

Environment, Food and Rural Affairs Committee

Oral evidence: Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill, HC 1893

Wednesday 6 March 2019

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Members present: Neil Parish (Chair); Alan Brown; John Grogan; Dr Caroline Johnson; Kerry McCarthy; Mrs Sheryll Murray; David Simpson; Julian Sturdy.

Questions 237 - 348

Witnesses

I: Emma Howard Boyd, Chair, Environment Agency; Chris Stark, Chief Executive, Committee on Climate Change; Alan Law, Deputy Chief Executive, Natural England.

II: Rt Hon. Michael Gove MP, Secretary of State for the Environment, Food and Rural Affairs; Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment; Davide Minotti, Deputy Director for the Environment Bill and Governance, Department for Environment, Food and Rural Affairs.

Written evidence from witnesses:

- [Environment Agency](#)
- [Committee on Climate Change](#)
- [Natural England](#)

Examination of witnesses

Witnesses: Emma Howard Boyd, Chris Stark and Alan Law.

Q237 **Chair:** Good morning. Thank you very much for coming this morning. We are going to try to keep to time this morning. I am sorry we started a little late, but we will need to be done with our first panel by 10.30, so I shall try to keep it going fairly fast. We have to try to keep our questions fairly short, if you keep the answers fairly short as well, please. Starting with Alan, please introduce yourselves.

Alan Law: I am Alan Law, deputy chief executive of Natural England.

Emma Howard Boyd: Hello. I am Emma Howard Boyd. I am chair of the Environment Agency.

Chris Stark: Good morning. I am Chris Stark, the chief executive of the UK Committee on Climate Change.

Q238 **Chair:** Thank you very much. Like I said, we are now getting towards the conclusion to our inquiry into pre-scrutiny of the Environment Bill, and we are particularly looking this morning at the Office for Environmental Protection. Given the OEP will have wider monitoring and advisory functions, in addition to its enforcement powers, is there a risk that these functions could overlap with or even interfere with the respective work of your organisations? How is the OEP going to be an umbrella enforcer but also, perhaps through tribunals or others, have an advisory role? Emma, you can start with that one.

Emma Howard Boyd: Thank you, and again I am pleased to be in front of the Committee, Chair. I will start by saying how much we welcome the introduction of an Office for Environmental Protection and the Bill as a whole. When I look at other bits of legislation that have been introduced that have set up important bodies, such as the Environment Agency with the last environmental Bill over 20 years ago, and similarly the Climate Change Act leading to the Committee on Climate Change and Natural England, it is important that we approach this Bill with a huge amount of ambition, as set out in the 25-year environment plan. For me, one of the issues I hope we get across today is about scrutiny of Government as a whole and how that is the key governance gap we need to plug.

On your question about scope and boundaries, it needs to clearly set out how we work together. I would also argue that the way we work with sister bodies, within the Defra group or the Committee on Climate Change, allows us a strong basis for that work to take place. We need to see a difference between what the OEP is scrutinising for Government as a whole, as opposed to scrutiny at a more granular level. We as the Environment Agency feel well scrutinised by Committees such as this, but also by the threat of judicial review.



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Q239 Chair: I am sorry to interrupt. You may well welcome it, but we are interested in whether you see it as a cosy little body that is going to be very linked to Defra? Therefore, you will not be too fearful of the OEP. In a way, I would like you to be a little fearful of what the OEP is able to do, because it needs to drill down on you in the Environment Agency, Natural England, the Rural Payments Agency or whatever it might be to get Defra on the right track sometimes. This is the bit that worries us: is it too close to all of you and just too cosy?

Emma Howard Boyd: It is not about cosiness; it is about having an organisation that has bite, but goes way beyond the boundaries of Defra. I would argue that where we bump into issues sometimes is where the work of other departments gets in the way of delivering environmental outcomes. How I am approaching this is about how we achieve the best for the environment. Given that the 25-year environment plan has set out a desire to put environmental issues at the heart of government decision-making, how do we make sure that this is not only scrutinising Defra and those bodies that are part of that family, but wider government as well? That is where things like the principles need to be given more heft.

Q240 Chair: If it is the Environment Agency taking action on farm pollution or on a water company with sewage works that are not up to scratch, and there is still pollution going into the water, the OEP is surely going to need powers to say to you, "You have not done enough. Do more". How is that actually going to work? Is it all part of Defra or is it not? This is what we want to know. Will you be able to have a little cosy chat and say, "Let's smooth all this over", because that is not what we want? I am not saying you will make a mistake, but that is what it is about. The OEP wants to give advice, but it also wants teeth. I am not certain you are frightened of its teeth at the moment.

Emma Howard Boyd: We certainly want it to have not only teeth, but a bite with them. I am saying that already we feel that the way we can be scrutinised brings fear, but the fact this is across government and is embedding environmental legislation in a different way is something we should be ambitious of, but equally should be fearful of as well.

Alan Law: First, we share what Emma described in welcoming the Bill, its ambition and the establishment of the OEP. From our point of view, we see there being space for an organisation of this nature to add value to scrutinise the activities of public bodies across departments, as Emma has described, and to hold them to account.

Q241 Chair: Please cover how it will do those two roles, as an adviser and as an enforcer or regulator.

Alan Law: The first one is that we need a clear and distinct purpose set out for the OEP. That should be set at a level around that scrutiny, advisory, holding to account and enforcement space. We see the OEP possessing quite a distinct capability, particularly around its legal



capability, and around audit and analysis, rather than being a body of technical environmental experts. We see some of the relationship between the OEP, bodies like ourselves and the agency captured through specific MoUs. Where scrutiny work is to be undertaken in a particular policy area, what might the role of Natural England or the agency be in providing some of the evidence to support that scrutiny? And what is the clear role and the added benefit that the OEP would provide beyond that?

Q242 Chair: Is there an argument to say that the advisory part of the OEP sits within the physical realms of Defra and the regulating part of it sits outside, physically in a different place? I am just putting scenarios to you. I want to see a separation, because it has a good advisory role and I do not want a lot of enforcement. That is not my argument but, in the end, there needs to be an enforcer. We have the European Court and all those things now, with ClientEarth able to take the Government to court. Then it comes forward with different proposals. I want a regulator to be able to do that. Is having it all cosily sitting work in the same building going to work? It is over to you, Chris.

Chris Stark: There is a great deal to be learned from the Climate Change Act. I echo everything that has been said today about the importance of the OEP and the Environment Bill in protecting the environmental protections that were provided by Europe. The Climate Change Act is instructive, because it sets up an important role for an independent body to provide scrutiny on what is happening on climate change. In many respects, the Environment Bill replicates those features. There is one key difference, of course, and you have made the distinction in the question you asked, which is that we provide the independent scrutiny on climate change; we are not the enforcer. Having all that in a single body brings with it some extra complications. If you draw from the lesson of the Climate Change Act, which is a good piece of legislation, it is immensely important that the body that provides independent scrutiny is genuinely independent. That has worked well with the Committee on Climate Change now for 10 years.

Q243 Chair: With the Secretary of State being able to appoint the chair and with huge influence over the members, is that too close to the department? Am I leading you as the witness?

Chris Stark: No, I am happy to address that, because I do not think it is. The model that is set out in the draft Bill closely replicates what you find in the Climate Change Act on the Committee on Climate Change. The Secretary of State appoints the chair but, once that appointment has been made, there is no further influence.

Q244 Chair: The chair then helps to appoint all the members of the committee, then the Secretary of State has no more influence. Is that what you are saying?

Chris Stark: All of the appointments to the board, if I can put it that way, are made by Ministers on the advice of chair, and that extends to



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the chief executive. Once those appointments are made, the functions they perform are entirely independent. That is how we work and it works extremely well.

Q245 **Chair:** You are still largely in their hands. I am not saying the present Secretary of State would not give it a great deal of independence but, when you are setting up legislation for an OEP, you have to set up for the worst common denominator, as well as the best one. That is where we are trying to drill down. We do not want, at the end of the day, too much interference from the Secretary of State of the day, because it could stifle its importance.

Chris Stark: I will make one final point to draw a parallel with the Climate Change Act. The function we perform is laid out clearly in the Climate Change Act. In effect, we are asked to perform a set of statutory duties once those appointments are made. There is an additional link, which is how we are funded, which is an occasional criticism that is levelled against the Climate Change Act. There is a continuing funding link from Government.

Q246 **Chair:** If you squeeze the funding, you can control the organisation. Natural England just lost a press officer, so it is easy to squeeze it.

Chris Stark: We do, however, have the ability to go to Parliament to say that we cannot perform our statutory functions with the funding that Government have provided for us.

Emma Howard Boyd: We welcome further parliamentary scrutiny, so any involvement in scrutinising the chair, etc. Also from a funding perspective, as Chris has said, there is that line to Parliament and we are potentially looking at five-year settlements. That is something that the Environment Agency has benefited from on the flood and coastal risk management side, which allows us greater freedom to plan for our flood programme and the delivery that we are giving from that side of our work.

Q247 **Chair:** This is the trouble with parliamentary scrutiny. Last week, we had Tony Juniper in, the new chair of Natural England. We accepted him as a fine candidate but, if we had not, the Secretary of State would have carried on and put him in place anyway. This is the trouble: we are offered a certain amount of parliamentary scrutiny, but what is it worth, at the end of the day? Alan, be very quick and then I must move on.

Alan Law: I simply want to say it is a balance of measures here. The scrutiny of Parliament, in its appointments and reporting, is right. The multi-year budgets are critical if you have concerns about the appointment process. Finally, there is the expectation and wherewithal for this body to be a public presence. Given the scrutiny and reporting nature of the body, they need the tools to be able to provide those. Those could be differentiators between other parts of the Defra group.

Q248 **David Simpson:** We may have touched on this a little, but what



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reassurances need to be given by Government about the future independence of the Office for Environmental Protection, or what additional safeguards should be written into the Bill? Do not all jump at once.

Alan Law: I suspect we have addressed some of that. From our point of view, it is around the scrutiny of Parliament in appointments and reporting. It would be around multi-year budgets to ensure that the body is able to fulfil its requirements without in-year changes compromising them, and the ability to exercise its functions in public.

Q249 **David Simpson:** You are talking about year-on-year changes. What sort of period of time would you like to be fixed?

Alan Law: A five-year budget settlement in line with spending reviews would be ideal.

Emma Howard Boyd: Similarly, having the voice for the environment is key to this role as well. It is something that we see as important at the Environment Agency. We believe this body needs to be championing the voice of the environment in how it operates.

