

The Rt Hon Thérèse Coffey MP
Department for Environment, Food and Rural Affairs
2 Marsham Street
London
SW1P 4DF

6 July 2023

By email only

Dear Secretary of State,

The Retained EU Law (Revocation and Reform) Act

You may be aware that the OEP submitted evidence¹ at the House of Commons Committee stage of the Retained EU Law (Revocation and Reform) Bill's consideration. I am taking the opportunity to write to you on two matters now that the Bill has received Royal Assent.

Ensuring that there is no regression of environmental protection

Environmental safeguards were not written into the Act, contrary to the advice of the OEP and others, but we have welcomed publicly the assurances from Government that environmental protections will not be weakened as a result of the Act, and that international commitments will be upheld.

Schedule 1 to the Act lists for revocation regulations 9 and 10 of the National Emission Ceilings Regulations 2018 (NECR). Your officials have explained the rationale. In short, the format of the National Air Pollution Control Programme (NAPCP) is thought to be lengthy, complex, and difficult for stakeholders to engage with.

The provisions are also said to be duplicative. In our view, however, there are no statutory requirements akin to regulations 9 and 10. There may well be some policy duplication, but no legally binding equivalent requirements exist.

We have previously commended the NAPCP, as it coherently and transparently provides detailed delivery plans for reducing emissions of all five targeted air

¹ [OEP submission to the Retained EU Law Bill Committee | Office for Environmental Protection \(theoep.org.uk\)](https://www.theoep.org.uk/consultations/retained-eu-law-bill)

pollutants.² The NECR also drives review and triggers improvement of plans³, allowing for corrective measures to be put in place to keep Government on track to meet air quality targets. The UK did not meet the emission reductions required for PM2.5 in 2021 which could have implications for future ambient concentrations and therefore the Environment Act PM2.5 targets, highlighting the need for the timely implementation of necessary changes to policies and measures.

In our view, the revocation of these regulations weakens accountability and transparency and – in the absence of an alternative, comprehensive plan – it has the potential to weaken environmental protection.

Our counterpart body in Scotland, Environmental Standards Scotland, has made representations about particular concerns in Scotland, where it also believes there are no potentially duplicative provisions in place.⁴ As our remit extends to Northern Ireland, we bring to your attention an increased risk in that jurisdiction also, as there is less scope for alternative cover in other legal or policy frameworks there.

Given the adverse impacts of revocation in the wider UK and in England, we look forward to seeing how the key attributes of these regulations that are not currently duplicated in other legislation are maintained, either in new legislative provisions or in other suitably robust ways. This appears necessary, if government is to fulfil its commitment to non-regression.

Implications for assimilated environmental REUL

We note that for REUL that will be assimilated under the Act, further action will be required if environmental protections are to be maintained. As you will be aware, without restatement under the powers of the REUL Act, directly effective rights and general principles of EU law will be lost at the end of this year. The Act also makes changes to retained case law. This could have negative implications for environmental law, either by weakening its protections or by creating a potentially protracted period of uncertainty. I know that your officials will be considering this.

In taking forward the Government's legislative programme for restatement of REUL under the Act's provisions, we understand there is a commitment to prioritise environmental protection and international commitments, which is welcome. We look forward to seeing assessment of the implications of the Act for directly effective rights, principles and case law that underpin environmental law. We will be interested to see how any risks will be addressed before the end of this year to ensure there is no weakening of environmental protections as the Government has committed to.

There is potential here, through the new Act and the application of the Environmental Principles Policy Statement made under the Environment Act 2021, to improve our law and policy making in a way that can increase the prospects of Government succeeding in its ambitions for the environment. However, there are also immediate risks of regression. We urge that Government seize this opportunity to ensure we

² [Progress in improving the natural environment in England, 2021/2022 | Office for Environmental Protection \(theoep.org.uk\)](#) (page 68).

³ Regulation 9 of the NECR contains a legally binding requirement for the NAPCP to be reviewed where an annual inventory shows an emission reduction commitment has been exceeded, or a projection suggests there is a risk of a future exceedance.

⁴ <https://www.environmentalstandards.scot/wp-content/uploads/2023/06/Correspondence-Mark-Roberts-to-Clare-Adamson-MSP-CEEAC-Committee-REUL-Bill-20230605.pdf>

have a legal framework in the best possible shape to support delivery of the commitments and ambitions set out in the Environmental Improvement Plan.

Yours sincerely



Dame Glenys Stacey
Chair of the Office for Environmental Protection



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