

13 December 2021

<b>Report of</b>	<b>Assistant Director of Place and Client Services</b>	<b>Author</b>	<b>Karen Syrett</b>
			<b>506477</b>
<b>Title</b>	<b>The Environment Act</b>		
<b>Wards affected</b>	All		

## 1. Executive Summary

- 1.1 This report is for Members' information and provides an overview of the recently published Environment Act.
- 1.2 Legislation that is intended to protect and enhance our environment for future generations has now passed into UK law. Through the Act, the Government proposes to 'clean up the country's air, restore natural habitats, increase biodiversity, reduce waste and make better use of our resources. It will halt the decline in species by 2030, require new developments to improve or create habitats for nature, and tackle deforestation overseas. It will help us transition to a more circular economy, incentivising people to recycle more, encouraging businesses to create sustainable packaging, making household recycling easier and stopping the export of polluting plastic waste to developing countries.'
- 1.3 These changes will be driven by new legally binding environmental targets, and enforced by a new, independent Office for Environmental Protection (OEP) which will hold government and public bodies to account on their environmental obligations.
- 1.4 The following are particularly relevant under the nature heading;
  - Strengthened biodiversity duty
  - Biodiversity net gain to ensure developments deliver at least 10% increase in biodiversity
  - Local Nature Recovery Strategies to support a Nature Recovery Network
  - Duty upon Local Authorities to consult on street tree felling
  - Strengthen woodland protection enforcement measures
  - Conservation Covenants
  - Protected Site Strategies and Species Conservation Strategies to support the design and delivery of strategic approaches to deliver better outcomes for nature
  - Prohibit larger UK businesses from using commodities associated with wide-scale deforestation

## 2. Recommended Decision

- 2.1 No decision is required since the report is for information and noting only.

**3. Reason for Recommended Decision**

3.1 The report provides an update on national policy.

**4. Alternative Options**

4.1 The option of not updating Members was rejected given the importance of Members needing to understand the planning implications of the Environment Act.

## 5. Background Information

- 5.1 Legislation that is intended to protect and enhance our environment for future generations has now passed into UK law. The Environment Act received Royal Assent on 9 November 2021. A 234 page Explanatory Notes document was published alongside the Act [Environment \(legislation.gov.uk\)](https://www.legislation.gov.uk)
- 5.2 Work on implementing Environment Act policies is well underway. Work has started on developing legally binding environmental targets, and the government have launched [consultations on the deposit return schemes for drinks containers](#), [extended producer responsibility for packaging](#) and [consistent recycling collections](#) which will change how rubbish is dealt with.
- 5.3 A [draft Principles Policy Statement](#) has also been published.
- 5.4 The [Office for Environmental Protection was set up in an interim, non-statutory form in July](#), providing independent oversight of the Government's environmental progress and accelerating the foundation of the full body. The OEP will formally commence its statutory functions shortly.
- 5.5 The Environment Act is intended to deliver:
- Long-term targets to improve air quality, biodiversity, water, and waste reduction and resource efficiency
  - A target on ambient PM2.5 concentrations, the most harmful pollutant to human health
  - A target to halt the decline of nature by 2030
  - Environmental Improvement Plans, including interim targets
  - A cycle of environmental monitoring and reporting
  - Environmental Principles embedded in domestic policy making
  - Office for Environmental Protection to uphold environmental law
- 5.6 There are a number of implications arising from the Act for the Planning Service;
1. All new developments will be required to deliver a ten per cent increase in biodiversity. Over the course of the bill's passage, the act was strengthened so that a ten per cent biodiversity net gain requirement on developers would extend to nationally significant infrastructure projects, such as major energy developments.
  2. The 30-year minimum biodiversity net gain duration can be reviewed by the secretary of state. The bill introduces a ten per cent biodiversity net gain requirement for all new developments. On sites where these biodiversity gains are secured, they would have to be managed for at least 30 years. A government amendment, introduced in September, would create a duty and power to allow the secretary of state to review, and increase if appropriate, this minimum duration period. According to Defra (Department for Environment, Food and Rural Affairs), the change "will allow this important aspect of the policy to be reviewed after government has evaluated the early years of mandatory biodiversity net gain practice, to understand how developers can make a positive impact on nature from their work".
  3. The new biodiversity metric, used by planners and developers to calculate their net gain requirement, would be subject to Parliamentary approval. Another government amendment would require the secretary of state to "lay the biodiversity metric and any revised biodiversity metric before Parliament".

