

Environment Bill 2019

17 October 2019

Introduction

DEFRA published the Environment Bill on Tuesday 15th October 2019. The Bill has been introduced to support the delivery of the 25 Year Environment Plan (published in January 2018). It is also an opportunity for the Government to indicate its commitment to some of the key issues being raised by the public around climate change, loss of biodiversity and environmental risks to public health.

The LGA has been involved in the development of various policy aspects of the Bill, including the waste consultations, governance consultation and regular engagement around air quality and biodiversity.

- The full bill can be accessed at: <https://services.parliament.uk/Bills/2019-20/environment.html>
- The LGA press statement can be accessed at: <https://www.local.gov.uk/about/news/queens-speech-lga-responds-environment-bill-0>

Key Messages

- The Environment Bill places specific environmental responsibilities on the Government which have previously been held by the EU. It supports the delivery of the 25 Year Environment Plan and seeks to address some of the key concerns the public has about environmental issues
- The Bill is an enabling document. It sets the framework for what the Government wants to deliver but doesn't contain all of the policy detail we would be seeking, as this will follow through subsequent work streams and secondary legislation.
- The Bill is structured around the following key themes:
 - Governance (including environmental principals, targets and establishment of Office for Environmental Protection OEP)
 - Waste and resource efficiency
 - Air quality
 - Water
 - Nature and biodiversity (including trees and conservation covenants)
- The policy statement which accompanies the Bill has a specific section on delivering environmental ambition at the local level:

<https://www.gov.uk/government/publications/environment-bill-2019/environment-bill-policy-statement#delivering-environmental-ambition-at-the-local-level>

This section argues that the role of local leaders is being bolstered to provide additional powers and flexibilities to deliver action. In doing so it highlights the following:

- Increasing and improving council powers to address environmental challenges in local areas
- Mandating biodiversity net gain
- Supporting local authorities to be place shapers through new spatial planning tools

The Bill contains a significant number of measures and points to a new environmental relationship between local and national government. There is potentially greater responsibility for the environment sitting with local councils. The LGA is keen to ensure that new responsibilities are fully funded and that councils have the support and capacity they need to deliver on these ambitions.

1. Governance

The Bill legally obliges policy-makers to have due regard to the environmental principles policy statement when choosing policy options, for example by considering the policies which cause the least environmental harm. The principles are:

- 1) environmental protection should be integrated into policy making
- 2) preventative action to avert environmental damage
- 3) the “precautionary” principle
- 4) environmental damage should as a priority be rectified at source
- 5) the “polluter pays” principle

A new statutory cycle of target setting, monitoring, planning and reporting will be introduced. Statutory Environmental Improvement Plans (EIPs; the first being the 25 Year Environment Plan) and a new framework for setting long term legally binding targets will be integral to this cycle. The legally binding targets will be the responsibility of the Secretary of State and cover a 15 year period. Legally binding targets will be set in four priority areas of the natural environment: air quality; waste and resource efficiency; water and nature. The EIPs and legally binding targets will be reviewed on a five-yearly basis.

The Bill establishes a new public body – the Office for Environmental Protection (OEP) – as an independent, domestic watchdog. Through its scrutiny and advice functions, the OEP will monitor progress in improving the natural environment in accordance with the government’s domestic environmental improvement plans and targets. It will be able to provide government with written advice on any proposed changes to environmental law.

Through its complaints and enforcement mechanisms, the OEP will replace the role of the European Commission, taking a proportionate approach to managing compliance issues relating to environmental law. The OEP will engage with public authorities around the failure to implement environmental law in order to reach a solution. Legal proceedings will only be taken as a last resort or in truly urgent cases.

All climate change legislation (including carbon budgets) will be brought within the enforcement remit of the OEP. The OEP will work closely alongside the Committee on Climate Change on these issues, ensuring that their individual roles complement and reinforce each other.

LGA view

- We support the model of focussing challenge at the level of national government. It is therefore appropriate that the key targets sit with the Secretary of State. It will be important to retain this external drive and vision as we leave the EU.

