



Department  
for Environment  
Food & Rural Affairs

# Environmental Principles and Governance after the United Kingdom leaves the European Union

## Summary of responses and government response

19 December 2018



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# Introduction and context

## Scope of the consultation

The consultation was launched in May 2018, and ran for 12 weeks. It was supported by a consultation document which focused on two main issues related to EU exit, and invited responses to 14 questions.

Firstly, the consultation document described the status and effect of environmental principles in international and EU law, and discussed how best to incorporate those principles into our policy and legal framework following EU exit. The consultation explored the scope and content of a proposed new statement on environmental principles in order to ensure that environmental protection will be maintained, not diluted, as we leave the EU. The proposals would require ministers to produce, and then have regard to the policy statement.

Secondly, the consultation document proposed the establishment of a new, independent, statutory environmental body to hold the UK government to account on the environment when the UK leaves the EU. In order to ensure we have robust systems in place to facilitate the successful development and implementation of environmental policy and law, it proposed that the new body should have three main functions: providing independent scrutiny and advice; responding to complaints about government's delivery of environmental law; and enforcing government's delivery of environmental law where necessary.

## European Union (Withdrawal) Act 2018

The EU Withdrawal Act was enacted during the consultation period (26 June 2018). Section 16 relates specifically to environmental principles and governance following the UK's departure from the EU, and is of direct relevance to the subject matter of the consultation.

It requires that the environmental principles which currently guide EU policy making and development must be set out in UK legislation. The UK government must produce a statutory policy statement explaining how those principles will be interpreted and applied in the making and development of policies.

It also requires the establishment of a public authority with functions for taking, in circumstances provided for by or under the Bill, proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with environmental law.

## EU Withdrawal Agreement

The EU (Withdrawal) Act 2018 will make sure existing EU environmental law continues to have effect in UK law after the UK leaves the EU.

It requires that the environmental principles which currently guide EU policy making and development must be set out in UK legislation. The UK government must produce a statutory policy statement explaining how those principles will be interpreted and applied in the making and development of policies.

It also requires the establishment of a public authority which must be able to hold government to account on environmental standards by taking proportionate enforcement action.

We will work to make sure that the OEP is in place as soon as possible in a no deal scenario, with the necessary powers to review, and if necessary take enforcement action, in respect of breaches of environmental law from when the jurisdiction of the Court of Justice of the European Union has ended.

Alongside this, under a no deal scenario we will put in place a holding arrangement during the interim period between 30 March 2019 and the launch of the OEP. This will provide a mechanism for the OEP to receive a report of any perceived or claimed breaches of environmental law made during this interim period. This means that the OEP can consider any early action it may need to take upon its establishment.

The UK-EU Withdrawal Agreement that was endorsed by EU leaders on 25 November 2018 sets out the agreement between the Government and the EU for the withdrawal of the UK from the EU. This is subject to agreement by the UK Parliament. A Political Declaration setting out the framework for the future economic partnership between the UK and the EU was also published.

As part of the Northern Ireland protocol (sometimes referred to as ‘the backstop’) in the Agreement, the UK and the EU have agreed commitments to maintain fair and open competition within the single customs territory, in the unlikely event that the protocol need ever come into force. These include obligations related to the environment, including a non-regression clause.

The text sets out that, if the protocol is required, the UK and EU will not reduce their respective levels of environmental protection below those in place at the end of the implementation period.

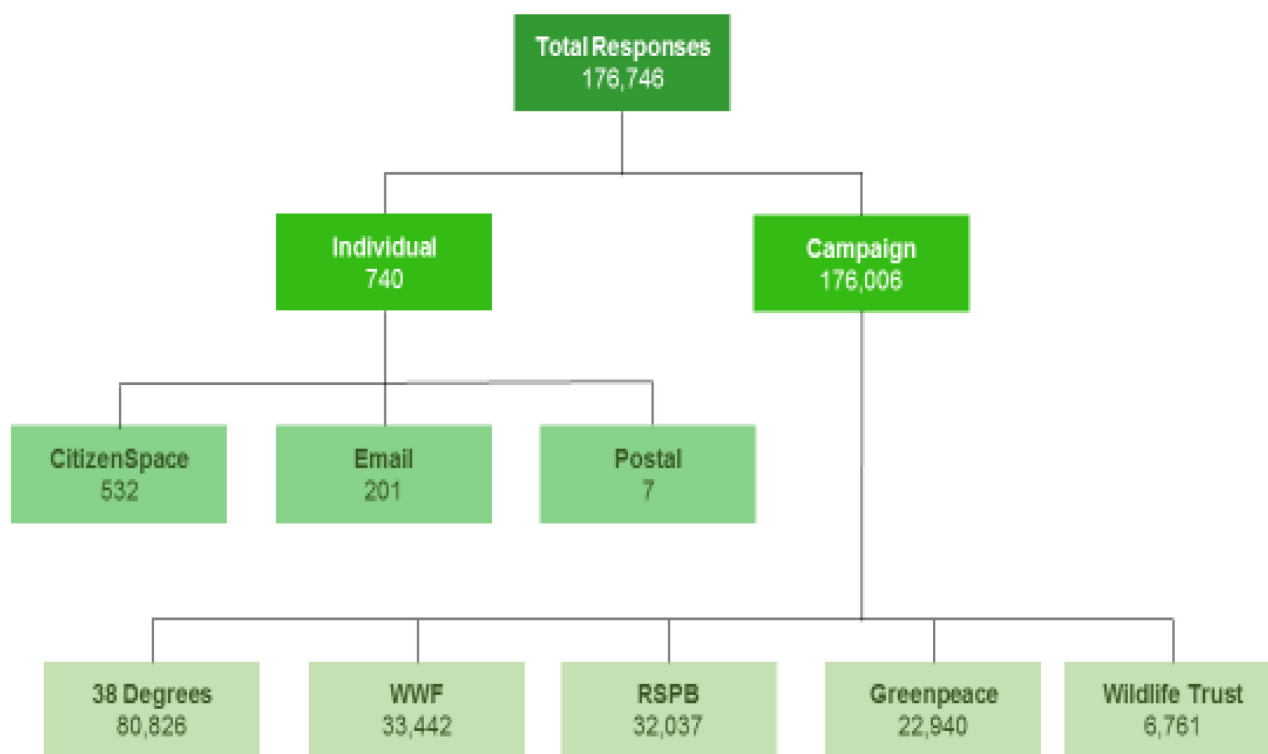
The intended approach of the draft Environment Bill is in line with the provisions of the Withdrawal Agreement concerning environmental principles and the domestic monitoring, reporting, oversight and enforcement of environmental obligations by an independent body or bodies. There are some environmental elements of the Withdrawal Agreement which our current proposals do not cover, namely those concerning the independent body’s

scope to enforce implementation of the “non-regression” clause. We will consider these provisions of the Withdrawal Agreement ahead of publishing the final Bill.

# Respondents

## Breakdown of respondents

A total of 176,746 responses were received during the consultation period. The vast majority of responses were submitted by email as part of organised campaigns run by Non-Governmental Organisations (NGOs - 176,006 responses). The majority of non-campaign responses were submitted via the CitizenSpace online portal (532), while a significant number of emails (201) were also received. A small number of hard copy responses (7) were received, however most of these were duplicates of email responses.



**Figure 1 – breakdown of consultation responses received**

## Campaign responses

A total of 95,180 emails were received in response to four campaigns as follows:

- World Wildlife Fund (33,442 responses)
- Royal Society for the Protection of Birds (32,037 responses)



- Greenpeace (22,940 responses)
- The Wildlife Trust (6,761 responses)

In relation to environmental principles, these campaigns called for the principles to:

- be put in law, not just policy
- apply to all public authorities

In relation to the new body, these campaigns called for it to:

- be independent of government, accountable to Parliament, and transparent in its decision making
- cover all environmental law, including climate change
- be adequately resourced, including funding and expertise
- allow citizens to raise concerns, free of charge
- have strong enforcement powers, including the ability to take legal action, impose fines and issue binding notices
- act against any part of government
- have the ability to challenge strategically important planning decisions

These four campaigns also called for the government to work with devolved administrations to co-design its proposals, and highlighted the need for statutory targets for the environment.

The organisation 38 Degrees ran a fifth campaign inviting participants to complete an online questionnaire responding to specific questions from the government's consultation document (Questions 1, 3, 5 and 8). A total of 80,826 survey responses were collated and submitted by email along with a summary report compiled by 38 degrees. The main messages from this campaign were:

## **Environmental principles**

- the responses overwhelmingly support the government's initial list of environmental principles to underpin future policy-making
- there is strong support for the government to include additional principles to increase public participation in environmental decision making, public transparency of environmental information, and access to justice relating to environmental violations

- 92% of responses state that the environmental principles should be included in the Environmental Principles and Governance Bill

## Accountability for the environment

- the majority of members believe the objectives for the new environmental body should be clarified and strengthened: 81.3% said that they only partially agree with the current proposal, and would like objective six amended so the body has a sole responsibility to protect the environment rather than having to consider other priorities
- respondents overwhelmingly said that the new environmental body should have powers to investigate concerns from the public about threats to our environment

For the purposes of the analysis, each campaign has been treated as an individual response.

