

# Environmental Policy Forum

## PRESS RELEASE

Under embargo until 00:01 07 September 2017

### **EU Withdrawal Bill inadequate to deliver Gove's "Green Brexit" vision of healthier environment**

**As MPs begin to debate the landmark European Union (Withdrawal) Bill, leading environmental scientists, engineers, ecologists and water and waste experts have called for meaningful parliamentary scrutiny of environmental policies and laws.**

Whilst the Conservative Government committed in its manifesto to "be the first generation to leave the environment in a better state than it inherited" and Environment Secretary Michael Gove has talked of his ambition for a "Green Brexit", a range of professional bodies have warned that the EU Withdrawal Bill "gravely threatens" the ability to achieve either.

In letters to Michael Gove and David Davis, the institutes have warned that the Bill fails to adequately provide for parliamentary scrutiny of the raft of changes required to make environmental laws function, ensure the fundamental principles which underpin decades of environmental improvement are protected, or provide a meaningful framework for independent scrutiny of future Government performance on the environment. They also warned that devolved administrations should not be constrained from pursuing ambitious environmental policies and targets of their own as a result of the powers the Bill creates.

The bodies have called for the legal establishment of a new body, answerable to Parliament and fully independent of Government which would help provide the kind of scrutiny currently provided by the European Commission. In the past this has allowed citizens and organisations to take governments to court over failing to meet legal obligations such as on air quality. The bodies have also called for parliamentary committees to rubber stamp or call in for scrutiny the large number of laws which Ministers can approve, under so called 'Henry VIII powers', as EU laws are made workable in the UK.

Environmental Policy Forum Chair, Professor Will Pope said "the Government has welcome ambitions for the environment, with a new 25 year plan imminent and a commitment to improve environmental quality for future generations. Yet plans without appropriate tools and measures for delivery and scrutiny will be doomed to failure. Brexit offers certain opportunities to manage our environment in a more effective manner, more bespoke to UK needs. Yet it also presents real risks that measures which have achieved cleaner rivers, seas, towns and cities could be eroded. We are calling for appropriate checks and balances to be established from the outset, to ensure we do not risk becoming the 'dirty man of Europe' again".

**ENDS**

For any press and communications enquiries, please contact Sarah Farache on 020 7269 5820  
E: [sarah.farache@ciwem.org](mailto:sarah.farache@ciwem.org).

## Notes to Editors

1. The Environmental Policy Forum (EPF) is a network of UK environmental professional bodies promoting environmental sustainability and resilience for the public benefit. The EPF's member bodies have a collective membership of around 70,000 environmental professionals, many of whom are individually chartered in environmental practice, science and engineering disciplines.
2. The briefing sent to Ministers can be found at [www.ciwem.org/brexit](http://www.ciwem.org/brexit)
3. CIWEM (The Chartered Institution of Water and Environmental Management), is the leading independent Chartered professional body for water and environment professionals, promoting excellence within the sector. [www.ciwem.org](http://www.ciwem.org)
4. The Institution of Environmental Sciences (IES) is a membership organisation that represents professionals from fields as diverse as air quality, land contamination and education - wherever you find environmental work underpinned by science. A visionary organisation leading debate, dissemination and promotion of environmental science and sustainability, the IES promotes an evidence-based approach to decision and policy making. [www.the-ies.org](http://www.the-ies.org)
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6. CIWM (the Chartered Institution of Wastes Management) is the leading professional body for the waste management sector representing around 6,000 individuals in the UK and overseas. Established in 1898, CIWM is a non-profit making organisation, dedicated to the promotion of professional competence amongst waste managers. CIWM seeks to raise standards for those working in and with the sector by producing best practice guidance, developing educational and training initiatives, and providing information on key waste-related issues. [www.ciwm.co.uk](http://www.ciwm.co.uk)
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8. IEMA is the membership body for more than 14,000 environment and sustainability professionals worldwide. We support individuals and organisations in setting and achieving globally recognised standards for sustainable practice, in turn driving the development and uptake of sustainability skills. We add value for our members by providing the knowledge, connections and recognition necessary to lead change within organisations at all levels. We are independent and international. We apply the combined expertise of our members to provide evidence and influence decision-making, working towards our vision of transforming the world to sustainability. To find out more, visit [www.iema.net](http://www.iema.net)

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# ENVIRONMENTAL POLICY FORUM

c/o Society for the Environment

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T: 0345 337 2951 E: [tatum.matharu@socenv.org.uk](mailto:tatum.matharu@socenv.org.uk)

Rt Hon Michael Gove MP  
Secretary of State for the Environment, Food and Rural Affairs  
Nobel House  
17 Smith Square  
London  
SW1P 3JR

4th September 2017

Dear Secretary of State,

## **Four Concerns Raised by the European Union (Withdrawal) Bill**

The Environmental Policy Forum (EPF) is a network of UK environmental professional bodies promoting environmental sustainability and resilience for the public benefit. The EPF's member bodies have a collective membership of around 70,000 environmental professionals, many of whom are individually chartered in environmental practice, science and engineering disciplines.

