

Briefing for Commons Second Reading of the Environment Bill

Greener UK and Wildlife and Countryside Link

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The Environment Bill is a vital piece of legislation. That the Prime Minister regards it as the “huge star of our legislative programme” is a strong statement of political intent.¹

There are many welcome measures in the bill. There are others where technical improvements will help to set the bill on the right track, and others where significant amendment or complete removal will be necessary.

Support from all sides of the House will be required to ensure that the bill is improved, helping to halt the loss of nature, reverse decades of environmental decline and set our environment on a pathway to significant improvement.

Much of the bill applies only to England. The need for a co-ordinated, ambitious approach to environmental governance and improvement across the whole of the UK has never been more important.

For the bill to succeed, it will require a step change in resourcing of local government, the Office for Environmental Protection and frontline delivery agencies such as Natural England and the Environment Agency, and for this to be sustained into future spending reviews. The catastrophic losses highlighted by the State of the Nature report² show where lack of funding has left nature to date.

Nature’s recovery will not be achieved on the cheap, but if funded and legislated for well, the dividends for the environment, our health and wellbeing, the economy and future generations will be priceless by comparison.

Summary of key concerns on the bill

It would be helpful if you would consider raising the following points in the debate:

- If the government is serious about its repeated verbal commitments to maintaining, and indeed enhancing, environmental standards, it must include a straightforward and substantive commitment to non-regression of environmental law in this flagship bill
- While a framework to set legally binding targets is welcome, it must be significantly strengthened in order to be effective
- The clauses on environmental principles need wholesale reform if they are to achieve equivalence let alone approach world leading legislation

- The independence and powers of the Office for Environmental Protection, including the proposed Environmental Review, must be strengthened
- The waste and resource efficiency measures are too focused on ‘end of life’ solutions to waste and recycling, with much more emphasis needed on the production side and to encourage the reduction of waste in the first place. The proposed charge on single use plastic items must apply to all single use materials. The government should commit to bring forward these measures, including deposit return schemes, as soon as possible
- Instead of increasing ambition to protect our health, the bill risks weakening existing laws and being a wasted opportunity for clean air. To show real ambition, the bill must include a legally binding commitment to achieve World Health Organisation guideline levels of particulate matter pollution by 2030
- The bill includes several measures which could seriously undermine the water environment. Clause 79 should either be deleted or substantively reformed
- The biodiversity and nature clauses should be strengthened. Local Nature Recovery Strategies will be ineffective unless there are stronger duties to use them in planning and spending decisions
- Biodiversity net gain in development requires stronger safeguards to ensure that it is part of a national plan to restore nature, that it does not enable more inappropriate development and that newly created habitat is protected for the future
- The bill is silent on tackling the UK’s global footprint. This must be addressed else the UK risks undermining its global leadership credentials ahead of key international summits
- The power to amend the main UK REACH text will need careful scrutiny to avoid it being used to reduce the level of protection for the public and the environment from hazardous chemicals

Non-regression in environmental standards

We understand that the [government believes](#) the measures in the Environment Bill, including the framework to set legally binding targets, and the oversight provided by the Office for Environmental Protection (OEP), to be “already superior to a non-regression commitment”.

As we will demonstrate in this briefing, while the Environment Bill is a welcome and much needed piece of legislation, it is in need of significant amendment and tightening before it is capable of guaranteeing that we do not fall below current standards (non-regression), let alone delivering the government’s ambition to leave the environment in a better state.

The loss of the non-regression provision from the [Withdrawal Agreement](#) heightens the need for legal certainty. Without it, there is no doubt that environmental law will come under sustained deregulatory pressure, including from those seeking to strike

trade deals, for example with the US. A non-regression provision is a key part of modern environmental law, as contained in a recent update to French Law and the [draft IUCN Global Pact for the Environment](#). The government should include a non-regression provision in our domestic law, Brexit or not. This should not be restricted to the themes addressed in this bill and should cover other vital areas such as soils.³

The simple truth remains that if the government is serious about its repeated verbal commitments to maintaining, and indeed enhancing, environmental standards, then it will wish to see this legacy enshrined in law through a straightforward commitment to non-regression of environmental standards set out in black and white in this flagship bill. The Withdrawal Agreement Bill also provides an opportunity to address this (for example [new clauses 18 and 19](#)).

Environmental Targets (clauses 1 – 6)

The inclusion of a target setting framework is an essential and welcome part of the Environment Bill. The long-term nature of environmental matters makes this particularly important. Halting and reversing the loss of nature and enhancing the environment cannot be achieved over the short time frame of a political cycle. Putting targets into law gives them certainty and clarity that benefit everyone and drives long-term investment in environmental improvements. However, targets alone will not drive improvement without a strong accountability framework for their achievement. As recent reports⁴ have shown, there is no let-up in the decline in nature. The need to take action has never been more urgent.

