

Environment Bill: the role and design of objectives and targets¹

We are sharing this Working Paper widely with stakeholders to stimulate comment and discussion on key aspects of the governance framework in the forthcoming Environment Bill.

Comments and feedback to Edward Lockhart-Mummery at ed@broadwayinitiative.org.uk or Martin Baxter at m.baxter@iema.net

September 2019

1. Overview

- 1.1 The government has committed to make ours the first generation to leave the environment in a better state, responding to growing public demand to solve issues like poor air quality, soil degradation, marine plastic pollution and the decline of nature. The business community can help solve these challenges if given a clear policy framework that enables it to adjust early and plan, invest and collaborate in the solutions. This approach would enable business not only to find the most cost-effective answers to environmental problems domestically but also to develop the innovations needed globally.
- 1.2 This paper outlines how the Government's planned Environment Bill can enable this through:
 - **the architecture for objectives and targets** to give clarity directly to the economy and how they should 'bite' on government so that, taken as a whole, policies across government support achievement of the objectives.
 - **how objectives in the Bill can be framed** to set durable high-level parameters to give everyone strategic predictability about the direction of policymaking
 - **how the target setting process can be designed** to set specific 'data points' that have to be met at specific times along the way.

2. The architecture for objectives and targets²

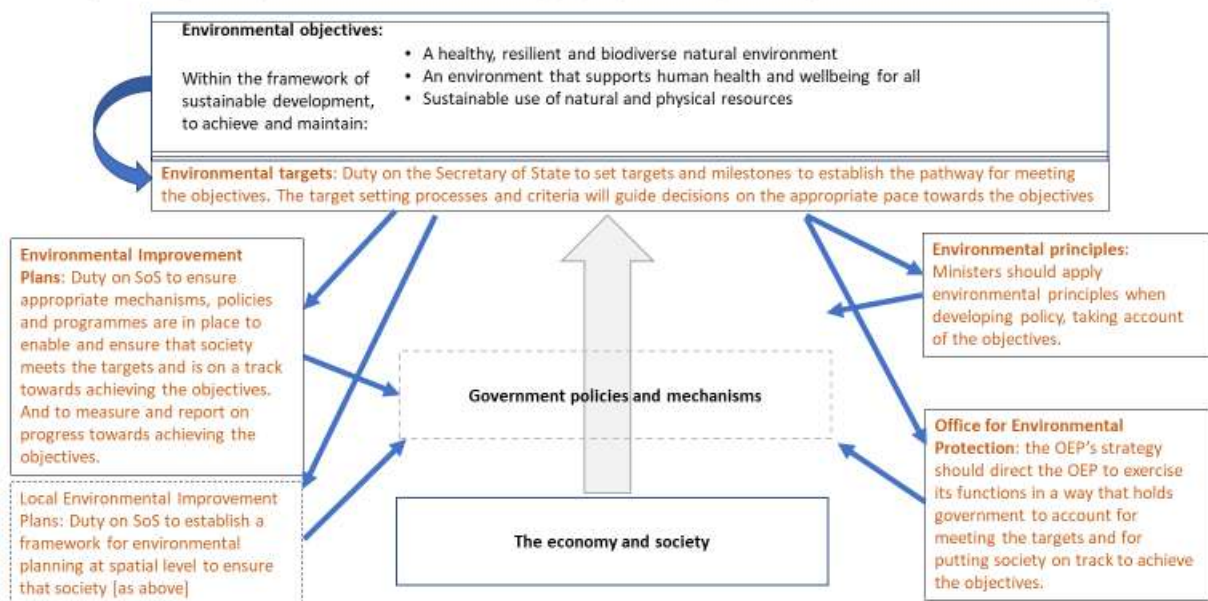
- 2.1 Chapter 1 of the Government's planned Environment Bill is expected to set out an overarching governance framework for the environment - in effect an Environmental Constitution - for when we leave the EU. It is likely to provide for:
 - a) a process for setting long-term targets and milestones
 - b) Environmental Improvement Plans (EIPs) and arrangements for indicators and reporting on the state of the environment
 - c) the application of core Environmental Principles in policy-making;

¹ Paper developed by Martin Baxter, Chief Policy Advisor IEMA & Edward Lockhart Mummery, Convenor Broadway Initiative – the paper draws on discussions within the Broadway Initiative www.iema.net/broadway