4. Ministers would have to review the amount of land being entered onto new biodiversity gain site registers.

Under the bill, a publicly-available "biodiversity gain site register" must be set up for each development site, which must be maintained for at least 30 years after the scheme has completed. There is no clarity as to how this will be done but it is implied elsewhere that this will be detailed in secondary legislation in the next two years. A government amendment specified that the secretary of state must "keep under review [...] the supply of land for registration in the biodiversity gain site register". He must also review "whether the period for which habitat enhancement must be maintained could be increased", though any changes to this timescale must be done "without adversely affecting" the land supply in the register.

5. The act introduces a new system of spatial plans aiming to boost biodiversity and protect valuable habitats.

Local Nature Recovery Strategies (LNRSs) are a new system of spatial strategies for nature, and will cover the whole of England – with no gaps. The environment secretary will appoint a 'responsible authority' to lead each LNRS area, and this authority will have to map the most valuable existing habitat for nature, map specific proposals for creating or improving habitat, and agree priorities for nature's recovery. These responsible authorities are assumed to be county level and above partnerships e.g. Local Nature Partnerships. It is intended to help developers avoid the most valuable existing habitat and focus habitat creation where most appropriate. However, a recent consultation mooted a landowner opt-out from LNRSs. A government amendment would introduce a requirement for the secretary of state to give statutory guidance to local planning authorities explaining "how they should take into account new Local Nature Recovery Strategies. Officers are a little sceptical that this will provide any more detail than already exists through Local Plan mapping of LoWS, SSSIs, SPAs etc, plus the readily available protected habitat data on Magic Maps, along with up to date Green Infrastructure strategies.

6. Species conservation and protected site strategies will be part of LNRSs

Feeding into LNRS, the act introduces a "species conservation strategy" as a new mechanism to safeguard the future of particular species at greatest risk, and a "protected site strategy", which will seek to achieve a similar purpose in respect of protected sites. The measures will place a new duty on local planning authorities to cooperate with Natural England and other local planning authorities and public bodies in their establishment and operation. However, green groups expressed significant concerns with the strategies last year.

7. The act introduces the power for the Habitats Regulations to be amended by the government

Earlier this year George Eustice announced his plan to "refocus" the Habitats Regulations to deliver creative public policy thinking that delivers results, "rather than relying on change being set principally by litigation and case law". This prompted concern from green groups who fear the new power will be used to water down the regulations, which contain some of the UK's strongest legal protections for rare habitats and species, and which have also been known to scupper the plans of developers.

8. Local authorities will have to produce a biodiversity report every five years

Local authorities will be required by the act to produce a 'Biodiversity Report' every five years. They will need to describe action taken and its impact, and a summary of action taken under the BNG policy. The reports will also provide valuable information to update Local Nature Recovery Strategies.

9. The act created a new green watchdog for England and Northern Ireland to uphold environmental laws

The Environment Act establishes the Office for Environmental Protection (OEP), the new green watchdog for England and Northern Ireland - subject to the Northern Ireland Assembly approving it. It is intended to hold public authorities, including ministers, to account if they fail to comply with environmental law.

10. The government gave some slight ground in a new amendment which concerns the court's ability to grant legal remedies where environmental laws have been breached. Peers had argued that earlier wording in the Environment Bill restricted this power. The new amendment acknowledged that in some circumstances granting a remedy to address behaviour or damage will be necessary even if it may cause substantial hardship to the rights of a third party – something peers had argued for.
11. The act requires organisations to 'pay regard to' environmental principles – with some crucial exceptions.

The five principles comprise the integration principle, prevention principle, precautionary principle, rectification at source principle, and the polluter pays principle. However, the Ministry of Defence and the Treasury are both exempt from this part of the bill. The principles are for guidance and tax and spend and defence policy are exempted. The first advice to the government from the OEP was on this issue and they strongly articulated the value of all government departments fully taking account of the statement on environmental principles.

12. The environment secretary will be required to set legally binding targets - but not interim ones.

The act requires the secretary of state for Defra to set long-term legally binding targets on air quality, biodiversity, water, resource efficiency, and waste reduction. These targets must be of at least 15 years in duration and be proposed by late 2022. However, despite lengthy debates arguing for the introduction of legally binding interim-targets to ensure the long-term targets are met, the government did not adopt them.