Chris Stark: I would reflect on my own experience in the Committee on Climate Change about the importance of having a genuinely independent body that can speak publicly about an issue and can still maintain a healthy relationship with Government while doing so. It is important, therefore, that the legislation is clear on the functions of the OEP and equally clear on how it will be funded. We have already discussed the appointments process. I must say that the provisions in the Bill look good from that perspective. The financing and funding of it, as we have been discussing, are probably the things to make sure we get right.

Q250 **Chair:** What happens if there is a general round of reductions in funding for Defra, which include the Environment Agency, Natural England and the Rural Payments Agency? Will it not include the OEP as well?

Alan Law: At the moment, elements of the Defra group budget are ring-fenced and excluded from those. Kew, for example, has a multi-year budget settlement, which protects it from those kinds of cuts. A similar arrangement could be installed here.

Emma Howard Boyd: Again, this is where we need to look at the role not just in relation to Defra, but for the rest of Government. That line into Parliament and thinking about scrutiny of Government as a whole should help bolster that independent budget line.

Q251 **Chair:** You make a good point. To take air quality again, it is a Defra responsibility, but much of doing it is in transport, because a lot of our pollution comes via transport, diesel engines and things. If you go back to the air quality issue, that is where the OEP will need to have a strong impact, not just on Defra, but on transport and MHCLG. Putting your environmental hat on, are you convinced it will have enough power?



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Emma Howard Boyd: That is what we need to make sure is set out in the principles, duties and scope. We have welcomed you as a Committee working with other Committees on issues like air quality, bringing together that joint scrutiny.

Chair: I will leave it there, Emma, because it is part of Kerry's question, so it is over to you now, Kerry.

Q252 **Kerry McCarthy:** I want to ask about the environmental principles. There has been concern expressed in a range of areas about these policy statements with the environmental principles in. At the moment, they just say that Ministers "must have regard to the policy statement", and some people say that that is not a strong definition or strong wording. Clause 4(2) says that the policy statement does not require the Minister to consider the principles where there is not likely to be any "significant environmental benefit". It seems odd wording to me, in that I would have thought it would be more normal to have the test; they would not need to look at it unless there is likely to be significant environmental impact. I am not sure what the word "benefit" is doing in there. Do you generally think that that section could be strengthened?

Emma Howard Boyd: When it comes to the principles, I endorse what you saying. We need to lift the language used to something like "acting in accordance with the principles". From all of the work that we do at the Environment Agency, the earlier you deal with environmental issues and embed them in the decision-making process, the better you are at making sure they are taken into account. If those principles are stronger and have to be acted in accordance with, it puts them in a different place. There is also the potential to have an overarching summary of the principles, almost, to show what the Act is dealing with.

Q253 **Kerry McCarthy:** Presumably if they have to have regard to, it just means that they have to have considered them. It does not necessarily mean they need to have acted upon them. Is that the difference? Others are nodding.

Alan Law: That is right. Last year, the House of Lords had a Committee looking at the implementation of the Natural Environment and Rural Communities Act. One of the areas of scrutiny there was on the duty to "have regard to" biodiversity, section 40. One of the findings from that review was that that was a somewhat toothless responsibility.

Kerry McCarthy: Is it like a tick-box? You just say we thought about it.

Alan Law: Our submission of evidence recommended strengthening that to "act in accordance with", which is the kind of terminology that the Planning Inspectorate needs to operate when making decisions to ensure that decisions are taken in accordance with policy statements that direct things like energy and infrastructure.

Q254 **Kerry McCarthy:** Clause 4(2) says that the policy statement does not require Ministers to consider the environmental principles where there is



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not likely to be any “significant environmental benefit”. There will be a lot of situations where Ministers are making decisions where there is not an environmental consequence, but I do not understand why the word “benefit” is in there rather than “impact”. Surely the test should be the same as an equalities impact assessment; you would make the decision that it is not going to have an impact. I do not understand the wording “benefit” in that. I do not know if you do.

Emma Howard Boyd: It is a curious word. I agree with you that “impact” would come across better. Where other legislation has been successful, to take the Climate Change Act, is where it has led to further scrutiny and work with other regulators in other parts of government, for example financial regulators. There it is looking through the lens not just of benefits, but also impacts and risks.

Alan Law: It is a confusing clause on any level, so clarification would be helpful.

Q255 **Kerry McCarthy:** I wonder if it is because you have these EIPs in the environment plan, which are about driving positive change forward, so looking at what we can do to improve the environment, as opposed to preventing harm. Obviously the purpose of a regulatory body is about both.

Emma Howard Boyd: It is both protecting and enhancing.

Q256 **Kerry McCarthy:** It is, exactly. There have also been calls for an overarching principle to be included, calling for a high level of protection for the environment which is in the TEU and the TFEU. Is that something that you support?

Emma Howard Boyd: Yes, it could bring the principles together.

Q257 **Kerry McCarthy:** What are the consequences of it not being there? I know we have moved to hypothetical situations, but what are the dangers of it not being there?

Emma Howard Boyd: It is about setting out the ambition of the Act. That is one angle that I hope we can focus on as well. We need to look at the enforcement provisions, but one of the great benefits of the Acts that we have seen before is how they have driven positive change. Putting in that overarching principle can set the tone of Act and what we are trying to achieve for nature.

Q258 **Kerry McCarthy:** There are quite a few exemptions in there. Do they cause concern?

Emma Howard Boyd: Indeed they do.

Kerry McCarthy: Are there any ones in particular?

Q259 **Chair:** You have raised concerns about exemptions. Perhaps you would like to detail which areas you are particularly concerned about.



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Emma Howard Boyd: There are areas around different departments, for example the MoD. The work it is doing overseas is one thing, but we know that the MoD owns a lot of land. Within that come environmental pressures, risks and standards that need to be kept. That is one example. Taxation is another. From a polluter-pays perspective, it is important that taxation considers how to capture environmental bads. Again, we need to think carefully, if this is really about putting the environment at the heart of government decision-making, how we make sure that we capture all the tools that exist in different parts of government.

Q260 **Kerry McCarthy:** Taxation seems to me to be a pretty important tool to achieving environmental change, whether you look at the landfill tax or the charge on plastic bags. There are all sorts of areas where it is crucial, so it seems a glaring omission. Alan, you want to come in.

Alan Law: First, I agree around the exemptions. A lot of high-quality natural environmental land is owned or managed by the MoD, so that exclusion seems strange to us. If I take a broader interpretation of your term "exclusion", the definition of natural environment in clause 30 is narrow and does not align well with what is in the Natural Environment and Rural Communities Act, which includes landscape and access of people to the natural environment, for example. There is scope for rationalising and aligning those definitions, so that we are talking about the same thing in different bits of legislation.

Q261 **Kerry McCarthy:** I do not think any manmade structure is covered, whereas it clearly could be.

Alan Law: No and, similarly later on, section 212 of the explanatory notes refers to areas being outside scope of the OEP, including forestry, flooding, navigation, and town and country planning. There is a point around interpretation. We assume that means insofar as they do not apply to issues with the natural environment, but it is untidy having those areas referred to as excluded, when they are clearly central to environmental issues.

Kerry McCarthy: There needs to be more clarity in defining that extent.

Emma Howard Boyd: I do not know if we are coming on to climate change, and making sure that the existing arrangements work well in this new arrangement.

Kerry McCarthy: I think that is question five, so we will come on to that. Thank you.

Q262 **Julian Sturdy:** This is just a quick question. I want to come back on something that Kerry touched on about taxation and potential taxation powers within the Environment Bill. I question whether that is actually needed in the Environment Bill. The polluter-pays scenario, and we talked about plastic, landfill tax, etc., can be done outside of an environmental Bill or even through other departments. Do you not agree with that, or do you feel it is essential it is part of the Bill?



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Emma Howard Boyd: We need to consider how the environment is looked at across all departments. That is, in essence, what the 25-year environment plan set out to do. If this is going to be truly ambitious as an environmental Bill and if it is going to be ground-breaking internationally, we need to look carefully at all areas of influence. From my background in the investment community and private sector, having the right fiscal, financial and taxation arrangements is key. If we set that correctly, we underpin all the innovation, all the way of embracing the importance of the environment and the economy. A healthy economy is strongly linked to a healthy environment. We need to make sure that this is considered.

Julian Sturdy: I am not arguing against that. I agree with that as a principle, but what I am trying to get at is whether the taxation element needs to be in the Environment Bill or if it is covered in other legislation, through other departments.

Chair: That probably needs to be checked, Julian. Perhaps you would like to look into that and give us written evidence on it, because what is being covered by the Treasury at the moment needs to be double-checked.

Emma Howard Boyd: I am happy to do that.

Q263 **Chair:** It is how we work together that matters on this. Before we leave this, the OEP is excluded from dealing with forestry, flooding, navigation, town and country planning, people's enjoyment of or access to the natural environment, and cultural heritage. Perhaps I can understand town and country planning to a degree, but why forestry and flooding? I do not get it. There are lots of times when we can do catchment area management, plant banks of trees and things. I do not quite get it. What is your take on it, Emma?

Emma Howard Boyd: This is an area where the scope could be broadened, but we need to make sure that it is done in a way so that we are not tripping up over each other. It is working out how the different existing bodies responsible for this area fit into the Bill, but we need to make sure it includes that.

Q264 **Chair:** It takes us back to the first question: are you independent enough? Because it is going to be part of Defra, but not actually part of Defra, is it just too close? Should you not be saying, as the Environment Agency—is it not part of your job as chair of the Environment Agency—to say to the Secretary of State and to Clare Moriarty that you think the OEP should have flooding and forestry as part of its remit? Is that not part of your job? Perhaps it is not; I do not know. The question is over to you.

Emma Howard Boyd: We need to get the boundaries. I have said already how we welcome the body and its scrutiny functions. We do not want to end up replicating duties, but we want an organisation, a body, with teeth. Working through these arrangements, particularly when it comes to the next phase of the Bill, will be key.



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Q265 **Chair:** The contrary argument to that is, if it has teeth, it might suit you for it not to deal with forestry and flooding. Where is the Environment Agency on this, because you are there to protect the environment, so we need to know?

Emma Howard Boyd: We want to be held to account, but we want it to be done in a way that captures this in the right way.

Q266 **Chair:** The straight question is: do you think forestry and flooding should be part of the OEP's remit?

Emma Howard Boyd: I think they should be.

Q267 **Mrs Murray:** How do you respond to the criticisms that the traditional JR system, judicial review, does not have the same force as the current powers of the European Commission and the European courts?

Chair: We will bring Chris in, in a minute. You have been rather quiet.

Chris Stark: Do no worry; I can be loud again.