## Petitions

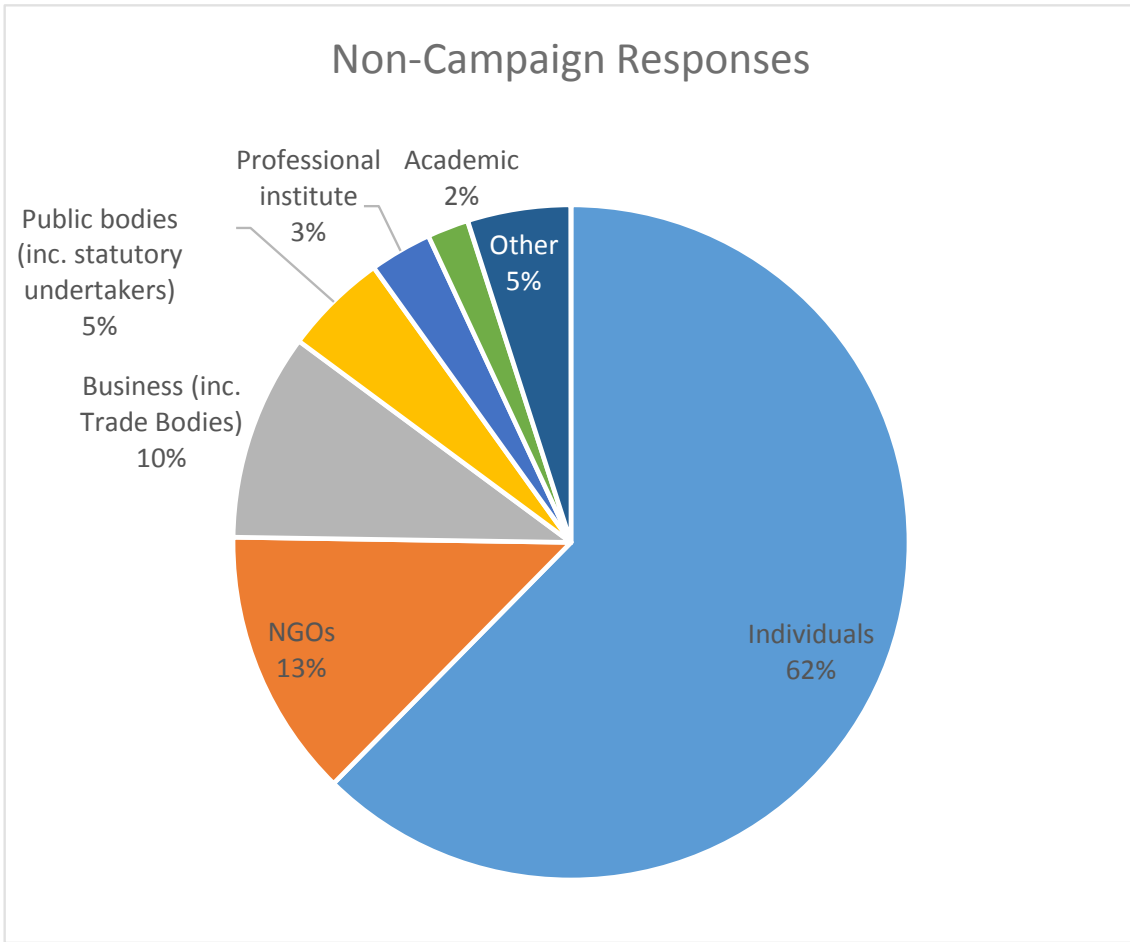
Greenpeace also ran a petition, calling on the Environment Secretary and the Chancellor of the Exchequer to ensure that the new body:

- has a duty to review and investigate public bodies to check they're following environmental laws correctly;
- has powers to enforce and uphold the law
- allows citizens and organisations to initiate complaints; and
- is transparent

The petition was signed by 105,624 people.

## Non-campaign responses

Non-campaign respondents were predominately members of the public, while a wide range of organisations representing different stakeholder groups also responded, as shown in (Figure 2).



**Figure 2 – breakdown of respondents by stakeholder group**

A full list of organisations which responded to the consultation is provided at Annex A.

## Stakeholder events

Defra also held three stakeholder events, where attendees were able to discuss the proposals with Defra officials and ask questions. Attendees included Arm’s Length Bodies, Local Authorities, Non-Governmental Organisations, trade bodies and industry. The feedback from these meetings was also recorded, and has been used to inform policy development. The key messages raised by stakeholders during these events were consistent with those raised through written responses to the consultation.

# Part 1 - Environmental Principles

## Key Themes

Themes most commonly raised in response to the questions on environmental principles were:

- almost unanimous support for the inclusion of all the proposed environmental principles in domestic law;
- suggestions for additional principles to be included;
- support for the principles to be listed on the Bill, with some concerns about the flexibility of this approach;
- the need for consistency on a UK basis across England, Wales, Scotland, and Northern Ireland;
- the principles should apply to all public authorities, not just ministers;
- the need for a robust and transparent review process; and
- concerns that the requirement for government to have regard to the policy statement is not strong enough

## Question 1: Which environmental principles do you consider as the most important to underpin future policy-making?

### Summary of responses

The principles listed in the EU Withdrawal Act 2018 were considered to be the most important. Many respondents suggested additional principles, with high level environmental protection, enforcement, science/evidence/risk/impact based, and non-regression, being considered particularly important to add.

Further proposed suggestions for additional principles include: net environmental gain; proportionality; innovation; animal sentience; conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and ecosystem services; and scale.

Legal practitioners and institutions raised concerns about the inclusion of the principles on access to justice, public participation in decision making and access to information in

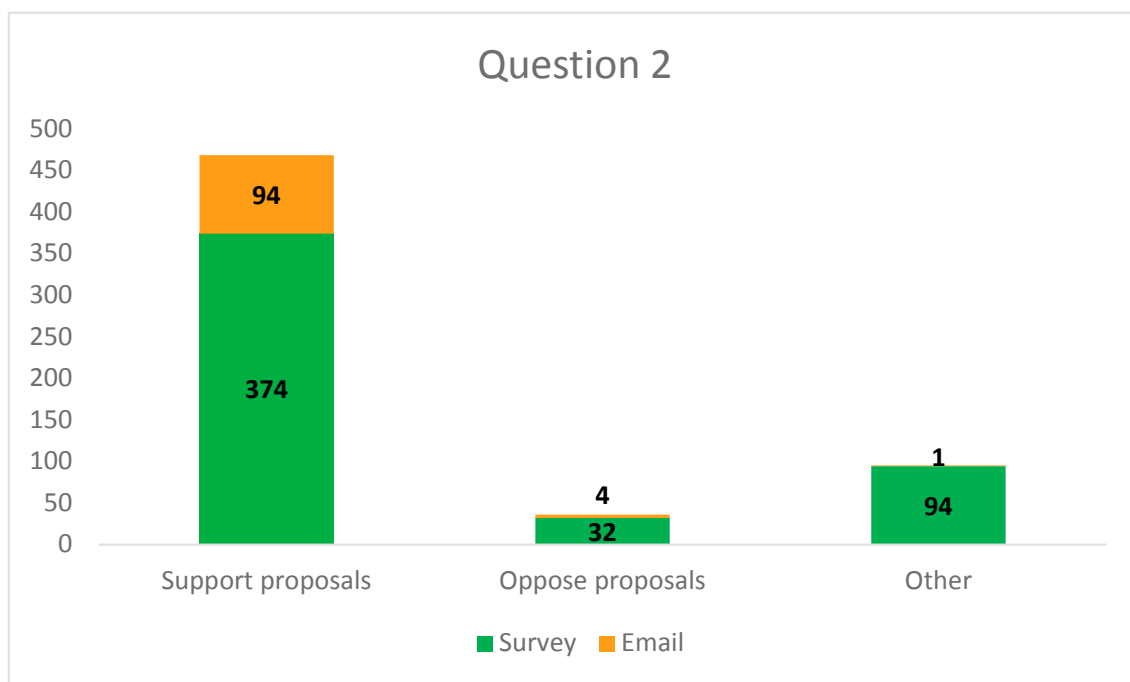
environmental matters, on the basis that they are rights rather than principles. For example '...upholding or according with a 'principle' as opposed to upholding and enforcing/claiming a 'right' might appear to be a weakening of the existing rights under the convention and the EU directives' (The Bar Council). Several also questioned the inclusion of sustainable development. For example Professor Maria Lee of University College London echoed many other respondents in noting that '...sustainable development is an overarching objective, rather than a principle. Its role when we leave the EU is nevertheless important'.

NGOs raised concerns about the potential inclusion of the proportionality principle, on the basis that this principle could have a 'dampening role' on others by undermining the weight afforded to them. Some respondents also disagreed with ranking or prioritising the principles, which would diverge from the EU approach and devalue certain principles. For example '...principles form a suite of measures to protect the environment which are contextual in application and complement each other; as such no one principle should be given additional weighting above any other principle' (CPRE).

A mixture of respondents, particularly those representing the farming sector, expressed concerns about defining and applying the Precautionary Principle. For example '...the precautionary principle has been used to justify an approach to potential harmful activity that considers only its hazard, without sufficient consideration to balancing the actual risks of harm against the potential benefits that a project would offer. This has been a particular issue for farmers in terms of the availability of crop protection products, such as fungicides, herbicides and insecticides' (National Farmers Union).

## Question 2: Do you agree with these proposals for a statutory policy statement on environmental principles (this applies to both Options 1 and 2)?

### Summary of responses



**Figure 3 – number of respondents in support / opposition to proposals for a statutory policy statement on environmental principles<sup>12</sup>**

Respondents predominantly agreed with the proposals for a statutory policy statement on environmental principles, although NGOs and individuals generally felt that the proposals did not go far enough and needed strengthening.

The majority of respondents suggested that the requirement for government to have regard to the policy statement was not strong enough, lacked legal enforceability and failed to reflect the role of environmental principles in the EU. Many respondents suggested stronger alternatives including ‘act in accordance with’, ‘have special regard to’, ‘unlawful to act in a way that is incompatible with’, and ‘take all reasonable steps to meet’. These alternatives were referenced from existing legislation, including The Human Rights Act 1998, Wellbeing of Future Generations Act (Wales) 2015, and Equality Act 2010.