We welcome your Government's continued commitment to leave the environment in a better state than we inherited it. Exiting the EU provides opportunities which may assist in the achievement of this, but without fundamental mechanisms and assurances in place from the outset, it also gravely threatens the feasibility of such ambition. In this context we consider that the EU Withdrawal Bill fails to adequately address several issues of significant concern for our sector and that further clarification is required in relation to four particular concerns which we detail on the attached note.

It is well understood that a healthy and well-managed environment is an essential foundation for the operation of a strong and resilient economy, healthy trade and a productive society. We recognise the extent of the burden of regulatory work involved with the EU exit process. However, in order to ensure the best outcomes in a democratic society, the need for transparency, scrutiny and appropriate enforcement mechanisms are paramount. The Bill as presently drafted undermines the scope for such safety mechanisms and we would urge you to strengthen the wording in this regard. Additionally, it is of the utmost importance that appropriate governance frameworks and access to justice, currently enabled by the EU via the Commission and CJEU, are established in the UK.

We are pleased that you have recognised the importance of environmental principles such as the precautionary principle in driving environmental improvements over recent decades, and the importance of maintaining them in the UK post-EU Exit. Without explicit transposition of these principles into UK law however, there is a real risk they will not be sufficiently provided for by case law and could be diluted and lost as a driver of our environmental policy and practice.

Finally, as the UK begins to shape its direction on environmental management outside of the EU, we strongly encourage the Government to ensure that it works closely with its devolved nations to develop a set of commonly applicable policy frameworks to

manage issues which are not governed by national boundaries or otherwise require common approaches. At the same time these administrations must be enabled to develop locally relevant and innovative legislation and regulation.

As the Bill passes through parliament and as you and your Government develop the mechanisms through which the environment will be protected and enhanced, please give strong regard to the considered positions in our attached document as without improvements on these fronts, the UK and its environment will be weaker not better for future generations.

Our organisations are committed to working with Government to achieve our mutual goal of an improved environment for future generations. We would welcome the opportunity to discuss our concerns with you further and to explore how we can best work with you to inform this important transition, by accessing the collective expertise of our members.

Yours sincerely,

Professor Will Pope  
Chair, Environmental Policy Forum

Terry Fuller  
Chief Executive, The Chartered Institution of Water and Environmental Management

Dr Emma Wilcox  
CEO, Society for the Environment

Adam Donnan  
CEO, Institution of Environmental Sciences

Dr Colin Church  
CEO, The Chartered Institution of Wastes Management

Sally Hayns  
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Martin Baxter  
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T: 0345 337 2951 E: [tatum.matharu@socenv.org.uk](mailto:tatum.matharu@socenv.org.uk)

Rt Hon David Davis MP  
Secretary of State for Exiting the European Union  
9 Downing Street  
London  
SW1A 2AS

4<sup>th</sup> September 2017

Dear Secretary of State,

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*cc. Robin Walker MP*

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Robin Walker MP  
Parliamentary Under Secretary, DExEU  
9 Downing Street  
London  
SW1A 2AS

4<sup>th</sup> September 2017

Dear Robin Walker MP,

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*cc. Rt Hon David Davis MP*

# Environmental Policy Forum

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Given the large volume of European Union (EU) environmental legislation and the positive influence this has had on the UK's environment, we welcome the steps being taken to transfer the body of European legislation into UK law. It is important, however, that this is undertaken in a robust and transparent manner. We are concerned that the following issues are not adequately addressed by the current Bill and call on ministers to provide assurance that the UK's citizens and environment will be appropriately protected as we exit the EU.