13. But non-legally binding interim targets will be monitored as part of the government's Environment Improvement Plan

The Environment Bill requires the government to publish an Environmental Improvement Plan (EIP). The government has pledged to set interim targets for each five-year period and lay out the steps it intends to take to improve the natural environment. The 25-Year Environment Plan will be adopted as the first EIP. The OEP is intended to hold the government to account for meeting these targets.

14. However, air quality targets will be set in the future

The act introduces a duty on the government to bring forward at least two air quality targets by October 2022 for consultation that will be set in secondary legislation. The first will aim to reduce the annual average level of fine particulate matter (PM2.5) in ambient air. The second will be a long-term target (set a

minimum of 15 years in the future), which the government says “will encourage long-term investment and provide certainty for businesses and other stakeholders”. An environmental targets policy paper published in August 2020 states that a target on reducing population exposure to PM2.5 would be put in place. The government says the “principle of a population exposure reduction target is to prioritise action that is most beneficial for public health and drive continuous improvement”.

#### 15. The Environment Act 2021 amends the Environment Act 1995

The new legislation amends the Environment Act 1995 to “strengthen the local air quality management (LAQM) framework to enable greater cooperation at local level and broaden the range of organisations that play a role in improving local air quality”, says Defra. “Responsibility for tackling local air pollution will now be shared with designated relevant public authorities, all tiers of local government and neighbouring authorities.” The environment secretary will be required to review the Air Quality Strategy at least every five years, and to publish an annual progress report to parliament.

#### 16. The act also amends the Clean Air Act 1993 to give local authorities more power

The amendments are aimed at helping local authorities reduce pollution from domestic burning, which contributed 38 per cent of PM2.5 emissions in 2019. It replaces the criminal offence of emitting smoke from a chimney in a smoke control area with a civil penalty regime to “enable quicker, simpler and more proportionate enforcement at a local level against the emissions of smoke within a smoke control area (SCA)”. It also strengthens the offences in relation to the sale of certain solid fuels for use in smoke control areas, by “removing the limit on the fine for delivering unapproved solid fuels to a building in a smoke control area, and requiring retailers of solid fuels to notify customers that that it is illegal to buy unapproved fuel for use in a smoke control area unless burning in an approved appliance”.

#### 5.7 Other key measures in the Act:

Trees at home and abroad – have gained some protection. The act requires local highway authorities to consult with communities before felling street trees - unless the trees qualify for certain exemptions. This could have resource and financial implications for LA's. The act also contains a whole section on deforestation abroad.

The Act committed to halt species decline by 2030. Campaigners fought hard for the government to include a target to halt species decline by 2030 on the face of the bill, as opposed to the original wording of simply “furthering the objective” to halt declines. This is in addition to the requirement to set at least one long-term legally binding target for biodiversity.

Conservation covenants have been formalised. A conservation covenant is an agreement between a landowner and a body such as a charity or public body to do or not do something on their land for a conservation purpose. Conservation covenant agreements will now need to be executed as deeds, rather than just “in writing signed”.

## 6. Equality, Diversity and Human Rights implications

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link:

## **7. Strategic Plan References**

- 7.1 The most relevant theme in the Strategic Plan is concerned with tackling the climate challenge and leading sustainability.

## **8. Consultation**

- 8.1 N/A

## **9. Publicity Considerations**

- 9.1 The Council

## **10. Financial implications**

- 10.1 There are financial implications resulting from the provisions of the Environment Act. The full extent of these is still to be seen but additional expertise either in house or via consultants is likely to be required.

## **11. Health, Wellbeing and Community Safety Implications**

- 11.1 Local Plan policies provide a basis for future development that is intended to support the health, wellbeing and community safety of Borough residents.

## **12. Health and Safety Implications**

- 12.1 No direct implications.

## **13. Risk Management Implications**

- 13.1 An understanding of the implications of the Act is likely to reduce the risk of inappropriate development being permitted and ensure the new measures are implemented.

## **14. Environmental and Sustainability Implications**

- 14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.
- 14.2 The Environment Act is intended to clean up the country's air, restore natural habitats, increase biodiversity, reduce waste and make better use of our resources