

Energy UK response to the Environmental Audit Committee's 25-Year Environment Plan Inquiry

28th February 2018

About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 730,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing lifelong employment as well as quality apprenticeships and training for those starting their careers. Annually, the energy industry invests over £11bn, delivers £88bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

Executive Summary

1. Energy UK and our members welcome the opportunity to provide this submission into the Environmental Audit Committee's 25-Year Environment Plan Inquiry. This response has been developed by our Planning Sub-Committee and Environment and Climate Sub-Committee. We welcome the ambition of the Plan and recognise the value that this central long-term vision provides to Government, the environment and industry alike.
2. We believe that this Plan sets out a positive vision for the UK's environment, however from the point of view of the energy sector it lacks objectives that are specific, measurable and time bound. It is therefore difficult for Energy UK and our members to identify any specific success criteria for the Plan. We also have an overall concern that if existing environmental laws and principles are not enshrined in UK laws once the UK leaves the EU this would be a failure of the spirit of the plan.
3. We believe that it is important that the Government consults on the detail of future environmental legislation with a wide range of stakeholders to ensure that it delivers the best outcomes for the environment, the public and UK industry. We are particularly interested in the detail of the proposed consultation on the principle of environmental net gain in developments, and in the forthcoming overarching chemicals strategy. We hope that the more detailed proposals which the Government will publish for consultation will provide some of the necessary detail that we highlight in this response.
4. As we move towards Brexit it is essential that Defra and its agencies are appropriately resourced and funded to deliver their increased remit as the European Union's role diminishes. The publication of the 25-Year Environmental Plan emphasises the criticality for effective and efficient agencies, ensuring that development can be expedited and environmental protection ensured. We are cognoscent of the strains placed on agencies of late and have consistently provided support as far as is practicable with our members hosting Marine Management Organisation staff for induction and industry training and sabbaticals. However, we are concerned regarding the Government's ability to create and implement the legislation and administrative bodies necessary to achieve the aims of the 25-Year Environmental Plan.
5. Furthermore, the legislative uncertainty faced by the energy sector, which will persist until the outcome of the negotiations to leave the EU is known, makes it difficult for us to analyse gaps in existing legislation. Also, whilst we welcome the creation of a new, independent statutory

body, in principle, we are keen to see further details from Government on the proposed role and responsibilities of this body. It is important that such an organisation has the resource, remit and powers necessary to hold industry and Government alike to account and protect the UK's environment for years to come.

6. For more detail about the questions posed within the consultation document please refer to the responses submitted by our members. Should you have any questions regarding this consultation response then please do not hesitate to get in touch via the details below.

I can confirm that this response may be published on the Parliamentary website.

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Ambition and Reporting

To what extent does the Plan set a sufficiently ambitious agenda across Government? How far do the objectives, targets and indicators set out in the plan reflect a higher level of ambition than existing targets (including European Union targets and the Sustainable Development Goals) and current performance? Are there any major gaps?

7. Given the lack of clarity as to the UK's future relationship with the EU, it is difficult for Energy UK and our members to assess the level of ambition in the Plan, as we are unsure about the degree to which UK aims and objectives could diverge from the EU's.
8. As an overarching principle, we support the Government's commitment to "*upholding environmental standards as we leave the European Union*". We believe that the Government should clarify this commitment and explain whether this means upholding the existing environmental standards of the EU, or upholding these standards and improving them as the EU improves them in the future. We would encourage the Government to ensure that environmental protection standards and principles are maintained post Brexit as any weakening of environmental standards would be to the detriment of the industry and environment alike.

Ambition and Reporting

What would success or failure look like for the Plan? To what extent will the Government's proposals for reporting on the Plan allow for proper scrutiny of its performance against its objectives? Are the commitments to legislative action in the Plan sufficient to ensure it will endure beyond the current Parliament?

9. Energy UK and our members have not been able to identify any new commitments to legislative action that are specifically targeted at the energy industry. Although we are interested in the Government's intention to consult on the principle of environmental net gain in developments, we note that at present there is only a commitment to consult on this and we cannot comment on this until a proposal is put forward for consultation. We are also interested to see what commitments will be set out in the Government's overarching Chemicals Strategy, but were disappointed to hear the Parliamentary Under Secretary of State for the Environment state that she "*certainly [does] not anticipate that the strategy will be published this year, because our main focus is implementing a smooth transition and continuing existing regulations*". We therefore cannot assess the objectives and the criteria for success of this plan until the UK has left the EU. As the Government looks to develop its ambition in more detail, we would urge the Government to undertake a series of public consultations throughout 2018 and 2019 with industry and environmental organisations as the Government seeks to set out and deliver upon its ambition.
10. Energy UK and our members view the principles behind net gain as broadly positive. However we would encourage the Government to substantiate them with further detail and clarification as to how the principles will be measured and whether they will be mandated. We would expect the forthcoming consultation on the new independent environmental body to provide detail on the role of this new independent body in scrutinising Government's performance in delivering the 25-Year Environmental Plan.
11. Energy UK and our members would generally consider a failure to enshrine existing environmental laws and principles in UK laws once the UK leaves the EU to be a failure of the spirit of the plan; there should be a consultation in the future which clarifies this. In the short term a degree of certainty on this may be provided by the EU Withdrawal Bill. However, in the longer term it is important that the Government ensures that industry is engaged in the consultation process when producing new environmental legislation.
12. We believe that it is important that it is recognised that there is significant legislative uncertainty faced by our sector that will persist until the outcome of the negotiations to leave the EU is known and a lack of clarity in light of the current Brexit negotiations. Furthermore, it