² We use the terms objective, target and milestone as follows: Objectives set the long-term outcomes to be achieved; Targets are measurable ways of determining whether an objective has been achieved; Milestones are defined points on the pathway to achieving targets

- d) a new Office for Environmental Protection (OEP) charged with monitoring implementation of EIPs and environmental law and where necessary, enforcing failure of public authorities to comply with environmental law.
- 2.2 The core elements of the long-term framework in the draft Bill (EIPs and measurement, principles and the OEP) are currently disjointed and do not in themselves have a purpose or direction. A high-level objective or set of objectives is therefore needed to ensure the framework binds everyone into the same long-term direction.
- 2.3 The diagram below outlines how objectives, supported by a process for setting targets, can i) give clarity to the economy about what needs to be achieved ii) bite on government activity so that as a whole it supports achievement of objectives and targets.

Purpose of Chapter 1: To provide a framework to ensure that appropriate policies and plans are in place to enable the environmental objectives to be met



3. How objectives in the Bill can be framed³

- 3.1 Environmental policy in the UK over the last 45yrs has largely been driven through membership of the EU. The Treaty on the Functioning of the EU (TFEU Article 191) sets out key objectives for EU environmental policy ([A191.1](#)) and links these to the application of core principles such as the polluter pays and precautionary principles ([A191.2](#)). The Treaty's environmental objectives will no longer apply when the UK ceases to be a member of the EU, although non-regression in terms of the level of environmental protection provided by law, regulations and practices is a likely condition of any future UK/EU agreement.
- 3.2 The UK is a signatory to the UN Sustainable Development Goals (SDGs); the [SDGs](#) set core objectives across a wide range of environment, social and economic factors which in combination are intended to set countries on a trajectory to a sustainable

³ Further detail is included in Appendix A on specific objectives in: the EU Treaty on the Functioning of the EU; Non-Regression; UN SDGs relevant to the Environment Bill; Wales Environment Act; Scottish Government National Performance Framework and the Defra 25yr Environment Plan.

future. The Environment Bill should directly support the UK achieving many of the [global goals](#).

- 3.3 Within the UK, both the Scottish and Welsh governments have overarching objectives set through statute which directly link to the SDGs.
- 3.4 In Scotland, the Community Empowerment (Scotland) Act 2015, places a duty on Scottish Ministers to consult on, develop and publish a set of [National Outcomes](#). The National Outcomes are specifically aligned to the United Nations Sustainable Development Goals and include a long-term environment outcome “We value, enjoy, protect and enhance our environment”.
- 3.5 In Wales, the Well-being of Future Generations Act (2015) sets the legal obligation to improve social, cultural, environmental and economic well-being in Wales. The Environmental obligations are delivered through the [Environment \(Wales\) Act 2016](#) which has an overall objective to promote sustainable management of natural resources.
- 3.6 In England, the [Defra 25yr Plan](#) sets out long-term environmental goals and environmental pressures which need to be managed. There is also recognition of the need to replenish depleted soil, plant trees, support wetlands and peatlands, rid seas and rivers of rubbish, reduce greenhouse gas emissions, cleanse the air of pollutants, develop cleaner, sustainable energy and protect threatened species and habitats.
- 3.7 The draft Environment (Principles and Governance) Bill proposes to put the 25yr Plan on a statutory basis as the first Environmental Improvement Plan, with the purpose of EIPs to improve the natural environment.

4. Why have long term policy objectives?

- 4.1 To govern the environment in the most cost-effective way, government needs to set clear and credible policy direction that enables all involved to plan, invest and collaborate across sectors to achieve multiple goals coherently, beyond the life of single parliaments.
- 4.2 Objectives also help:
 - a) focus policies on their purpose
 - b) hold responsible parties to account for progress
 - c) anticipate early on where changes in direction are necessary, rather than wait until problems are locked in
- 4.3 Developing national objectives becomes more critical as the UK leaves the EU. The Theresa May Government committed to leaving the environment in a better state and also [committed](#) to “non-regression” in the level of environmental protection as we leave the EU and to a [process of reviewing](#) ongoing alignment. In his letter to Donald Tusk dated 19th August 2019, Prime Minister Boris Johnson stated that “Although we will remain committed to world-class environment, product and labour standards, the laws and regulations to deliver them will potentially diverge from those of the EU.”