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<sup>1</sup> Please note, the ‘other’ category relates to responses where it was not clear whether respondent supported or opposed the proposals

<sup>2</sup> The ‘Email’ numbers include hard copy responses

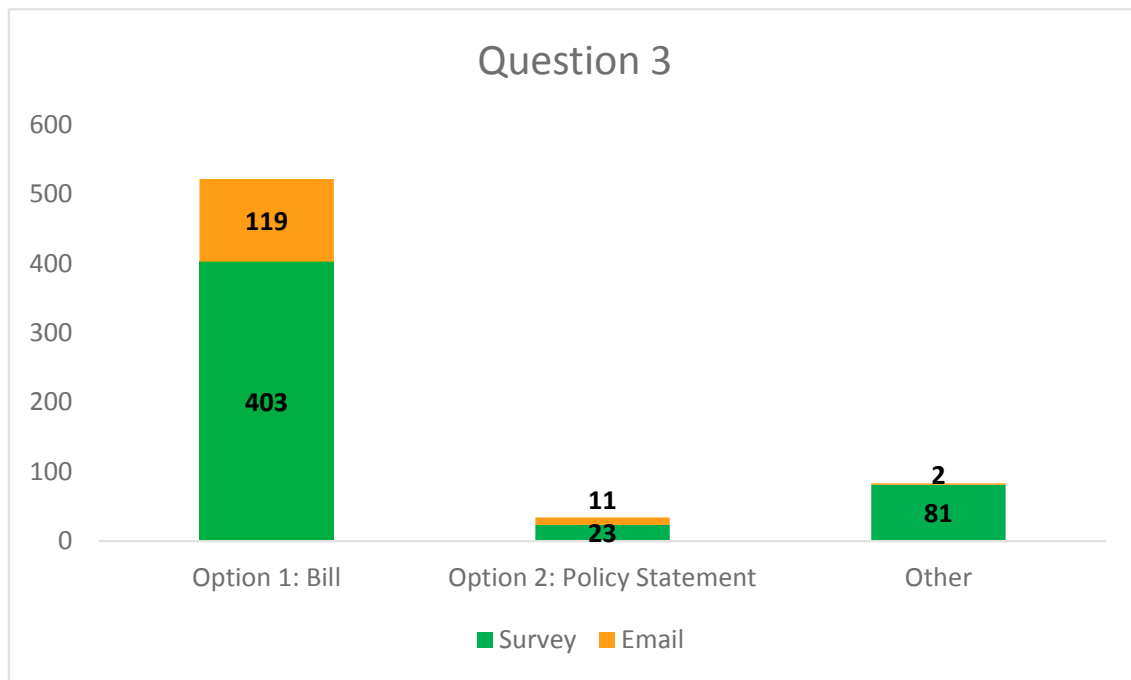
The majority of respondents, particularly NGOs and individuals, considered that the environmental principles should apply to all public authorities, not just ministers. Most cited concerns about a failure to apply the integration principle, and a resulting inconsistency of approaches towards policy and decision making, between local and national levels.

Many suggested that the environmental principles should be the same in England, Scotland, Wales and Northern Ireland as the environment does not respect national boundaries. Respondents also suggested that differences in the definition and application of environmental principles could 'undermine common resource management and internal markets', and that close cooperation with devolved administrations will '... present a common position on environmental protection to trading partners and third countries generally and set standards for international cooperation and collaboration...' (UKELA).

Some respondents, particularly professional institutes, highlighted the need for a rigorous mechanism to review and amend the principles in future. However they highlighted that such a process should ensure that new principles would not undermine existing ones, and that 'this process should be transparent, including public consultation and parliamentary scrutiny and approval'. Others called for the monitoring and reporting of compliance with the principles, and robust enforcement if not applied.

### Question 3: Should the Environmental Principles and Governance Bill list the environmental principles that the statement must cover (Option 1) or should the principles only be set out in the policy statement (Option 2)?

#### Summary of responses



**Figure 4 – number of respondents in support of Option 1 / Option 2**

The EU Withdrawal Act 2018 required that the nine environmental principles listed within it must be set out in the Bill. Respondents predominantly agreed that the environmental principles should be listed on the Bill, as this would give the principles weight, certainty, permanence, accountability and enforceability. Some respondents also suggested that including the principles on the Bill would protect them from ‘diverging political sentiments’ resulting from a change of government and / or minister, which could water down or remove the principles.

Businesses and industry and trade bodies stated that they preferred the principles to be set out in the policy statement only, as it allowed more flexibility to update and add new principles, as international approaches to the environment and sustainable development are developing continuously.

However several respondents said that the principles should not require frequent modification as they have been embedded in international law for many years. For example, ‘...new scientific evidence might inform whether and to what extent the [precautionary] principle should be applied in a particular case (as recently in the decision



to restrict neonicotinoids to indoor use), and economic or technological developments might affect the assessment of benefits and risks — but the principle itself would not need to change’ (The British Academy).

Many respondents suggested a mechanism for the adoption and interpretation of new environmental principles. Others suggested that the principles in the Bill could be sparsely worded and be defined in the policy statement so that on-going improvements can be made without the need for primary legislation.

## Government response to questions 1 to 3

The government has included the environmental principles in primary legislation in the draft Bill. We agree with the majority of respondents that enshrining the principles in legislation will ensure that they have the appropriate status and weight, provide certainty and longevity as well as enabling accountability.

The draft Bill (Clause 2(1)) includes the nine principles as committed to in the EU Withdrawal Act, as supported by the majority of respondents. We consider that these principles will ensure that we maintain a high level of environmental protection, and that these principles continue to drive policy making in the UK as we leave the EU. The UK has already signed-up to these principles through international treaties, which also apply through our membership of the EU. Maintaining the same list of environmental principles ensures a consistent approach as these principles are already widely applied, and there are also existing mechanisms and court decisions to support their implementation and application. We are grateful for the suggestions of extra principles. The draft Bill only lists the nine set out in the EU Withdrawal Act, as any additional principles would need to be carefully considered further in order to be described in detail and understand the implications of their inclusion on future policy making. Further work and evidence is being gathered to establish what the circumstances, evidence and/ or criteria might be for the Secretary of State to add further principles within the statutory policy statement.

The nine principles will be described in the statutory policy statement (Clause 1). This will allow for ministers to apply the principles to reflect their policy and legislative area, because we recognise that principles may need to be applied differently in individual policy and legislative areas. Ministers would be able to take account of any changes in best practice or case law which could inform their application. We are examining solutions which will directly address the concerns expressed over the application of certain principles such as the precautionary principle or access to justice. To help to inform their description in the policy statement, we are reviewing examples of how the principles have been interpreted and applied in different policy areas and what this meant in practice. We agree that the environmental principles should not be ranked or prioritised by importance. The policy statement will set out a process to help ministers to determine which principles are relevant to a given policy area, as well as descriptions of the principles, in order for them to determine what the principles mean for their area.

Clause 3 addresses concerns raised about scrutiny and revisions of the policy statement, by requiring the Secretary of State to provide a draft of the policy statement for consultation and to lay the draft before Parliament, ensuring that it is properly scrutinised. This clause also applies if the Secretary of State wishes to revise the policy statement. The information paper sets out possible criteria that the Secretary of State may need to consider when deciding whether to review the policy statement.

The draft Bill includes a requirement for government to have regard to the policy statement on environmental principles in their policies and carrying out their functions (Clause 4). The government seeks the draft Bill to be broadly equivalent to the corresponding provisions in the Treaty on the Functioning of the European Union – particularly Article 191 which sets out that Union Policy ‘shall be based on’ the environmental principles; the proposed ‘have regard to’ obligation is broadly equivalent to this requirement. We want the principles to underpin the policy and law-making process, incorporating the consideration of these principles alongside other matters. While examples of stronger requirements may exist in other domestic acts, these often include caveats such as ‘unless relevant considerations indicate otherwise’ (Marine and Coastal Access Act, 2009); in effect, such provisions therefore carry broadly the same legal weight.

The government does not currently consider it appropriate to extend application of the policy statement beyond central government. While we recognise the points made by respondents with regards to this issue, central government has primary responsibility for developing the majority of high-level and strategic environmental policies and legislation. Central government also sets the strategy and approach for policies developed by other public bodies. For example, the National Policy Planning Framework sets out a clear framework for all planning authorities’ local development plans. Therefore the application of the policy statement to ministers should ensure that the principles are also embedded in the strategic frameworks set for other public bodies.

Currently, the draft Bill applies to England and to UK reserved matters. We would welcome the opportunity to co-design proposals with them to ensure they work across the whole of the UK, taking account of the different government and legal systems in the individual home nations. It is noted that the Devolved Administrations are undertaking their own consultations in this area to consider their approach.

The duties upon ministers set out in the draft Bill will fall within the scope of the OEP. It is therefore possible that the OEP could scrutinise government’s application of the principles and take enforcement action in cases where it considered that a duty had not been discharged; this should address concerns raised that oversight and enforcement of the environmental principles is needed. Please see responses to Q6-9 for further details on OEP and its functions.

## Part 2 - Accountability for the Environment

### Key themes

Responses to the questions on accountability for the environment related almost entirely to the proposed new environmental body, the OEP. The themes most commonly raised were:

- the resourcing of the OEP, including technical expertise and funding
- the importance of ensuring the independence of the OEP from government in order to fulfil its role, including its classification and governance
- the balance of environmental protection against other priorities
- OEP scrutiny of environmental law and policy
- that the OEP should have a complaints function
- the need for the OEP to have stronger enforcement powers than just advisory notices, including the ability to initiate legal proceedings and issue fines
- that the OEP should act against all public authorities, not just central government
- the need for a UK wide body, or at least greater coordination with devolved administrations
- risks of duplication / overlap with other existing oversight bodies
- the power to exercise its functions with discretion, but with a clear focus on the most strategic and important issues
- the scope of the OEP should include climate change

### Question 4: Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?

#### Summary of responses

While respondents were relatively split on whether there would be a greater or lesser governance gap, compared to the assessment set out in the consultation document, an overall majority believed that the gap would be greater in some areas (explained below).

Those that provided a reason generally argued that current proposals are not sufficient to provide sufficient and effective governance after EU exit.

A common theme across stakeholder groups was that the OEP should have a UK wide remit, otherwise the proposals would clearly fail to address environmental governance issues in the devolved administrations, compared with the current EU arrangements.

Several respondents were concerned about the OEP having insufficient enforcement powers. While respondents generally supported the OEP to having a legal mandate to take enforcement action, many did not support the judicial review system due to concerns about costs, timescales, an inability to make merit based judgements, and a lack of fines. There were also strong concerns about the loss of citizen's right to complain regarding government's failure to meet environmental standards.

Several respondents considered that the OEP must be well resourced and have access to technical expertise and information in order to avoid a governance gap. Similar concerns related to the loss of EU arrangements for policy design, reporting, and an ability to demand information from other bodies.

Respondents were concerned about reduced government accountability, due to a loss of scrutiny, investigation and reporting, as many respondents strongly believed that environmental priorities and standards will be reduced after Brexit, particularly as the government will be influenced by political pressures and money.

Some businesses suggested the need for a more detailed gap analysis to avoid duplication of existing regulatory bodies, while a minority did not see any potential governance gap and felt that the OEP should not have any enforcement powers. Some also suggested that consideration should be given to the expansion of existing bodies rather than the creation of a new body.

