

**The Draft Environment (Principles and Governance) Bill**  
**Feedback from Breast Cancer UK**

June 2019

***Breast Cancer UK believes that the Government's Environment Bill is a positive step forward, but considerable work is required to ensure that the legal accountabilities proposed in the bill do not weaken existing EU Environmental principles/standards, which contribute greatly to reducing breast cancer risk. Multiple flaws need to be resolved including: guaranteeing the maintenance of existing EU environmental principles and standards; introducing legally binding targets for environmental objectives, ensuring the OEP's independence and enhancing its enforcement capabilities. This paper outlines these concerns and provides actionable policy proposals to address them.***

**About Breast Cancer UK**

Breast Cancer UK's mission is to prevent breast cancer through scientific research, collaboration, education and policy change. We educate and raise awareness of the preventable risk factors for breast cancer and provide practical information to help people reduce their risk. We campaign for policies that support prevention and we fund scientific research to better understand and address lifestyle and environmental risk factors.

Breast Cancer UK is the only UK charity focused exclusively on the prevention of breast cancer. An unhealthy environment has direct and adverse consequences for public health, and there is growing scientific evidence linking environmental factors, such as harmful chemicals, poor air quality and water/land pollution to diseases, including breast cancer. Accordingly, the Environment Bill is a crucial piece of legislation which will have significant implications for our continuing efforts to mitigate breast cancer risk.

The EU's comprehensive environmental and public health protections have supported the development of a healthier environment. As the UK prepares to leave the EU, Breast Cancer UK wants to ensure that the Environment Bill does not dilute existing environmental principles, standards and the related legal accountabilities of the Government.

**Purpose of the Environment Bill**

The Government introduced its Draft Environment Bill in December 2018<sup>1</sup> setting out how the UK intends to maintain environmental standards post-Brexit. The Bill proposes a new system of environmental governance, underpinned by 'environmental principles', and overseen by a new watchdog - the Office of Environmental Protection (OEP)<sup>2</sup>.

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<sup>1</sup> HM Government (2018) 'New environment protections set out in flagship bill' available at: <https://www.gov.uk/government/news/new-environment-protections-set-out-in-flagship-bill--2> (Accessed 30<sup>th</sup> May 2019)

<sup>2</sup> HM Government (2018) 'Draft Environment (Principles and Governance) Bill' available at: <https://www.gov.uk/government/publications/draft-environment-principles-and-governance-bill-2018> (Accessed 30<sup>th</sup> May 2019)



## Breast Cancer UK's Key Concerns

### 1. Maintaining existing Environmental Principles and Standards

UK Government policy will be underpinned by a new set of environmental principles derived from EU treaties and the EU Withdrawal Act 2018<sup>3</sup>. The Environment Bill lists nine principles to be enshrined into UK law (Draft Clauses 1-4). These include precaution, preventative action, polluter pays and public participation in decision making<sup>4</sup>.

Such principles are welcome, however the detailed language found in the bill dilutes existing EU principles and an overarching commitment to a high level of environmental protection is absent. The Bill also removes references to the impact of environmental damage on public health, which risks treating the environment and health as separate rather than mutually reinforcing matters. Existing EU principles have helped ensure that hazardous chemicals, linked to breast cancer, such as Bisphenol A, have either been restricted or banned<sup>5</sup>.

Yet more concerning, the bill makes the proposed principles matters of policy, rather than legal obligations. This increases the risk of the UK becoming a dumping ground for such chemicals. Under the bill's proposed framework, UK Environmental policy could shift from being legally tied to environmental principles, to a position where their interpretation and application is entirely in the Government's hands.

The bill requires the Secretary of State (SoS) to prepare a policy statement outlining the interpretations and application of the principles. However, the scope of the statement is constrained by a series of unjustified exclusions related to public spending, taxation or any other matter specified by the SoS. Crucially, ministers are only required to 'have regard' to the statement when making or revising policies. Compared to EU law, this is a much-weaker requirement, allowing ministers to undermine existing precautionary regulations which are fundamental to breast cancer prevention. Legally enforceable duties are essential to ensure that policy actions remain 'in accordance with' environmental principles.

These governance gaps weaken the protections provided by existing environmental principles and counter the bill's overarching ambitions. This failure to ensure equivalence with EU environmental law<sup>6</sup> will negatively impact efforts to reduce public exposure to environmental contaminants that impact the quality of our air, land and water, which have in turn helped minimise breast cancer risk.

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<sup>3</sup> EU, Treaty on the Functioning of the European Union 2012/C 326/01, article 191.