5. What makes good objectives?

- 5.1 Analysis of the way objectives are framed in the [TFEU](#), [SDGs](#) and by governments within the [UK](#) and [overseas](#) (see Appendix A) identifies key characteristics which are commonly used to frame objectives:
- a) framed to include **a clear end point** – so they can be translated into more specific targets - e.g. “clean”, “healthy”.
 - b) set out a clear approach for the journey towards **the desired state of the environment** – variously combining “improve”, “replenish”, “enhance”, “preserve”, “protect”...all which convey a sense of action-oriented policy.
 - c) **aligned with a clear purpose** – either directly e.g. “protect health”, “rational utilisation”, “sustainably use” or as part of a broader framework of social and economic goals/outcomes
 - d) unarguably **desirable now and in the future** – so everyone – from the Cabinet, through the media, to the public – buys into them, cannot resist them and we reach societal consensus about purpose quickly. This shifts focus onto the ‘how’ and what is the most beneficial pathway to achieving them.
 - e) **meaningful for individuals and at a local level** – they resonate so people and communities can easily see how they can contribute to the objectives.
 - f) **consistent** – so they can be handled together where it makes sense to do so.
 - g) **internationally linked** – meet UK commitments to achieve at least equivalent outcomes to those embedded in EU requirements and be set at a level that is aligned or consistent with the international direction of travel and takes account of the opportunities for stimulating exports and any other impacts on competitiveness.

6. Objectives for the Environment

We propose that a clause on Objectives for the Environment is included in the Bill as follows, to set clear direction and link together the principles, targets, EIPs and OEP.

1. Objectives for the environment

- 1.1 Within the framework of sustainable development, the environmental objectives are to achieve and maintain:
- a) A healthy, resilient and biodiverse natural environment
 - b) An environment that supports human health and wellbeing for all
 - c) Sustainable use of natural and physical resources

7. How the target setting process can be designed

Context

7.1 Government has committed to explore options for including additional cross-cutting targets for environmental improvement as part of the governance framework in the forthcoming Environment Bill⁴, recognizing that well-designed targets could offer greater certainty on the strength of the government's ambition and drive action by businesses and wider society.

Design Considerations

- 7.2 A well-designed process for establishing long-term targets for environmental improvement is essential for giving confidence to business, communities and investors. Key aspects of the proposed process are as follows:
- a) The Act should make it a duty of the SoS to establish targets and milestones which set the trajectory for the environmental objectives to be achieved over the long-term.
 - b) Targets should define a clear end point with a date and in quantifiable (or otherwise independently verifiable) terms.
 - c) Targets should be informed by a baseline assessment of the state of the environment, including the interconnections and the drivers of performance.
 - d) The Secretary of State should seek views of business, civil society, regulatory bodies and other interested parties, including as appropriate through representative bodies, throughout the process of setting targets and milestones.
 - e) Timescales for targets should align to enable sectors to consider them together and should coincide with the 5 year EIP cycle of review.
 - f) Milestones should be established as the staging posts towards the target in no longer than 5-yearly intervals. Milestones effectively set the pace for the achievement of long-term targets.
 - g) The Act should set a date for establishing targets and milestones that allows for a process to understand who needs to contribute what and how it fits with other targets. This probably needs 2 years from Royal Assent to develop the initial set of targets, consult with stakeholders, and gain parliamentary approval⁵.
 - h) Where the method for establishing a target or milestone is not yet feasible (e.g. soil), the Government should set a timetable for producing one taking account of the advice of the OEP.
 - i) There should be independent advisory capacity, for example via a committee of the OEP to:
 - i. advise on where targets are needed
 - ii. advise on draft targets
 - iii. advise on where targets need changing
 - iv. advise where plans are inadequate to meet targets
 - v. exchange letters publicly where milestones are met
 - vi. enforce where targets are missed [though the cause may be predecessor governments?]
 - j) Targets and milestones should be set in regulation through affirmative resolution procedure.

