

Briefing

Environment Bill Second Reading

Summary

A new approach to environmental protections will be vital in tackling the climate and nature emergency. However, the Environment Bill currently fails to deliver the promised level of ambition: gold standard protections, a demonstration of global environmental leadership, and a world-leading watchdog. Friends of the Earth welcomes the government's intent to make this bill the 'star' of this legislative programme – however, for this aim to be fulfilled, significant improvements are needed.

Please consider raising the following points in the debate - If the government is serious about its repeated verbal commitments to maintaining and enhancing our environment, it must:

- **Include a straightforward and substantive commitment to non-regression of environmental law in this bill.** In itself, the Environment Bill does not demonstrate or guarantee future non-regression. The bill currently offers a partial mechanism to encourage transparency around and scrutiny of some actions which may lead to the weakening of protections; but places no barriers to this weakening. This monitoring mechanism must therefore be bolstered to guard against such weakening, and measures taken to remove regressive elements across this bill.
- **Guarantee the independence and effectiveness of the office of Environmental Protection. that the new body will be effective.** For the OEP to be the world-leading watchdog the government has pledged to create, its independence and powers must be strengthened, including through greater parliamentary oversight of OEP board appointments and the budget. The Upper Tribunal must be empowered to grant meaningful, dissuasive and effective remedies including, where appropriate, financial penalties.
- **Significantly strengthen the proposed targets framework to ensure they lead to effective, ongoing action.** Improvements are needed to how targets are set and met, with the scope of bodies tasked with meeting these targets broadened. This would ensure they are relevant across government from day one and drive a significant improvement in the quality of our environment rather than narrow or piecemeal change.
- **Overhaul the clauses on environmental principles** to ensure they apply to all public bodies, not simply central government, and their implementation in existing legislation is not undermined.
- **Include a commitment to set targets to end plastic pollution and phase out unnecessary single use plastics.** Plastic pollution is a key concern, not only for the environment sector but also for consumers and businesses. This bill must provide a clear route to delivering on these concerns by ensuring that targets are set to end the flow of plastic pollution and to stop plastic waste, by phasing out non-essential single-use plastics and ensuring these are not simply replaced by single-use products made of other throw-away materials.
- **Include a legally binding commitment to achieve World Health Organization guideline levels of particulate matter pollution by 2030 at the very latest.** This will also need to be backed by a robust target setting framework ensuring that future air quality targets set under the bill will not be subject to a weaker framework than that afforded by existing law.
- **Get the UK on track to end plastic pollution and waste** by taking an 'all-in' approach to Extended Producer responsibility, Deposit Return Scheme proposals and single-use charging. This must address the need to reduce material use, promote design for resource efficiency and reuse, and consider the environmental impacts of production and use of products in addition to their end-of-life waste phase.

Further detail

While extending ambition, the Environment Bill currently fails to lock in needed action or to fully safeguard and replicate current standards of environmental protection. Overall, this bill would represent a degradation, rather than an enhancement, of existing environmental principles, standards and enforcement.

Despite ambitious statements, the bill does very little to ensure the secure entrenchment of environmental standards and principles in future UK law, nor does it provide for a watchdog with world-leading enforcement mechanisms.

The absence of substantive non-regression:

If the government is serious about its repeated verbal commitments to maintaining, and indeed enhancing, environmental standards, then it will wish to see this legacy enshrined in law through a straightforward commitment to non-regression of environmental standards in this bill.

Clause 19 sets out a requirement for written statements on a limited category of primary legislation containing “provision which, if enacted, would be environmental law” to identify potentially regressive measures. While this clause does offer an incremental improvement in transparency around regression, and a remodelled version could prove useful alongside a substantive commitment, we must be clear that clause 19 is not, in itself, a non-regression clause.