Alan Law: We agree and take the view that the JR process provides part of the means for providing assurance, but does not replicate in full the functions of the Commission and the Court. Our evidence suggests that we would like to see slightly more bite at the upper end of the process, in the decision notices. We share the ambition that the work in enacting this is focused on enabling and realising environmental opportunities, rather than focused on punishing. We also reflect that having bite at the upper end of the escalating enforcement process is part of what serves to support others taking more notice earlier of advisory points and engaging on enabling, rather than on enforcement.

Q268 **Mrs Murray:** Mr Law, before I go on to the other two, I specifically want to hear from you why you think the decision notices need to be binding, rather than of an advisory nature. How would you change the Bill to reflect this?

Alan Law: The option is to have decision notices that are binding. If you made a decision notice automatically binding, it might limit the use of decision notices. The option is to have a binding component to it. In our experience of regulation of sites of special scientific interest, for example, we use things like stop notices and can also issues that involve repair, where there has been damage. We are reflecting that we are not looking at duplication here, so this is how those kinds of decision notices could be turned into practical measures that are applied at a policy scale or at the operation of an organisation. There are parallels. They are not exactly the same but, if a policy is shown to be damaging to the environment and not in keeping, there should be a vehicle to say that we need, at the right moment, to apply a stop to that policy.

Q269 **Mrs Murray:** I will come to you now, Mr Stark, about the traditional JR system. Why do you think it does not have the force as the current powers of the European Commission and European Court?



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Chris Stark: I only have a few things to say on this, because there is a specific regime in place for the Climate Change Act. I will observe that, in the Climate Change Act, the enforcer is Parliament and, if I can put it this way, there is this additional threat of judicial review hanging over the provisions of the Act too. That works well in that space, but what we are discussing here is far more specific. The protections offered by Europe under the various legal frameworks that cover the environment require to be replicated and a tough enforcement regime. I might observe that some of those protections relate to important aspects of the climate change task that faces the UK. They are things such as the Energy Efficiency Directive and the Renewable Energy Directive. We have submitted in our evidence to Defra and this Committee that those protections should be brought over too. It is not enough to expect judicial review to cover them, so it is important that the OEP is an enforcement body with teeth on those aspects. I would only observe that the judicial review process is a useful complement to the climate change side. If we have the chance, we can talk more about the differences between this Bill and the Climate Change Act.

Emma Howard Boyd: What I said earlier about judicial review is that we see it as something that has teeth. We hope that, in most cases, going through the processes will sort this out because, ultimately, we want to solve the issue that is under review, under scrutiny and needs enforcement so, as quickly as possible, we put in the remedies to sort out that environmental issue. That is where we have concerns that money is focused on putting things right, rather than extended legal processes.

Q270 **Mrs Murray:** Could I finally ask if you see any benefits from an enhanced enforcement procedure that incorporates the Environmental Tribunal?

Emma Howard Boyd: One of our concerns with that is whether you build up a lot of replicated environmental expertise. At the moment, that expertise sits within the bodies, such as in the Environment Agency, Natural England and MMO. Ultimately, I look at this as how we make sure we are correcting what has gone wrong from an environmental perspective and that that is sorted out. Replicating expertise in different bodies may not be the best way of achieving a reverse of an issue from an environmental perspective.

Alan Law: Could I add to the point on JR? It is simply that we wish the OEP had a focus on outcomes as well as process, not necessarily to the point of being prescriptive about the right outcome, but on ensuring an appropriate or correct type of outcome is achieved. Reliance on judicial review, which focuses merely on the process, but does not necessarily make a judgment on whether the outcome is adequate or sufficient, feels like it would be insufficient. We have some experience of using the tribunals. If you have a higher level of enforcement, you need some means to appeal against decisions that come through that enforcement, and the tribunal is one option to apply.

Mrs Murray: Do you have anything to add, Mr Stark?



Chris Stark: No, I will leave it there.

Q271 **Chair:** Before we leave this one, at the moment, as you quite rightly say, judicial review is about process. The process might have been right, but the decision and actually curing air quality or whatever it might be has not been done. Surely the tribunal has a real place to guide you through where we need to go, before it goes right the through, possibly to the High Court. I feel that these tribunals could take some of the heat out of the situation. Now, I know you believe you are the experts in the field, and I can understand you not wanting to create another expert panel. Take air quality again: the European Commission has said the Government have to come back and do more. Do not forget it is separate from Government, so we have to be certain that the OEP has a method, either through a tribunal or other, so that it can come back do you, the Environment Agency, or whoever it might be—it might be the Department for Transport, car manufacturers or anybody—to do more to get to the policy that is to improve air quality, taking that argument.

I am in favour of the tribunal, because it could stop a lot of cases going too far up the legal ladder. Where do you stand? I can understand your reticence in some ways that it might try to take over your role, but there has to be a check and balance somewhere. We do not want to replicate the European Commission, because we are spending our time trying to get out of the European Union, but we have to have a system that properly holds the Government to account.

Emma Howard Boyd: I hope that the run-up to judicial review, the notices that take place and the lines at various stages, where you move towards action, allow the focus to be on the outcomes. Again, I am nervous about replicating resources. There is a huge role for working with other environmental experts in how we make sure that, over time, standards improve in the right direction. That is where I welcome bringing in other parties.

Q272 **Chair:** Would the tribunal not be part of that process, as long as it did not take over your role? It is the outcome. As Alan talked about, it is the outcome that matters, not the process. The trouble with judicial review as it stands at the moment, if we are not careful, is it will be all about process. The lawyers will argue process as the day is long, because they will say “My client carried out the process correctly”. The fact that the policy was wrong or that it did not actually improve air quality is irrelevant to the process because, during the process, they carried out the right procedure. Planning applications that go to judicial review are all about the process. It is not about the decision. Somehow or other, judicial review will not take the place of the European Commission, so we need something to deal with it. I just think that a tribunal is a way to start having high-powered advice to put the situation right, rather than it going to court. It is part of the court action, but not so far, but you do not see that, do you?



Emma Howard Boyd: No, I am worried about processes clogging up. What I am interested in is how we can be efficient about getting to the point where we are focusing on the outcome, which is my worry about the tribunal.

Q273 **Dr Johnson:** This is a question for Mr Stark. Looking at the difference between the OEP and the Committee on Climate Change, the OEP has enforcement powers, but it does not apply in the area where the Committee on Climate Change does, apart from in fluorinated gases. Does that mean there is a gap where there is no enforcement at all and how would you resolve that, if it is the case?

Chris Stark: No, I would not say there is a gap, but there is an ambiguity, if I can put it that way, in how climate change is handled in the draft Bill. The Bill as it is drafted excludes enforcement of climate change law. In one sense that is helpful, because it clearly sets out that there is a function here that is distinct for us. The Climate Change Act again is a useful piece of legislation. It is useful in the sense that it creates a clear governance framework over climate change, and basically hands the enforcement role to Parliament itself. It makes Parliament the enforcer, and creates three important institutions in that governance arrangement. Enforcement is provided by Parliament; Government are responsible for the plan; and we, the Committee on Climate Change, provide independent scrutiny. Importantly, that independent scrutiny does not include enforcement but, as we have been discussing, it does include the ability for us to speak directly to Parliament about where we see deficiencies, and publicly, as a potential means to a judicial review and a challenge through the courts.

The Climate Change Act importantly gives us two distinct roles when it comes to independent scrutiny. One is the one we are commonly known for, which is our role in assessing how well the UK is doing in reducing emissions. There is again a tight governance arrangement in place in the Climate Change Act for that, which establishes carbon budgets, which are effectively five-yearly laws to reduce emissions. We provide our assessment of how well things are going directly to Parliament, and the Government are expected to make a plan for those targets as they are set.

Our second role as provided by the Climate Change Act is to be the independent scrutiny body for climate change adaptation. In that area, there is the potential for additional overlap. As the Environment Bill is drafted, it is possible that we will run into a point where we are providing independent advice on the impacts of climate change on the national environment and the OEP is expected to do the same thing. That is possible to manage, but it would be important for us to establish a clear memorandum of understanding about how we will operate with the OEP. In addition, it is probably true that the Environment Bill will need to be clear about the respective roles of the Committee on Climate Change and the OEP. That seems to me to be entirely possible.



Q274 **Dr Johnson:** Would it be more straightforward to have one organisation doing both, rather than two potentially overlapping?

Chris Stark: The technical expertise to work on climate change exists in the Committee on Climate Change and there is a clear legislative framework for that in the Climate Change Act. I advocate not disturbing that, because it works extremely well, and instead being clear on how we work with the OEP. However, it introduces the idea of who the enforcer is. Again, on the Climate Change Act, it is important that we do not disturb the idea that Parliament itself, on such an important whole-economy issue, remains in charge.

I know that many of the NGOs have suggested that the OEP might have an enforcement function other the other function that we have been discussing, which we have called climate change mitigation and the carbon budgets. It is firmly my view that that would loosen the governance arrangement we already have in place, most notably because we would be asking the OEP, in its enforcement role over those carbon budgets, to take a judgment on whether to launch a proceeding against the Government, which would require them to make a separate assessment of how well the Government are doing, duplicating a role that we have. Instead, the ideal arrangement from my perspective would be that we are offering our independent assessment directly to Parliament but, as necessary, to the OEP itself to allow it to undertake its enforcement functions as regards the natural environment.

Q275 **Dr Johnson:** Would you like to see the OEP's enforcement done through Parliament, in the same way as yours is?

Chris Stark: No, I think it is important that, since the OEP is effectively acting in a role that is currently performed by the European Commission, that is laid out clearly and that we have a tough enforcer of those legal frameworks. And the Bill establishes that, but it is important that we resolve the ambiguity, where there is overlap with the Climate Change Act. You will find that mainly in the area of climate change adaptation. I will just say again that I do not think that should be a problem, as long as we are clear on the relationship and that is laid out in both the statute and in a memorandum of understanding.

Q276 **Dr Johnson:** You think it is definitely overlap with no gaps to fall through.

Chris Stark: I do not see a gap, but I see the potential for some ambiguity, unless that is resolved.

Q277 **Julian Sturdy:** I have a quick question following up from that. On that overlap of climate change adaptation, which you talked about, what happens when those two sets of advice are in conflict with one another?

Chris Stark: We are not the enforcement body and that is for the enforcement body to resolve. If we are clear about the respective roles, in that circumstance, we would be offering our independent advice of



where action is needed to tackle a deficiency in the climate change adaptation plan. It would then be for the OEP to decide whether that was something it wished to enforce, and I would expect it to be gathering information from a number of sources, when it came to the natural environment, to perform that role.

Q278 **Julian Sturdy:** Do you feel there could be conflict there?

Chris Stark: I can see the potential for conflict, but it is part of the important function of an enforcement body to resolve that itself. It would be a judgment call for the OEP to decide what it wished to enforce.

Chair: That needs to be taken into regard as we set up the OEP.