- Success in the past has been based upon appropriate national focus with different local solutions. The statutory policy statement will help to provide clear direction for this work. We particularly welcome the inclusion of the polluter pays principle and anticipate that this will apply to producers of waste packaging.
- It will be essential to keep the remit of the OEP clear and not add in a wide variety of responsibilities. The OEP should focus on the gaps which will arise after EU withdrawal and any new policy which will be developed in the future.
- The Bill states that a body whose functions include functions of a public nature has a duty to co-operate with the OEP in connection with the exercise of its functions. The OEP will have enforcement functions over public authorities who fail to comply with environmental law. The OEP also has powers to deal with significant environmental complaints and can issue notices to public authorities. Ultimately there are powers in the Bill for the OEP to apply for judicial review of public authorities where serious failure to comply with environmental law takes place. It will be essential that the OEP board contains knowledge and direct experience of local government, as one of the public authorities which it will have to work with. The LGA will continue to lobby to ensure that the OEP keeps its remit over public bodies very focussed and specific.

2. Waste and Resource Efficiency

This section of the Bill includes provisions that will directly affect local government services:

- require producers to pay the full net cost of managing specified products and materials at end of life to incentivise more sustainable use of resources;
- establish a deposit return schemes for drinks containers
- require local authorities in England to collect the same range of materials for recycling from households; and collect waste streams separately where possible (unless there is a valid financial or technical reason not to do so)
- introduce separate weekly food waste collection from households
- enable charges to be applied to specified single-use plastic items
- issue statutory guidance on the use of enforcement powers and extending an existing power to set out conditions to be met by all those carrying out enforcement activity
- new measures for regulators including local authorities to tackle waste crime and illegal activity
- a new power to remove waste when no other route is available
- enable the Secretary of State to make regulations to amend the permitted range of penalties for existing Fixed Penalty Notices
- ensure businesses and public bodies present recyclable materials for separate collection and arrange for its separate collection;

Other measures will have an impact on the wider waste sector:

- enable government to set resource efficient product standards and information and labelling requirements, to drive a shift in the market towards durable, repairable and recyclable products

- enable producer responsibility obligations to be applied at all levels of the waste hierarchy to, for example, facilitate the prevention of food waste and increase the redistribution of food surplus
- enable the Secretary of State to regulate the import, export or transit of waste and hazardous waste
- enable regulation to be made on digital tracking of waste

LGA view

Waste and recycling

- It is right that manufacturers and retailers should pay the full cost of recycling and disposing of packaging in household waste. The LGA has long called for the system to be reformed and for producers to meet the costs of local authorities, including the cost of littering and fly tipping discarded packaging. The Bill sets out the headlines of a producer responsibility scheme but does not provide enough detail for councils to assess the financial and service impacts of the reforms. Within the section on disposal costs, litter and fly tipping of discarded packaging is not included. We will be working with DEFRA to shape the reformed producer responsibility scheme by the proposed implementation date in 2023. The next steps must provide clarity for local government on full funding of costs.
- The provision to set up a deposit return scheme does not set out the detail of the scheme or how it would work. While a deposit return scheme has the potential to increase recycling and change consumer behaviour, it needs to be based on sound analysis of the cost and benefits. We look forward to further engagement with DEFRA on the impact on local authority kerbside collections, litter and fly tipping.
- The LGA supports a core set of consistent materials for recycling. Most councils already collect the core set of dry recyclables and we look forward to working with government to develop the proposals and secure additional funding for councils. At the same time, retailers and packaging manufacturers must reduce the amount of unnecessary and non-recyclable packaging as this is a significant barrier to increased recycling.
- How materials for recycling are collected should be a matter of local choice; collecting materials in separate streams will not work in many areas. It is helpful that councils will have local flexibility where there are technical, economic and environmental reasons for collecting materials together. We will be working with DEFRA on the implementation of this proposal. If councils are compelled to introduce separate collection streams this will have financial implications, for example on existing contracts for sorting waste which will need to be fully funded.
- We support the ambition to introduce weekly food waste collections, providing that the cost to councils is fully met through new funding. It is helpful that the Bill sets out exemptions and we will work with councils and DEFRA to understand the practical challenges in collecting food waste, particularly from flats.

- There is little detail on how charges would be applied to single use plastic items. We encourage DEFRA to consider applying producer responsibility obligations to single use items such as coffee cups to ensure that producers are paying towards the cost of recycling.
- The LGA supports the principle that businesses should play their part in meeting national recycling targets. We will be working with councils to understand the impact this will have on them and the role they could play in helping businesses recycle.

Litter and waste crime enforcement

- Littering creates unnecessary additional work for councils. We believe that the public wish to see councils taking enforcement action against those who spoil the environment for the majority of responsible citizens. We will work with Government to better understand the purpose and value of any new guidance.
- Criminal activity is undermining legitimate, responsible waste operators as well as creating additional costs for councils and other public services. We will work with Government to understand the funding and service implications of any new powers.