## **Government response**

The government is committed to ensuring that there is not a governance gap as we leave the EU, and that environmental standards are maintained.

Concerns about the OEP not having a UK-wide remit are recognised. The government has an ongoing dialogue and is jointly working with the devolved administrations. Scotland and Wales have committed to consulting on how they will address this issue for their own respective administrative areas.

Environmental policy is a devolved matter subject to a small number of areas that are reserved. The current proposal in our draft Bill therefore remains for the OEP to have jurisdiction in England, with a UK-wide remit in relation to reserved matters. Northern Ireland Executive officials have requested that the scope of the Bill be expanded to enable the inclusion of Northern Ireland should future Northern Ireland Executive Ministers decide on this approach. We are exploring opportunities to co-design the final proposals with the

devolved administrations alongside consideration of any of their own legislative proposals to address this issue.

Clauses 22, 23 and 25 address the issues raised about the OEP having a lack of enforcement powers, such as a legal mandate, as discussed further in our response to Q9.

With regard to concerns around government accountability, Clauses 14-16 describe the scrutiny function and reporting procedure for the OEP, as discussed further in our responses to Q6-7. Citizens will also still be able to complain regarding government's failure to meet environmental standards (Clause 18), as discussed further in our response to Q8.

Defra is committed to ensuring that the role of the OEP does not create an overlap with other bodies responsible for holding the government to account. We are engaging with other relevant bodies, such as the Committee on Climate Change (CCC), the Parliamentary and Health Care Ombudsman, and the Local Government and Social Care Ombudsman to ensure that bodies have separate and complementary remits with regard to their roles and functions, while Clause 21 should also ensure coordination on an ongoing basis in cases of shared interest. As noted in the consultation document, the role of the OEP would be separate from regulatory bodies such as the Environment Agency (EA), which are primarily responsible for regulating people and businesses.

In relation to concerns about judicial review, we have addressed the issue of timescale by disapplying the normal time limits for claims brought by the OEP (Clause 25(7)). We have also examined the need for a merits based assessment of cases brought by the OEP, but consider that judicial review provides a broadly equivalent depth of review to the role of the Courts of Justice of the European Union (CJEU) in infraction proceedings.

## **Question 5: Do you agree with the proposed objectives for the establishment of the new environmental body?**

### **Summary of responses**

Respondents broadly supported the proposed objectives, although there was a demand for further clarity and more detail amongst a large number of stakeholders.

There were significant concerns about the final objective of 'recognising that it is necessary to balance environmental protection against other priorities'. A large proportion of respondents, particularly NGOs, considered that it is the role of the government to balance priorities and that this should not be within the regulatory body's remit. For example, the response received from Greener UK stated that the purpose of the OEP should be to *"monitor, scrutinise and enforce compliance with environmental law, and not to 'balance' this against other priorities which are the responsibility of other government departments and agencies. It should not be the role of the body to decide how government is to balance its various objectives, but rather ensure that it complies with its legal*

*obligations.*” However a much smaller proportion of responses, particularly representing businesses, supported the need to balance the environment with other priorities including housing, the NHS, education, and defence. Some also suggested that the ‘proportionality principle’ be included in the objectives.

NGOs in particular, agreed that the OEP should be independent of government and able to hold it to account, while some suggested that it should report directly to Parliament as a ‘Non-Administratively Classified Parliamentary Entity’ similar to the National Audit Office (NAO). Other examples of independent bodies cited as possible models included the Committee on Climate Change (CCC), the Equalities and Human Rights Commission (EHRC), and the Health and Safety Executive (HSE).

A number of respondents also proposed that the OEP should be able to hold other public bodies to account in addition to central government. Respondents across all stakeholder groups also supported the idea of a UK-wide body covering the devolved administrations.

There was strong support for the OEP having adequate funding, with some concerned stakeholders citing funding cuts at Natural England as an example, and others suggesting that its budget be audited by the NAO. There was also strong support for the body having sufficient expertise, with a few responses (mainly from NGOs and professional institutes) highlighting the need for scientific expertise.

A number of respondents, particularly from business, proposed that the OEP could be integrated with existing government departments. Some suggested that instead of setting up a watchdog, the government could expand the role of existing bodies within the current environmental governance framework e.g. the CCC, Natural Capital Committee or the EA. One respondent, said they were “...*fully supportive of the creation of an environmental watchdog to hold government to account on their environmental ambitions and obligations. Where this can be achieved as a function of an existing body, such as the Environment Agency, there may be efficiency savings to be made.*”

## **Government response**

The draft Bill includes objectives for the OEP to perform its duties objectively, impartially, proportionately and transparently (Clause 12(1)). This will ensure that the body is independent of government (and other bodies) and capable of holding it to account. We recognise concerns with regards to acting proportionately were raised by respondents, and the OEP will have the freedom set out how it intends to interpret and discharge this duty in its strategy (Clause 12(3)). The enforcement and complaints functions also now address directly (rather than indirectly) all public authorities in addition to central government (Clauses 17), as supported by the majority of respondents; this is discussed further in our responses to Q8 and Q9.

The draft Bill establishes the OEP as a Non-Departmental Public Body which is operationally independent from its sponsoring department, with a separate legal personality (see the Schedule to the draft Bill). This model allows the OEP to freely

exercise its functions without the government or other bodies unduly influencing its work programme or decision making. Establishing the OEP as a Parliamentary Body was considered, however this would prevent it from taking legal proceedings against the government if it were to remain within the well-established constitutional boundaries by which Parliament currently operates. However we recognise the need for Parliament to have a clear role, and that Mary Creagh, the Chair of the Environmental Audit Committee has requested for the Chair of the OEP to be subject to a pre-appointment hearing. This will be considered as part of the follow up to government's response to the Public Administration and Constitutional Affairs Committee Report on Pre-Appointment Hearings<sup>3</sup> which is looking at the overarching principles around the hearings. The draft Bill requires the non-executive members of the body to be appointed on the basis that collectively, they have the specific experience required to deliver its functions (Schedule, Paragraph 1(4)).

The OEP should have adequate resources to deliver its remit, and funding will be provided through grant-in-aid which will be clearly defined from Defra's budget as a separate line in Defra's annual Estimate. The Secretary of State is required to provide funds reasonably sufficient to enable the OEP to perform its functions (Schedule, Paragraph 9), while the Defra budget (including OEP's funding) will also be subject to parliamentary approval and scrutiny, helping to address concerns raised by stakeholders about resourcing and independence. In addition, the OEP's statement of accounts must include an assessment of whether it has been provided with sufficient funds to carry out its functions (Schedule, Paragraph 11(3)).

With regards to the suggestion to expand the role of existing environmental bodies such as the Environment Agency, Natural England or the Committee on Climate Change, it is important to note that currently there is no single body that carries out all the functions that will be delivered by the new body, therefore additional functions would need to be added through statutory changes. This could risk diluting the specialised focus of bodies such as the CCC in order to expand their scope to deliver the required functions in relation to the environment as a whole.

The OEP is intended to be a strategic body, holding government and public bodies to account on environmental standards once we leave the EU. Bodies such as NE or the EA are regulators and delivery authorities, responsible for implementing many of the environmental policies and laws, for example by regulating and advising developers and farmers. It is not proposed for the OEP to have any responsibility for the operational delivery of environmental legislation on the ground.

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<sup>3</sup> See:

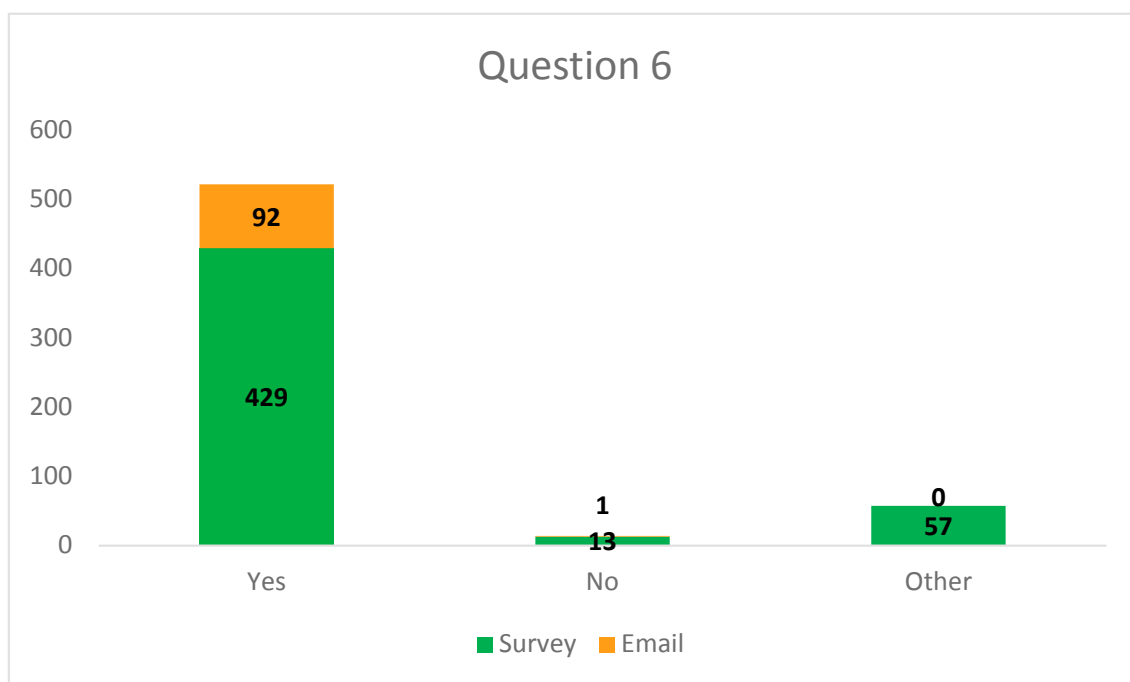
<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/909/90902.htm>

Public bodies such as the EA and NE have statutory duties under environmental law which therefore would fall within the remit of the OEP, and so they clearly could not be responsible for overseeing or enforcing against their own performance in these areas. As such, even if additional powers were given to, for example, the EA, the entity would not achieve the independent enforcement capabilities required.