Without a binding commitment to maintaining standards, environmental law will come under sustained deregulatory pressure, including during trade negotiations, in secondary legislation, and in the review of policy and guidance. Non-regression provisions have been recognised as a key part of modern environmental law, including in the [draft IUCN Global Pact for the Environment](#).

It is also important to recognise that the principle of non-regression allows for policy *change*, while guarding against *weakening*. It does not intend to ‘freeze’ legal protections in place but to protect and strengthen environmental policy objectives and respond to evidence. For instance, under CITES on the international trade in endangered species of wild flora and fauna, species that are no longer endangered could be removed from the list without a regression in the level of protection.

A government intent on leading the world in environmental action could use this opportunity to:

- Set out how proposed policy changes will be assessed for potential progressive or regressive environmental impact.
- Add an additional and binding commitment so that standards cannot be weakened or watered down in the future.
- Outline a rigorous process in which a Parliamentary Committee scrutinises every government bill for its compatibility with environmental non-regression
- Require that the minister’s statement is in the form of an oral statement to the House.
- Widen of the scope of this provision to cover international treaties, secondary legislation, policy and guidance.

Environmental targets (clauses 1 – 6)

As well as being legally binding, targets must also be enforceable and ambitious. Mechanisms that assure their delivery must be put in place immediately. The framework must not be used to weaken or undermine existing targets and new targets must at least match the level of ambition in existing targets, while supporting the ratcheting up of ambition in future iterations. To achieve this, the framework in the bill must be significantly bolstered in the following areas:

- **To prevent the current framework for target setting from being used to set narrow, unambitious targets, an objective should be added to the bill to guide both the content and the scope of the targets.** Key measures of environmental success must not be overlooked. For example, resource efficiency and waste reduction targets should cover eliminating plastic pollution. Air quality targets should cover the emission of, concentration of and exposure to all key harmful pollutants.
- **Targets must be based on independent, expert, science led advice to ensure that they are robust and fit for purpose.** The bill currently fails to put in place a credible mechanism for incorporating expert advice into the setting of targets. It gives ministers a blank cheque to decide how and from whom to source advice. Instead, the government should be required to obtain and follow the advice of an independent, well-resourced, expert body, and to undertake public consultation. This advice should include what targets should be set, the steps that should be taken to ensure they are met, and the remedial measures required if a target is missed.
- **The bill must also put in place measures to compel future governments to bring forward specific time-bound measures to meet targets, ensure policies are in place to deliver the targets, and to take remedial action where targets are missed.** To ensure action across government, other public bodies must also be placed under a duty to contribute to the achievement of the targets, and interim targets should be made legally binding.

Environmental principles (Clauses 16 to 18)

This bill constitutes a significant weakening of the current legal effect of the principles, which have up to now been binding on all public authorities - including in individual administrative decisions. This legal obligation will be undermined by the current drafting, which requires ministers to have “due regard” to an (as yet, unpublished) policy statement on the principles when making policy, rather than legislating to require their ongoing application across all parts of government decision making. This risks relegating these vitally important legal principles to little more than creatures of policy.

Additional issues:

- Clauses 18(2) and (3) contain wide ranging exemptions which appear to absolve HM Treasury, the Ministry of Defence and all those “spending...resources within government” from considering the principles at all. They also state that the policy statement need only be applied “proportionately”, allowing future governments to trade off environmental principles against socioeconomic considerations. These exemptions should be limited or removed.
- The provisions in the Environment Bill are weaker than those in the Planning Act 2008 regarding the role of parliament. There is some provision for parliamentary scrutiny of the principles policy statement in Clause 17, but no formal role for parliament in approving it in the way that other policy statements, such as those on national energy policy, must be approved by a resolution of the House of Commons following a debate.
- The three Aarhus rights, which arise out of the UK's membership of the UN's Aarhus Convention (public access to environmental information, public participation in environmental decision making and access to justice in relation to environmental matters), appeared in the list of principles in the draft bill. These have now disappeared entirely. Government should reinstate a new reference to the importance of these rights and the need to ensure they are respected, protected and fulfilled.