Chris Stark: I think it does.

Emma Howard Boyd: That is an area that needs clarification, but it also touches on other areas where there is the potential for scope and overlap. It goes back to how we want a strong body, but we also want to make sure, where we only have a certain amount of resources to deal with the environment, we are using them as efficiently and effectively as possible, focusing on outcomes and positive development, in accordance with the 25-year environment plan.

Alan Law: I have nothing further on that question, but a little point on the EIP. It is simply to log a question around whether it would be possible to make the role of the OEP tighter on environmental improvement plans, not in the setting of policy ambition, but in advising on appropriate metrics, for example appropriate definitions that sat within the environmental improvement plans; such that the OEP could be confident that, in exercising its scrutiny and reporting functions subsequently, the right kind of information could come forward to evaluate whether progress was being made in the manner expected. There is a connection that is currently not there within the Bill that could be.

Chair: That was a very good point. Thank you all a good evidence session. We now have the Secretary of State, so we should be able to put some of your ideas to him this morning, straight away, hot off the press. Thank you very much for attending. It was a good session that we can add to our pre-legislative scrutiny of the Environment Bill. Thank you, all three of you, for coming this morning.

Examination of witnesses

Witnesses: Michael Gove, Dr Coffey and Davide Minotti.

Q279 **Chair:** Thank you very much and welcome, Secretary of State and Minister Coffey. Davide, would you like to introduce yourself, because both the Secretary of State and Thérèse are known to us all?

Davide Minotti: Thank you, Chairman. My name is Davide Minotti, and I am the deputy director on the Environment Bill in Defra.

Q280 **Chair:** Thank you very much. Good morning, Secretary of State, and good morning, Thérèse and Davide. We will get straight on with it. I understand, Secretary of State, you are giving up single-use plastic for Lent, so we will watch you in the next 40 days to make sure that you do not use any single-use plastic. That is quite a challenge, Secretary of State.

Michael Gove: It certainly is. I will seek to minimise.

Chair: You are qualifying it now. Either you are giving it up or you are not.

Michael Gove: I said that I would reduce my use of single-use plastic.

Chair: I am still going to watch you with great interest.

Michael Gove: I would expect nothing less.

Q281 **Chair:** Thank you very much for joining us. We are doing the pre-legislative scrutiny and thank you for offering it to us. We enjoyed doing it and have taken some good advice along the way. I just hope you take some notice of it when we have done it. That will be rather useful, Secretary of State. First, how will you ensure that the Office for Environmental Protection will have the resources necessary to carry out its functions?

Michael Gove: It is a direct responsibility of any Secretary of State to make sure that, if you are setting up a body as important as this, it is properly resourced. Nobody wants to create a bureaucracy for its own sake, but it is the case that we want to ensure not just that the chairman, the chief executive and the other board members have the resources that they feel that they need, but also that they can draw on and have at their command a battery of experts, and legal staff and opinions. If it is the case that we do not to fund it properly, I expect the chair and the board to make it clear that they need additional resources.

Q282 **Chair:** We had the retiring chair of Natural England in here much lamenting that they no longer have a press officer in Natural England. We have a new chair, Tony Juniper, put in place last week. Why is it that, if you can cut the press officer in Natural England, we can be confident that



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you will not cut the press officer in the OEP? What is the difference? Whoever is Secretary of State will be in charge of it all.

Michael Gove: The outgoing chair of Natural England was clear about where he felt the priorities that he had in mind were not necessarily being executed in quite the way he wanted. We had an exchange and discussion here about the press and communications function of Natural England, and I took a different view from the chair, but of course people can make up their own minds.

Q283 **Chair:** It is not so much that I want to discuss the issue of whether he was right or wrong. What I am saying to you is that you, as Secretary of State, can clearly squeeze the budget of Natural England. What is stopping you—not necessarily you, but the next Secretary of State, whoever he or she may be—from saying, “We’ve got budget cuts. We need to cut back Defra. OEP is part of Defra. We will cut it as well”? What under the present idea will stop the then Secretary of State? I am not accusing you of doing it, but what is stopping them doing it?

Michael Gove: Ultimately, Parliament will. The key question is that all Ministers are responsible to Parliament and all Ministers are responsible for the bodies for which their department is the sponsor department. Were it to be the case that I or any successor Secretary of State did not fund any of the arms of government or the appropriate bodies that we are responsible for appropriately, Parliament could take a view.

Q284 **Chair:** I am sorry to interrupt. Yes, we can take a view, but we could have taken a view on Tony Juniper, last week, which was different from yours, but it would largely have been irrelevant, because you would have carried on with the appointment. It happened in health the other day. So parliamentary scrutiny sounds good, until the moment that you have to try to use it, and then you, as Secretary of State and Ministers, can roll us over. We are not going to walk into your little trap that easily. We need real assurance that this is going to be an arm’s-length body that is going to be properly funded. Is it going to be physically in Defra? Where is it going to sit? Will the enforcement and regulatory thing all sit neatly together? These are the sorts of things we are questioning strongly. I will allow Thérèse to come in.

Dr Coffey: Thank you, Mr Chairman. It is specifically in the legislation that we put to you about the funding process, and the fact that the OEP will be making a statement essentially on whether they have had enough money or not. I recognise what you have just said but, ultimately, if the OEP is putting out a report saying, “The Government are not giving us enough money”, I hope you would feel that we have the political sensitivity to recognise that and to anticipate it. There is a slightly different discussion about Natural England because, if you recall, Natural England is both a delivery partner and a regulator, so there are different things they are doing. In effect, the OEP is not undertaking to be a delivery partner for the Government. It is very much about scrutinising Government.



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Chair: I do not want you to keep making a comparison, because you are getting off the hook.

Dr Coffey: I am saying it is in the legislation.

Q285 **Chair:** The point I am making is that, if you squeeze the budget, you can squeeze the operation of the OEP, and that is the issue. I am not convinced at the moment that you—not necessarily you, but whoever is in charge at the time—would be able to do this. How is it that the Committee on Climate Change has more independence on how it sets its budget? I would like to see more independence on how that budget has set, because otherwise we only have the embarrassment factor. We can embarrass you as Ministers, if you make the wrong decision on the OEP. If you have a situation, in a year or two, when you have a Government with a much bigger majority, they will take the embarrassment factor and they will not care. That is why we have to be careful as we set up this legislation that it is right. I would like the Secretary of State to answer to that one. It is not about you, but about posterity really.

Michael Gove: All suggestions gratefully received.

Chair: “Gratefully received”, Secretary of State—you are very good at receiving them, but are you actually going to take notice of them?

Michael Gove: We do not know what the suggestion is.

Q286 **Chair:** You have a rough idea, Secretary of State. We need more independence in the funding of the OEP. How will you consider that?

Michael Gove: As I say, I will look at any suggestion with generosity.

Chair: Okay, we will wait and see. We have dealt with that one.

Dr Coffey: You asked a question about the location. Specifically, it is expected that the OEP will not be in a Defra building. That is also what we are trying to do in case we need the interim arrangements. They will not be in the Defra building in London.

Q287 **Chair:** There are two roles for the OEP, in a way, and both of them are good roles. One is an advisory role to try to put the situation right, so not everything goes to court. Then there is the regulatory role. I do not know whether you think they should be split more than they are at the moment.

Dr Coffey: It clear there will be a split. Natural England will continue to be the statutory adviser to the Secretary of State and Ministers, so it has that role already set out in legislation on how elements of this should be done. The specific thing about the Office for Environmental Protection is about how we are complying with the law and what redress we might need to achieve that. That is the sort of conversation that we often have with the European Commission, on that approach and what we are seeking to do. If the Commission is not happy, they can go to the court,



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when they do not believe that what we are doing is sufficient. It is a different stage.

Q288 **Chair:** You are hitting the nail on the head, really. We are not going to have the European Commission there, which is partly why we are leaving the European Union. What we need at the same time is the Government to be held to account, but we do not want everything landing up in the courts, do we? We need something that advises strongly, so that we do not spend all our time paying expensive lawyers to argue whether the process has been right. Are you confident that this can do that?

Dr Coffey: Yes, I have been pushing firmly in our preparations for this that they need to be physically separate. Of course there need to be conversations, but no location for where it should be has been determined. It is clear that it will not be in a government department. The interim arrangement could be, but not in Defra.

Q289 **Chair:** Is the Secretary of State on the same page on this or is he still in a thoughtful process? Where are you, Secretary of State?

Michael Gove: I completely agree with the Minister.

Dr Coffey: We do talk.

Q290 **David Simpson:** The impact statement accompanying the Bill states that it would be "constitutionally impossible" for the OEP to be anything other than a non-departmental public body, but we have heard from numerous legal experts during our inquiry, including parliamentary counsel, who have said that this is not the case. Why have you said that the OEP needs to be an arm's-length body of Defra?

Dr Coffey: There has been a lot of consideration. The Secretary of State and I met the parliamentary commissioner for New Zealand, some time ago. People have discussed something similar to the National Audit Office and so on. The key difference is a body that is accountable to be Parliament. There is nowhere in the world, and it would be unprecedented and, I think, constitutionally challenging for Parliament to have a body that is accountable directly to it, like the NAO, that would take the Government to court. It would simply be a huge change in the constitution that we have today. We have other bodies already, such as the Information Commissioner's Office and the Equality and Human Rights Commission that have powers to take the Government to court and are set up as NDPBs.

Q291 **Chair:** The Office for Budget Responsibility has a lot more independence.

Dr Coffey: I do not think it has the ability to take Government to court. Those powers about taking Government to court would set out something that is different for a parliamentary body. I do not believe anybody accuses either the EHRC or the ICO of being a patsy of Government, in the fact that it is an NDPB. People who work for them are not treating as civil servants. They are not civil servants, so there is a whole operational



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angle. This has had a lot of debate and I am the Secretary of State and Davide would like to add more.

Michael Gove: Again, we are open to thoughts and suggestions, but it was our intention to make sure we had the most stable constitutional footing. There are non-departmental public bodies, for example Ofqual the exams regulator, whose independence has been proven over time. There are different ways in which one can seek to cement the independence of the regulator. We sought to do that in legislation but, if there are additional safeguards that we believe are workable, we are more than happy to consider them.

Davide Minotti: My point is what the Minister has said: it is novel to have a body that has the power to enforce against Government. Other similar bodies that have such a power are indeed NDPBs. We have looked around that advice and it is that specific function, the constitutional element that makes the body an emanation of Parliament, that makes it novel. I would not call it constitutionally impossible, but really novel.

Q292 **David Simpson:** The last part of my question, Secretary of State, is that you have said you are in listening mode, so would you consider recommendations from this Committee urging greater parliamentary accountability for the OEP?