The OEP is to have jurisdiction in England and in relation to UK reserved matters only, thereby respecting the division of responsibilities in the devolved settlements. As for the environmental principles, we are exploring opportunities to co-design the final proposals with the devolved administrations.

## Question 6: Should the new body have functions to scrutinise and advise the government in relation to extant environmental law?

### Summary of responses



**Figure 5 – number of respondents supporting / opposed to the scrutiny of environmental law**

The majority of respondents supported the proposals that the OEP should have a function to scrutinise and advise the government in relation to extant environmental law, and generally considered that the body should have a role in ensuring that environmental law is effectively reviewed and improved when updated.

A large number of respondents highlighted the importance of independence from government in its exercise of this function. For example, several respondents highlighted



that the OEP will need to be clearly independent from government if it is to critically review its performance. Conversely, some respondents questioned whether an advisory role may potentially conflict with its enforcement function, given that the OEP may be providing advice in a supportive manner through its advising function, while also taking enforcement action on the same issue. A small proportion of respondents also viewed scrutiny and advice as two distinct functions, and suggested that these should be kept separate.

Nonetheless, other respondents viewed the scrutiny function as being complementary to the enforcement function, with a key theme being the need for the scrutinising and advising of environmental law provided by the OEP to be backed up by strong enforcement powers. Several respondents also highlighted the need for clear statutory targets for the environment if the OEP is to be able to scrutinise the government's performance and hold it to account.

Some respondents, particularly businesses, highlighted the potential for advice provided under this function to overlap with the role of similar existing bodies, and suggested that some elements of the scrutiny function should be restricted to avoid duplication. The Institution of Environmental Sciences responded that *"...the new body must recognise that this function is already undertaken in part and to varying extents by a range of other bodies (such as, in England, the Environment Agency and Natural England on specific elements of their respective policy areas). As such, work of this type must be undertaken in partnership with other participants in the scrutiny and advice community, collaborating to co-produce scrutiny and advice outputs."*

Other issues raised by respondents include the need for the scrutiny function to be carried out transparently, and for the OEP to be adequately resourced to carry out its function.

## **Government response**

The draft Bill gives the new body powers to carry out scrutiny and advice of the delivery of environmental law and any proposed changes, as supported by the majority of respondents.

The OEP must monitor the implementation of environmental law (Clause 15(1)), and may also report on such matters (Clause 15(2)). These reports must be published and laid before Parliament (Clause 15(3)), and the Secretary of State is required to lay a response within 3 months (Clause 15(4 and 5)), helping to ensure accountability.

The OEP must also provide advice about proposed changes to environmental law or any other matter relating to the environment when asked to do so by a minister (Clause 16(1)); in these circumstances, the minister may specify matters to be taken into account when the OEP provides its advice (Clause 16(2)). This enables parameters to be set within which the advice is to be delivered, ensuring it is as effective as possible for its intended purpose. The OEP retains impartiality from government through its powers to provide advice about changes to environmental law without any involvement of a minister (Clause 16(3)). The OEP is required to publish its advice, including any matters the minister asked

it to take into account (Clause 16(5)), thus ensuring transparency. A minister may also lay the advice and a response before Parliament (Clause 16(6)).

The OEP's ability to act as an adviser to government is considered to be a positive role, which is complementary rather than potentially conflicting with its enforcement function. The OEP will be free to determine how it implements its functions, but it is expected that the preferred route to remedy issues will be through its monitoring, reporting and advising role in the first instance, rather than through more adversarial enforcement which should be used as a last resort.

Numerous statutory targets already exist for the environment, in areas such as water quality, air quality and waste management; these targets already exist in domestic law and will continue to have effect after the UK leaves the EU.

With regards to concerns about the potential for overlap and duplication, existing bodies such as the EA and NE have relatively specialist environmental remits; therefore the strategic nature of the OEP's scrutiny function would not overlap with technical advice from delivery bodies such as these. One of our objectives for the design and operation of the OEP is that it should have a clear remit, avoiding overlap with other bodies. The draft Bill focuses the OEP's role on the implementation of environmental law and the environmental improvement plans (25 Year Environment Plan) that are of national strategic importance.

## **Question 7: Should the new body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?**

### **Summary of responses**

The majority of respondents agreed that the OEP should be able to scrutinise, advise and report on the delivery of environmental policies. These respondents were particularly in favour of the OEP being able to scrutinise, advise and report on progress in achieving the 25 YEP's ambition, goals and actions.

The majority of respondents were also in favour of the OEP responding to consultations on changes to environmental policy. However, several respondents did not agree with the suggestion that the OEP may only provide scrutiny and advice when commissioned by government, and suggested that the body should be free to exercise this function with discretion.

As for Q6, two related themes highlighted by respondents were on the one hand, the importance of the advice provided under the scrutiny function being backed up by strong enforcement powers, and on the other hand a concern over a potential conflict between these two functions. Other key themes similar to those raised under Q6 included the need to avoid overlaps with the role of existing bodies, the need for the OEP to be clearly

independent from the government, and the importance of clear targets on the environment in order to hold the government to account.

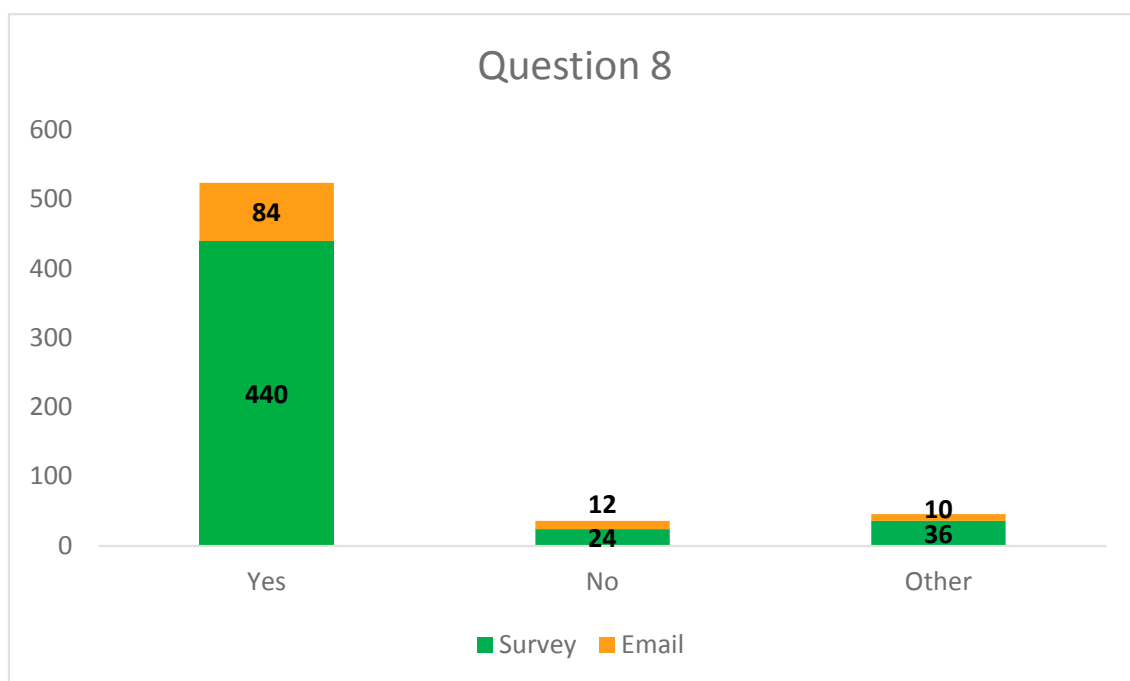
## **Government response**

Given the strong support for the OEP to be able to scrutinise, advise and report on those parts of the 25 YEP for which the UK government has competence, the draft Bill requires it to annually monitor progress against the government's environmental objectives (Clause 14(1)), as set out in the Environmental Improvement Plan (currently the 25YEP). Together with the clauses in the draft Bill on the Environmental Improvement Plans (EIPs) (Clauses 5-10), our proposals create a robust statutory process of annual government reporting (Clause 8) and OEP scrutiny of progress in implementing the EIP. The annual government report must describe progress in implementing the EIP and whether the natural environment has improved during that period (Clause 8(2)). The OEP must report annually on progress against these environmental objectives and this report can include suggestions as to how progress can be improved (Clause 14(2) and 14(6)). The OEP's report must be laid no later than six months after the governments annual report on the 25YEP. All of the OEP's reports about government's progress against environmental objectives must be published and laid before Parliament (Clause 14(7)).

Other concerns raised in response to this question are addressed in our response to Q5 and Q6.

## Question 8: Should the new body have a remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law?

### Summary of responses



**Figure 6 – number of respondents supporting / opposing a complaints function**

Respondents predominately agreed that the OEP should have the function and powers to investigate and respond to complaints from members of the public. Of those respondents that provided a reason for their answer, many expressed the view that this function is important to ensure government accountability. Some raised the point also made elsewhere in the consultation responses that the OEP must be fully independent of government in order to carry out this role.

A small proportion of respondents, primarily representing business, farming or trade bodies, disagreed with this proposal. Some expressed the view that existing mechanisms available through the ombudsmen and other authorities were sufficient to address public complaints, and that putting this in the OEP's remit risked unnecessary duplication. A small number of those in support of the proposal also stated that overlap with other bodies should be avoided.

Many organisational respondents stated that the OEP will need to be strategic in its handling of complaints and be able to exercise discretion about the matters which it investigates in order to focus on serious breaches and make best use of its resources. For example, the Institute for Environmental Management and Assessment (IEMA) agreed

*“...that the new body would need to consider all valid complaints received but should have discretion to exercise its powers to act in appropriate cases, rather than have a duty to act in response to all complaints.”* A small number suggested that the OEP should publish the criteria which it will use to prioritise activity in relation to complaints.

Many respondents, in particular NGOs, argued that the complaints process must be cost-free and easily accessible to allow any individual to make a complaint.

## **Government response**

Clause 18 allows any person to submit a complaint to the OEP without charge if they believe that a public authority has failed to comply with environmental law, as supported by the majority of respondents.

Subsection (5) of this clause requires internal complaints procedures of the public authority that is being complained about to have been exhausted before submitting a complaint to the OEP. This is to ensure that complaints are primarily dealt with by the public authority itself and avoid complaints being submitted to both bodies at the same time, helping to address concerns raised about duplication and overlap with existing mechanisms. Clause 21 also requires coordination of investigation of complaints with the ombudsmen in cases where they have a shared interest.