The Office for Environmental Protection

Role and Independence (Clauses 21 to 24; Schedule 1):

The OEP will only be effective if it is sufficiently independent from government. The government has accepted this and there has been strong support in parliament for the principle of the OEP's independence, including in the previous second reading debate in October 2019. The EFRA

Committee concluded that it is essential that “every step is taken to ensure the Office for Environmental Protection is as independent from the Government as possible, to give the public confidence that the Government will be properly held to account on its duty to protect the environment”.

Protecting the institutional independence of the OEP will be crucial to guarantee its independence over the longer term. **The bill should be strengthened in three ways to achieve this:**

- **A strengthened duty on the Secretary of State to protect the OEP’s independence.** Schedule 1 of the bill requires the Secretary of State, in exercising functions in respect of the OEP, to have regard to the need to protect its independence. This is welcome but should be strengthened by the removal of the words “have regard to”.
- **Improved transparency,** including the maintenance of a log of substantive contact with government.
- **Clarification that the OEP will have complete discretion to carry out its functions.** The Office for Budget Responsibility has complete discretion in the performance of its duty to examine and report on the sustainability of the public finances. There seems no particular reason why a similar provision ought not to be included in the Environment Bill.

Environmental review (Clause 35):

Environmental review could represent a new and improved mechanism for the comprehensive review of compliance with environmental law. Unfortunately, **the proposed environmental review process is unsatisfactory and requires amendment to ensure:**

- **The effectiveness of the environmental review model is not constrained by reference back to judicial review principles,** which have previously proven unsatisfactory in dealing with environmental complaints. To remove this fetter, Clause 35(5) should be removed, and the bill should explicitly state that environmental reviews must properly consider contested matters of fact as part of a thorough review process. Environmental review and the Upper Tribunal have the potential to meaningfully improve environmental enforcement and, as such, environmental reviews should also be available in urgent situations and for serious issues.
- **The remedies and sanctions available through the environmental review process are strengthened.** The Upper Tribunal must be empowered to grant meaningful, dissuasive and effective remedies including, where appropriate, financial penalties – just as the Court of Justice of the European Union is currently able to do. Without this change, the creation of the OEP will mark a weakening of protections from those we have enjoyed in recent decades, as the constraints imposed on the Upper Tribunal in Clause 35(8) severely limit its ability to grant meaningful remedies, undermining the entire enforcement process.
- **The role that civil society can play in ensuring compliance with environmental law must be recognised** by giving civil society access to an improved environmental review mechanism.

Meaning of natural environment, environmental protection and environmental law (Clauses 41, 42 and 43):

“Environmental law” is defined in Clause 43 as any legislative provision which is mainly concerned with environmental protection. The term “mainly concerned” is ambiguous with no clear legal meaning. “Related to” is a clearer and more easily understood alternative. “Environmental protection” itself is too narrowly defined in Clause 42. Key areas of law with potential environmental impacts may fall outside the scope including, for instance, many pieces of planning law, as explained in Paragraph 366 of the Explanatory Notes.

In addition, specific areas of law are carved out of definitions within the bill. Exclusions include the disclosure of, and access to, environmental information; taxation, spending and the allocation of resources within government. Omitting these exclusions would ensure that the OEP is able to effectively assess whether compliance with environmental law is being adequately prioritised.