Michael Gove: Again, yes I would. We would have to assess whether the additional level of accountability to Parliament that was put forward was consistent with the effective operation of the body, with legal precedent and so on, but we would be anxious to ensure that, when the body was created, from the beginning, people could have the maximum possible confidence in its independence.

Q293 **Chair:** I have one last question on this. We have had parliamentary counsel before us, who have said that this does not necessarily need to be a non-departmental public body of Defra. We have had witnesses in this morning, the chair of the Environment Agency and others. I am a bit worried it is all too cosy. That is what worries me about the whole thing because, at the moment, whether we like it or not, the Environment Commission can take the Government to court. Then it can actually put down ideas on air quality, so the Government have to come back again and put the situation right. I do not want everything to land up in court. Tribunals and others, as we will talk about in a minute, may have a role here, but I am not convinced that an OEP will have the same teeth and will frighten our department. If you take air quality, it is not about Defra, is it? It is about transport and local government. Many aspects of getting air quality right do not lie within Defra, although Defra has the responsibility for it. Are you convinced that this new OEP will be independent and strong enough not just to take Defra on, but take on the whole of Government?

Dr Coffey: Yes.



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Michael Gove: I was about to say “absolutely”, but I prefer the Minister’s use of one syllable, when I had four.

Dr Coffey: You were an MEP once, Neil. Governments appoint people to the European Commission, as you will be aware.

Q294 **Chair:** I realise that, but I also know that there are 28 or 27 member states, and you do not have a majority in the Commission. Therefore, that is not an argument, Minister. We have to be serious, if we are going to do this pre-legislative scrutiny, as there is a real concern from strong legal experts that it does not necessarily need to be an arm’s-length body of Defra. I still think you could split it away from Defra and it would just be seen by everybody to be more independent and possibly more powerful because of it. I want you to take that away, as you are in listening mode, Secretary of State. Then we will wait to see, with our pre-scrutiny, what ideas we come up and we will be interested then to see how you take them on board. I would not close your mind to the possibility that it could be something other. Much of the aspect of the OEP is good, but I am not entirely convinced that it is independent enough, but we will carry on. I am getting into trouble from Caroline, because I am stealing part of her question here. I am sorry, Davide.

Davide Minotti: I have a factual comment that, contrary to other of the witnesses you have heard, such as ALBs of Defra, the legislation that is put forward in front of you for scrutiny does not have any powers of direction for the Secretary of State on the OEP. Once the board is appointed and in place, the board is solely responsible for deciding whether to take an enforcement action, for example. Once they do that, there is a requirement for them to publicise and inform the relevant authority. They are fully autonomous in those decisions and there is no power of direction from the Secretary of State, in any way.

Chair: We will talk about how the board is set up later.

Q295 **Dr Johnson:** My question is on the strength of enforcement. You have set it up in a three-step process similar to the way the Commission works, but we have heard from people who have given evidence on both sides of the argument about whether the OEP should be able to give out legally binding notices as their second step. What is your view on that and why?

Michael Gove: The prospect of the OEP taking the Government to court and using judicial review to overturn or challenge a Government decision is one with which we are constitutionally familiar. Prior to that, it would be a brave Government indeed that would ignore any notice that was issued in the first instance. Again, we have put forward a proposition that we think is sensible and in line with constitutional precedent, but we are open-minded. If there are ways in which the teeth can be sharpened that are consistent with broader principles of good governance, we will look at them.



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Q296 **Dr Johnson:** If what you are saying is that Government would not ignore the notice, whether it was legally binding or not, why does it matter if it is?

Dr Coffey: The Commission does not serve legally binding notices now, so that would be a change.

Dr Johnson: It would be strengthening with more teeth.

Michael Gove: What we are seeking to do, not in every respect but in broad respects, is to replicate, exactly as you say, a similar process. The Commission says you are in breach and, unless you do what is required to be consistent with the law, we will issue infraction proceedings and go to the ECJ. Similarly, if we were in breach, the OEP would have the power to go to the courts and they courts would, I am sure, take a dim view if the Government had been breaking the law.

Q297 **Dr Johnson:** You are saying that you do not think the notices need to be legally binding, because the Government will follow them anyway. The counterargument to that is, if you are going to follow them anyway, why does it matter if they are legally binding? Having them legally binding adds extra strength to their function.

Michael Gove: Again, it is an open question. We have sought to replicate, consistent with our constitution, something that is an intelligible and fair process, we think.

Dr Coffey: For example, if they wanted to challenge the Environment Agency on its application of the law, the Environment Agency is set up by the law of Parliament to take decisions on regulatory matters. If the OEP were able to issue legally binding notices, it would be completely undermining the regulatory independence. It may be that the OEP does not believe that the Environment Agency, Government or whichever public body is to do that. Then the appropriate thing would be for that debate, which happens today between us and regulators, but also us and the Commission. If there is an agreement it tends to end up going to court, but that is no different from what we have today. There are risks of OEP becoming a new regulator, in effect, and overriding our existing regulators, just by these legally binding notices, and I do not think that is the right way for this to go ahead.

Q298 **Dr Johnson:** The other thing on that is that Professor Macrory gave evidence last week and he felt that the Secretary of State should be the person who becomes directly accountable for failures to protect the environment across Government. How do you feel about that, Secretary of State?

Michael Gove: I feel that responsibility at the moment. I am a huge admirer of Professor Macrory and I would be open to arguments as to how to take account of that.



Daide Minotti: The main difference there is that, under the current system of the EU, member state governments are responsible centrally, because there is no other agent that the EU can go to, because we signed the treaty and we are a member of the EU. There is that responsibility. But once we leave the EU, there are bits of environmental legislation that we have decided certain other public bodies or other public bodies are responsible to deliver. To suddenly make the Secretary of State responsible for the delivery of all of those bits of environmental legislation, which we have already allocated to local authorities, would significantly change the balance of responsibilities and almost take it away from those bodies that we have said are responsible to deliver those duties. It would be a significant change, once we have left the EU, which we do not think is necessary under the domestic UK system, because those local authorities are responsible and can be taken to court, just like the Secretary of State can be taken to court by the OEP.

Q299 **Dr Johnson:** You are basically saying he would be made responsible for things for which he did not have control, because they are devolved issues. The only way to make him responsible would be to take the power back from local authorities.

Daide Minotti: That is correct.

Michael Gove: We would not want to undermine the independence of the Mayor of London, for example.

Daide Minotti: Can I address the point that Professor Macrory raised? I have sympathy with his concern. He was concerned that the OEP would then be distracted from the big strategic issue of non-compliance with environmental law, which needs to be taken forward, in a plethora of complaints of the behaviour of local authorities or others. We recognise such a concern, which is why the legislation is written in a form that requires the OEP to focus on things that are significant. It also requires, for example if there are a number of breaches in a number of local authorities, the potential to join that notice, whether it is a decision notice or an information notice, so that that bunch of local authorities can be used as an example by the OEP to make a point, if that is how they feel. We have tried to recognise Professor Macrory's concern in that way, rather than changing the constitutional responsibility of local authorities or other public bodies.

Dr Coffey: Government does have certain powers to direct local authorities. We have issued ministerial directions under the Environmental Protection Act 1990, on things like air quality.

Q300 **Chair:** I think there is an argument that the OEP is far too heavy on local authorities and not heavy enough on Government. That is my issue. You talked about how the Environment Agency must be the regulator, but who regulates the regulator? Somebody has to be answerable. The Environment Agency is good, but it is not the fount of all wisdom. Sometimes it gets it wrong. We get cases of this in our own



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constituencies. I am not convinced that this is targeted. All sorts of things are taken out of the OEP's scope.

I am not convinced that it is strong enough to hold Government to account. You as Minister naturally are going to say you do not want the Environment Agency held to account, because you are its Minister and a good Minister. That is not the point. We need the ability to be able to hold the regulator to account, because regulators do not always get it right. That is where we need somebody prepared to take them on. Air quality, you see, has not been got right. Successive Governments have decided it is too expensive, and the moment it becomes too expensive to do something, which is not necessarily the regulator's fault, there is political pressure. Is the OEP going to be able to sort that? I doubt it will in its present form.

Dr Coffey: Neil, I have not said that the Environment Agency should not be held to account.

Q301 **Chair:** You said it knows best and I do not like that statement.

Dr Coffey: I did not say that at all, actually, Neil.

Chair: It does not always know best.

Dr Coffey: I did not say that at all.

Chair: You said words very close to that, Minister.

Dr Coffey: I did not. What I said was the Commission does not have legally binding notice powers. I do not think it would be right for the OEP to be able to legally override the decisions of the EA, just by issuing legally binding notices. If the OEP believes that the Environment Agency, in its delivery as a regulator, is in fault on environmental law, the OEP should be able to have that same conversation about why they think it is. If they are not satisfied with the response of the EA, just like national Government, they can take the EA to court on that basis. But I do not think there should be a step where you just issue legally binding notices and override EA decisions, without that further step of going to court.

Q302 **Chair:** It is just making sure not everything lands up in court.

Dr Coffey: I agree.

Chair: If you are not careful, if they do not have enough powers, that is exactly where everything will land, which is what we have to be careful of.

Dr Coffey: Very little goes to court in our dealings with the Commission now.

Davide Minotti: I want to clarify, when you said you are worried about the balance of the OEP focusing too much on local authorities and not enough on central government. I want to clarify that the draft clauses



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presented in front of you now make clear that all of the functions of the OEP, the complainant and also the enforcement functions, so not just the core, apply to central government, to emanations of Parliament such as the Environment Agency and Natural England, as well as to local authorities. It applies to all public authorities.

Q303 Mrs Murray: Some of our witnesses have highlighted flaws in the use of the traditional judicial review to resolve environmental cases. They have suggested a more imaginative procedure might be to include an environmental tribunal. Do you see any benefits to incorporating the Environmental Tribunal in the OEP's enforcement process?

Michael Gove: There were a number of thoughtful participants in the debate, who have argued that an appropriate tribunal might be the means to proceed. As I mentioned earlier to the Chairman, we are open-minded, but we have sought to replicate an easily understandable process, as far as possible.

Dr Coffey: Davide might want to explain it in more detail.

Chair: Minister, I want you, both the Secretary of State and the Minister, to answer the questions. Davide can come in occasionally, but he is not here to take over the meeting. I do not get the Secretary of State and you in front of us often, so will you answer the questions, please?

Dr Coffey: I just said he might be able to explain the specific regulations.

Chair: We are getting too much so, Ministers, do not pass the buck. Answer the questions, please. Carry on.