Under the clauses as drafted, the body would not have a duty to investigate all complaints, therefore it will be able to exercise discretion regarding the complaints which it investigates. Clause 19(1) requires that the OEP must first consider whether a submitted complaint indicates that there has been a serious failure to comply with environmental law. It would then prioritise all such complaints in line with its published strategy, while also have regard to the criteria set out at Clause 12(4).

Further detail regarding the nature of the OEP relevant to the issues raised in these responses such as independence and accountability is provided within the government response to Q5.

## **Question 9: Do you think any other mechanisms should be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notices?**

### **Summary of responses**

The predominant view in response to this question was that advisory notices alone would not be sufficient to enforce government delivery of environmental law. Some business, farming and trade groups felt that advisory notices would be sufficient, but NGOs,

academics and professional institutes almost entirely disagreed. A small group of respondents felt the OEP should have no enforcement powers at all.

Respondents broadly supported all of the further mechanisms described in the consultation document; the ability to issue binding notices, to intervene in legal proceedings, and to agree environmental undertakings.

Respondents also suggested further enforcement mechanisms for the OEP, particularly the ability to initiate its own legal proceedings and the power to issue fines. The ability to initiate legal proceedings was promoted by the majority of academic, NGO and professional institute respondents. For example, Wildlife and Countryside Link stated that 'Any new "gold standard" environmental watchdog must be able to refer cases to court to achieve parity with EU complaints mechanism'.

Many respondents also supported the power to issue fines, although fewer than those in favour of direct legal action. Some respondents suggested that if the OEP was to have the power to issue fines, the resulting funds should be ring-fenced for environmental purposes.

Other mechanisms proposed by respondents included the ability to issue quashing, prohibiting, mandatory restoration or compensation orders, injunctions and stop notices, and the ability to suspend or remove office holders, launch public inquiries, and put public bodies into a form of 'special measures'.

## **Government response**

The draft Bill addresses respondents overarching concern that the OEP could only issue advisory notices. This builds on the requirements of the EU (Withdrawal) Act 2018, by setting out an escalating enforcement framework for the OEP.

The proposed enforcement function would commence with the OEP issuing an 'information notice' if it has reasonable grounds to suspect that there has been a serious failure to comply with environmental law (Clause 22). Subsequently, the OEP could proceed to a 'decision notice', where it has concluded on the balance of probabilities that there has been a serious failure to comply with environmental law (Clause 23).

It is expected that the majority of cases would be resolved through discussion and negotiation during the notice stages, as is also case with EU infractions. Although these notices would not be binding, if the public authority in question does not agree to implement the recommended measures, the OEP would be able to submit a claim for judicial review (Clause 25). The OEP may apply for the usual suite of remedies available under the standard judicial review procedure, including declarations of the law, injunctions, and mandatory / prohibiting / quashing orders. The power to initiate judicial review proceedings fulfils the requirements of Section 16 of the EU (Withdrawal) Act 2018. We would expect that a declaration of the law will be the usual outcome in most cases.

We do not propose that the OEP should have the power to issue fines against the government on the basis that public authorities have a duty to comply with court judgments under the Rule of Law. This forms part of the UK constitution and is made explicit in the Ministerial Code. Failure to comply with a court order can also lead to the responsible person being held to be in contempt of court, as noted by UKELA: ‘Failure to comply with a court order following action by the OEP would be contempt of court (as would a failure to comply with an order or undertaking in a judicial review) and the court would have inherent powers to fine, sequester or imprison if need be.’

Fines could be counterproductive if they were to significantly reduce a department’s / authority’s budget and resources, and so further limited their capacity to fully implement environmental law due to resource limitations. Fines collected in domestic courts are also typically directed to the consolidated fund, which would amount to a recycling of public funds. It is also worth noting that although the power to impose fines is available to the CJEU, it is very rarely used in practice and has never been used in relation to the UK.

The draft Bill does not give the OEP powers to issue binding notices, as this would greatly exceed the current powers of the European Commission, which must always apply to the CJEU for a ruling where agreement cannot be reached with the Member State. The draft Bill also does not include statutory provision for the OEP to enter into enforcement undertakings, as this is not considered necessary to allow the OEP to deliver its intended function. However, this does not prevent the OEP from entering into such bilateral agreements on a voluntary basis during the enforcement process. The draft Bill does not make explicit provision for the OEP to intervene in third party judicial review proceedings, however it could apply to intervene in the normal way, and it is not considered necessary in any case given that the OEP has powers to bring its own judicial reviews.

## **Question 10: The new body will hold national government directly to account. Should any other authorities be directly or indirectly in the scope of the new body?**

### **Summary of responses**

The majority of respondents considered that the public authorities should be directly within the scope of the OEP. Support for this position was particularly strong from NGOs, academics and professional institutes, while the views of businesses and public authorities were more varied. Many respondents argued that any public body with environmental responsibilities or duties, or with potential environmental impacts, should be included in the scope. The Wildlife Trusts responded that *“all public authorities with responsibility for making crucial decisions on the implementation of environmental law should be fully and directly within scope of the OEP (i.e. in terms of scrutiny, complaints and enforcement).”*

Respondents in favour of broadening the OEP's scope argued that this oversight would improve accountability.

Specifically in relation to NDPBs, the majority of respondents supported their direct inclusion in the OEP's scope, although many business groups and public bodies disagreed.

In relation to local authorities (LAs), again the majority of respondents felt they should be included directly in the OEP's scope. Many business groups and public authorities again disagreed, including a particularly large majority of LA respondents. For example, the LGA said *"The new body should focus on the gaps which will arise after EU withdrawal and any new policy which will be developed in the future. A remit over a variety of government bodies or partners will not help to improve performance particularly at a time when budgets are tight, and runs the risk of the body not having a meaningful impact."*

Fewer respondents commented with regards to the potential direct inclusion of other types of public body, but again the majority which did were in favour of their inclusion in scope, with the exception of business and public authority respondents. A large number of specific bodies were suggested for inclusion, however in addition to public authorities, these included private companies, NGOs and landowners.

Some respondents suggested that although all public bodies should be in scope, the OEP should first engage with central government when investigating or taking enforcement action. Others raised the point that the OEP should adopt a collaborative approach when dealing with other public bodies.

Some of those who disagreed that the OEP's scope should extend beyond central government argued that doing so would undermine the authority and responsibilities of ministers, or risk unnecessary duplication of existing processes.

## **Government response**

In response to the majority of respondents' view that public authorities should be directly within the OEP's scope, the draft Bill proposes that its complaints and enforcement functions will apply directly to any public authority failing to comply with environment law. Clause 17(3) confirms that public authorities include any person or body carrying out a function of a public nature (subject to certain exemptions) will be within the scope of the OEP.

While concerns about this approach are recognised, it would not be possible for the OEP to bring legal proceedings against central government in domestic courts for the actions of another public authority. Therefore all public authorities must be in scope in of the OEP order to avoid a governance gap when we leave the EU.

The OEP will normally only accept a complaint if any internal complaints procedures of the authority in question have already been exhausted, avoiding duplication (Clause 18).



Clause 21 also requires appropriate coordination with the ombudsmen, where there could occasionally be cases of mutual or joint interest.

If an investigation is opened or enforcement action is initiated against a public authority other than a minister, the OEP must copy any notices and correspondence to the relevant minister (see Clauses 19 and 24), thus involving central government and avoiding undermining the rights and responsibilities of ministers. We have also proposed a 'Duty of Cooperation' which would require all public authorities and the OEP to work collaboratively when dealing with complaints and enforcement action (Clause 26).

We do not propose that private companies, NGOs or landowners would be within the OEP's scope, as they are not currently directly accountable to the European Commission, while existing domestic regulators already enforce compliance by these organisations.

## **Question 11: Do you agree that the new body should include oversight of domestic environmental law, including that derived from the EU, but not of international environmental agreements to which the UK is party?**

### **Summary of responses**

Respondents to this question were broadly in support of the inclusion of domestic and EU retained law within the OEP's remit across all groups. Some concerns were raised in relation to the appropriateness of EU legislation within the UK constitution following EU exit, suggesting that EU legislation should be 'filtered' before adoption.

The inclusion of international law into the body's remit was less well supported with a significant minority of respondents arguing for its exclusion, particularly amongst the business, farming, and trade or industry body stakeholder groups. Reasons provided highlighted the potential overlap with existing bodies empowered to consider international agreements.

However a majority argued for the inclusion of international law into the OEP's remit, citing improved authority, consistency of environmental standards and national oversight in some cases. A proportion of respondents argued for a more restricted inclusion, based on a limited ability to scrutinise obligations without overlapping with existing mechanisms. The majority of support for the inclusion of international law came from NGOs, academics and individuals, with all other groups split evenly between support and opposition. A small number of NGOs also suggested that international agreements should be transposed into domestic law.

## Government response

The definition of environmental law is provided at Clause 31, which would include both environmental law determined entirely domestically, and that carried over from EU environmental law; this is in line with the majority of responses to this question.

The OEP will not cover international environmental law, as this would create an overlap with existing compliance mechanisms for international agreements, which will remain in place after our exit from the EU. The European Commission and CJEU also have no direct role in overseeing or enforcing such international agreements, therefore excluding international environmental law from the scope of the OEP will broadly maintain the current governance arrangements under which we operate as a member of the EU.

The EU (Withdrawal) Act will transfer EU legislation into domestic law when we leave the EU. The suggestion that this body of law should be “filtered” is beyond the scope of the draft Bill.

## Question 12: Do you agree with our assessment of the nature of the body’s role in the areas outlined above?

### Summary of responses

The majority of responses to this question focussed on the issue of climate change, particularly compared with the issues of agricultural and marine policy which had also been discussed in sections that preceded this question in the consultation document.

On the issue of climate change, a significant majority of respondents considered that it should be within the scope of the new body. The most common argument in support of the inclusion of climate change was that climate change and environmental issues are inextricably linked, the need to carefully dovetail different bodies’ responsibilities, the need for enforcement, and a remit limited to climate change adaptation and resilience.

