

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 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
E: laura.grant@ciwem.org

Notes

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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

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

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

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.ciwem.co.uk

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. Further information can be found at www.socenv.org.uk

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

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