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PRE-LEGISLATIVE SCRUTINY OF THE DRAFT ENVIRONMENT (PRINCIPLES AND GOVERNANCE) BILL

Thank you for your letter dated 29th March regarding your outstanding questions following the evidence session, which I am pleased to answer.

Exclusion of climate change from the enforcement function of the OEP

I note the range of views that have been heard during the evidence sessions and it is clear that while stakeholders have raised concerns about a governance gap in relation to the enforcement of climate change legislation, they also recognise the strength of the Climate Change Act and want to protect the role of the Committee on Climate Change.

I therefore recognise that following EU Exit there may be a governance gap in relation to EU climate change law currently enforced by the European Commission. This was a point highlighted by the Committee on Climate Change, who also made clear that any action to address such a governance gap need not extend to domestic climate change legislation given the robust framework already in place under the Climate Change Act.

The exact nature of our future relationship with the EU also remains a matter for negotiation, including any future obligations in relation to regulatory enforcement. The Government will therefore continue to consider this issue carefully and may need to review our approach to enforcement of climate change legislation after any wider enforcement requirements arising from our future relationship with the EU have been negotiated.

The OEP as a Parliamentary Body

We are committed to ensuring that the OEP should be accountable to Parliament and operationally independent of government, and we have examined several options for achieving this, including establishing a Parliamentary body.

The Government explained why the OEP has not been established as an emanation of Parliament in its response to the Environmental Principles and Governance consultation and the Draft Environment (Principles and Governance) Bill Statement of Impacts. These

documents explain that it would be inappropriate in constitutional terms for an emanation of Parliament to litigate against the government, given the well-established constitutional boundaries within which Parliament currently operates. If a Parliamentary Body were to be given the power to initiate legal enforcement proceedings against government this would represent a fundamental change in the role of Parliament since Parliament has never taken legal enforcement action against the executive. In summary therefore, the Government's position is based on constitutional principles, rather than on legal issues or advice.

Establishing the OEP as a Parliamentary Body within the current constitutional boundaries of Parliament could either mean a governance gap due to a lack of suitable enforcement functions, or could require the setting up an additional body to carry out the enforcement functions. This could result in increased delivery costs and relevant expertise being split across bodies.

We therefore consider that setting up the OEP as a Non-Departmental Public Body (NDPB) would allow it to operate efficiently while remaining operationally independent of government, which is of course a key consideration for the committee and for my Department. There are several examples of NDPBs with similar functions to the OEP which successfully operate independently of government. For example, the Equality and Human Rights Commission is an NDPB with similar functions to the OEP, and regularly intervenes in legal action against Government. In 2016 it intervened in a judicial review against the Government involving the spare room subsidy.

We will continue to carefully consider these issues as we finalise the Bill, and will fully consider the Committee's views as part of that process. I very much welcome the work of the Environmental Audit Committee during the pre-legislative scrutiny stage of the Environment Bill and look forward to the Committee's report in due course.

Thank you again for your letter.

With every good wish,

Michael Gove

*Yours,
Micheal*