However, as well as being legally binding, targets must also be enforceable and ambitious and mechanisms that assure their delivery must be put in place immediately. It is vital that the framework is not used to weaken or undermine existing targets, and that new targets must at least match the level of ambition in existing targets. In order to achieve this, the framework in the bill must be significantly bolstered in the following four areas:

- **The current framework for target setting does not promote ambition or protect against needless regression.** In theory, the framework could be used to set narrow, unambitious targets. The bill should require the Secretary of State to set a sufficient number of targets in each priority area. While we welcome the focus on long-term improvement that targets of at least 15 years will bring, the bill should also allow for shorter term targets to be set where appropriate. This could be achieved by ensuring that the target setting power can be exercised over a shorter timeframe than 15 years for all priority areas, as is the case for particulate matter. The bill grants the Secretary of State the power to revoke or lower a target in certain circumstances, subject to much discretion and little scrutiny. This would allow the Secretary of State to revise a target and therefore potentially weaken legal protections and standards. This power must be much more tightly constrained to prevent misuse, with independent expert advice playing a role in determining whether departures are in fact justified. The secondary legislation in which targets will be housed must be laid by October 2022. Targets should be set as soon as possible, with the 2022 date regarded as a final deadline and not a timetable.
- **The ‘significant improvement’ test must be clarified and strengthened.** This test is designed to help shape the ambition of targets so that they drive real

improvement in the natural environment. While we support the intention behind it, it is unclear how it will work in practice. The term 'significant environmental improvement' is not defined and could be interpreted by an unambitious government as a significant improvement to an already degraded and degrading environment. As the test is to be applied to targets and other action collectively, it could mask slow progress or a lack of ambition in individual target areas. Furthermore, the test only applies on reviewing targets. At the very least, it must be applied at the start of the target setting cycle to ensure that environmental improvement drives the whole process.

- **The bill must drive continual improvement.** [Clause 4](#) places a duty on the Secretary of State to ensure that targets are met. This is very welcome. However, there is nothing to compel governments, including future ones, to start taking action now required to meet targets, or to take remedial action where targets are missed. Interim targets should be legally binding, and the bill should require successive governments to bring forward time-bound specific measures as part of the Environmental Improvement Plan to ensure progress remains on track. In order to ensure action across government other public bodies must also be placed under a duty to contribute to the achievement of the targets. The targeting regime should also be aligned with delivery mechanisms such as Environmental Land Management (ELM). Alongside this bill, the Agriculture Bill should create a matching long term ELM funding framework based on an assessment of environmental need.
- **Targets must be based on independent, expert, science led advice** to ensure that they are robust and fit for purpose. [Clause \(3\)\(1\)](#) requires the Secretary of State to seek advice from persons they consider to be independent and to have relevant expertise. This gives ministers a blank cheque to decide how and from whom to source advice. Instead, advice should be sought from an independent, well-resourced and expert body and based on public consultation. Advice should be published, and the government must be required to take this advice into account in setting targets. In the event of a departure from the advice, the government should provide clear evidence and a compelling justification for the departure, through publishing a report for parliamentary scrutiny.

Environmental Principles (Clauses 16 to 18)

The clauses on environmental principles⁵ are largely unchanged from the [draft Environment \(Principles and Governance\) Bill](#), despite very clear evidence that emerged during pre-legislative scrutiny, including from leading academics on the need for these clauses to be strengthened⁶. **The bill constitutes a significant and unacceptable weakening of the legal effect of the principles.**

The Queen's speech suggested that "For the first time, environmental principles will be enshrined in law." This is not correct as the principles are already enshrined in law (EU treaties and their inclusion in many environmental directives and regulations make them part of UK law). Moreover, the bill is relegating these vitally important legal principles to little more than creatures of policy.

[Clause 16](#) requires the Secretary of State to prepare a policy statement on environmental principles. Only Ministers, not public authorities, must have 'due regard' to this statement when making policy but the requirement does not apply

to decision making in individual cases and is subject to wide ranging exemptions in [Clause 18\(2\) and \(3\)](#). There is a half-hearted attempt to provide for parliamentary scrutiny of the statement in [Clause 17](#) but no formal role for parliament in approving the statement, as many have called for.

Currently, under EU law the environmental principles are binding on all public authorities including in individual administrative decisions. This legal obligation on all public authorities to apply the principles whenever relevant will be lost through the bill.

We note that the three Aarhus rights (public access to environmental information, public participation in environmental decision-making and access to justice in relation to environmental matters) were removed from the list of principles that was set out in the draft bill (Clause 2 (g) to (i)). While we agree that these rights should not be included in a list of environmental principles, we think that the government should use the bill as an opportunity to restate the importance of these rights and the need to ensure they are respected, protected and fulfilled.

Without fundamental redrafting, this part of the bill represents a significant backward step and potentially puts us in a worse position than we currently are *vis a vis* the principles in EU law.

The independence of the Office for Environment Protection (Clauses 19 to 22)

We welcome the government's recognition that "the OEP should have sufficient independence from government". However, the additional measures that the government has introduced are not yet sufficient to ensure the independence of the body in the long term.⁷

Independence of appointments

The process of appointing the Chair and other non-executive members of the OEP's board has not changed since the publication of the draft bill. Both the Environmental Audit Committee and the EFRA Committee called for a greater role for parliament in the appointments process. In oral evidence, the Secretary of State told the EFRA Committee that the model of the Office for Budget Responsibility in which the appointment of the Chair is made with the consent of the Treasury Select Committee "has much to recommend it". **It is very disappointing therefore that the government has failed to improve the appointments process and appears to be relying on pre-appointment hearings to provide independence, which they do not.⁸**

Independence of funding⁹

The government has agreed that in order to ensure its financial independence, the OEP will be provided with a five-year indicative budget which is formally ring fenced by HM Treasury within any given Spending Review period. This is welcome and should be enshrined in the legislation.

