



Environment Bill

HL Bill 16 of 2021–22

Authors: Nicola Newson & James Tobin

Date published: 3 June 2021

On 7 June 2021, the second reading of the Environment Bill is scheduled to take place in the House of Lords. The bill is a wide-ranging piece of legislation, comprised of a range of different thematic elements. The first part of the bill is focused on environmental governance. It would allow the Government to set long-term targets for the natural environment and includes the creation of an Office for Environmental Protection (OEP) to hold the government to account on environmental law and its environmental improvement plan now that the UK has left the European Union.

The bill also provides for measures directed at specific areas of environmental policy. They include provisions on improving air quality; waste management and recycling; water management; protecting natural habitats and biodiversity; and for so-called conservation covenants.

The bill has completed its passage through the House of Commons. During debate on its provisions, Labour welcomed the bill but described it as lacking in the necessary ambition and insufficient to address the urgent need presented by the climate crisis and other critical environmental issues. As a result, Labour (and other opposition parties) tabled a range of amendments during committee and report stage, although all were unsuccessful.

Government amendments and new clauses were accepted at both stages. A number of these amendments were minor and technical in nature. Others were more substantial and are discussed in the body of this briefing. For example, concerning issues such as introducing greater clarity on the role of the Office for Environmental Protection and its relationship with the existing Committee on Climate Change.

The Government has also announced that it will seek to move further amendments in the House of Lords. They include measures aimed to reduce the harms caused by storm overflows and to introduce a legally binding target on species abundance.

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I. The provisions in the bill

The Environment Bill is largely comprised of two distinct sections. The first provides a legal framework for environmental governance. The second makes provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants.¹

The explanatory notes to the bill note that:

- The first part of the bill was published in part as the draft Environment (Principles and Governance) Bill on 19 December 2018, fulfilling a legal obligation set out in section 16 of the European Union (Withdrawal) Act 2018. The measures published at that time related only to environmental principles and governance, and placing the previous government’s 25-year environment plan on a statutory footing.
- The remaining parts of the bill make provision for a range of environmental improvements. In its 2019 Manifesto, *Get Brexit Done: Unleash Britain’s Potential*, the Conservative Party pledged to “protect and restore our natural environment after leaving the EU”. Measures in the bill—many of which were consulted on by the previous government and included in the Environment Bill introduced late in the first parliamentary session—take legislative steps aimed at delivering those commitments.²

It is a large piece of legislation, containing 141 clauses and 20 schedules. Those provisions are outlined in brief below.

I.1 Part I: Environmental governance

I.1.1 Environmental targets

Clauses 1–6 of the bill would create a framework for setting environmental targets. The Government has stated that: “Existing environmental targets are largely derived from EU law and now that the UK has left the EU it may wish to set its own targets that differ and go beyond those of the EU that will have been retained for the time being in domestic law”.³

Clause 1 of the bill would allow the secretary of state to make regulations

¹ [Explanatory Notes](#), p 9.

² *ibid.*

³ Department for Environment, Food and Rural Affairs, [Delegated Powers Memorandum](#), 28 May 2021, p 3.

setting long-term environmental targets, and would require them to set at least one long-term target in four priority areas:

- air quality;
- water;
- biodiversity; and
- resource efficiency and waste reduction.

Each long-term target would have to specify the standard to be achieved (a standard that “must be capable of being objectively measured”) and a date for achieving it, at least 15 years from the date the target is initially set.

Clause 2 would require the secretary of state to make regulations setting a PM2.5 air quality target. Particulate matter (PM) consists of a complex mixture of solid and liquid particles of organic and inorganic substances, including sulphate, nitrates, ammonia, sodium chloride, black carbon and mineral dust, in the air.⁴ The presence of PM is a common proxy indicator for air pollution. The World Health Organisation (WHO) describes PM with a diameter of 2.5 microns or less (PM2.5) as particularly health-damaging, as it can penetrate the lungs and enter the blood system.