Other measures

- The ambition to set resource efficiency standards for products is welcome. Local government must be closely involved in developing these standards to ensure that they maximise opportunities for re-use and recycling.

3. Air Quality

The Environment Bill makes a clear commitment to set a legally binding target for the pollutant with the most significant impact on human health, fine particulate matter. The Bill also strengthens the ability for local authorities to overcome air quality issues. Both the Environment Act 1995 and Clean Air Act 1993 provide mechanisms for local authorities to address local air quality, however these duties to act and the powers to enable action were often misaligned. While responsibility sits with local authorities, often the levers to take action sit with other bodies.

The Environment Bill updates, simplifies and strengthens the local air quality management framework (LAQM). In particular it ensures that responsibility for solutions to poor air pollution is shared across local government structures and with relevant public bodies.

Amendments to the Clean Air Act 1993

The act will seek a simpler regime for smoke control enforcement allowing a possibly decriminalised regime with a simplified structure for issuing penalty notices. It is seeking to update legislation to give councils the power of entry. There will also be additional enforcement powers for domestic burning. It will extend these powers to allow enforcement on moored vessels

LGA view:

- We would seek as wide as possible interpretation of relevant public authorities and as strong as possible duty for them to co-operate in local authorities in their clean air targets.
- We would also seek for local authority air quality plans to override national policy of public agencies where it is in direct conflict with air quality goals. For example Highways England should not exempt their roads from chargeable clean air zones except with local agreement.
- We support increased use of decriminalised enforcement in order to reduce the administrative burden on councils exercising their enforcement functions.
- We have specifically called for powers to tackle emissions from moored vessels and welcome developments in this area.

4. Water

This section includes measures intended to support new and existing internal drainage boards. The Bill amends the Land Drainage Act 1991 to enable certain valuation calculations to be provided for in secondary legislation, so that necessary updates to the calculations (including data sources) can be readily made.

LGA view

- It is not clear what impact this will have on local authorities, as they part pay for Internal Drainage Boards through a special levy. We request urgent clarity on this from government.
- Councils are under-resourced to deliver their local flood risk management and statutory consultee responsibilities. The Bill is a missed opportunity to address this. There should be a change on the rules relating to council tax referendums so that levies such as internal drainage board levies should not count against councils' own referendum limits.
- The median cost to process a single land drainage consent application is £250, five times the nationally set £50 application fee. The Land Drainage Act should be amended to allow locally-set fees for flood defence consenting

5. Nature and biodiversity

The Nature and Biodiversity Part of the Environment Bill (Part 6) includes provisions to:

- amend section 40 of the Natural Environment and Rural Communities Act 2006 to strengthen and improve the duty on public bodies to conserve and enhance biodiversity, in accordance with the proper exercise of their functions;
- mandate net gain in biodiversity through the planning system, requiring a 10% increase in biodiversity after development, compared to the level of biodiversity prior to the development taking place, as measured by a metric set out by DEFRA

- require the preparation and publication of Local Nature Recovery Strategies, a tool to direct action for nature, and place an emphasis on supporting local leadership of nature improvement.
- introduce conservation covenants – these will be private, voluntary agreements between a landowner and a ‘responsible body’, such as a conservation charity or public body, to fulfil conservation objectives and ensure the delivery of wider health and social benefits for communities for the public good. Covenants will be voluntary but legally binding;
- provide greater enforcement powers to the Forestry Commission to reduce illegal tree felling, and require local authorities to consult local residents prior to the felling of street trees.

LGA view

- We support the principle of increasing biodiversity net gain through the planning process. We also recognise the need to provide new housing and associated infrastructure. However, we have concerns about the implementation of these proposals and the new burdens for councils. Planning departments will need to be supported with the right skills and resources to make this work. We do not support a mandatory national arbitrary percentage target. Local site variation will affect the appropriateness of a single national target. Revenue from the sale of proposed statutory biodiversity units (where improvements on site are not possible) should be collected and spent locally by local authorities.
 - Any additional policy requirements relating to biodiversity net gain should be taken into account by developments alongside any other costs including their own profit expectations and risks, to ensure that proposals for development are compliant with Local Plans. Consideration should be given as to whether the current national planning practice guidance on viability could benefit from further strengthening in this regard.
 - Further work will need to be done with councils to establish what the impact will be of Local Nature Recovery Strategies and conservation covenants.
 - Decisions on the felling of street trees should remain a matter of local determination. This is a new burden and must be fully funded.
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