Air quality (Clauses 2, 69 to 74)

Instead of increasing ambition to protect our health, the bill risks weakening existing laws. Not only does it open the door to the loosening of existing legally binding air pollution limits, but any future air quality targets set under the bill will be subject to a substantially weaker framework than that afforded by existing law. A government that is serious about protecting people's health must:

- Make a legally binding commitment to meet World Health Organization guideline levels of PM2.5 by 2030 at the very latest as part of this bill.
- Commit through this bill to publishing and implementing plans that set out time-bound, impact-assessed measures to reduce air pollution, in line with binding targets, alongside measures to protect groups more vulnerable to the effects of air pollution.
- Include a 'clean air duty' to ensure all levels of government and public bodies are contributing to achieving binding targets through their decision making. (For further details, see [the additional briefing from the Healthy Air Campaign.](#))

Tree felling and planting (Clauses 100 and 101)

We note that the bill does not include a requirement for the government to produce a tree strategy for England, as is the case in Scotland. Given that work is already underway to develop a national tree strategy for England, a straightforward amendment putting this on a statutory footing would send out a positive signal on the importance the government attaches to trees and woodlands.

Resource efficiency and waste reduction (Clause 1, 47 to 68)

Target setting: An opportunity for progress on plastics

Legislation must address all sources of plastic 'emissions' - not just packaging and other single use plastic but also the wear-and-tear of synthetic rubber from vehicle tyres, the accidental release of pre-production 'nurdle' pellets of plastic by petrochemical companies, micro-fibres from synthetic clothes, and paints.

Measures in this bill to improve plastic recycling rates are welcome, but insufficient. With plastic production set to quadruple by 2050, even a doubling of recycling rates would leave an absolute increase in plastic ending up in landfill, incinerators or the environment.

The Environment Bill must therefore include a specific requirement for both interim and long-term targets to reduce plastic pollution under the resource efficiency and waste reduction heading in Clause 1.

The government has recognised the importance of stopping plastic pollution at source with the imminent ban on plastic straws, stirrers and cotton-bud stems. Legislation must drive a continuing step-change in efforts to prevent the production of waste in the first place and a shift to reusable and refillable products and business models. This requires an explicit target to rapidly phase-out non-essential single-use plastics, combined with strong enforcement from the OEP to keep action on track.

Extended Producer Responsibility (EPR) Clauses 47 to 48 and Schedules 4 and 5):

The December 2019 Resources and Waste Strategy for England made some welcome commitments regarding EPR, including making producers contribute to the cost of dealing with the waste they are responsible for. The Strategy recognises the production and use-phase impacts of the textile sector, but this bill falls short of requiring producers to take responsibility for these phases of their products' lifecycle. The bill's EPR provisions currently place too much emphasis on recycling and should be amended to favour 'reduce and reuse' policies and address life-phase impacts.

Deposit Return Schemes - (Clause 51 and Schedule 8):

The government's consultation on a deposit return scheme (DRS) suggested an 'all-in' scheme, with no restrictions on the size of drinks bottles. The government must confirm that it will introduce such a scheme, as a foundation for a shift towards a future where reuse and refill business models predominate.

Single-use plastic charges extended to all single-use items (Clause 52 and Schedule 9):

A consumer levy or charge on single-use plastics could be useful in shifting consumer behaviour. But these will almost certainly drive a shift towards other single-use materials if these are not also subject to the same disincentivising charge. This would increase the pressure on finite natural resources to provide alternatives to plastic and would create a new waste stream. The bill must ensure that charges apply to all single-use products and packaging; regardless of the material from which they are constructed. This will drive a shift away from single-use and towards a 'reduce & reuse' economy, in keeping with the advice of the EFRA Select Committee.

Waste exports (Clause 59)

There is clear evidence that UK waste, including material collected for recycling, is polluting vulnerable overseas communities. We welcome the government's pledge to curtail 'polluting' waste exports, but the UK's international obligations, including under the Basel Convention, already prohibit the export of waste where there is reason to believe it will not be managed in an environmentally sound manner. Polluting waste exports will remain a serious and arguably illegal issue without adequate regulation, proper transparency into tracking waste exports, and limiting the production of waste in the first place.

As a next step, the government should conduct a full review of policies relating to waste export and management, alongside a commitment to sustainable management of the UK's waste, with a focus on 'reduce and reuse' alongside quality recycling systems.

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