However, the government has not given the OEP the ability to have its own Estimate separate from Defra, which remains of concern. This is because the government seems to believe that only Non-Ministerial Departments can submit their own estimate. We disagree as our research suggests that estimates can be submitted by either Non-Departmental Public Bodies or independent statutory bodies that are accountable to parliament, a status more befitting for a body with the OEP's remit and role.

The government also claims that having its own estimate would remove the flexibility for Defra to provide in-year financial support to the OEP in response to changing circumstances. We do not believe this to be correct as supplementary estimates can be prepared and submitted to deal with in-year budgetary changes, as is the case for bodies such as the National Audit Office.¹⁰

Institutional safeguards

We welcome the Principal Objective for the OEP in [Clause 20](#) and the new duty on the Secretary of State, in exercising functions in respect of the OEP, to have regard to the need to protect the OEP's independence (Paragraph 16 of [Schedule 1](#)). The 'have regard to' construction is much maligned, and we therefore encourage the government to strengthen this important duty.

As a further guard against any attempt to undermine the OEP's independence, Clause 20 (or Paragraph 16 of Schedule 1) should have added to it an obligation on the OEP to report to parliament on any attempt, particularly by or on behalf of, any of the public bodies it oversees, to compromise its ability to act in the ways contemplated by Clause 20(2).

Clause 20(2) – which presently requires the OEP to act objectively and impartially – should have added to it 'independently'.

The Office for Environmental Protection's enforcement function (Clauses 26 to 36)

The OEP is not given a sufficiently wide remit to ensure adequate environmental governance or to properly fulfil its potential.

It should have broad scope to act where it thinks it is most needed and it must be enabled to take a wide-ranging and strategic approach to environmental oversight. The considerable range of matters that could affect environmental conditions mean this is indispensable. However, the bill currently limits the OEP's scope in a number of ways.

Furthermore, many of the OEP's functions rely on the identification of a potential 'failure to comply with environmental law' by a public authority. However, the definition of this term is concerning (Clause 26(2)). This is already a clear phrase with an obvious meaning – it does not require elucidation in legislation. This definition should be removed.

Investigations (Clause 28)

Conducting investigations into specific and individual potential breaches of environmental law will be a very important element of the work of the OEP. However, there is room for further improvement to help the body see off problems before they occur.

We welcome the ability of the OEP to conduct investigations on its own initiative without having to rely on receipt of a complaint, which is provided for in [Clause 28\(2\)](#). However, the functions of the OEP must be clarified and extended. It must be empowered to conduct broader inquiries into systemic issues and make recommendations or issue guidance off the back of them. This could be established in Clause 24 (monitoring and reporting on environmental law) and could help prevent breaches of law before they occur. Clause 28(9) should be amended to require the publication of the reports the OEP prepares following an investigation.

Environmental Review (Clause 33)

We welcome the government's attempt to design a bespoke enforcement process for the OEP. Unfortunately, the proposed Environmental Review process is unsatisfactory for a number of reasons:

- Environmental reviews could represent a new and improved mechanism for the comprehensive review of compliance with environmental law, but **they must be able to consider technical facts and issues, with expert adjudicators** who are able to thoroughly review the substantive matter at hand. The bill should explicitly state this.
- **There is a need to move away from traditional judicial reviews**, which have proved unsatisfactory in dealing with environmental complaints. While the environmental review model appears to be an attempt to do just that, the way it is currently curtailed by reference back to judicial review principles, means the substance of the review process is, in essence, judicial review in disguise.
- **To address this, the Upper Tribunal should not be restricted to applying 'judicial review principles' in environmental reviews.** [Clause 33\(5\)](#) should be removed, and the bill should explicitly state that environmental reviews must properly consider contested matters of fact (and also the decision notices) as part of a more thorough review process.
- Environmental reviews are only possible where an information and decision notice have been issued by the OEP to the relevant public authority. **While there is scope for urgent judicial and statutory reviews, this should be improved.** Environmental review and the Upper Tribunal have the potential to meaningfully improve environmental enforcement and, as such, environmental reviews should be available in urgent situations and for serious issues.
- **The important role that civil society has to play in ensuring compliance with environmental law must be recognised** by giving civil society direct access to an improved environmental review mechanism. The environmental review

process will work best if it is open to all. As has been recognised by the Supreme Court, in order for the judiciary to ensure that the government carries out its functions in accordance with the law, people must in principle have unimpeded access to it.¹¹

- **The remedies and sanctions available through the environmental review process are too weak.** Instead, the Upper Tribunal must be empowered to grant meaningful, dissuasive and effective remedies including, where appropriate, fines – just as the Court of Justice of the European Union is currently able to do. The constraints imposed on the Upper Tribunal in Clause 33(8) are detrimental to good administration and appear to severely limit the ability of the Tribunal to grant meaningful remedies. They must be addressed during passage.
- **The purpose and force of the statement of non-compliance is not clear, and appears to be particularly weak.** The bill clarifies that a statement of non-compliance does not affect the validity of the relevant conduct. This begs the question of what the statement does do. While the compliance statement is an interesting novelty introduced by the bill, it should be bolstered to allow the court to use it to deliver mandatory compliance orders as bespoke remedies.