Concerns were also frequently expressed about a potential governance gap which would be created by climate change being left out of scope as we leave the EU, particularly in relation to the enforcement of climate change legislation.

A smaller number of respondents from the business stakeholder group questioned the inclusion of climate change legislation that is not directly required as a result of EU exit.

The proposed inclusion of agricultural and marine policy was broadly supported by those who responded to this question. The exclusion of climate change was opposed by two thirds of respondents arguing for its inclusion within the body’s scope in some form. Support for inclusion was strongest among the NGO stakeholder group, with opposition mainly from the business, farming, and trade or industry body stakeholder group; other groups were evenly split on the subject. Those respondents supporting the exclusion of

climate change commonly referred to a potential overlap with the remit of the CCC as the main reason.

A significant number of responses generally highlighted the difficulty of separating environmental policy areas, and concern over a lack of clarity of the role and remit of the OEP. A small number of the business stakeholder group questioned the singling out of agriculture and marine policy areas, whilst others proposed further policy areas of inclusion such as waste, water, cultural or historic concerns.

## **Government response**

The definition of environmental law (Clause 31) establishes the scope of the complaints and enforcement functions. It also sets the scope of the scrutiny function with regard to monitoring and advising on environmental law (Clauses 14 - 16). The definition focuses the scope of the OEP on legislation mainly concerned with the protecting, maintaining, restoring or enhancing the natural environment, or protecting people from the effects of human activities on the environment.

As supported by a majority of respondents, marine and agricultural legislation would therefore fall within the scope of the OEP, insofar as it is mainly concerned with those matters. To the extent that fisheries and agriculture are covered by the 25 YEP, they would also fall within scope of the scrutiny function of the OEP (Clauses 14-16).

We acknowledge the responses to the consultation on the scope of the OEP in regard to climate change and the support for its inclusion. We agree with respondents that following EU exit there could be a governance gap in relation to EU climate change law and those domestic commitments enforced by the European Commission, given the Commission's current role in this regard.

The government is committed to ensuring that our legislative arrangements in relation to climate change, including in the final Environment Bill, maintain our world-leading environmental standards as we leave the EU. The Withdrawal Agreement reinforces our commitment on this further. We would welcome the EFRA Committee's views on how this can be best achieved.

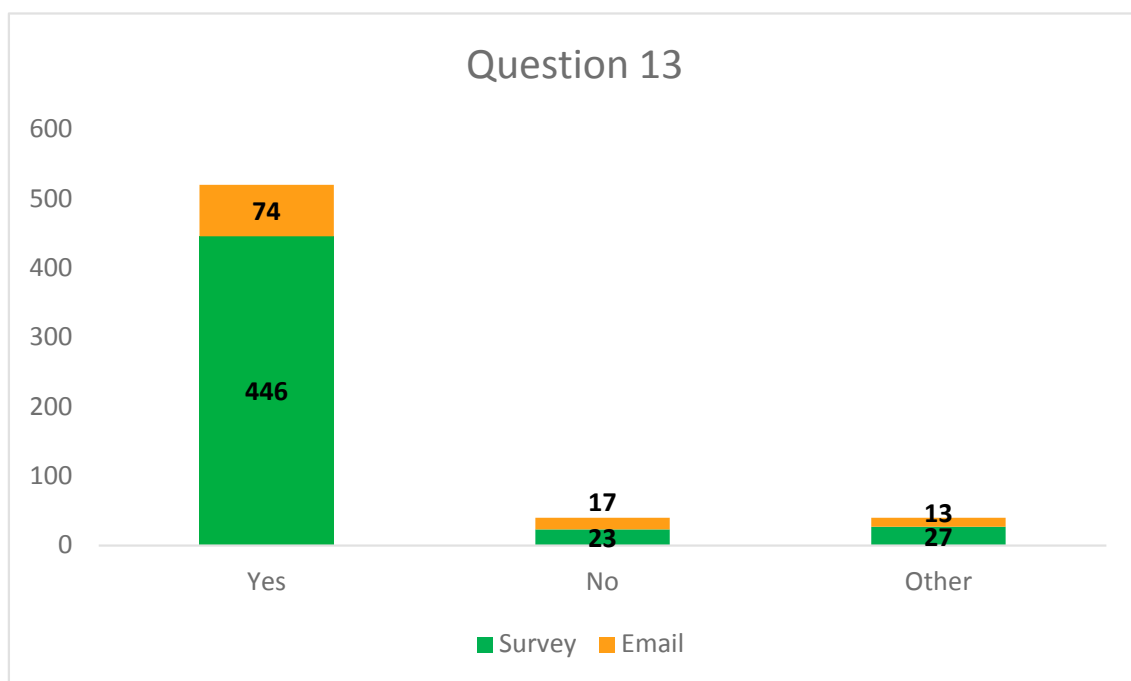
In terms of scrutiny of climate policy, the UK already benefits from a robust, world leading governance framework established under the Climate Change Act. Under this framework, our independent advisers, the Committee on Climate Change (CCC), scrutinise government actions and hold us to account. In defining how the OEP will take account of climate change, we will ensure that the vital role of the Committee is protected and it is able to operate as it does currently. The government is continuing to explore potential solutions to this issue.

It is also important that the OEP has regard to climate change, as one of the most important environmental challenges we face, when it carries out its broader functions. In addition, we expect that the OEP and CCC would both operate under a Memorandum of Understanding, which would require them to coordinate the exercise of their functions in a mutually beneficial and complementary way.

Given the specific issues relating to climate change, the government will therefore take advantage of any advice received through the pre-legislative scrutiny process, in order to finalise its approach.

## Question 13: Should the body be able to advise on planning policy?

### Summary of responses



**Figure 7 – number of respondents supporting / opposing the OEP advising on planning policy**

Overall, respondents were predominately in favour of the OEP being able to advise on planning policy, although some concerns were raised by businesses and public authorities.

Many respondents cited the potential impacts planning decisions can have on the environment, as well as the possibility of improving the planning process and policy for the benefit of the environment. Some respondents suggested that the OEP should be a key consultee on major changes to planning policy. However, some business groups and public authorities raised concerns that there could be conflict with, or duplication of, existing processes if the OEP were able to advise on planning policy.

Several respondents suggested that the OEP should have the authority to challenge plans and proposals with major environmental impacts, while some would like to see the OEP have the ability to intervene in individual planning cases. However respondents were split on this point, with other respondents considering that the OEP's role in relation to planning should be purely advisory, with a significant minority of business groups, stating explicitly that the body should not be able to intervene in local planning decisions. The National Farmers' Union, for example, responded that it should not be possible for the OEP *“to interfere with local planning decisions; there is already a robust appeal mechanism, which is capable to ensuring that planning policies have been correctly applied in individual cases.”*

A small number of respondents across various stakeholder groups made the point that the OEP's role should be to enforce environment law in respect to planning. Some respondents also suggested that the body's remit with respect to planning should include Nationally Significant Infrastructure Projects (NSIPs), and that marine planning policy should also be within scope.

## **Government response**

There are strong existing mechanisms for challenges to be brought to development plans and individual planning decisions. The government is clear that the OEP should not provide an unnecessary source of legal challenge or delay in planning in England compared with EU protections.

Therefore we have provided for the OEP's functions to include elements relating to the planning system only where appropriate. This matches the current oversight by the European Commission in regard to environmental law and reflects provisions in the Withdrawal Act. The OEP will not be specified in the planning legislation as a decision-maker, consultee, or body through whom planning decisions must be approved.

We will continue to consider the remit of the OEP in this area during pre-legislative scrutiny of the draft Bill. Our objective, which we intend to ensure is reflected in the final Bill, is to enable the OEP to enforce the application of environmental law in an effective and proportionate manner, maintaining EU protections while avoiding the imposition of unnecessary burdens and delays.

## **Part 3 – Overall environmental governance**

### **Question 14: Do you have any other comments or wish to provide any further information relating to the issues addressed in this consultation document?**

#### **Summary of responses**

The majority of responses to this question simply summarised the views expressed by stakeholders in their responses to the previous questions. Most of these responses therefore reinforced the key themes identified elsewhere in the wider survey.

In particular, respondents took the opportunity to suggest further environmental principles in response to this question, however most of these had already been identified in response to Q1. Respondents also reiterated the need for a strong, UK wide environmental body which is independent from government.

Several respondents used this opportunity to raise concerns about regulation within specific policy areas, particularly when we leave the EU. These included Environmental Impact Assessment, pollution by nuclear waste, renewable energy, pesticides, plastics, fisheries, agriculture, flood risk, biodiversity, air pollution, animal sentience, climate change resilience, public health, and natural capital. Other raised much broader issues relating to overall continued degradation of the environment, the need for stronger environmental protections and global partnerships, and the risks that Brexit poses to the environment.

#### **Government response**

Suggestions for additional principles have been considered, as set out in our response to Q1-3.

Concerns about the independence of the OEP are addressed in our response to Q5.

Points raised in relation to specific policy areas are beyond scope of the draft Bill, but are noted and may be considered in future policy development.