<sup>4</sup> DEFRA (2018) 'Information paper on the policy statement on Environmental Principles' available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766299/env-bill-information-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766299/env-bill-information-paper.pdf) (Accessed: 30<sup>th</sup> May 2019)

<sup>5</sup> Breast Cancer UK (2018) 'BCUK Background Briefing Endocrine disrupting chemicals', available at: [https://www.breastcanceruk.org.uk/uploads/documents/BCUK\\_EDC\\_brief\\_v2\\_23.9.2018.pdf](https://www.breastcanceruk.org.uk/uploads/documents/BCUK_EDC_brief_v2_23.9.2018.pdf) (Accessed 30<sup>th</sup> May 2019)

<sup>6</sup> Lee, M. Scotford, S. (2018) 'Environmental Principles after Brexit: The Draft Environment (Principles and Governance) Bill (Working Paper)' available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3322341](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3322341) (Accessed: 30<sup>th</sup> May 2019)

## BCUK Public Policy Proposals

- **To uphold robust environmental standards that protect public health, ministers and public authorities must be legally bound to act in accordance with existing environmental principles throughout the policy making process.**
- **To remain effective, the new principles must be applicable to all public authorities thereby ensuring cross-governmental action and compliance.**
- **To ensure a fully integrated approach, the precautionary and preventative principles must also cover environmental damage to human health, as is the case in existing EU Law.**
- **To avoid diluting existing standards, the Government's policy statement must be fully scrutinised and any revisions approved by Parliament.**

## 2. Introducing Legally binding targets within Environmental Improvement Plans (EIPs)

The bill places a duty on the SoS to prepare an EIP covering a 15-year period, reviewable every 5 years (Draft clauses 5-10). The SoS is also required to lay an annual report before Parliament on the Government's implementation of the EIPs. The OEP will scrutinise this report and the SoS is required to respond to its findings. These are welcome monitoring and reporting provisions, but it remains unclear whether the EIPs will address all relevant environmental health issues including exposure to hormone disrupting chemicals, such as phthalates and parabens. Such chemicals are associated with a wide range of adverse health conditions and illnesses, including hormonal cancers such as breast cancer.

The Government's existing 25-year Environment plan<sup>7</sup> is classified as an EIP and is placed on a statutory footing. The bill however fails to provide legally binding targets on public health risk factors such as air pollution, pesticides and biocides but instead delivers only vague aspirations. This means that the Government can avoid legal accountability for its environmental objectives. An unintended consequence of this is that harmful chemicals linked to diseases such as breast cancer could enter consumer products and the environment at an increased rate. Legally accountabilities must underpin future EIPs including the upcoming chemicals strategy<sup>8</sup>.

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- **To manage exposure to chemicals linked to diseases such as breast cancer, the Government must introduce legally binding targets that support its environmental objectives.**
- **To reduce the impact of air pollution on public health, the Government must enshrine into law the WHO's guideline limits for air pollutants.**
- **To ensure that the protection of public health remains at the core of environmental governance, the OEP Board must include the monitoring of environmental risk factors as a component of its scrutiny and advisory functions.**

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<sup>7</sup> HM Government (2018) 'A Green Future: Our 25 Year Plan to Improve the Environment' available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/693158/25-year-environment-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf) (Accessed: 30<sup>th</sup> May 2019)

<sup>8</sup> Smith, L et al (2018) 'The 25-year environment plan', House of Commons Library, available at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8196> (Accessed: 30<sup>th</sup> May 2019)

### 3. Ensuring the independence of the Office of Environmental Protection (OEP)

The OEP will take over the responsibilities of the European Commission and “scrutinise environmental policy, investigate complaints and ... make sure environmental law is properly implemented” (Draft clauses 11-29)<sup>9</sup>. The creation of the OEP is a bold step, however, the bill fails to ensure its independence, enabling the Government to mark its own homework, thereby compromising the OEP’s ability to hold public authorities to account.

The OEP’s policy scope is determined by the bill’s definition of environmental law, namely legislation that protects, maintains, restores or enhances the natural environment. The Bill’s explanatory notes outline policy areas included within the OEP’s remit such as air quality, water resources and waste management<sup>10</sup>. However, it is extremely concerning that the remit excludes chemicals policy, which has been the subject of extensive EU enforcement. This is a critical governance gap, as the bill fails to recognise the growing scientific evidence of the role that chemicals play in increasing the risk of environmentally induced cancers.