The Office for Environmental Protection and climate change

We welcome the fact that the OEP will have climate change within the remit of its enforcement functions, as recommended by the Environmental Audit Committee and the EFRA Committee in their pre-legislative scrutiny reports^{12,13}. We agree that the OEP should work closely with the Committee on Climate Change to avoid overlap and duplication and ensure a joined-up approach to scrutinising and enforcing climate law.

Restrictions on disclosure (Clause 38)

Transparency is a crucial element of proper environmental governance and access to justice. People must be kept abreast of the OEP's work in order to understand how it is contributing to the enforcement of environmental law. Some elements of the bill are encouraging in this respect. However, important improvements are required to ensure full transparency of OEP processes.

The OEP and public authorities are prevented from disclosing certain materials including information and decision notices, and correspondence relating to such notices (Clauses 38(1) and (3)). This may threaten the independence of the OEP (given that ministers must receive a copy of any notices issued under clause 35).

It is unclear why these specific provisions are needed given that access to information legislation already has relevant carve-outs, for instance where disclosure would adversely affect the course of justice or the ability of a public authority to conduct a criminal or disciplinary inquiry. A better approach, given the Environmental Information Regulations are already in place and would apply to the OEP, would be to either remove clause 38 altogether or flip it around so that disclosure is required apart from in certain (exhaustive, specified) circumstances.

Meaning of natural environment and environmental law (Clauses 39 and 40)

Environmental law is defined in [Clause 40](#) as any legislative provision which is mainly concerned with an environmental matter. **The term 'mainly concerned' is ambiguous with no clear legal meaning.** 'Related to' is a broader and more easily understood alternative. It acknowledges that law is often concerned with many matters, and that the environment is affected by many areas of law.

As Dr David Wolfe QC said in his written evidence to the pre-legislative scrutiny of the draft bill:

“And, even then, there is no basis for a “mainly concerned with” test. If any provision of any Act or regulation is concerned with an environmental matter, then it is “environmental law.”¹⁴

'Environmental matters' are also too narrowly defined in Clause 40(2). Key areas of law with potential environmental impacts fall outside the scope including, for instance, many pieces of planning law as explained in paragraph 341 of the Explanatory Notes. This is concerning as the planning system is a core part of our framework of environmental protection. In addition, specific areas of law are carved out. Concerning exclusions include those relating to the disclosure of and access to environmental information and taxation, spending and the allocation of resources within government. This latter exclusion could hinder the OEP's ability to assess whether compliance with environmental law is being adequately prioritised.

The definition of the natural environment in [Clause 39](#) risks excluding significant elements of the natural world including, for example the marine environment. Although paragraph 333 of the Explanatory Notes indicate that the marine environment is included, for the avoidance of doubt this should be explicitly stated on the face of the bill.

The bill does not include any focus on the UK's **global footprint** and its reduction. Whilst this is implicit via the inclusion of Environmental Improvement Plans (of which the 25 Year Environment Plan is the first and includes a chapter on protecting and improving our global environment), this international component must be explicitly recognised in the bill. For further detail see the additional briefing from WWF on delivering a reduction in global footprint through a mandatory corporate Due Diligence Obligation.

Environmental governance, Northern Ireland (Clauses 42 and 43, Schedules 2 and 3)

We welcome the extension of provisions in the bill on Environmental Improvement Plans, environmental principles and the OEP to cover Northern Ireland. Our previous comments in relation to those parts of the bill also apply to the specific clauses and schedules on Northern Ireland.

We welcome the fact that, subject to these provisions being commenced, a dedicated Northern Ireland member would be appointed to the board of the OEP. However, we are concerned that the proposed process for appointing this member lacks involvement or oversight from the Northern Ireland Assembly.

The government should confirm that the work to establish the OEP takes full account of the resourcing, staffing and expertise needed for the body to operate effectively in Northern Ireland.

Northern Ireland shares a land border and a number of cross-border sites with the Republic of Ireland. It would be helpful if the government could indicate what work is being undertaken on the relationship between the OEP and existing environmental governance structures within the Republic of Ireland.

Devolution

The provisions relating to environmental principles and the OEP primarily relate to England only – and, as outlined above, Northern Ireland. The role of the OEP also extends to reserved functions of UK Ministers in Scotland and Wales. This approach appears to be consistent with the devolution settlements. However, it does raise some matters that require clarification. The government should:

- Provide clarification, with examples, of the reserved functions of UK Ministers that would be subject to oversight by the OEP; and
- Indicate why the reserved functions of UK Ministers in Northern Ireland are rightly subject to the environmental principles (Schedule 2, Paragraph 8(2)) but that this is not the case in regard to the reserved functions of UK Ministers in Scotland and Wales (clauses 127(1) and 18(3)(c), taken together).

Waste and resource efficiency (Clauses 44 to 66)

The UK is currently using and wasting resources at unsustainable levels. We welcome that the bill proposes a number of measures to tackle this, including through the introduction of new producer responsibility schemes, deposit return schemes and resource efficiency product requirements.