⁴ DEFRA Environment Bill Policy Paper December 2018 - <https://www.gov.uk/government/publications/draft-environment-principles-and-governance-bill-2018/environment-bill-policy-paper>

⁵ The aim should be for cross-party support for targets and milestones, to enhance their durability across successive parliaments.

- k) There should be a duty on the SoS to ensure that EIPs contain appropriate mechanisms for the targets to be met (or to be on track to meet them).
- l) There should be a duty on the SoS to meet the targets.

8. Criteria in setting targets and milestones

8.1 When setting targets the Secretary of State shall take into account:

- a) The environmental objectives
- b) The UK's International obligations, including under Treaties and the SDGs
- c) Advice given by the OEP on potential long-term environmental challenges/pressures that may affect the achievement of the objectives
- d) Analysis of the potential contributions and pathways required from different sectors, including their feasibility, the technology pathway and the policy gap.
- e) The coherence of environmental targets as a whole and how they cohere at relevant spatial scales
- f) The potential impact on/contribution to achieving carbon budgets set under the Climate Change Act 2008

8.2 In setting targets and milestones, the following matters shall be taken into account:

- a) Scientific knowledge relevant to the environment
- b) Current technology and potential technological innovation
- c) Economic circumstances, and in particular the likely impact of the decision on the economy, including on international competitiveness
- d) Social circumstances and in particular the health and wellbeing of communities
- e) Fiscal circumstances, and in particular the likely impact on taxation, public spending and public borrowing;
- f) The state of the environment in Wales, Scotland and Northern Ireland where the setting of targets and milestones in England may affect, or be affected by, long-term environmental objectives that may be set by devolved governments

Appendix A

Defra 25yr Environment Plan

1. Clean air
2. Clean and plentiful water
3. Thriving plants and wildlife
4. A reduced risk of harm from environmental hazards such as flooding and drought
5. Using resources from nature more sustainably and efficiently
6. Enhanced beauty, heritage and engagement with the natural environment
7. Mitigating and adapting to climate change
8. Minimising waste
9. Managing exposure to chemicals
10. Enhancing biosecurity

Plus: "We need to replenish depleted soil, plant trees, support wetlands and peatlands, rid seas and rivers of rubbish, reduce greenhouse gas emissions, cleanse the air of pollutants, develop cleaner, sustainable energy and protect threatened species and habitats."

Treaty on the Functioning of the EU (Article 191)

Article 191.1

Union policy on the environment shall contribute to pursuit of the following objectives:

- i. preserving, protecting and improving the quality of the environment
- ii. protecting human health,
- iii. prudent and rational utilisation of natural resources
- iv. promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

Article 191.2

Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

Non-Regression in the Level of Environmental Protection (Annex 4, Part 2 Article 2 UK/EU Withdrawal Agreement)

With the aim of ensuring the proper functioning of the single customs territory, the Union and the United Kingdom shall ensure that the level of environmental protection provided by law, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to: access to environmental information, public participation and access to justice in environmental matters; environmental impact assessment and strategic environmental assessment; industrial emissions; air emissions and air quality targets and ceilings; nature and biodiversity conservation; waste management; the protection and preservation of the aquatic environment; the

protection and preservation of the marine environment; the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release and disposal of chemical substances; and climate change.

Non-Regression Business Statement – Greg Clark 6th March

“A similar framework will apply to environmental protections as the UK leaves the EU, implemented through the environment Bill. On 19 December, we published the draft Environment (Principles and Governance) Bill, the first part of a much larger environment Bill to follow in the next Session. The draft Bill outlines our proposals to establish a world-leading body to hold the Government to account for environmental outcomes after the UK leaves the EU. The draft Bill also requires the Government to publish a statutory policy statement on the interpretation and application of nine environmental principles, including the four contained in EU treaties.

The Government will also legislate to ensure that where future Bills could affect environmental protections, a Minister of the Crown will make a statement of compatibility to Parliament and provide explanatory information.

We will also create a new statutory duty on the Government to monitor any strengthening of environmental protections and regulations by the EU, and to report regularly to Parliament about the Government’s intended course of action in those areas.

That will give Parliament the information it needs to consider whether or not domestic protections need to be strengthened accordingly. Through these commitments, the Government will provide a robust framework for maintaining and strengthening environmental standards as the UK leaves the EU.”

