

February 2019

Joint Environment, Food and Rural Affairs Committee & Environmental Audit Committee Inquiry:
Pre- legislative scrutiny of the Environment (Principles and Governance) Bill

Submission

The Sustainable Soils Alliance is a partnership of farming organisations, businesses, NGOs, applied science and academia working together to reverse the current crisis in soil health and restore our soils to health within one generation. The views in this submission are those of the Alliance's Executive Committee based on feedback from members, supporters and our Science Panel consisting of leading experts in soil health.

Many of our supporter organisations have responded to the consultation separately. This submission looks to examine the Bill through the specific prism of healthy soil, although we appreciate that much of the detail for this particular environmental indicator, including the legal basis for environmental protection and enhancement, will be covered by part 2 of the Bill.

Overall we welcome the Bill and ambition to maintain high environmental standards post Brexit and would highlight the commitment made by Prime Minister, Theresa May, at its launch to address "*some of the opportunities we think will be available to us when we leave the EU in terms of this area of protection of the environment*". Soil health is a good example of where the current EU environmental framework has been piecemeal and largely ineffective, leading to increasingly degraded soils through erosion, loss of organic matter, compaction, salinisation, contamination, sealing etc.

An ambitious and robust Bill underpinned by sound accountability and clear targets would go a long way to seizing this opportunity, improving on the status quo and demonstrating global leadership.

We do, however, have concerns relating to the draft Bill as follows:

Q1: Does the proposed constitution of the oversight body provide it with enough independence to scrutinise the Government?

We share the concerns of many organisations about the lack of independence for the new body, the process by which non-executive members of the Office for Environmental Protection (OEP) are appointed, the manner with which its budget is allocated (via the Secretary of State) and the absence of necessarily robust enforcement mechanisms in cases of breaches of environmental law.

A clearer delineation of responsibility, accountability and greater transparency would provide a stronger guarantee of independence. This in turn would generate a sense of policy continuity, duty and long-term focus for the organisation, able to withstand varying levels of political and financial investment in environmental protection by successive governments. The decline over recent decades of our nation's soil health is a good illustration of what happens when an environmental indicator is overlooked for any period of time.

We suggest that the new body's funding should be set and approved directly by Parliament (not the government) and implemented via multi-annual budgets, while board members and other non-executive staff should be appointed by an independent panel.

Q2: Does the proposed oversight body have the appropriate powers to take 'proportionate enforcement action'?

No. First of all, clause 31 of the Explanatory Notes for the Bill, lists the '*matters*' which *would normally be considered to constitute environmental law*, and therefore the extent of the OEP's legislative competence. They include air quality, water resources and waste management, but no mention is made of 'soil health'.

Given soil's extensive environmental impact – for carbon sequestration, biodiversity, healthy plants and animals etc, this is a significant oversight, especially given the Government's own commitment for all of England's soils to be 'managed sustainably' by 2030 – an ambition that was reiterated in the 25 Year Plan. Soil health needs to be explicitly included in this list if the OEM is to have 'proportionate enforcement powers' to hold government adequately to account.

This need is especially pressing given that a number of significant legal mechanisms required for 'proportionate enforcement action' as they relate to soil are excluded - exclusions which put the Bill out of step with both our international obligations and its own overriding objective - the delivery of the 25 Year Plan.

The following exclusions, have particular implications for soil health.

- Forestry, which has significant impacts on soil health, biodiversity and a variety of other environmental impacts.
- Town and country planning decisions can have significant environmental impact – indeed are the cause of some of the biggest areas of environmental litigation.
- Flooding - healthy soils have the potential to significantly reduce runoff in flood years and cut flood frequency, and so are simultaneously a significant environmental indicator and an important tool in flood management.

If it is not the intention to specifically exclude these areas, especially where they overlap with environmental law, a clarification to the Explanatory Memorandum may be required.

We are also concerned about the failure to include climate change under the scope of the OEP, especially given its place amongst the core goals of the 25 Year Environment Plan. This exclusion seems particularly arbitrary where soils are concerned given that their ability to store carbon makes them an important tool in climate change mitigation. Excluding climate change therefore removes a vital lever for soil health improvement and risks disjointed and even conflicting policy outcomes.