# Conclusions

## Environmental principles

You said	We did
Almost unanimous support for the inclusion of all the proposed environmental principles in domestic law	<ul style="list-style-type: none"> <li>All proposed environmental principles are listed on the bill (Clause 2)</li> </ul>
Suggestions for additional principles to be included	<ul style="list-style-type: none"> <li>Suggested principles require further consideration and it would be necessary to ensure added value</li> </ul>
Support for the principles to be listed on the Bill, with some concerns about the flexibility of this approach	<ul style="list-style-type: none"> <li>Environmental principles are listed on the draft Bill</li> <li>The policy statement (Clause 1) will allow ministers to interpret the principles</li> </ul>
The need for consistency on a UK basis	<ul style="list-style-type: none"> <li>The draft Bill only applies in England and UK reserved matters</li> <li>We continue to explore opportunities to co-design proposals with the devolved administrations</li> </ul>
The principles should apply to all public authorities, not just ministers	<ul style="list-style-type: none"> <li>It is not necessary to extend the application of the policy statement beyond central government</li> <li>The principles will be embedded in strategic policy frameworks set for other public bodies</li> </ul>
The need for a robust and transparent review process	<ul style="list-style-type: none"> <li>Clause 3 requires Secretary of State to consult on a draft of the policy statement and lay it before Parliament</li> </ul>
Concerns that the requirement for government to have regard to the policy statement is not strong enough	<ul style="list-style-type: none"> <li>This approach is broadly equivalent to the corresponding provisions in the Article 191 of the Treaty on the Functioning of the European Union</li> </ul>

## Accountability for the environment

You said	We did
Concerns about the OEP being properly resourced, including technical expertise and funding	<ul style="list-style-type: none"> <li>• The Secretary of State must provide sufficient funds to enable the OEP to perform its functions (Schedule, Paragraph 9(1))</li> <li>• The OEP must produce an assessment of whether it has been provided with sufficient sums in order to carry out its functions for each financial year (Schedule, Paragraph 11(3))</li> <li>• Non-executive members must have relevant experience (Schedule, Paragraph 1(4))</li> <li>• The OEP has powers to employ its own staff and make arrangements for the staffing of the OEP as it determines (Schedule Paragraph 4).</li> <li>• The OEP has powers to establish committees which may include people who are neither members nor employees of the OEP. This will allow the body to gain access to additional specialised expertise to support any of the functions or strategic direction of the body.</li> </ul>
The importance of ensuring the independence of the OEP from government in order to fulfil its role, including its classification and governance	<ul style="list-style-type: none"> <li>• The OEP will be a NDPB, operationally independent from its sponsoring department, with a separate legal personality</li> <li>• The OEP will have powers to do anything it considers appropriate in connection with achieving its functions without approval from ministers. This is subject to the usual exceptions relating to acceptance of gifts etc (Schedule, Paragraph 5)</li> <li>• The Secretary of State must consult the Chair before appointing non-executive members, while the chief executive must be appointed by the Chair, and executive members are appointed by the OEP (Schedule, Paragraph 1)</li> </ul>
Concerns about a need to balance environmental protection against other priorities	<ul style="list-style-type: none"> <li>• While the OEP must have regard to the need to act proportionately (Clause 12(1), it has the ability to set out how it will act proportionately as part of its strategy (Clause 12(3))</li> </ul>
The OEP should scrutinise environmental law and	<ul style="list-style-type: none"> <li>• The OEP has powers to scrutinise the implementation of, and changes to, environmental law and report annually on progress on the 25 Year Environment Plan (Clauses</li> </ul>



You said	We did
policy	14-16)
The OEP should have a complaints function	<ul style="list-style-type: none"> <li>Members of the public can submit complaints to the OEP for free about alleged failures to comply with environmental law (Clause 18)</li> <li>The OEP may carry out investigations of complaints which indicate a serious breach of the law has occurred (Clause 19)</li> </ul>
The need for the OEP to have stronger enforcement powers than just advisory notices, including the ability to initiate legal proceedings and issue fines	<ul style="list-style-type: none"> <li>The OEP has the powers to initiate legal proceedings against public authorities where an issue cannot be resolved through notices (Clause 25)</li> <li>Issuing of fines is not considered necessary or appropriate in a domestic context</li> </ul>
The OEP should act directly against all public authorities	<ul style="list-style-type: none"> <li>The OEP can take enforcement action directly against any public authority, subject to limited exceptions (Clause 17(3))</li> </ul>
The need for a UK wide body, or at least greater coordination with devolved administrations	<ul style="list-style-type: none"> <li>The OEP is to have jurisdiction in England and in relation to UK reserved matters only, thereby respecting the division of responsibilities in the devolved settlements.</li> <li>We continue to explore opportunities to co-design the final proposals with the devolved administrations</li> </ul>

# Annex A – Organisational respondents

ACG

ADEPT

ADS Group Limited

Agricultural Biotechnology Council

Agricultural Industries Confederation

Agricultural Law Association

Aldersgate Group

Anglian Water Services

Angling Trust and Fish Legal

APPG on Agroecology

Association of Drainage Authorities

Association of Local Government Archaeological Officers

Association of Local Government Ecologists (ALGE)

Association of the British Pharmaceutical Industry

BASF Plc

Bioregional

Brexit and Environment Network

Bridport Environment Group

British Academy

British Ceramic Federation

British Heart Foundation

British Lime Association

British Metals Recycling Association

British Ports Association

British Standards Institution

Buckingham CC

Buckinghamshire and Milton Keynes Natural Environment Partnership

Bude Friends of the Earth

Canal & River Trust

CEMEX

Central Association of Agricultural Valuers

Centre for the Study of Global Ethics (University of Birmingham)

Chartered Institute for Archaeologists (CIfA) and Council for British Archaeology (CBA)

Chartered Institute of Building Services Engineers

Chartered Institution of Water and Environmental Management

Chichester Harbour Conservancy

Chilterns Conservation Board

Churches Together in Wales (Cytun)

CIEEM

CIWM

CLA

Clean Air in London

ClientEarth

Committee on Climate Change

Communication Workers Union North West Safety Forum

Confor: Promoting Forestry and wood

Conservative Rural Forum

Co-op

Cornish Solidarity

Cornwall and Isles of Scilly Local Nature Partnership and Cornwall Council

Cornwall Beaver Project

Cornwall Seal Group Research Trust

Cornwall Wildlife Trust

Countryside Alliance

CPRE

Crop Protection Association

DAERA CNCC Secretariat

Devon CC

District Councils' Network

Dorset LNP

Dorset Local Nature Partnership

Ealing Friends of the Earth

EAUC

Ecosurety Ltd

EDF Energy

Edge

EEF the manufacturers' organisation

ELWA

Energy UK

Environment Agency

Environment, Politics & Globalisation MA/MSc 17/18, King's College London

Environmental Industries Commission

Environmental Policy Forum

Environmental Services Association

Erith Group

European Subsea Cables Association

FABRA UK

Fairfield Association

Field Studies Council

Forestry Commission England

Friends of the Earth

Friends of the Earth Hackney and Tower Hamlets

Friends of the Lake District

Game and Wildlife Conservation Trust

Grantham Institute/Grantham Research Institute

Gray's Ecology

Green Growth International

Greener UK

Harrogate and District Green Party

Harrogate Trust for Wildlife Protection

Heathrow Airport

Herefordshire Council

Herriard Estates

Historic England

Historic Houses

Honor Frost Foundation: Steering Committee on Underwater Cultural Heritage

IMEA

Institute for European Environmental Policy

Institute of Archaeology

Institute of Environmental Sciences

Institute of Fisheries Management

Institute of Food Science and Technology

JNAPC

John Muir Trust

L F Papworth Ltd

Landscape Institute

LARAC

Law School U of Birmingham

LEAF (Linking Environment and Farming)

Leicester Friends of the Earth

LGA

Lincolnshire Wildlife Trust

Local Nature Partnerships

London Councils Transport & Environment Committee

Manchester Friends of the Earth

Marches Christian Environmental Network

Marches NP and Shropshire

Marine Biological Association

Marine Conservation Northern Ireland

Marine Conservation Society

Mayor of London

Naked Solar Ltd

National Farmers Union

National Federation of Fisherman's Organisation

National Parks England

National Pig Association

National Trust

Natural England

Natural, Historic and Built Environment, Hertfordshire County Council

Nature Matters NI

NIMTF

North Pennines AONB Partnership

North Yorkshire County Council

Northumberland Coast AONB Partnership

Northumbria University

OIB

Oil & Gas UK

Open Spaces Society

Oroo Foundation

Orsted

PCAH - Parents Concerned About Hinkley

Pesticide Action Network UK

Planning and Environmental Law Committee

Policy & Legislation Committee Service NAW

Policy Connect

Pupils 2 parliament

Ramboll Environment and Health UK Limited

Renewable Energy Association

Richmond and Twickenham Friends of the Earth

Robert Dyer

Royal College of Physicians

Royal Institute of British Architects

Royal Society

Royal Society of Biology

Royal Society of Chemistry

Royal Town Planning Institute

RSPB

Save Newlands Corner Campaign

School of Law Queen's University Belfast

Scottish Power

Seabed User and Developer Group, SUDG

Sheffield and Rotherham Wildlife Trust

Shrewsbury Friends of the Earth

Society for the Environment

Society of Motor Manufacturers and Traders (SMMT)

Soil and Groundwater Technology Association - on behalf of a member of that organisation. In this context the views offered should not be necessarily taken as wholly representative of the organisation.

South West Water

Southampton Friends of the Earth

Southern Water

Southwest Environmental Limited

SSE

Staffordshire CC

Steady State Manchester

Stobart Energy

Stockton-on-Tees Borough Council

Stretton Climate Care

Suez

Suffolk Coastal Friends of the Earth



Sustain: The alliance for better food and farming

Sustainable NI

Sustainable Traditional Buildings Alliance

Tata Steel UK Ltd

TechUK

Teversal, Stanton Hill and Skegby Neighbourhood Forum

The Bar Council

The British Academy (Full PDF response submitted separately)

The Crown Estate

The Heritage Alliance

The Law Society of Scotland

The Passivhaus Trust

The Ramblers

The Tree Conference

The Wildlife Trusts

Towens

Town & Country Planning Association

Transition Exmouth

Twinn Sustainability Innovation

UAL

UK Chemical Industries Association

UK Health Alliance on Climate Change

UK Petroleum Industry Association

UKELA

UKNEE

UKOOG

UKPR

Ulster Farmers' Union

Unicef UK

UNISON Water Environment Transport

United Kingdom Lubricants Association

Urban Habitats Conservation Group

Urban Vision Partnership Ltd

Valero Energy

Valpak Limited

Veolia

VINE Value in Nature and the Environment

Walsingham Estate Company

Water UK

West Cornwall Friends of the Earth

Wildfowl and Wetlands Trust

Wildlife Countryside Link and Environment Links

Willmott Dixon

Wingrave with Rowsham Environmental Network

Woodland Trust

Woodland Trust NI

Worcestershire CC

Wrongs Covert Woodland Project

WSP

WWT

Yorkshire Water

# Glossary

CCC – the Committee on Climate Change

CJEU - the Courts of Justice of the European Union

EA – the Environment Agency

EU – the European Union

NE – Natural England

OEP – the Office for Environmental Protection

NDPB – Non-Departmental Public Body

NGO - Non-Governmental Organisation

NSIPs - Nationally Significant Infrastructure Projects

UK – the United Kingdom

UKELA – UK Environmental Law Association