Dr Coffey: I actually find that rather insulting, Neil. The different conversations and suggestions that have been put forward are important, and are part of the scrutiny process that we have gone through. What happens with the CJEU and infraction cases is that their test is what they call a manifest error of assessment. Comparing the European Court approach to the UK approach is, in effect, what the judicial review process does. It is the established mechanism we already have in law in this country, in England and Wales, to establish the legality of the actions of public authorities. That is why we believe that the process that CJEU undertakes is similar, in effect the same, as the JR process. I am conscious of the recommendations about the Environmental Tribunal, but we believe that same outcomes are there, and we have seen that with the air quality process.

Q304 Mrs Murray: However, the Secretary of State has already said that leaving the European Union gives us the opportunity to look at doing things better, so we do not necessarily just have to follow the European procedure. Some people who we have listened to have suggested that there might be a better way of doing it. Have you considered this?



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Michael Gove: As the Minister said, we think it is better, as much as possible, in this case. There are a lots of other things we can do differently but, given that people have had a degree of confidence in the process whereby the Commission can give an opinion then, if necessary, go with infraction proceedings, people have had a confidence that, whatever the other defects of the EU, that is a good working model. Therefore, we have sought to replicate it but, as I say, we are open-minded.

Q305 **Chair:** Secretary of State, you have said that "This draft Bill shows the strength of our commitment to a green Brexit. We will not only maintain our current protections, but surpass them, taking new steps to ensure our environment is even better protected in future". Therefore, are looking for this OEP not only to take on the role of what the European Commission and Court did, but we are also thinking that it can move on to protect more of the environment. Is there not a role for the tribunal that will advise Government, government departments and local authorities on aspects of how we can improve the environment, without just taking it through a legal process? Air quality again is a good example, because it is not just about regulation, but about reducing the amount of pollution in given areas. That needs some practical application, and that is the bit where the tribunal has an important role, but it would need enough teeth. It would have to say to the Environment Agency and what could be the transport ministry or across government, "You have to take action". You seem concerned about the tribunal having these powers. Where do you stand?

Dr Coffey: When you say "tribunal", do you mean the OEP?

Chair: Yes, part of the process is for them to advise before it even goes further, Secretary of State.

Michael Gove: My understanding is that the advocates of a tribunal system say that there should be a specialist court. In the same way that you have a specialist court that deals with immigration cases, so there should be a specialist court that would deal with some of these environmental matters. The argument for it is that such a court and those presiding in those tribunals builds up a degree of expertise in this area. I am not a lawyer, but it is always the case that, if you have a judgment in a tribunal, someone who thinks that that judgment is wrong can subsequently seek to appeal to a higher and higher court, and ultimately to the Supreme Court.

Q306 **Chair:** Secretary of State, I agree with you, but I am trying to head off at the pass so many cases going up and up the legal ladder. We ought to set up something, so that we do not make a good living for so many lawyers, because they are making a good enough living already. I just worry that the Environment Agency and others do not like the fact that this tribunal might have expertise that they will have to take notice of. I think it should have it.



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Michael Gove: Anyone presiding in that tribunal would almost certainly be a lawyer.

Q307 **Chair:** Lawyers argue law, but there can also be lawyers who are experts in particular fields on the environment. You can have different types of lawyers. This is where I see the tribunal having both a legal aspect, but also an advisory aspect. Just taking things to the High Court will cost a lot of public money and may not improve the environment. Where do you sit on the idea of a more powerful tribunal?

Michael Gove: It is already the case, following the Aarhus principles, that if an individual citizen were to take Government to court for a breach of environmental law, there are caps on the cost that such an individual would undertake. So it is already the case that an environmental litigant has an advantage. Anyway can apply for a costs order, but they have an advantage in going to court that other litigants are unlikely to have. It is an open case but, ultimately, our hope would be that, were the OEP to say, "Oi, you got it wrong. Change", one would change. Whether one then went to a tribunal or another court, one would be running the risk of a penalty being levied. One of the things about going to a higher court, without wanting to circumscribe what any tribunal might wish to do, is that that higher court would probably have a bigger stick with which to beat the Government and a more profound way of exacting penalties that would determine compliance.

Q308 **Chair:** I understand the Government do not want the stick being beaten or to use the stick too often.

Michael Gove: We are all in favour of big sticks.

Q309 **Chair:** We have to be sure that it is set up in a way so that Government are answerable, as well.

Dr Coffey: I am not entirely sure what direction you are trying to get the OEP to take. One of the advantages of this body, in answering Sheryll's question a little further, is that it can be more agile. It can take a long time for all of these processes, as we have them today with the European Commission.

Q310 **Chair:** I think the tribunal would cut down the time, not increase it.

Dr Coffey: I am afraid you are still confusing me, Neil. Are you talking about the OEP?

Chair: Yes, it is the OEP.

Dr Coffey: I agree. One of the benefits that we will see from the OEP is that it is a much quicker way. As people know, they can take us to court today, if they want. The OEP is supposed to be a group that will not need organisations constantly to think the only way is to go to the High Court to have that discussion. There are benefits to it. What I would not suggest as the right way forward is for the OEP to be advising councils on how to improve air quality. I am quite sure if that is where you were



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going. I am conscious that the Government could have just imposed all sorts of powers or solutions. I do not think that would have been the right thing to do. The approach we have taken is the right thing. Bristol, with the different topography of the city centre proving a real challenge, is a completely different situation from a roundabout in a stretch of road in Southampton. That is why I do not think the OEP would be the right people to start getting into that advisory element.

Q311 John Grogan: I have two questions on the potential for turf wars between the OEP and the existing bodies, and one suggestion in response to the Secretary of State's invitation for us to make suggestions. Dr Coffey, you gave a helpful answer. I would just like to ask you to expand a little on the different advice that the OEP will provide on the one hand, and how that differs from what Natural England is doing at the moment, in terms of the two different types of advice they give. You touched on it.

Dr Coffey: Natural England is the general statutory adviser about how we achieve improving the environment in different ways. It will come up with recommendations on a number of designations of areas or what we should be doing. It then works, in particular, with delivery partners on certain aspects of how we can make that happen. In its regulatory role it does that.

What I would see is that, if something is not working, the OEP would intervene, to some extent, in a similar way to the Committee on Climate Change is challenging Government, saying, "You said you would do this on zero-carbon housing; if you do not do this, how on earth are you going to achieve what you want to do?" That is where you have that more strategic debate, perhaps rather than individual decisions on one particular piece of advice or another. To be clear, the Secretary of State is shaping the policy, but, on a day-to-day basis, that is how I see our interaction potentially being quite different.

Davide Minotti: Just to clarify, the advisory role of the OEP is set out in clause 14(3) and is specifically on whether measures the Government are taking are in line with the improvement plan that is required earlier on in the draft Bill for the environment. Think about the 25-year advisory plan. The advice from the OEP will be about whether you are on track to meet all of your goals in the 25-year plan, so it will be at a strategic level, big picture: "Are you on track?" There is a requirement earlier on in the Bill about the production of the environmental improvement plan that also requires Government to publish a set of data to show how we are doing against the environment plan. People then use that data to give advice to us on a regular basis, once a year, on our progress.

Dr Coffey: You could envisage only giving us advice initially on creating that plan and then, effectively, the OEP saying whether it thinks it is up to scratch or not.

Q312 John Grogan: Just looking at the wider potential for turf wars, to quote one concern from Natural England, Natural England is worried that the



OEP's purpose is not clearly defined in the Bill. Would you agree with that? Could it have better definition? The Environment Agency is concerned about competition for staff. There are only so many technical staff around. Could that be a problem?

Dr Coffey: The creation of the OEP is going to lead to an exciting place for people to come and work. It is pioneering in this country, and really quite different. You never know: we may get officials who currently work in the Commission keen to come back to this country, whether that is in terms of the OEP directly or other similar things. You will be aware we have a lot of UK officials working in the Commission. There is going to be genuine interest in people applying for these roles.

I am sure Michael will want to say more on this. In terms of memorandums of understanding, there may initially be some trying to work out who is doing what. To some extent, that happens now a bit. It can be like that, but they are professional bodies and they will, candidly, get on with it.

Michael Gove: There is always an opportunity. Some might say it is a turf war; others might say it is overlap. It might be a double or even triple-lock, where you have bodies that are all concerned, or see it as part of their remit and brief to improve our natural environment and provide advice, or indeed something stronger if necessary, to Government. I do not think it will be a turf war. We have sought to delineate pretty clearly what functions the OEP would fulfil. As we say, some are functions that the Commission currently fulfils, and there is also learning from the experience of the Parliamentary Commissioner for the Environment in New Zealand and others.

On the second point, about staff, I do not think so. We would not envisage that the OEP would be a massive organisation, though it will be a powerful one. Exactly as Thérèse says, it would be attractive to people, some of whom might be working in public service, some of whom might be working in environmental NGOs, some of whom might be gifted lawyers who would see an opportunity to play a role in establishing a new British institution.

- Q313 **John Grogan:** Finally, I have a suggestion linked to the debate about establishing confidence in the OEP. I have had more emails about the OEP this week than about Brexit and even about the future of Keighley Cougars; it is definitely in the minds of my constituents. The Chair referred to the scrutiny procedure, which started in the latter days of the Brown Government Select Committee. Could this be the first public appointment, if a suitable amendment was passed, that required approval by the EFRA Committee as well as by the Minister? It could be known as the Parish protocol. It would immortalise our Chair for generations to come. How would Ministers react to such a suggestion that, given the need to establish confidence in this new body, the chair should be approved by the EFRA Committee?



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Michael Gove: When I was a backbencher, I argued that there should be certain public appointments that should be subject to confirmation by select committee. When I became a Minister, of course, I decided otherwise. The difficulty would rest, if I am honest, with people saying, "Ah, we know that Neil Parish is the most intelligent, gifted and independently minded select committee chair, but why should he have this unique power?" What happens if other committees want to have that power for other appointments? It is the thin end of the wedge. That would be the argument.

Q314 **Chair:** There is probably a half-way house, Secretary of State. At the moment, dare I say it, you are all-powerful. I am not suggesting you should not be, but we do have to have a better role and not just be offered this person and told, "Whether you like them or not, you will take them". There has to be a bit more of an equal opportunity to say that we like them or do not like them. There is a lot of argument that, at the moment, you have lots of powers to set up who they are and, once you have them up, you will have power over them.

Michael Gove: I quite understand. If I decided to appoint my Aunt Betty to the job, lovely person though she is, I think that she would find it very difficult to do the job and to attract other members of the board on that basis. People would quickly see—

Q315 **Chair:** We are not necessarily expecting you to put your Aunt Betty forward. Even if you do not, we would to have a better role. At the moment, like I say and as John has said, we just get offered scrutiny, which is fine and which we appreciate, but we know that it is very limited in its ability to say no.