We welcome the fact that targets set through the bill will focus on waste reduction and resource efficiency, but overall, the measures in the bill itself are too focused on ‘end of life’ solutions to waste and recycling. We need much more emphasis on reduction and design for resource efficiency, including through reuse, at the design stage. This will support the UK’s carbon targets and delivery of net zero. The proposed waste and resource efficiency powers are enabling powers and it is not yet clear how or when these will be used. Whilst it makes sense to allow for a degree of flexibility, the government must take this opportunity to clearly set out its intentions and ambitious, tangible targets with set dates.

The government has previously committed to “match or where economically practicable exceed the ambition of the EU’s Ecodesign standards”.¹⁵ This bill provides a well-timed and convenient legislative vehicle to do just that.

We would like an assurance from the government that **it will seek to introduce legally-binding targets on waste minimisation through the power in Clause 1**. Given that the implications of UK resource use extend far beyond our borders, targets set on minimisation must ensure a reduction of the UK's global material footprint. This is because the vast majority (81 per cent as of 2014) of resource extraction to meet final UK demand occurs abroad.¹⁶ In line with the waste hierarchy, radical waste minimisation should be achieved through significant reductions in use of resources in the first instance, followed by a major increase in reusability and resource productivity. The UK is on course to easily exceed the government's current target to double resource productivity by 2050, so we would like assurances that the new, legally binding targets will drive ambition in this area.

Producer responsibility (Clauses 44 to 46)

Paragraph 2(2)(a and b) of [Schedule 4](#) indicates that regulations should cover waste minimisation, reduction, re-use, redistribution, recovery or recycling of products or materials. This is welcome. However, we are concerned that [Schedule 6](#) undermines this through its sole focus on disposal costs. **Extended producer responsibility must be fundamentally designed as a system to incentivise full lifecycle improvements in products and packaging.** With regards to packaging in particular, this includes a wholesale reduction in single-use packaging and towards reusable and refillable alternatives, using modulated fees to internalise the full life-cycle costs of packaging, not just those that occur at the end-of-life.

Charges for single use plastic items (Clause 50 and Schedule 10)

The fact that potential **single use charges will only apply to plastic** is a significant missed opportunity and could result in unintended consequences. We are already seeing shifts from single use plastic cutlery, stirrers, straws, etc. to single use alternatives made from paper, wood, etc, even when such items are unnecessary or reusable options are easily accessible. This will undermine the UK's carbon targets and commitment to achieve net zero. The government's proposals mean that not only will this continue unchecked, it will, in fact, appear to be encouraged by government policy. It would be far better to tackle the single use culture in general, rather than just shifting the environmental burden away from plastic to other materials. Tackling the scourge of plastic pollution must remain a key government priority, but this goal must not be pursued in a policy vacuum as this risks bringing about changes that could, for instance, increase carbon and result in more waste generation. **This part of the bill must be amended if the government's ambitions on waste minimisation and reduction are to be achieved.** This would be consistent with the EFRA committee's [recommendation](#) following its inquiry on single-use plastic packaging.

Deposit schemes (Clause 49)

The government should clarify that it will introduce an 'all in' deposit return scheme (DRS), broaden the scope of DRS to include reuse and future proof legislation to ensure opportunities to establish a DRS for other packaging formats in the future. These are the only methods to achieve the environmental outcomes proposed in the government's consultation.¹⁷ The government's own [impact assessment](#) also demonstrated an 'all-in' scheme would have a significantly larger net economic benefit than an 'on-the-go' scheme.

Resource efficiency (Clauses 47 to 51 and Schedule 8)

The bill grants a general power to the relevant national authority to set resource efficiency requirements for products. Paragraph 1(2)(2) of [Schedule 8](#) excludes energy-related products from this power. This is because the government states that the Secretary of State will already have powers to set resource efficiency standards for energy-related products courtesy of regulations made under section 8 of the European Union (Withdrawal) Act 2018. This will see existing powers held by the European Commission to set resource efficiency requirements for energy-related products under the Ecodesign Directive transferred to the Secretary of State on exit day.¹⁸

However, it is not clear whether there is a mechanism to prevent regression when it comes to current ecodesign standards for energy using products, or ensure the UK will keep pace with EU standards in future. In line with ambitions outlined in documents including the Clean Growth Strategy and the Resources and Waste Strategy, **we would like assurances in law that the UK will at least meet, and preferably exceed, the EU's future ecodesign targets**, using a similarly broad spectrum of powers as are outlined for non-energy using products in the current bill.

We encourage the government to give urgent consideration to this potential discrepancy on standard setting before the line by line scrutiny of the bill commences.

Air quality (Clauses 2, 67 to 72)

Instead of increasing ambition to protect our health, the bill risks weakening existing laws and being a wasted opportunity for clean air. Not only does it open the door to existing legal binding air pollution limits being loosened, but any future air quality targets set under the bill will be subject to a substantially weaker framework than that afforded by existing law.

It is positive that the bill recognises the need for a new binding target for particulate matter (PM) pollution. However, there is nothing to suggest what standard or date that target will commit to. The bill provides no assurance that new targets will improve upon the legally binding pollution limits already in law and does not protect those existing limits from being weakened in the future. **A government that is**

serious about protecting people's health must make a legally binding commitment to meet [World Health Organisation guideline levels](#) of PM by 2030 on the face of the bill.

The bill provides the opportunity for binding targets, once established, to be reneged upon by the Secretary of State further down the line if they consider the costs of meeting them to be 'disproportionate'. This is unacceptable when people's health is at stake and would deliver weaker protections than those surrounding existing legal air pollution limits.

