

Inquiry

Response Document



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Environment Bill Inquiry (Environment, Food and Rural Affairs Committee)

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Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 5,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network

We welcome the opportunity to participate in the Environment Bill Inquiry and would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy and Communications) at JasonReeves@cieem.net with any queries.

Responses to Questions

1. Does the Environment Bill meet the Government's commitment to non-regression from EU environmental standards?

No. Five principles (environmental protection integrated into policy-making, preventative action, precautionary, environmental damage rectified at source, and polluter pays) are included on the face of the Bill. However, it conspicuously excludes the non-regression principle.

CIEEM strongly recommends that the non-regression principle is included in the Bill in order that environmental standards are not lowered in the future, and to empower this and future Governments to continue to embrace the ambition of leaving the environment in a better state for future generations.

Non-regression of environmental standards does not mean that the UK must continue to align with EU environmental standards; this may be desirable in relation to trade arrangements with the EU, but as long as environmental standards are not lowered from the current baseline, the UK should be free to pursue raising environmental standards in its own way and as is fit for the UK.

The Bill requires 'a Minister of the Crown' to have 'due regard' to the policy statement on environmental principles when making policy (this could include guidance). Therefore, the policy statement will need to be robust and clear in order for the law to be effective. Public authorities will also have to consider what action they can take to further the general biodiversity objective and report on that action – this is to be welcomed – the loophole for inaction will be if a decision is made that "there is no new action" that could be taken.

2. Does the Bill ensure that the Government and public bodies will act in accordance with environmental principles and law and be held to account if they don't?

CIEEM strongly supports the improved general duty on public authorities under Section 40 of the Natural Environment and Rural Communities Act 2006, which changes the requirement from "conserve biodiversity" to "conserve and enhance biodiversity". However, the duty remains to "have regard" rather than to "act in accordance with" and so leaves a loophole for inaction. This wording should be amended to reflect the latter, securing action by public authorities to restore biodiversity. There are notable exemptions in the application of the principles in the Bill. These include the armed forces, defence or national security, taxation, spending, and the allocation of resources within Government. If Government is serious about action to address ongoing environmental degradation in the face of the climate emergency and biodiversity crisis, action must be taken across all areas of Government and these exemptions removed.

The OEP will have to produce a strategy that will set out how it will do this. This document will have to be robust if it to 'ensure' that bodies are held to account.

3. Will the Office for Environmental Protection (OEP) have the powers, resources and independence from Government to effectively fulfil its role?

CIEEM believes that the watchdog needs to be further removed from Government to make it truly independent. We are however pleased to see that the new Office for Environmental Protection (OEP) will have climate change included in its remit, as CIEEM has championed.

Regarding enforcement, we are pleased that the OEP will receive complaints from the public and that it will also be able to instigate investigations of its own initiative. It is disappointing however that investigations can only result in recommendations being made in light of its findings.

We understand that Information Notices, Decision Notices and Linked Notices are a part of an escalating engagement process with public bodies regarding potential failings to exercise their functions or unlawfully exercising their functions. However, they are of very limited enforcement value given that the notices can only recommend steps that “*should*” be taken to remedy failings.

In escalating a Decision Notice to an Environmental Review, it is unclear from the Bill what true enforcement power the OEP will have. It cannot impose fines and can only grant remedies that can be granted under judicial review, which is a different process in that it can only assess whether a decision-making process was lawful rather than the merits of the decision-making.

The OEP must have the ability to issue fines, as these have been a crucial mechanism by which the CJEU has held the UK Government to account.

In putting together Environmental Tribunals, CIEEM strongly recommends that appropriate environmental experts are included in each tribunal.

Regarding financial resources, CIEEM considers that the OEP must be able to draft its own budget that it believes is appropriate to deliver its duties and functions, and that this budget is approved by Parliament.

Additionally, expertise is another resource that the OEP must have. Members of staff who have the expertise and experience relevant to the functioning of the OEP will be essential.

As currently laid out in the Bill, the OEP will not be independent of Government. For the OEP to scrutinise the functions of Government and other public bodies, the Secretary of State must be removed from the process of appointing board and staff members, and from allocating funding. These responsibilities must be moved to a Select Committee of Parliament. We suggest the following amendments to Schedule 1:

Membership

1 (1) The OEP is to consist of—

- (a) a Chair (who is to be a non-executive member),
- (b) at least two, but not more than five, other non-executive members,
- (c) a chief executive (who is to be the accounting officer), and
- (d) at least one, but not more than three, other executive members.

(2) The members are to be appointed by **Parliament** ~~the Secretary of State~~ and the OEP in accordance with paragraphs 2 and 3.

(3) In making those appointments, **Parliament** ~~the Secretary of State~~ and the OEP must ensure, so far as practicable, that the number of non-executive members is at all times greater than the number of executive members.

Appointment of non-executive members

2 (1) Non-executive members are to be appointed by **Parliament** ~~the Secretary of State~~.

(2) **Parliament** ~~The Secretary of State~~ must consult the Chair before appointing any other non-executive member.