Michael Gove: You make a very fair point. If I or anyone else tried to appoint someone who clearly was not authoritative, independent and able to do a good job, you would rightly tear a strip off us and that would undermine the credibility of the body. Yes, it is theoretically possible that a future Minister, armed with a big majority, would think, "Do you know what? I am determined to have my place man or woman there". That would be a shame, but I absolutely understand that concern.

Chair: Much as I appreciate John's compliments, I understand that it is not going to be the role of the Chair or the Select Committee but, somehow or other, we have to get a bit more influence over who that person may be.

Q316 **Dr Johnson:** Dr Coffey, you said that you did not want the OEP's binding notices to overrule the advice of Natural England. Can I check that I have understood this correctly? The Government are going to set their targets; Natural England is going to advise the Government on how they might achieve them; Ministers then decide which bits of advice they want to take on how to achieve them; then the OEP will come in to advise how well those targets are being met or not, and, if they are not being met, will then take a separate process to try to achieve them. Will the OEP be



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the body, at that point, which says how those targets should be achieved and what rule changes, tax changes or whatever must be done to effect the change, or will it still be up to Ministers, with their advisers, to decide how those changes are made?

Dr Coffey: If you look at the Committee on Climate Change, the Government come up with a policy and the Committee on Climate Change assesses it. It will say, "You are short of your carbon budgets. Unless you do X, Y and Z, we do not believe you can achieve them". It does not require Government to do that.

The bit I was keen on with the legally binding notices is that it would be a significant change from what we have today. You would have the OEP overruling decisions instead of challenging them, with the EA, Natural England or whoever potentially coming back to say why they believe they are right; then, if they cannot agree, the OEP can take the legal process. I do not see the OEP necessarily being the person that says, "Because you cannot come up with a policy—"

Q317 **Chair:** The Commission can challenge now, but the OEP will not be able to, so therefore it is a watering down, is it not?

Dr Coffey: No, I did not say that.

Q318 **Dr Johnson:** Say that you have a target that you are going to reduce the number of a particular matter or something, and then the OEP does its assessment and thinks that you are not going to achieve that, because they can see that you are not going to achieve that—that is what the experts think—it will then issue a notice that says that you are not going that. The Secretary of State says that politically you will feel obliged to do so. Will the OEP then be telling you how you must do that, whether it is making a choice between whether that is based on vehicles, wood-burning stoves or whatever that is, or will it still be up to Ministers to make those decisions with the advice of Natural England?

Dr Coffey: Very specifically in the legislation, it talks about a progress report and for them to suggest consideration of how progress could be achieved either quicker or potentially in a different way. It is not going to be the case, nor is it our intention, that the OEP will write policy for the Government.

Q319 **Chair:** You will not have to come back and present further policy in order to get to the target. That is what you have to do on air quality. This is the issue. Will the OEP have that power or not?

Davide Minotti: Forgive me, Mr Chairman; I think there is a confusion in the different functions here. The draft legislation sets out quite clearly the three functions in the various clauses. There are the scrutiny and advice functions on the achievement of the goals in the 25-year environment plan, and then the enforcement and complaint function. If you are talking about a lack of meeting a binding target set in a piece of environmental legislation, the OEP can go down the enforcement route, which has all the



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stuff that we have discussed, which is all designed to prod the Government to do more. There is the information notice, the decision notice, and eventually it can go to court and there can be a court order to redo a plan or to take a specific action.

Q320 **Chair:** It will be able to issue a court order eventually.

Davide Minotti: Yes, of course. The court will issue a court order if the court agrees with the OEP. I just want to address the advisory function, which was the point that the member was asking about.

Chair: We have to get on to Kerry's question. We are running out of time.

Q321 **Kerry McCarthy:** I will follow up on that a bit before getting on to climate change, but I will be quick. Secretary of State, I have been given figures that suggest that, since you assumed the role, there have been 77 Defra consultations, one piece of legislation and 45 of those consultations have not resulted in any action whatsoever. Can I bring that back to my concern about the fact that you have this *IEP* [11:24:18], which will be the 25-year environment plan, which is a very long-term measure? You have the advisory role of the new OEP. How will you ensure that things actually happen? Do you see my point?

Michael Gove: I do.

Kerry McCarthy: Everything could be kicked into the long grass—lots of consultations, a 25-year plan that might be a 23-year plan by the time it is adopted as the first *IEP* [11:24:43]. This comes on to the question that I want to ask about the relationship with climate change. On climate change, you at least have these five-year budgets, so this is far from being the equivalent. How can we make your Department do things more quickly and actually act when it says it is going to act?

Michael Gove: It is a very good point. There is always a tension between acting as quickly as one can and reserving due process. The reason that there are a number of consultations is because we are acting and we are obliged to consult if we are making significant changes. Were I to introduce a change and not have consulted, I could be judicially reviewed once the decision was taken. Following on from what the Chair said, that could become a much more protracted process. Ideally I would like shorter consultations and faster action most of the time, but the law requires consultations in certain areas.

Also those consultations can be incredibly powerful and useful. The consultation that we had on the Ivory Bill, which is the one piece of legislation that has become an Act, was both useful in refining the legislation and powerful in reminding MPs about the level of public concern that lay behind the legislation.

Q322 **Kerry McCarthy:** There are things, such as wild animals in circuses, where you could easily have just got on with it and brought legislation in.



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You are going to be held for judicial review, I understand, if you do not go out to consultation and that could be challenged, but if you go out to consultation and nothing happens—

Dr Coffey: I am not sure where that story comes from. I can think of littering and fly-tipping. There is quite a lot we have done consultations on. It is just that we can take it through secondary legislation, so not everything we do requires primary.

Q323 **Kerry McCarthy:** I think it will be more detailed than that. If I can focus on the climate change point, the Committee on Climate Change said, back in May 2018, that it thought that omitting all manners related to the climate change from the OEP's remit would be artificial and potentially create problems. That was a letter that went to you, Secretary of State, in May last year. Why did you not take that on board?

Michael Gove: This is precisely an issue for pre-legislative scrutiny. The previous witness, Chris Stark, though I would not want to put words into his mouth, was making the point that he would not want to see anything happen that upsets the smooth and effective working of the Committee on Climate Change and the settlement that has flowed from the 2008 Act, and neither would we. There is a delicate question as to whether and how the OEP should take into account these considerations. I am totally open-minded about how that is resolved, and would be grateful for the Committee's advice.

Q324 **Kerry McCarthy:** Obviously the Committee on Climate Change has a strong advisory function but no enforcement function. It is all well to say that parliamentary scrutiny plays a role, but we are in a position at the moment where we are on course to meet the third carbon budget, but at the moment we are not on track to meet the fourth or fifth. That is where parliamentary scrutiny would come into play. It is one thing scrutinising when things are proceeding according to plan, but when they do not, nobody really knows what happens if the Government do not meet their objectives under the Climate Change Act. You are saying that you are open to considering this new body's role in enforcement in that respect.

Michael Gove: I am, but there are arguments as to why that might change the nature of the way in which the Committee on Climate Change works, and not necessarily in a good way. We put forward a proposition. There are arguments you will have heard from witnesses. Whatever recommendation you make, we will take seriously.

Q325 **Kerry McCarthy:** That sounds to me like you are quite receptive to the idea of the OEP taking on this role.

Michael Gove: I am open-minded on that front. Various points have been made. One would want to see what the particular proposition would be and we would have to consider it. Going back to the point about tribunals, tribunals work in immigration and employment cases because in essence they take quite a lot of the traffic that would otherwise be in the courts and deal with them in a more expeditious way. If you want to



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put forward the case for First-tier Tribunals on the environment, we would look at it; if you want to put forward that case, we would look at that as well.

Chair: Kerry said there were 45 consultations going on at the moment. Is it as many as that?

Kerry McCarthy: There have been 77 consultations since the Secretary of State took over; 45 of them resulted in no action, so presumably they were closed and nothing happened.

Q326 **Chair:** You do not necessarily dispute that figure, do you?

Michael Gove: I do not recognise that figure. I will investigate.

Chair: It seems rather a lot to me.

Michael Gove: Lots of consultations are a sign of lots of activity.

Chair: We also need action after the consultation.

Michael Gove: Yes. There are not many people who would say that, during the time that Thérèse, George, John and I have been at Defra, it has been a torpid backwater of Government characterised by inactivity.

Chair: I would be the first to compliment you on that. It was an interesting figure; that was all.

Michael Gove: Absolutely, and we will look at it.

Q327 **Mrs Murray:** Secretary of State, we do not know the actual source of where these figures have come from and you do not recognise them. If you investigate, will you come back to us and tell us?

Michael Gove: Yes, absolutely.

Chair: It would be good to have it back in writing.

Dr Coffey: It would be helpful if Kerry could send us the information that she has been provided.

Michael Gove: We will give you a complete rundown on all of them.

Chair: Can you stay for the last couple of questions, please, if possible? I know you are on a tight schedule.

Q328 **Julian Sturdy:** Good morning. Secretary of State, I just wanted to touch on the environmental principles. You have said that you are looking to replicate EU law with the Environment Bill but, when we look at this, the Bill omits overarching principles and objectives that exist in equivalent EU law. This is something that has come out a lot in the evidence sessions that we have had so far. How do you square that?

Michael Gove: It is a very interesting question, because principles are not themselves law, but they shape how legislation is designed. Our view was that, not just in the EU but broadly, the principles are well understood—the precautionary principle, the rectification-at-source



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principle, polluter pays, et cetera. The argument, which was made very effectively by Oliver Letwin and others on the Floor of the House, is that you say what the principles are on the face of the Bill and then the Government go to Parliament and say, "This is how we are going to put the principles into effect", and then you have regard to those principles when you are shaping new legislation. Again, without wanting to be too repetitive, if people think that there are ways in which we are going to have regard to those principles which are insufficiently rigorous, we are open-minded.

Q329 **Julian Sturdy:** Pretty much all of the evidence from people we have had in front of the Committee agreed that the provision on environmental principles was too weak, in terms of the existing principles you have in place. Do you accept that?

Michael Gove: I do not. Again, if someone wants to make a specific case about what we should add or alter, I will look at it.

Q330 **Chair:** What about forestry and flooding and all of those things? Do you not think they should be taken in?

Michael Gove: There is a distinction. There is a principle—polluter pays—and that can apply to everything from, if such a thing were to happen, someone using nitrates too promiscuously to someone who has a waste dump in Stoke who does not do the right thing and whom we have to pursue. The principle applies whether it is waste or agriculture. Producing sectoral things would be difficult. These are universal principles that apply everywhere. The danger is that, if you introduce forestry, someone will say, "But you need to specify in greater detail", in lots of different areas, and you end up having a list—

Q331 **Chair:** But for flooding and catchment areas, all of these things that we have been doing so much work on, why can the OEP not have a say on that? It just seems logical to me.