is worth noting that this makes it difficult for us to analyse gaps in existing legislation, as the effect that this legislation will have in the future is unclear. We are also concerned that, the legislative programme and Parliamentary time is currently, and will continue to be, dominated by Brexit. It should therefore, be acknowledged that the legislative challenges faced in constitutional issues linked to the UK's membership of the EU will make it challenging to introduce any new environmental legislation required to fully implement the 25-Year Environmental Plan. Energy UK and our members would expect the 25-Year Environmental Plan and the EU Withdrawal Bill will ensure that existing environmental law and principles are enshrined in a UK regulatory system. We would expect a public consultation on future legislative proposals to introduce the 25 Year Environmental Plan to be held before the 29th March 2019 which clarifies this. As well as Parliamentary time, we are concerned about Defra and its agencies' ability to resource the work needed to bring in new legislation, given the existing pressures of their budgets.

13. Members of the Environmental Audit Committee may additionally be interested in knowing that remaining in the Internal Energy Market is likely to require UK based participants to adhere to EU environmental targets and ambitions. As it is currently unclear what the outcome of the Brexit negotiations to leave the EU will be, Energy UK members are considering how they would operate in a scenario where they are indirectly required to comply with EU environmental law in order to participate in this market. Industry continues to question whether Defra, and the associated environmental public bodies, have the necessary resources available to deliver on the raft of proposals outlined within the 25 Year Environmental Plan.

Implementation

The Plan sets out a natural capital-led approach and a principle of “environmental net gain” when undertaking development. What are the risks and benefits of adopting these approaches? What steps need to be taken during development and implementation to ensure they lead to positive environmental outcomes, especially in respect of biodiversity?

14. Whilst we welcome the UK Government acknowledging the importance of a natural capital-led approach within the 25-Year Environmental Plan, we and our members have a number of questions pertaining to the definition of “environmental net gain”. Clarification is required as the definition remains unclear, namely whether environmental net gain means offsetting biodiversity which has been lost during development or rebuilding biodiversity following a site's use or indeed both. The net gain approach proposed appears to be quite different to previous views around biodiversity offsetting. Our understanding is that net-gain is site-based and those improvements must be done on the development site rather than being offset elsewhere. We are concerned that the new approach could represent a significant change from the existing requirements for development and believe more detail is needed on this before we can assess its relative merits.
15. In particular, more detail is needed on how local to the site the Defra believes environmental net gain should be. We also believe that guidance from Defra is required as to how gains in biodiversity as a result of development on a site should be accounted for. Such gains in biodiversity often occur around marine energy infrastructure, such as power station outflows and offshore wind farm foundations.
16. We believe that a natural capital-led approach could be an effective way of delivering the Government's aims; however, this can only be achieved if there are accepted and approved common tools and methodologies for evaluating natural capital. We and our members are concerned that the proposed concept goes beyond the resourcing of Defra and its agencies to assess natural capital appropriately and will need to work with a wide range of stakeholders to ensure that assessments are properly carried out. Using natural capital tools is a new approach and the introduction of this methodology sets a major precedent in environmental management in the UK; the application of this approach requires a clear strategy and vision from Defra and its agencies.

17. We therefore believe that before natural capital tools and methodologies are developed and introduced Defra should produce and consult upon a vision for their application. This vision should also specify which organisation(s) would own these tools, and the review processes to which these tools would be subject. As such, we would strongly recommend that the natural capital-led approach should be delayed to allow the Environment Agency (EA) adequate time to properly consult upon the most suitable methodology to be adopted. It is important that once this vision has been created, the new tools and approaches are trialled and assessed before being fully adopted. Neither the EA nor Defra have, as far as we are aware, consulted with key stakeholders on this proposal. Given that it is a significant change to existing policy, we would have expected a greater level of prior engagement with Defra. An open, consultative approach to the development of the vision, tools and the methodologies would help to ensure that a consistent approach is taken to their use and development, and would give stakeholders confidence that the tools that they are required to use are well designed and fair. We anticipate that natural capital tools and methodologies will be used increasingly in the future. Application of a natural capital approach requires a clear strategy and vision from the EA, Defra and wider Government on natural capital. Therefore, we recommend that the EA publishes its vision for the future use of natural capital tools and methodologies (perhaps as part of the forthcoming review of its Regulatory Strategy) and publically consults upon it before producing tools, methodologies and guidance on natural capital to ensure that its approach is consistent and coherent.
18. We would also expect Defra and its agencies to develop and introduce tools and methodologies for assessing the value of natural capital, which should again be subject to public consultation in advance of their introduction Defra should produce and consult upon a vision for the use of these tools. This is important to ensure that a consistent approach is taken across Government on the use and development of these tools. We also recommend that Defra develops further guidance to support its natural capital approach including the form of worked examples of its implementation would be helpful to operators. We suggest that these examples should cover a range of scenarios to help operators understand how they will be expected to use these.
19. Furthermore, we would appreciate clarity as to how the 25-Year Environmental Plan interacts with the long-established concept of “best available techniques” (BAT) for industrial environmental regulation. We believe that the Government will need to specify the approach for developments where site-specific assessments would trigger payments/taxes for residual impacts on the environment and associated potential loss of natural capital/biodiversity, even though environmental quality standards have been met and BAT has been applied.