Environmental Improvement Plans provide a weaker and less robust mechanism for delivering binding air quality targets than that afforded to existing legally binding pollution limits. The Plans leave too much to the discretion of ministers and fail to recognise that the protection of human health should be paramount when delivering measures to clean up the air. **The government should commit to publishing and implementing national Healthy Air Plans that set out time-bound, impact-assessed measures to reduce air pollution in line with binding targets.**

Where a target is missed, the bill requires the government to set out steps to achieve the target "as soon as reasonably practicable". To at least reflect the protections afforded by existing legislation the government should instead be required to put timetabled measures in place that are likely to achieve compliance "in the shortest possible time".

Although the bill provides some welcome new powers for local authorities, it passes the burden of responsibility to them while failing to require action across central government or committing additional funding or resources to drive effective local action. The bill must include a 'clean air duty' to ensure all levels of government and public bodies are contributing to achieving binding targets through their decision-making.

Ammonia emissions from agriculture make a significant contribution to the formation of secondary PM in urban air pollution¹⁹. The government should confirm that the reduction of ammonia emissions will be considered as part of the process to set the PM_{2.5} air quality target under Clause 2.

The Clean Air Strategy²⁰ includes a welcome commitment to a target for reducing nitrogen deposition on England's protected priority sensitive habitats by 2030 and to review what the longer term targets should be. The government should confirm that this will be taken forward as part of the exercising of its target setting power under Clause 1, so that this target becomes legally binding.

For further details, see this [briefing](#) from the Healthy Air Campaign.

Water (Clauses 73–87)

The bill includes several measures which could seriously undermine the water environment.

Clause 79 is a wide-ranging power to amend the regulations that implement the EU Water Framework Directive. These include vital rules about the way water quality is

measured and the different chemicals and pollutants that must be considered. There may be some justification for a power to make technical updates to regulations, but this should not be a licence to weaken important targets via secondary legislation.

England is already far behind its target of achieving Good Ecological Status in all waters by 2027. The government should not be using the Environment Bill to give itself powers to amend difficult targets or the way they are measured.

Clause 79 should be deleted or amended to ensure that targets and standards cannot be weakened without thorough public consultation and scientific advice.

On the other hand, more positive opportunities to improve the water environment are missed.

The bill must tackle water consumption. In the same way as the bill requires that a target must be set for reducing particulate matter, the bill should include a sister clause to specify that a target is set for a rapid and sustainable reduction in water consumption. Anything less will be a significant missed opportunity as the next legislative vehicle to deliver this may be several years away. The bill should include a power to:

- Establish ‘no abstraction zones’ around priority freshwater habitats where there is evidence of damage by abstraction, and
- Introduce a mandatory water efficiency labelling scheme, linked to minimum standards for fittings and incorporated into building regulations

Small waterbodies and wetland habitats form an essential but overlooked part of our water environment. The bill should require a strategic programme to further their conservation to be set out at a catchment scale, under the framework of a national Nature Recovery Network.

Clauses on Land Drainage powers must also be amended to ensure that these powers do not undermine the objectives of the bill.

Biodiversity gain (Clause 88 and Schedule 15)

Done well, biodiversity net gain could help restore biodiversity, deliver ambitions through the 25 Year Environment Plan and help respond to the climate and ecological emergencies if it operates and is assessed against a national plan to restore nature and ecosystems. However, current proposals include several significant weaknesses. Newly created habitat could be ploughed up after 30 years, key types of development are currently out of scope, the level of gain must be more ambitious, and there should be stronger assurances that existing protections cannot be undermined.

- **Biodiversity net gain habitats must be secured in perpetuity, or the system will inevitably lead to overall losses.** Schedule 15 paragraph 17(3) and 20(2)(b) would allow gain sites to be ploughed up for other uses after 30 years, destroying any carbon storage benefits and ecological gains.

- **Nationally Significant Infrastructure Projects (NSIPs) should be included in biodiversity net gain and exceptions should be limited.** NSIPs can be some of the most damaging developments for nature but planned and designed well, they offer opportunities for biodiversity net gain. Provision should be made to include these developments within the scope of the bill. Unfortunately, exemptions are potentially very wide. Paragraph 6(b) of [Schedule 15](#) would enable the Secretary of State to exempt any type of development in the future. The bill should avoid blanket exemptions and should instead set out a process for considering exemptions through public consultation.
- **The level of gain must be more ambitious.** The government has mandated 10% gain. The [Impact Assessment for the net gain](#)²¹ noted that 10% is merely *‘the lowest level of net gain that the department could confidently expect to deliver genuine net gain, or at least no net loss’*. It is less ambitious than some current practice. 20% net gain would be more commensurate with the scale of nature’s needs. Paragraph 4(4) of [Schedule 15](#) enables the Secretary of State to amend the percentage gain through regulations. There must be no opportunity to lower the level of gain – provision should only be made to amend upwards to ensure that biodiversity net gain is not undermined.
- **The bill should be explicit that the mitigation hierarchy²² and existing designations and planning protections for sites are not undermined by biodiversity net gain.** Any biodiversity net gain claimed for developments affecting these sites must be additional to existing requirements and not used to override their protection. We support the exclusion of irreplaceable habitats from biodiversity gain (Schedule 15 (7)(1)). Exclusions should be extended to national and international wildlife sites including SSSIs, SPAs, SACs and Ramsar sites as well as ancient woodland.
- **The word ‘net’ has been removed from biodiversity net gain proposals in the bill** – these are now termed biodiversity gain. Clarification is needed on why this has been done and whether this materially alters the intentions of proposals or future outcomes on the ground.