National Outcomes for Scotland

Following the introduction of the Community Empowerment (Scotland) Act 2015, Scottish Ministers have a duty to consult on, develop and publish a set of National Outcomes for Scotland and to review them at least every five years.

The National Outcomes are specifically aligned to the United Nations Sustainable Development Goals, as set out in the Programme for Government.

The new [National Performance Framework](#) includes 11 National Outcomes that set out the kind of country Scotland wants to be, and 81 National Indicators that are used to track and measure progress towards achieving them.

The long-term environment outcome is “We value, enjoy, protect and enhance our environment”. The performance indicators are available [here](#).

Environment (Wales) Act 2016

Overall purpose is to promote sustainable management of natural resources.

“Natural resources” includes:

- i. animals, plants and other organisms;
- ii. air, water and soil;
- iii. minerals;
- iv. geological features and processes;
- v. physiographical features;
- vi. climatic features and processes.

Sustainable management of natural resources mean

- i. using natural resources in a way and at a rate that promotes achievement of the objective in subsection (below),
- ii. taking other action that promotes achievement of that objective, and
- iii. not taking action that hinders achievement of that objective.

The objective is to maintain and enhance the resilience of ecosystems and the benefits they provide and, in so doing—

- i. meet the needs of present generations of people without compromising the ability of future generations to meet their needs, and
- ii. contribute to the achievement of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2).

UN Sustainable Development Goals (SDGs)

The Environment Bill should directly support the UK achieving the following SDGs:

SDG 6 – Clean Water and Sanitation

Ensure availability and sustainable management of water and sanitation for all

SDG 12 – Sustainable Consumption and Production

Ensure sustainable consumption and production patterns

SDG 13 – Climate Action

Take urgent action to combat climate change and its impacts

SDG 14 – Life Below Water

Conserve and sustainably use the oceans, seas and marine resources for sustainable development

SDG 15 – Life on Land

Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

SDG 16 – Peace, Justice and Strong Institutions

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

The Environment Act will also support the UK achieving:

SDG 3 – Good Health and Wellbeing

Ensure healthy lives and promote well-being for all at all ages

SDG 7 – Affordable and Clean Energy

Ensure access to affordable, reliable, sustainable and modern energy for all

SDG 8 – Decent Work and Economic Growth

Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

SDG 9 – Industry, Innovation and Infrastructure

Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

SDG11 – Sustainable Cities and Communities

Make cities and human settlements inclusive, safe, resilient and sustainable

Dutch Environment and Planning Act

- i. to achieve and maintain a safe and healthy physical environment and good environmental quality
 - ii. to effectively manage, use and develop the physical environment in order to perform societal needs.
-

Swedish Environmental Code

The purpose of this Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. Such development will be based on recognition of the fact that nature is worthy of protection and that our right to modify and exploit nature carries with it a responsibility for wise management of natural resources.

UK Climate Change Act 2008**1 The target for 2050**

- (1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.
-

Appendix B: potential shape of Chapter 1

[Red font represents additions to the draft Bill index]

DRAFT OF A BILL TO [...]

Chapter 1

Purpose and objectives for chapter 1.

0.1 Purpose of chapter 1.

The purpose of chapter 1 is to provide an environmental governance framework for ensuring action is taken to enable environmental objectives to be met.

0.2 Environmental objectives

Within the framework of sustainable development, the environmental objectives referred to in 0.1 are to achieve and maintain:

- a) A healthy, resilient and biodiverse natural environment
- b) An environment that supports human health and wellbeing for all
- c) Sustainable use of natural and physical resources

0.3 Non-regression

[...]

Environmental targets

0.4 Duty to set targets

The SoS must set targets and milestones where needed to enable the objectives to be met.

[detail]

05. Targets

- 05.1 It is the duty of the Secretary of State to set targets consistent with the trajectory needed to achieve the objectives in the long-term.
- 05.2 Each target shall describe the long-term state of an aspect of the environment, consistent with the objectives.
- 05.3 Each target shall have an achievement date, which shall be at least [15] years from the date at which the target is set.
- 05.4 Targets shall be set in the following areas:
 - a) to improve air quality
 - b) to restore and enhance nature
 - c) to improve waste management and resource efficiency
 - d) to improve surface water, ground water and waste water management.]
- 05.5 Nothing in 2.4 shall prevent the Secretary of State from setting additional targets in other areas in order to achieve the objectives.

