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To: Baroness Taylor of Bolton  
Constitution Committee  
House of Lords  
London  
SW1A 0PW

Dear Ann,

**Government response to Constitution Committee report on the Environment Bill**

Thank you and all members of the Constitution Committee for the report on the Environment Bill dated 22 June 2021. I have given careful consideration to all of the recommendations raised and will go through each of them in this letter. I am arranging for copies of this letter to be placed in the Libraries of both Houses.

Appointment of Office for Environmental Protection (OEP) board members

**Recommendation 1a: The House may wish to consider if the provisions for appointing members to the Office for Environmental Protection appropriately ensure its independence.**

There are appropriate safeguards in place to ensure the independent appointment of all board members. The Office for Environmental Protection (OEP) will be included in the Schedule to the Public Appointments Order in Council and non-executive members will therefore be independently regulated by Her Majesty's Commissioner for Public Appointments. The Bill also requires that the OEP Chair be consulted on all non-executive appointments.

The Equality and Human Rights Commission took a similar approach as its board members are appointed by Ministers. The Equality Act 2006, which established the Commission, does not give Select Committees or Parliament any power to veto appointments to the Commission's board. The Commission has had an 'A' rating as a National Human Rights Institution from the United Nations since 2009, based partly on its independence and autonomy from government.

Chief executives of the OEP will be appointed by the non-executive members of the OEP, other than the first Chief Executive, who is to be appointed by the Chair. The Secretary of State must be consulted on the appointment of a chief executive since the chief executive is to be the accounting officer of the OEP and will be responsible for the stewardship of public funds. The other executive members will be appointed by the OEP board alone.

The Bill also provides for the Secretary of State to appoint an interim chief executive, who is now in place, ahead of the board being quorate. This is to help facilitate the timely establishment of the OEP.

**Recommendation 1b: The House may also wish to ask the Government for further information about how non-executive members are to be appointed and whether, in particular, this will take place at arm's-length from the Government or with the involvement of the Secretary of State.**

OEP non-executive member public appointments are independently regulated by Her Majesty's Commissioner for Public Appointments. This is a well-established process, and the role of Ministers is clearly set out in the Cabinet Office Governance Code on Public Appointments, ensuring the right balance of independence and accountability. As ministers are accountable and responsible to Parliament for public appointments, it is appropriate that they should retain the ability to make the final choice.

All public appointees will remain ultimately accountable to Parliament which may choose to call any member of the OEP board to provide evidence in relation to their suitability to the appointment after they have taken post.

For these reasons, government does not believe it is necessary to prescribe a particular role for Parliament in scrutinising the appointments of non-executive members on the face of the Bill. The Environment, Food and Rural Affairs and Environmental Audit Committees conducted a pre-appointment scrutiny hearing before the appointment of Dame Glenys Stacey as OEP Chair Designate, which confirmed her suitability for the role. The first non-executive members of the Board have also been appointed by the Secretary of State after consultation with the Chair. Non-executive member appointments were made on the basis of fair and open competition further to the appropriate public appointments process. This approach retains the right balance between ministerial accountability and operational independence in making appointments to the OEP.

#### Guidance powers in the Bill

**Recommendation 2: The House may wish to examine the appropriateness of [Clause 25] guidance [power] in the context of the Office for Environmental Protection's purported independence.**

The OEP must prepare its own enforcement policy. It will set out its own approach to determining what technically constitutes a "serious failure", and other aspects of its enforcement policy. However, because the OEP will have a wide environmental remit (covering all domestic environmental law, and all public authorities) the Government have always been clear that the OEP should be focusing on the most serious, strategic cases. No existing bodies have the range of specialist functions, breadth of remit, and independence that we are proposing for the OEP. This guidance power is therefore an important safeguard for accountability to ensure the OEP functions as has always been intended. For example, if the OEP were failing to be strategic and not taking action in relation to serious, systemic issues, the government could use this power to suggest ways in which the OEP could more effectively use its resources to benefit people and the environment. However, the Government recognises that this issue concerned the Constitution Committee and Peers at Lords Committee, and therefore we have tabled an amendment to Clause 25 to provide for Parliamentary scrutiny of draft guidance. This will provide a greater oversight of the use of this power and gives Parliament an opportunity to examine the appropriateness of the guidance. Under the new amendment, the Secretary of State will be required to lay a draft of any guidance before Parliament and respond to any resolutions or recommendations made by either House or Parliamentary Committees before producing the final guidance. This would supersede and strengthen the provision in clause 25(4), which currently requires the Secretary of State to lay before Parliament and publish any guidance.

It is important to note that there are also existing safeguards in place to protect the independence of the OEP:

- clause 25 does not provide the Secretary of State with any power to direct the OEP, or to intervene in decision-making about specific or individual enforcement cases;

- the guidance under Clause 25 can only cover matters listed under clause 23 subsection 6;
- the OEP must have regard to any guidance issued by the Secretary of State alongside other material considerations;
- the Secretary of State must have regard to the need to protect the OEP's independence in exercising functions relating to the OEP.

**Recommendation 3: The Delegated Powers and Regulatory Reform Committee (DPRRC) recommended that the requirement to lay guidance before Parliament should be extended to other guidance provisions in the Bill, particularly clause 67 [update: 68] on littering enforcement. We [Constitution Committee] agree with the DPRRC.**

We accept this recommendation. As we announced at during Committee stage in the Lords, government has accepted all of the DPRRC's recommendations and tabled amendments to the following clauses of the Bill to require guidance (for example, relating to the implementation of policy at a Local Authority level) to be laid before Parliament, rather than simply published on a government website:

- a) Clause 57: Separation of waste
- b) Clause 68: Littering enforcement
- c) Clause 102: Content of local nature recovery strategies
- d) Clause 105: Species conservation strategies
- e) Clause 106: Protected site strategies

#### Delegated powers in the Bill

**Recommendation 4: The DPRRC recommended that powers exercised under clause 73 [update: 74] should be subject to the affirmative procedure, and that in the absence of a clear justification why the new sections of the 1991 Act should be able to amend any Act of Parliament, the scope of the clause [update: 90] power should be confined to amending the 1991 Act only. We agree with the DPRRC.**

We accept this recommendation. The government has tabled amendments in line with the DPRRC's recommendation that Clause 7] (a power to make regulations concerning the implementation of the vehicle recall provisions) be amended to change the procedure from negative to affirmative, due to the breadth of the power, and clause 90 (Valuation of other land in drainage district: England) to be narrowed to the 1991 Act only.

#### Devolution and the Environment Bill

**Recommendation 5: The House may wish to ask the Government to explain further how it envisages the Office for Environmental Protection working with existing bodies in England, including the Environment Agency, and existing devolved bodies such as the Scottish Environment Protection Agency.**

The OEP will only be able to take direct action in Scotland, Wales and Northern Ireland in relation to the statutory duties of UK government ministers and public bodies responsible for delivering reserved functions.

The Bill also makes provision for the scope of the OEP to be extended to cover devolved legislation and public authorities in Northern Ireland, subject to commencement of those clauses by the Assembly.

At Lords Committee stage, we introduced a duty for the OEP to set out in its strategy how it intends to interact with devolved environmental governance bodies, as defined in the Bill. It will promote cooperation between the OEP and devolved environmental governance bodies and respects the devolution settlements by imposing this duty on the OEP only.

Additionally, in Clause 27 the OEP has a duty for it to consult with devolved environmental governance bodies if it is dealing with relevant matters, such as transboundary issues.

Yours Sincerely,



**LORD GOLDSMITH OF RICHMOND PARK**