We also query the exclusion for the MoD from the remit of the OEP. The MoD is a major landowner in the UK and has been recently associated with a series of serious incidents of soil contamination (Radium, heavy metals, mustard gas) associated with historical operations. The MoD has clearly defined environmental obligations and we see no reason why any responsibility for remediation should be watered down.

Q3. Are there any conflicts of interest or overlap with existing government bodies?

There is potential for overlap between the OEP and existing regulators, particularly the Environment Agency and Natural England which needs to be clarified.

Given that we are also arguing for the inclusion of climate change within the OEP's scope, this will need to be accompanied by a clear delineation between its role and the (advisory) responsibilities of the Committee on Climate Change (CCC) e.g. on the role of land management in greenhouse gas emissions reduction.

Q4. As drafted are the principles legally enforceable? What will need to be included in the National Policy Statement to interpret the application of the principles?

We welcome the nine environmental principles proposed by the Bill, many of which have immediate and obvious implications for farming and soil health. Given that an estimated 80% of the costs of degraded soils occur offsite (and therefore are of limited concern to those whose actions may be responsible for them), the Polluter Pays principle is of particular significance.

We do note however, that Ministers need only "have regard for" these principles when making decisions, and recommend a strengthening of the wording here to achieve higher levels of enforcement.

We are concerned about the exclusion of "Taxation, spending or the allocation of resources within government" from the scope of the principles. This would seem to rule out any idea of how environmental considerations might impact on the allocation of public expenditure for example, for flood defences, and so requires clarification.

Q5. Does the Bill meet the government's commitment to non-regression from EU environmental standards?

As we indicated earlier the last few decades have seen a steady decline in soil health despite the reference in EU Directive 2014/52/EC on Environmental Impact Assessment to “population and human health, biodiversity, land, soil, air and climate”. As such, we welcome the inclusion of soil health in the 25 Year Plan, which we see as an opportunity to drive genuine improvement in comparison with EU Standards and the placement of the Plan on a statutory footing in the form of Environmental Improvement Plans (EIPs).

Turning these Plans into genuine environmental improvement will depend upon adequate monitoring and reporting by the Government and the OEP, based on proper measurement criteria, however (see below).

In parallel, it is unclear how the objectives, instruments and bodies outlined in the Agriculture Bill tie in with those of this Bill. We have concerns about the transposition of existing EU environmental law into domestic legislation, (in the case of soil, the eight farming rules for water, among other things), how this regulatory ‘baseline’ will be factored into the environmental land management scheme (ELMS) for farmers, the provision of ‘public funds for public goods and the wider application of the polluter pays and other environmental principles.

This concern is especially pressing as we lose the cross-compliance system enforced by the CAP, which contains a number of standards not currently replicated in UK law. As the regulatory framework for farming post Brexit farming is developed, there is an urgent need for greater clarity about the responsibility of the new farming regulator and the OEP, and their distinct responsibilities to ensure both government and the farming industry meet the environmental targets that will be critical to achieving non-regression.

Q6. Is there anything else missing that should be included to meet the enforcement, governance and other gaps in environmental protection left by leaving the European Union?

We understand that part 2 of the bill will expand upon the environmental governance system the government has committed to and look forward to seeing more about this.

Of particular importance is the EIPs for improving the natural environment. These need to be underpinned by specific, legally binding objectives and targets, and accompanying mechanisms to achieve them.

The targets should cover a variety of environmental improvements relating to the 25 Year Plan, and we would draw particular attention to soil health, water quality, peatland restoration and net biodiversity gain. They should be developed on the basis of expert advice, and with five-yearly milestones and metrics for each of the defined objectives.

These plans will be critical for delivering results, but also for unlocking business and community investment. As such, they should be closely integrated with existing local environmental plans and initiatives like river-basin/catchment management plans which are pioneering joined-up strategic thinking that connects water, land and soil management into a coherent whole.