06. Milestones [interim targets?]

- 06.1 For each target, the Secretary of State shall set milestones which set legal goals for improvements in the state of the environment at future points in time.

- 06.2 Milestones shall be set at 5yr time intervals, starting from the year of adoption of a target.
- 06.3 Three successive milestones shall be set for each target.
07. Criteria for Setting Targets and Milestones
- 07.1 When setting targets and milestones the Secretary of State shall take into account:
- a) The objectives that need to be achieved
 - b) The UK's International obligations relating to the environment and climate change
 - c) Advice given by the OEP on potential long-term environmental challenges that may affect the achievement of the objectives
- 07.2 In setting targets and milestones, the following matters shall be considered:
- a) Scientific knowledge relevant to the environment
 - b) Technology relevant to the environment
 - c) Economic circumstances, and in particular the likely impact of the decision on the economy
 - d) Social circumstances and in particular the health and wellbeing of communities
 - e) Fiscal circumstances, and in particular the likely impact on taxation, public spending and public borrowing;
 - f) The interrelationship and interconnectedness between different areas of the environment
 - g) The relationship between the area of the environment and the need to achieve carbon budgets set under the Climate Change Act 2008
 - h) The state of the environment in Wales, Scotland and Northern Ireland where the setting of targets and milestones in England may affect, or be affected by, long-term environmental objectives that may be set by devolved administrations
08. Consultation on Setting Targets and Milestones
- 08.1 Before laying before Parliament a draft statutory instrument containing an order for setting targets under (2) and milestones under (3) the Secretary of State must:
- a) obtain and take into account the advice of the OEP
 - b) consult with stakeholders
 - c) take into account any representations made by other national governments and authorities
- 08.2 As soon as is reasonably practicable after giving its advice to the Secretary of State, the OEP must publish that advice in such manner as it considers appropriate.
- 08.3 If the order makes provision different from that recommended by the OEP, the Secretary of State must also publish a statement setting out the reasons for that decision and how the decision is consistent with the objectives.
09. Approval of Targets and Milestones
- 09.1 The Secretary of State must set the targets and milestones by order.
- 09.2 An order setting an environmental target and milestone is subject to affirmative resolution procedure.

Policy statement on environmental principles
 1 Policy statement on environmental principles
 2 Meaning of "environmental principles"

[.. the environmental principles should ensure that the development of policy is consistent with the objectives]

3 Policy statement on environmental principles: process
 4 Policy statement on environmental principles: effect

Environmental improvement plans

5 Improving the natural environment

[the purpose of EIPs is to ensure Government has appropriate mechanisms in place to contribute to the objectives and meet the targets and milestones]

6 Environmental improvement plans

7 Environmental monitoring

8 Annual reports on environmental improvement plans

9 Reviewing and revising environmental improvement plans

10 Renewing environmental improvement plans

Local Environmental Improvement Plans [the purpose of LEIPs is to facilitate local prioritization and contribution to the environmental objectives and targets]

Environmental Responsibility Plans

The Office for Environmental Protection

11 The Office for Environmental Protection

12 Exercise of the OEP's functions

[The OEP must prepare a strategy about how it intends to exercise its functions consistent with contributing to the objectives and meeting the targets]

13 The OEP's strategy: process The OEP's scrutiny and advice functions

[Advising on targets and plans]

14 Monitoring and reporting on environmental improvement plans

15 Monitoring and reporting on environmental law

16 Advising on changes to environmental law etc

The OEP's enforcement functions

17 Failure of public authorities to comply with environmental law

18 Complaints

19 Investigation of complaints

20 Duty to keep complainants informed

21 Practical co-ordination of investigations

22 Information notices

23 Decision notices

24 Duty of the OEP to involve the relevant Minister and other public authorities

25 Enforcement 5 Draft Environment (Principles and Governance) Bill

The OEP's enforcement functions: co-operation and information

26 Duty to co-operate

27 Scope of requirements to provide information to the OEP

28 Prohibitions on disclosure of information

29 Public statements

Interpretation

30 Meaning of "natural environment"

31 Meaning of "environmental law"

32 General interpretation Final provisions

33 Regulations

34 Extent, commencement and short title