Duty to conserve and enhance biodiversity (Clauses 89–90)

Public authorities have a vital role to play in turning around the state of nature. The current duty on public bodies²³ to have regard to the need to conserve biodiversity is weak and ineffective. The bill proposes three welcome steps: (1) it expands the duty to have regard to the need to enhance biodiversity; (2) it creates an obligation to plan for appropriate actions to fulfil the duty; and (3) it requires certain public authorities to report on actions pursuant to the duty.

In order to ensure that the new duty is more effective, however, the following improvements should be made:

- The provisions in the duty remain too open-ended to guide everyday action: **the bill should require the government to consult on and publish guidance for public authorities on how the duty should be fulfilled**

- The main difficulty that many public authorities have in enhancing biodiversity is severe financial constraint. In planning their actions, **authorities should be required to set out an estimate of the likely budgetary needs and constraints**, which should be submitted to HM Treasury
- The **biodiversity duty should apply to private sector bodies** as well as public bodies
- Clause 90(8) should also require a reviewing and advising public authority to be designated to **audit the reports** produced

Local Nature Recovery Strategies (Clauses 91–95)

Local Nature Recovery Strategies can enable a wide range of organisations to contribute to the measures needed to address the biodiversity crisis and deliver the ambitions of the 25 Year Environment Plan, in particular by supporting the creation of a Nature Recovery Network. By identifying local biodiversity priorities including restoration opportunities, they could deliver policy integration and better value for money at the same time as saving nature.

The biggest shortcoming of this part of the bill is that the duty to use the strategies is very weak. It is included in the duty to conserve and enhance biodiversity in [Clause 89\(5\)](#), requiring public authorities to have regard to the strategies in making plans to conserve or enhance biodiversity. **The duty should be a much stronger requirement to take the strategies into account in the exercise of public functions, including planning and spending decisions.** The results should be part of the [Clause 90](#) biodiversity reporting duty to ensure oversight.

To be effective, it is essential that the strategies properly influence policy and decision-making in key areas such as planning, Environmental Land Management and biodiversity net gain. In this way, they will provide the strategic impetus for action to create an ecologically coherent national Nature Recovery Network. For example, on planning, there must be a clear link between the strategies and strategic spatial planning, such as how Strategic and Local Plans should take account of the strategies.

The bill should ensure that onsite and offsite net gain biodiversity increases, funds secured from the purchase of ‘biodiversity credits’, and funds for land management are spatially targeted through the strategies and make a meaningful contribution to nature’s recovery. This approach should consider the possibility of identifying areas where investment can provide multiple benefits, where improved ecological function can improve air and water quality, promote natural flood management, or enhance landscape character, as outlined in [Greener UK’s briefing](#) on a strategic approach to environmental planning.

Proposed Ramsar sites, potential Special Protection Areas and Local Wildlife Sites have been omitted from the meaning of a nature conservation site in [Clause 95\(3\)](#). Along with the statutorily designated sites, Local Wildlife Sites hold almost all of England’s remaining nature resource. They form a vital core from which nature can

disperse and recover throughout the Nature Recovery Network. **To more fully identify local biodiversity priorities, Local Wildlife Sites should be included in the habitat map.**

Of course, it is necessary to link local with national ecological considerations, so there should be a requirement for all strategies to contribute to the development of an ecologically coherent network of sites.

Tree felling and planting (Clauses 96 and 97)

We welcome the plans to require the consultation of local communities before beginning street tree felling programmes. It is important that this be properly resourced if it is to be meaningful consultation and this should be ring fenced. The technical detail of how this will be applied in practice must also show that it is drawing on the experience of local communities across England and not contain loopholes that leave valued trees vulnerable.

In early 2019, the government consulted on this and two other measures. The other two were a duty to report tree losses and gains and a statutory local authority tree strategy requirement. These latter two have not been taken forward. In para 5.6 of its [response](#) to the consultation²⁴, the government indicated that reporting on tree felling and planting would be encompassed within the wider reporting system through this bill national biodiversity reporting and that they will be publishing best practice guidance on local tree strategies (para 6.4). We look forward to working with the government to ensure that these are as robust as possible.

We welcome the strengthening of the Forestry Commission's powers in relation to illegal felling which must also be properly funded.

We note that the bill does not include a requirement for the government to produce a national tree strategy for England, as is the case in Scotland. Given that work is already underway to develop such a strategy, **we hope that this could be a relatively straightforward amendment to the bill that would send out a positive signal on the importance the government attaches to trees and woodlands.**

Conservation covenants (Clauses 98–121)

The bill introduces a system of conservation covenants, whereby 'responsible bodies' approved by the Secretary of State can enter into private arrangements with landowners. These arrangements oblige the current landowner and future landowners to abide by 'restrictive' or 'positive' obligations to do with the management of the land for the benefit of its conservation for environmental or historic purposes. The section of the bill on covenants is based on a [Law Commission draft Conservation Covenants Bill](#). We have concerns that in its current form, covenants would not act as an effective legal mechanism to secure net gain sites in perpetuity.