Dr Coffey: Julian and Neil, in hindsight, some of the wording in some of the explanatory notes that came with this were being explicit about what Acts currently guide, say, the Forestry Commission. Absolutely, anything environmental in there is completely within scope. I do not think it has been worded brilliantly.

Chair: Thank you for that clarification.

Q332 **Julian Sturdy:** Thérèse, you are saying that you do not think it has been worded brilliantly.

Dr Coffey: Forestry, in particular, keeps coming up because the Act that sets up the Forestry Commission and all those different things does not get into the minutiae of the environment.

Chair: That will be clarified in the Bill.

Q333 **Julian Sturdy:** You think that needs further clarification. Is that what



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you saying?

Dr Coffey: We would need to explain it better than we have done. Hopefully, today will start that journey. Ministerial directions have been issued to the Forestry Commission specifically in regards to nature, and those are themselves legally binding on the Forestry Commission. It perhaps could have been written better.

Q334 **Julian Sturdy:** The last point is about what you think is wrong about including more binding duties in the Bill to require Ministers to consider the environment when making future policies, right across the board.

Michael Gove: It is perfectly possible to do that. The question is whether there are some areas of policy where there is not a direct environmental consideration—it is a fair argument—where this would be an unnecessary additional, extra step. If I am the Lord Chancellor and am thinking about making a policy change to judges' pensions, does that have an environmental consequence?

Dr Coffey: It could even be the Secretary of State for Health making decisions on the use of single-use plastic. For medicinal reasons, it may be better. I know Davide would like to address that, but there have been some questions about what the difference is between "in accordance with", "in due regard to" and all those different things. To some extent, we have tried to replicate what was set out in the treaty. The articles in the treaty have specific references. Why do you not use the words?

Davide Minotti: The treaty talks about the idea that European policy should be based on environmental principles, so the "have regard to" is the clauses in terms of achieving the same legal effect that we could find. The Secretary of State already mentioned that.

Q335 **Chair:** The problem we have with "regard to" is about what that actually means. You can say, "I have looked at it, I have taken regard of it and I can carry on and ignore it". It is not very strong, Secretary of State, not in my use of the English language; perhaps you can persuade me otherwise. I think you could just say, "I have had regard to it"; the Transport Minister can say, "I have had regard to it but I have carried on with the policy that I am already carrying on with". It is not strong enough, is it?

Michael Gove: It is a well-understood legal term. There are all sorts of requirements on Ministers and other decision-makers to "have regard to", in a variety of pieces of legislation. If it can be shown that I or anyone else has not had regard to it, they can be JR-ed. When I was Education Secretary, I was JR-ed successfully by a group of councillors because I did not have appropriate regard to a particular set of criteria in ending a school building scheme. It can be argued in court, and it was a painful moment, for the Government and for me, to lose. You can argue that there should be a stronger wording but it is a perfectly well-understood form of wording.



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The second thing I would say is that when Parliament says how Government, in their policy statement, are going to have regard to those principles, the Secretary of State will have to defend, on the Floor of the House, that policy statement and Parliament will vote on it. That is a proper measure of parliamentary accountability.

Chair: Again, that is much easier parliamentary scrutiny when there is a low majority for the Government. It is much more difficult when there are big majorities.

Julian Sturdy: Thérèse's health example is a very good example, with single-use plastic that might be needed within the health service so would go against that environmental argument. As long as it has regard to it and looks at it, I think that is fair.

Q336 **Chair:** We might be interested, because we are doing this pre-legislative scrutiny, to see in writing some of what you believe, on the Government side, "have regard to" actually means. Like I said, we are inclined to think that it is rather weak; you might be able to persuade us otherwise.

Michael Gove: There are lots of references.

Q337 **Chair:** As you are in a listening mode, we need to be as well. Very quickly on the last question, which Alan unfortunately was not able to stay for, what specific arrangements with the devolved Administrations will be put in place to ensure governance for the environment is consistent across the UK? Again, air quality, river pollution and all of these things do not necessarily stop at the Scottish or Welsh border, or even at the Northern Irish border going into the Republic. How are we going to deal with that?

Michael Gove: The Northern Ireland Administration—as we know, there is no Executive at the moment—have asked to have their concerns addressed in the Environment Bill so that we will have a governance structure for Northern Ireland.

The Environment Minister in Scotland, Roseanna Cunningham, is consulting at the moment. She has issued a very full consultation paper on what Scotland should do in order to keep step.

The situation in Wales is slightly different, because the Welsh Government argue that some of the legislation they already have in place provides for these protections. There are some people who argue that, no, the Welsh Government need to go further. We respect the devolution settlement and, to be fair to the Welsh Government, the Minister responsible, Lesley Griffiths, has been very open-minded in her approach.

Q338 **Chair:** Very quickly, I have a direct question from Alan Brown, who had to go. What inputs will the devolved Administrations have into clauses 1 to 4 on the environmental principles before the Bill is published? How are you going to deal with the devolved Administrations on that?



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Michael Gove: We meet monthly with the devolved Administration Ministers on a ministerial level. We meet not quite daily but regularly at official level.

Q339 **Chair:** On those particular clauses, are you going to discuss them?

Michael Gove: Yes, across the board, every clause.

Q340 **Chair:** You discuss them. Do you take on board their ideas?

Michael Gove: Yes.

Dr Coffey: To be clear, they have not expressed any interest in being part of this Bill.

Michael Gove: Apart from Northern Ireland.

Dr Coffey: Apart from Northern Ireland, yes. There are still ongoing discussions.

Michael Gove: If they want to, as with the Agriculture Bill, then we are more than happy. I said to Fergus Ewing that if he wanted to do it, there might be a case for the OEP being located in Scotland. I suggested Aberdeen.

Q341 **Chair:** You are not sure that will happen.

Michael Gove: I do not think it will. It is more likely to be in the case that it will be in Tiverton than Aberdeen.

Chair: We could put it in Carlisle, in order to defend the border.

Q342 **Kerry McCarthy:** Can I very quickly ask about Northern Ireland? There is real concern about the vacuum there. We have Northern Ireland Questions at the moment, but at the last Northern Ireland Questions I asked about a concern I had. I had been in touch with quite a few environmental campaigners who were particularly concerned about the impact of the ever more intensive industrialised farming there, and concerns about slurry leaching into water supplies and just the impact that it is having.

I know it is not your responsibility, but the Northern Ireland Office did not seem to be very interested either. I had mentioned Defra, and the response from the Secretary of State was that "the honourable Lady will know that Defra does not have jurisdiction over environmental policies in Northern Ireland. That is for the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. I am sure the Permanent Secretary has heard her comments". My concern is that you cannot leave it to civil servants. There are political decisions that need to be made and political direction that needs to be given. I would have thought the Northern Ireland Office, in the absence of Stormont sitting, ought to be more interested.

Perhaps it is not your responsibility but I would really appreciate it, given



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that you are experts in this subject, if you could have conversations with the Northern Ireland Office about this. It is one of the biggest industries, is it not? There are massive food producers in Northern Ireland, and there is also beautiful countryside in places. Somebody needs to be putting this in the political sphere.

Michael Gove: Every month, when we meet Ministers from the DEAs, we also have officials, and we have officials there from DAERA there as well. They do an outstanding job. The difficulty is that for the Secretary of State or the Minister of State to direct them would mean direct rule. None of us want that. We all want the restoration of the Executive. Is it unsatisfactory? Absolutely, it is. I know that Karen, as Secretary of State, takes the environment very seriously, but she also, quite understandably, takes the constitutional responsibility seriously not to usurp what is properly the Executive's position.

Q343 **Chair:** How would the OEP work with the Republic of Ireland and working with European law and the Commission? I take it very much that, as it is at the moment, that is also an aspect, is it not, because rivers, lakes, the air and everything mix across the border?

Dr Coffey: There are already bodies that work across. There are two loughs in particular—Lough Foyle and Carlingford Lough—that have cross-border management bodies. We have the existing North/South Ministerial Council. We have the British-Irish Council. In effect, the regulator is still the Northern Ireland Environment Agency, and they have regular collaborations. There is no reason for any of that not to continue.

Q344 **Chair:** Good. Kerry makes a very good point that there is no Government in place there, so it is necessary that we make sure that Northern Ireland gets good treatment.

Finally, when will the Bill be published? Have you any idea, Secretary of State?

Dr Coffey: We need your report.

Michael Gove: It will be after your report and after we have incorporated all of your suggestions.

Chair: Our report will be done in plenty of time for you to be able to draft the Bill; have no fear.

Michael Gove: We hope that it will be when the Queen's Speech comes. When will the Queen's Speech come? That depends on factors outside my control.

Q345 **Chair:** Naturally, we have genuinely enjoyed this pre-scrutiny role. We are trying to put together what we think are helpful ideas. I take you at your word that you are in a listening mode. We would really like to work with you. We have not come at this to try to destroy the Bill or to destroy the OEP. We want to make it stronger and work with you. Wherever possible, if you think our ideas are okay, please give them time and



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thought. If you can accept them, please do.

Finally, you are coming back again on 27 March, when we will talk about our readiness for Brexit. Hopefully we will have got through the withdrawal agreement, so we will not need to talk about dealing with a hard border and things under a WTO Brexit, but if necessary we might have to talk about that as well. Like I said, let us wait and see what happens.

Can I just make a final comment? I would like to put on record my thanks to George Eustice for the five years he was Minister. He was a very good Minister, very helpful to me personally and very helpful to this Committee. Dare I say it, I welcome Robert Goodwill to the role. I just want to put that on record.

Thank you very much to everybody attending this morning. The process now is we will Heads of Report next week, and then it will not be too long before our report will be published. Do you actually think the Bill will come through fairly early in the new Parliament, if all goes to plan?

Michael Gove: Yes.

Q346 **Chair:** While you are here, when can we expect the Agriculture Bill to come back?

Michael Gove: When a meaningful vote passes—I did not say “the” but “a”; hopefully the House of Commons will be satisfied by any additional work that can be to improve it—then we can get on with the withdrawal agreement implementation Bill and then the Agriculture and Fisheries Bills can come back.

Q347 **Chair:** Finally, while I have you on the hook, literally, what about the Fisheries Bill?

Michael Gove: It is the same thing.

Q348 **Chair:** Are you expecting that before recess?

Michael Gove: The Chief Whip has reminded Conservative MPs that there may not be an Easter recess, so it all depends on—

Chair: “Events, dear boy”. Thank you very much. Thank you, Minister, and thank you, Davide.