The proposed OEP board will include a Chair, a Chief Executive, five non-executive members and three other executive members. These appointments will be the responsibility of the SoS, enabling DEFRA to exert total control over the agency’s leadership. This fundamentally constrains the OEP’s independence and prevents Parliament from providing oversight.

The bill also mandates the SoS to provide funding that is deemed sufficient for the OEP to conduct its duties. Whilst the bill contains a safeguard, enabling the OEP to provide an annual statement of accounts and comment on whether it receives appropriate funding, the OEP’s financial security and accountability is at direct risk of political interference.

#### BCUK Public Policy Proposals

- **To address identified governance gaps and to adequately protect the environment and public health, chemicals, must be included within the OEP’s policy remit.**
- **To avoid political interference, that could reduce environmental standards and threaten the independence of the OEP, appointments, funding and oversight processes must be transferred from DEFRA to Parliament.**
- **To ensure the OEP is adequately resourced to fulfil its purpose, the OEP must propose its own level of funding requirements, not the Secretary of State.**
- **To secure Parliamentary oversight, the Chair of the OEP must be appointed by Parliament or the relevant select committee, and not by the Secretary of State.**

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<sup>9</sup> House of Commons Library (2019) ‘*Environmental principles and governance: the draft bill*’ available at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8484> (Accessed 30<sup>th</sup> May 2019)

<sup>10</sup> Environmental Audit Committee (2019) ‘*Scrutiny of the Draft Environment (Principles and Governance) Bill*’ available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1951/195102.htm> (Accessed: 30<sup>th</sup> May 2019)

#### 4. Enhancing the OEP's Enforcement Capabilities

The bill provides the OEP with tools to enforce environmental law. These are vital to maintaining high levels of environmental protection post-Brexit (Draft clauses 17-29). For example, at the inception of an enforcement process, the OEP will issue an 'information notice', presenting reasons why it believes environmental law has been breached, and in the case of serious failure, can issue a 'decision notice' suggesting remedial steps. There is, however, no legal requirement for public authorities to comply. In the event of continued non-compliance, the OEP can apply for a judicial review, however such reviews have serious limitations, including time delays, costs and loss of effective negotiation mechanisms<sup>11</sup>.

The bill's provisions appear superficially similar to the EU's infringement procedure<sup>12</sup>, however, there are key differences. EU members are legally bound to apply the infringement procedure and where a breach has occurred the Commission can take member states to the European Court of Justice and levy punitive fines<sup>13</sup>. The bill, however, restricts the OEP's ability to conduct investigations and fails to provide it with effective enforcement remedies. It cannot, impose fines, put public authorities into special measures or strip them of powers, all of which would act as significant deterrents.

Accordingly, enhanced enforcement powers for the OEP are essential to ensure preventative and remedial action takes place where public health is at risk. The power to address high levels of air pollution, which increases the risk of numerous adverse health conditions and has been linked to increased breast cancer risk<sup>14</sup>, provides an example of where robust enforcement action is required. Without such capabilities the OEP is not fit for purpose, threatening its effectiveness and long-term sustainability. As proposed the OEP, far from being world leading, is purely a toothless watchdog.

#### BCUK Public Policy Proposals

- **To enable the OEP to address breaches of environmental law, its enforcement powers must be expanded to enable it to conduct investigations and inquiries.**
- **To ensure compliance with OEP decisions, their notices must be legally binding.**
- **To instigate preventative and remedial action, the OEP must be able to issue compliance orders by applying to a court or environment tribunal.**
- **To ensure public authorities' compliance with a court/tribunal order, the OEP must have the deterrent power to issue remedies and impose fines.**

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<sup>11</sup> Friends of the Earth (2017) 'Judicial Review: An Introduction' available at:

<https://cdn.friendsoftheearth.uk/sites/default/files/downloads/JR%20-%20Part%201.pdf> (Accessed: 30<sup>th</sup> May 2019)

<sup>12</sup> European Commission (2019) 'Infringement procedure' available at: [https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure\\_en](https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en) (Accessed 30<sup>th</sup> May 2019)

<sup>13</sup> Carrington, D (2018) 'UK taken to Europe's highest court over air pollution' The Guardian, available at: <https://www.theguardian.com/environment/2018/may/17/uk-taken-to-europes-highest-court-over-air-pollution> (Accessed 30<sup>th</sup> May 2019)

<sup>14</sup> Yaghivan, L et al (2017) 'Association between air pollution and mammographic breast density in the Breast Cancer Surveillance Consortium', Breast Cancer Research 19 (1): 36, available at: <https://www.ncbi.nlm.nih.gov/pubmed/28381271> (Accessed 30<sup>th</sup> May 2019)