Paragraph 3(c) of [Schedule 17](#) enables the Upper Tribunal to take account of whether the obligation serves 'the public good' when considering whether to

discharge or modify a conservation covenant. Without any further definition, it is unclear how the Tribunal would interpret 'public good', risking covenants being easily discharged or modified. Similarly, Paragraph 3(2)(a)(ii) of [Schedule 17](#) allows the Tribunal to consider changes to enjoyment of the land when discharging or modifying a covenant, which again may give undue leeway to a landowner to avoid obligations under a covenant.

[Clause 99\(5\)](#) has been modified from the Law Commission draft bill to enable bodies whose '*main activities*' relate to conservation become a responsible body. Under the draft bill it was only bodies where '*at least one of the purposes or functions*' are related to conservation. It is difficult to judge whether or not this would make it easier for private companies to become responsible bodies. **A stronger formulation would be a combination of the two, such as 'bodies whose primary purpose or function relate to conservation'.**

Regulation of chemicals (Clause 122 and Schedule 20)

The bill gives the Secretary of State the power to amend the UK REACH and the REACH Enforcement Regulations 2008 to ensure a smooth transition to a UK chemicals regime. The bill creates a mechanism for the government to amend the main text of this UK REACH law, although it also lists a number of protected articles which cannot be modified.

Amendments to UK REACH will need to be made through further regulations. [Schedule 20](#) of the bill states these can only be made if they are consistent with Article 1 of REACH, which sets out its aims and scope. Paragraph 1(6)(b) of the Schedule says the Secretary of State must, before beginning consultation on any amending regulations, publish an explanation of why they are consistent with Article 1, in "the manner which the Secretary of State considers appropriate".

We are concerned about granting the Secretary of State such a sweeping power to amend the main UK REACH text as this could be used to reduce the level of protection for the public and the environment from hazardous chemicals.

This is exacerbated by recent experience of pesticides legislation in which an accidental weakening of laws relating to endocrine disrupting chemicals nearly slipped through. The error, spotted by the UK Trade Policy Observatory²⁵, was eventually corrected by the government²⁶, but it highlights the risks of allowing changes to such significant areas of public protection law to technical secondary legislation on which there is no public consultation.

We will be examining the individual REACH articles in depth to establish which ones should be added to the protected list.

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Endnotes

¹ [Background briefing on the Queen's speech](#), 14 October 2019.

² [State of Nature 2019](#).

³ [Greener UK briefing on non-regression in the Environment Bill](#), October 2018.

⁴ [State of Nature 2019](#).

⁵ The environmental principles are integration, prevention, precaution, rectification at source, polluter pays (Clause 16(5)).

⁶ Lee, Maria and Scotford, Eloise A.K., [Environmental Principles After Brexit: The Draft Environment \(Principles and Governance\) Bill](#) (25 January, 2019).

⁷ [Government response](#) to the pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill, 15 October 2019.

⁸ [Oral evidence from the Secretary of State](#) to the EFRA Committee on 'Is Defra ready for Brexit?', 9 September 2019.

⁹ [Greener UK briefing](#) on the funding of the Office for Environmental Protection, March 2019.

¹⁰ For example, this [Memorandum for Supplementary Estimate](#), 2016-17.

¹¹ R (oao Unison) v Lord Chancellor [2017] UKSC 51, [68].

¹² [Scrutiny of the Draft Environment \(Principles and Governance\) Bill, Environmental Audit Committee, 24 April 2019](#).

¹³ [Pre-legislative scrutiny of the Draft Environment \(Principles and Governance\) Bill, EFRA Committee, 23 April 2019](#).

¹⁴ [Written evidence](#), Dr David Wolfe QC, pre-legislative scrutiny of the draft Environment (Principles and Governance) Bill.

¹⁵ HM Government (December 2018) *Our waste, our resources: a strategy for England*

¹⁶ CIEMAP briefing, 2018, 'Developing a carbon based metric of resource efficiency'.

¹⁷ [Introducing a Deposit Return Scheme \(DRS\) in England, Wales and Northern Ireland, Defra, February 2019](#).

¹⁸ [Memorandum from Defra to the Delegated Powers and Regulatory Reform Committee](#).

¹⁹ Wildlife and Countryside Link [consultation response](#) to the draft Clean Air Strategy, August 2018.

²⁰ [Clean Air Strategy](#), Defra, January 2019.

²¹ Biodiversity net gain [Impact Assessment](#), Defra, 21 November 2018.

²² The [mitigation hierarchy](#) is avoid before mitigate before compensate for environmental harm.

²³ [Section 40](#) of the Natural Environment and Rural Communities Act 2008.

²⁴ [Government response](#) to consultation on trees and woodlands, 15 October 2019.

²⁵ [Not just a technical exercise: a look at new UK pesticides regulation](#), UK Trade Policy Observatory, 15 May 2019.

²⁶ [Lords Hansard, Column 29GC](#), 16 October 2019, Grand Committee discussion of the Pesticides (Amendment) (EU Exit) Regulations 2019.

Greener UK is a coalition of 13 major environmental organisations united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment.

Greener UK is working in partnership with Wildlife and Countryside Link.

Together, Greener UK and Wildlife and Countryside Link members have the support of over eight million people.



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