(3) **Parliament** ~~The Secretary of State~~ must, in appointing non-executive members, have regard to the **requirement for desirability** of the members (between them) having experience of—

(a) law (including international law) relating to the natural environment,

(b) environmental science,

(c) environmental policy, and

(d) investigatory and enforcement proceedings.

(4) A person may not be appointed as a non-executive member if the person is an employee of the OEP.

Appointment of executive members

3 (1) The chief executive is to be appointed by the non-executive members of the OEP, other than the first chief executive who is to be appointed by the Chair.

(2) The other executive members are to be appointed by the OEP.

(3) **Parliament** ~~The Secretary of State~~ must be consulted before a person is appointed as chief executive.

(4) An executive member must be an employee of the OEP.

Funding

11 (1) The Secretary of State must pay to the OEP such sums as **Parliament** ~~the Secretary of State~~ considers are reasonably sufficient to enable the OEP to carry out its functions.

(2) The Secretary of State may provide further financial assistance to the OEP (including by way of grants, loans, guarantees or indemnities) subject to such conditions as **Parliament** ~~the Secretary of State~~ may determine.

Independence of the OEP

16 In exercising functions in respect of the OEP, **Parliament** ~~the Secretary of State~~ must have regard to the need to protect its independence.

4. Are there concerns about the powers and provisions (including on setting targets) relating to air quality, biodiversity, water resource management and waste management and whether they will be effective? Has the Government provided enough detail on the secondary legislation, or other non-legislative policy measures, that would be required?

We are pleased to see the Bill taking a long-term view with requirements on Ministers to set targets with interim reviews every five years. However, setting targets that are no shorter than 15 years in the future (even if they need to be set by 2022) provides little incentive for Government to actually act now.

We are also concerned that the Bill only requires one target to be set for each topic area – meaning just one target will be set for biodiversity and that that one target will be beyond 15 years into the future.

We must be far more ambitious, including more legally-binding targets for each topic area, and for the short-term, including milestone targets for 5 and 10 years.

On Biodiversity Net Gain (BNG), the Bill sets the requirement for gains at 10% but gives the power to amend the percentage to the Secretary of State. Any change in the percentage should be based on BNG monitoring evidence and following consultation with relevant stakeholders.

CIEEM advocates that 10% is not enough given the uncertainty inherent in creating or restoring habitats and the ongoing background biodiversity declines that will potentially rule out any gains at 10%. Because of these concerns with reaching genuine and meaningful net gain, we recommend that power to amend the percentage gain requirement should only look to be increased.

We do not believe that nationally significant infrastructure projects should be exempt from BNG. These projects often have the biggest environmental footprints and should be used as flagships of the BNG approach and to showcase leaving the environment in a better state for future generations.

5. *Does the Bill allow for common frameworks for governance and principles to ensure there is coherent implementation of environmental policy across the UK? What steps do the UK Government and Devolved Administrations need to take to make that a reality?*

It is not apparent on the face of the Bill that there is a proactive approach for common frameworks for biodiversity.

In order to facilitate a common approach, we support the recommendation that the Bill should include overarching objectives for protecting and enhancing the natural environment that are collectively agreed with the devolved governments. This would provide an overarching ambition for the natural environment on the face of the Bill. For example, for biodiversity, the Bill could state that it aims to achieve healthy and biodiverse-rich ecosystems that are essential for a fully functioning biosphere. Collaboration and consistent monitoring across countries will be key to achieving this.

6. *Has sufficient consideration been given to the resource implications of the Bill for national and local government and other public bodies?*

Sufficient consideration has not been given.

The Bill strengthens the duty on public bodies to not just *protect* but also *enhance* biodiversity, and that local authorities must have regard to relevant local nature recovery strategies.

Secretary Villiers in her speech at the launch of the Bill said that Government will provide data, guidance, and support for local authorities in producing these strategies but did not elaborate on what this would mean.

The Bill places very considerable burdens on local authorities, including drafting biodiversity reports, action plans to enhance biodiversity, and local nature recovery strategies. These will require funding and in-house expertise. Appropriately competent environmental professionals must be at the heart of delivering the ambition and duties set out in the Bill and CIEEM is able to facilitate upskilling professional to help achieve this

However, in questions after her speech noted above, Secretary Villiers acknowledged that resources and funding will be needed for local authorities, adding that the Bill will create new income streams for the environment, but did not suggest that any further funding will be provided to local authorities. The Environment Bill policy statement says that *“Government will fully fund all new burdens on local authorities arising from the Bill in order to make our ambition a reality. We are committed to working in partnership with local government, businesses and wider stakeholders on the implementation of these measures, to identify and secure the capacity and skills to deliver a cleaner, greener and healthier environment.”* This is very welcome but needs to be translated into reality as no funding is guaranteed in the Bill itself.

BNG payments by developers could ensure that the system, once operating, is self-sustaining. However, there's a resource and capacity gap which local authorities and Local Nature Partnerships must first be able to meet to deliver BNG. An 'Additional Burdens' settlement is needed to support local authorities in formulating Nature Recovery Strategies and in implementing BNG so as to ensure that local taxpayers do not face excessive increases.

We note that there may be opportunities for Local Authorities to charge for some aspects of their services in the Bill.