



**DRAFT ENVIRONMENT (PRINCIPLES AND
GOVERNANCE) BILL**

**RESPONSE BY THE
AGRICULTURAL LAW ASSOCIATION
TO THE**

**ENVIRONMENT, FOOD & RURAL AFFAIRS
COMMITTEE**

AND

ENVIRONMENTAL AUDIT COMMITTEE

JOINT ENQUIRY

31 JANUARY 2019

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1.0 The Agricultural Law Association

1.1 Background

The Agricultural Law Association ('the ALA') was formed in 1976 and is the UK's largest inter-professional organisation devoted to the law and business of the countryside.

We focus on the law in a non-partisan, apolitical way in order to promote its knowledge, understanding and development among those who advise rural businesses.

The ALA has over 1370 members across diverse professions including lawyers, surveyors, accountants, farm business consultants, academics and members with specific expertise in international trade and investment. We have members from all the principal professional firms in the rural sector and, uniquely, all other principal member/industry organisations within the rural sector.

We are a member of the following current sector cross organisation groups in the UK:

Tenancy Reform Industry Group
Agricultural Representatives Bodies Group (Taxation)
Scottish Land Commission – Tenant Farming Advisory Forum
Land Partnerships Service – National Advisory Group

We are also the largest member association of the European Council of Rural Law.



1.2 OUR RESPONSE

This response is submitted on behalf of the ALA and its members who advise their clients in a rural context on all land and property related matters.

Our members' clients have diversified land and property interests, including residential property that is let to private tenants.

Our response refers to numbering of clauses as they appear in the Draft Bill where appropriate.



2.1 The Draft Environment (Principles and Governance) Bill - Clauses

2.1.1 Clauses 1 to 4 – Policy statement on environmental principles

Our understanding of the draft Bill and the Explanatory Notes is that the Policy Statement on Environmental Principles will be considered as guidance rather than have any specific legal status of its own.

As we submitted in our consultation response (in August 2018) to DEFRA's consultation on the Environmental Principles and Governance after the United Kingdom leaves the European Union, our working assumption at that stage was that if the environmental principles were to be set out in the draft Bill, they would be binding.

The status of the Policy Statement as guidance therefore suggests that only regard must be given to the environment principles as opposed to them being a binding matter of law.

We seek clarification on the status of the Policy Statement and Environmental Principles, for example where an environmental improvement plan is prepared.

2.1.2 Clause 6 – Environmental improvement plans

We seek clarification as to whom the Secretary of State will be required to consult with and seek input from in the preparation of an environmental improvement plan.

2.1.3 Clauses 8 & 9 – Annual reports on environmental improvement plans

We seek clarification on how the Secretary of State will fund and implement the measurement of baseline data against which the environmental improvement plan will be funded.



As we have submitted in our responses to the DEFRA's Health and Harmony and the Environmental Principles and Governance consultations, it is fundamental to the agriculture sector that the Government is clear on the evaluation methods that will be used and supported for the establishment of baseline data on the environment at farm level.

2.1.4 Clause 16 – Advising on changes to environmental law etc

We seek clarification on the role of the Office for Environmental Protection in advising on changes to environmental law and its interaction with the Law Commission and its functions under the Law Commissions Act 1965 where Government departments can refer projects for law reform to the Law Commission.

We are concerned that the Minister is only required under sub-section 6 to lay before Parliament the advice received by the Minister from the OEP and any response the Minister may make to the advice, if the Minister thinks fit.

In our opinion, where changes are proposed to environmental law, the Minister must be obliged to lay the OEP's advice before Parliament

2.1.9 Clause 20 – Duty to keep complainants informed

Whilst we agree with the duties of the OEP under clause 20, we consider that a process for appealing against the OEP where it does not intend to consider the complaint is limited to Judicial Review. There seems no other mechanism by which a complainant can challenge the conclusion of the OEP.

2.2 The Draft Environment (Principles and Governance) Bill

Schedule – The Office for Environmental Protection

2.2.1 We suggest that the membership of the OEP should consist of at least one member with the relevant judicial/legal qualifications in environmental law.



- 2.2.2 We consider that in order to maximise the objectiveness and independency of the proposed new body, that it should report to Parliament rather than Government.
- 2.2.3 We also submit that the OEP should have the power to issue enforcement/stop notices. We acknowledge such a power would need to avoid overlap of the existing responsibilities of the Environment Agency.
- 2.2.4 The OEP should have an advisory role in overseeing the implementation and success of any existing agri-environment scheme or future land management scheme as part of the Government's schemes for the rural sector to meet its environmental objectives.
- 2.2.5 We note that the OEP has the power to submit a review application under clause 25(3) to the relevant court but it should also have an internal panel which has judicial experience or legally qualified members sitting on it which not only deals with issues of failure of an authority to comply with environmental law but would also include issues arising from the misinterpretation of policy by and/or a failure of Government to comply with environmental law; to include the power to set up a judicial inquiry.
- 2.2.6 An additional role for the OEP should also be to advise on nationally applicable derogations in situations of significant environmental risk or climatic events.

We have welcomed the opportunity to submit our views to the Joint Inquiry and we would be happy to assist the EFRA and EA Committees in further discussions on the issues that are raised above.

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