### 1. Ensuring appropriate parliamentary scrutiny during withdrawal

The Withdrawal Bill's aim is to *"wherever practical and appropriate"* convert EU law into UK law. Clause 7 confers major executive powers on the government to bring about legal and institutional changes that would normally be the subject of detailed parliamentary debate and scrutiny:

*"A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate- (a) any failure of retained EU law to operate effectively, or (b) any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the EU".*

These powers are incredibly broad and will be able to achieve anything that could be done through an Act of Parliament, including repealing or amending existing pieces of primary legislation. It is estimated that around 800-1000 statutory instruments are likely to be needed to address "deficiencies" in retained EU law through these powers.

Under the provisions of the Bill most of these will be made without parliamentary debate, as the affirmative procedure (requiring the approval of both Houses of Parliament) will only be required in a small number of cases (Schedule 7, Part 1, 1(2)). Sufficient parliamentary time and resource must be made available to review the list of instruments produced by ministers and provide opportunities to debate those where Parliament feels there are potential issues. The EPF suggests that the government should make a recommendation for each statutory instrument as to the appropriate level of scrutiny to which it should be subject, and for this to then be reviewed and decided by a parliamentary committee. Public consultation and parliamentary debate should be the presumption and not the exception.

### 2. Establishing a new independent body to provide governance and enforcement

Transferring the letter of the law through the Bill is only part of the equation. We will equally require a means to ensure all the UK governments and their regulatory agencies are held to account for their implementation of the detail of the law, as leaving the EU will bring an end to the investigative role of the European Commission and the direct jurisdiction of the Court of Justice of the European Union (CJEU).

The UK government considers that judicial review and parliamentary elections will be sufficient instruments for civil society to hold it to account. However it has recently reformed the rules relating to judicial review making it much harder and more expensive to access justice in environmental cases. These reforms were criticised in a recent United Nations Aarhus Convention Compliance Committee report, which observed that they have moved the UK “further away” from fulfilling its duty to allow citizens to bring forward cases. NGOs and ordinary citizens play an important role in upholding environmental protection, particularly following austerity reductions in public sector resourcing. In order to ensure that they can continue to play this supportive role, appropriate access to justice and the ability for all to participate and contribute in this way should be secured.

The combination of the European Commission and the CJEU has far greater powers than domestic courts, as demonstrated by its ability to enforce progress in addressing urban waste water issues in the UK for example. An independent, well-resourced expert body reporting to each of the four Assemblies/ Parliaments should be created by an Act of Parliament to take on this reporting and investigatory role currently performed by the Commission, connected to the Courts for the judicial role. The Committee on Climate Change provides a good model for an independent organisation providing sufficient scrutiny of this kind. To ensure an appropriate level of independence and authority, the new body should be funded by, and directly accountable to, the UK Assemblies/ Parliaments, in a similar way to the National Audit Office.

In addition, environmental issues often require long term plans away from the influence of short term political timescales, and membership of the EU has provided the UK with a framework for long term strategic thinking outside the normal political cycles. The new body would advise on the need for, and form of, such plans and allow appropriate scrutiny through the parliamentary process.

### **3. Transposing the principles of environmental protection**

The ‘precautionary principle’, the ‘preventive principle’ and the ‘polluter pays principle’ are the fundamental foundations of environmental protection in Europe (detailed in Article 191 of the Lisbon Treaty). These principles have underpinned the environmental progress made in the UK and across the EU over recent decades including in the control of chemicals and pesticides and by providing finance for environmental remediation. They frame how environmental policy should be developed and are essential guidelines for businesses and the courts.

However, while some principles are already included in particular Acts of Parliament, there is no general statement of environmental principles in UK law equivalent to the commitments in the EU Treaties. The EPF welcomes the Environment Secretary’s support for the precautionary principle after EU exit; the Bill must now ensure that it fully transposes the environmental principles into UK law, to enable future cases to be brought if necessary rather than relying on previous case law.

### **4. Working collaboratively with the devolved nations**

Governance of environmental matters is largely devolved in the UK. We support the need to maintain consistent UK frameworks applying across the four nations in some policy areas, for example in, agriculture and environment, as many environmental processes do not respect political boundaries and in order to maintain stability and the effective functioning of the UK single market. However, the devolved nations have been instrumental in driving higher standards, particularly Wales’ Environment Act and Well-being of Future Generations Act. The Bill must not limit the ability of the devolved nations to improve environmental standards. The development of common frameworks, that agree outcomes but not prescriptions, must be a collaborative process and agreed through consensus with their Assemblies/ Parliaments.

For any enquiries, please contact Laura Grant, Senior Policy Adviser, CIWEM  
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