Implementation

To what extent does the Plan set out effective delivery mechanisms to ensure DEFRA, other Government departments and public bodies have the resources and responsibilities to implement it? Where should the Government seek agreement with the Devolved Institutions to ensure a common approach across the UK?

20. Energy UK and our members have concerns regarding the adequacy of the funding and resource allocated to Defra and its agencies to deliver the Plan. Ambitions set out in the 25-Year Environmental Plan and the cross-Governmental aspiration to further build the UK's 'blue economy' of marine industries is predicated upon a robust and fit-for-purpose set of regulators and industry bodies. At present, Natural England and the MMO are facing challenging financial pressures and are struggling to resource their offshore wind advisory function despite their discretionary consultancy service. Energy UK and our members' interactions with these organisations make it clear that their senior leadership teams are aware of the problems pertaining to funding. Operators are currently supporting agencies by providing training to the staff at the MMO and Natural England and have found this to deliver beneficial outcomes for operators and regulators. However, we are concerned that increasing pressure on the budgets of Defra's executive agencies could lead individual operators and sector groups facing excessive charges, for example if agencies were unable to recover the full cost of regulation from certain sectors and seek to recover the shortfall from other regulated industries where they cannot properly recover their costs.

21. Energy UK and our members support the Government's aim to ensure that environmental standards and their enforcement remain robust post-Brexit, however, we are concerned that financial pressures faced by Defra and its agencies may affect their ability to achieve this and these issues may only be further exacerbated. Furthermore, the proposals to establish a new, independent body will need considerable consideration and consultation should they be proceeded with. Delivery of the 25-Year Environmental Plan is predicated on good governance and appropriate resourcing for the Department and its agencies despite existing resource constraints and those caused by Brexit.
22. With regards to devolved institutions, Energy UK and our members believe that there should be a single body or committee responsible for the development of visions, tools and methodologies for natural capital in the environment across the UK to encourage consistency and a level playing field. This would ensure that values are applied consistently to natural capital assets. We would also support a common approach to environmental standards and their enforcement across the UK. As a minimum a consistent approach across Great Britain would match the geographic reach of the energy market and participants' desire for consistency within it that market. We would therefore expect to ensure this consistency, the Government should informally discuss and formally consult upon its proposals for any delivery mechanisms with the devolved administrations to ensure that there is no divergence in approach or differing priorities on issues such as natural capital. We believe that this is particularly the case for any natural capital tools and methodologies as it is important for the Government to recognise that, whilst the ecosystem services delivered by natural capital assets may vary depending on their location, it is not the status of the location that causes the variance.

Principles and Oversight

The Government has proposed an independent statutory body to “champion and uphold environmental standards as we leave the European Union”. What role, legal basis and powers will it need to ensure the Government fulfils its environmental obligations and responsibilities? How do these compare to the role of the European Institutions in the existing arrangements? What standard would it have to meet to be “world leading”?

23. Energy UK and our members do not believe that there is sufficient detail about the remit of the proposed body in the 25-Year Environmental Plan to make detailed comments about the legal basis or powers of this body. We believe that the Government should identify in detail the legislative gap that the body would fill and specify the way in which this body would be resourced and structured. The objectives for any new independent statutory body should also be very clearly and carefully set out with its targets, duties and powers all being provided in detail.
24. We would like to highlight the Government's responsibility to consult on the detail of future environmental legislation with a wide range of stakeholders to ensure that deliver the best outcomes for the environment, the public and UK industry. We look forward to providing detailed feedback when this information is provided and the Government publish the consultation on the independent statutory body for the appropriate level of scrutiny.

Principles and Oversight

The Plan sets out a series of objectives and the Government says it will consult on a policy statement on environmental principles to underpin policy-making after leaving the European Union. What principles should the Government include as part of that consultation? What legislation might be needed?

25. Energy UK and our members support the polluter-pays principle and the precautionary principle. We would support these principles being enshrined in future legislation but would like to highlight the Government's responsibility to consult on the detail of future environmental

legislation with a wide range of stakeholders. New legislation needs to reinforce those principles already in place in the EU and all principles need to be reviewed and considered against how legislation is being implemented nationally.