

ENVIRONMENTAL POLICY FORUM

Four concerns raised by the European Union (Withdrawal) Bill

The Environmental Policy Forum (EPF) is a network of UK environmental professional bodies and learned societies 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.

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 Bill in its current state and we call on Peers 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.

The EPF welcomes the revisions made to Clause 7 during the Bill's passage through the House of Commons, specifying more clearly the kinds of deficiencies that could be corrected by Ministers. And we welcome the requirement for Ministers to address the Commons before introducing a statutory instrument as well as the establishment of a parliamentary committee that will sift through each statutory instrument to determine the appropriate level of scrutiny to which it should be subject, which we previously called for.

However, these provisions do not go far enough; ministerial powers are not sufficiently tightly prescribed. The EPF maintains that parliamentary debate as well as stakeholder consultation should be the presumption and not the exception.

The EPF supports the House of Lords' Constitution Committee's recommendations that the Withdrawal Bill require Ministers to demonstrate 'good reason' for exercising these powers and that the sifting committee's powers be decisive in calling for an affirmative procedure for a statutory instrument as it deems necessary.

2. Closing the governance gap by exit day

Transferring the letter of the law through the Bill is only part of the equation. We will equally require 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). As the situation currently stands, there will be what is being referred to as a 'governance gap'.

In its 25 Year Environment Plan, the Government has committed to consult "*on plans to set up a world-leading environmental watchdog, an independent, statutory body, to hold Government to account for upholding environmental standards*" in early 2018.

The EPF welcomes this suggestion, which aligns with our previous call for a new independent body for environmental governance and enforcement, submitted to the Environment Secretary on 4th September. However, this consultation has yet to open and this body, as well as the full suite of functioning statutory instruments, need to be operational *before* exit day.

The EPF calls for an independent, well-resourced expert body to be created through primary legislation, co-designed by and reporting to each of the four Assemblies/ Parliaments. It should take on the reporting and investigatory role currently performed by the Commission and be properly 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.

We also call for there to be a mechanism for civil society to hold the UK government to account. This Government considers judicial review and parliamentary elections to be sufficient instruments for this, 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 latter reforms were also 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. Civil society groups 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 EPF recommends that the Withdrawal Bill require the Government to establish a new Body or Bodies to fulfil the roles and functions currently being undertaken by EU institutions to ensure effective governance of environmental law once the UK exits the EU.

3. Transposing the principles of environmental protection

The 'precautionary principle', the principle that preventive action should be taken 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. As currently written, the Withdrawal Bill limits the applicability of the environmental principles to a subset of UK environmental law and only in certain circumstances.

The EPF recommends that the Withdrawal Bill fully transposes all environmental principles into UK law.

4. Working collaboratively with the devolved nations

Governance of environmental matters is largely devolved in the UK. We support the need to maintain common frameworks applying across the four nations in some policy areas, for example, agriculture and environment, as many environmental processes do not respect political boundaries and in order to help 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 therefore not limit the ability of the devolved nations to improve environmental standards over and above any agreed minimum standard. The development of common frameworks, that agree outcomes but not prescriptions, must be a collaborative process and agreed through consensus with their Assemblies/ Parliaments.

The EPF recommends that the UK and devolved governments work together throughout the passage of the Withdrawal Bill to ensure that common frameworks can be established

that set minimum environmental standards across the UK at or above current EU standards, while allowing for each country to set higher standards should they wish to do so. This process should be jointly initiated to allow for genuine co-creation and shared ownership.

The EPF stands ready to advise or otherwise assist Peers as the EU (Withdrawal) Bill passes through Parliament. Our organisations are committed to working with parliamentarians to ensure the environment is protected and enhanced for the public benefit, for which we can readily access the collective expertise of our members. The 70,000 environmental professionals we represent need reassurance that their previous achievements here will not be undermined or, worse still, reversed, and they require greater certainty about the legal bases of their efforts as they operate at the frontline of this vital work.

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Notes:

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. www.socenv.org.uk/EPF
2. Our work on the European Union (Withdrawal) Bill can be found at www.socenv.org.uk/EUWithdrawalBill
3. The Chartered Institute of Ecology and Environmental Management (CIEEM) is the leading professional membership body representing and supporting 5,000 ecologists and environmental managers in the UK, Ireland and abroad. Our Vision is of a society which values the natural environment and recognises the contribution of professional ecologists and environmental managers to its conservation. www.cieem.net
4. 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
5. 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. 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
6. 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. www.iema.net
7. 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

8. The Institute of Fisheries Management (IFM) is an international organisation of people sharing a common interest in the modern management of recreational and commercial fisheries. www.ifm.org.uk
9. The Landscape Institute is the chartered body for the landscape profession. It is an educational charity working to promote the art and science of landscape practice. The LI's aim, through the work of its members, is to protect, conserve and enhance the natural and built environment for the public benefit. The Landscape Institute provides a professional home for all landscape practitioners including landscape scientists, landscape planners, landscape architects, landscape managers and urban designers. www.landscapeinstitute.org
10. The Society for the Environment is comprised of 24 Licenced Bodies, with over 500,000 members between them. It received a Royal Charter in 2004, which empowers it to regulate the Chartered Environmentalist (CEnv) and Registered Environmental Technician (REnvTech) registration in the UK. There are now over 7,000 environmental professionals currently registered who share a common vision of delivering sustainability through environmental professionalism. www.socenv.org.uk