Under clause 2, the target would relate to the annual mean level of PM2.5 in ambient air. This target would not have to be a long-term target, meaning it could have a deadline of less than 15 years. Clause 2 specifies that the PM2.5 target would be in addition to the long-term air quality target required in clause 1.

The bill itself does not specify any parameters for the annual mean level of PM2.5 or the timescale for achieving it. At committee and report stage in the Commons, Labour attempted to amend the bill to include a binding target on the face of the bill, for a PM2.5 level of 10 micrograms/m³ or less by 1 January 2030.⁵ This was defeated both times. The WHO set an annual mean level of 10 micrograms/m³ as a guideline value for PM2.5 in 2005.⁶

Clause 3 would require the secretary of state to seek advice from independent persons with relevant expertise before setting the long-term targets and the PM2.5 air quality target. Regulations to set the targets must be laid before Parliament by 31 October 2022. They would be subject to the affirmative procedure, requiring the approval of both Houses before they could come into force. Clause 3 would prevent the secretary of state from

⁴ World Health Organisation, ‘[Ambient \(outdoor\) air pollution](#)’, 2 May 2018.

⁵ House of Commons Library, [Environment Bill 2019–21 and 2020–21: Report on Committee and Remaining Stages in the Commons](#), 24 May 2021, pp 14–15 and 66.

⁶ World Health Organisation, ‘[Ambient \(outdoor\) air pollution](#)’, 2 May 2018.

subsequently lowering or revoking a target unless they were satisfied that:

- meeting the target would have no significant benefit compared with not meeting it or lowering it, or
- changes since the target was set would make meeting it disproportionate to the benefits.

The PM2.5 air quality target could not be revoked but could be amended.

Greenpeace has expressed concern that if the long-term targets are not set until 2022 and then have a deadline of 15 years to be met, then “no legal action could be taken against the Government on any potential environmental failings on water, plastic, waste or nature restoration until 2037, at the earliest”.⁷ However, the Department for Environment, Food and Rural Affairs (Defra) has argued that time would be needed to achieve ambitious targets and that interim reporting requirements and the Office for Environmental Protection (see below) would keep the Government accountable during the 15-year long-term target period.⁸

Clause 4 would place a duty on the secretary of state to ensure the long-term targets and the PM2.5 air quality target are met. Clause 5 specifies that the regulations that set the targets must also set a reporting date for each target. On or before that date, the secretary of state would be required to make a statement to Parliament about whether or not the target had been met. If it had not been met, the secretary of state would have twelve months in which to publish a report explaining why and setting out steps to meet the target.

Clause 6 establishes a procedure for reviewing environmental targets. The first review would have to take place by 31 January 2023, and subsequent reviews at least every five years after that. The review would have to consider whether meeting the long-term targets, the PM2.5 air quality target and any other legally binding environmental targets the secretary of state considers it appropriate to take into account, would “significantly improve the natural environment in England”. The secretary of state would have to report to Parliament on whether this “significant improvement test” was met. If it was not met, the report would have to set out what steps the secretary of state planned to take in relation to the long-term targets and the PM2.5 air quality target to ensure the significant improvement test was met.

The Government published a policy paper in August 2020 (updated October

⁷ Phil Richards, [‘Environment Bill loophole leaves nature targets in 18-year lag’](#), Greenpeace, 16 October 2019.

⁸ Department for Environment, Food and Rural Affairs, [‘Environment Bill coverage focuses on single-use plastics and environmental targets’](#), Defra in the Media Blog, 17 October 2019.

2020) which set out how it intends to develop and bring forward targets by October 2022.⁹ The Government said:

We are not yet able to commit to the specific targets we will set or the metrics we will use. It would be premature to do so without further evidence gathering and public consultation that will take place in later target-setting steps [...] This paper describes our initial thinking on possible objectives for targets which will be explored over coming months.

The Government anticipates it will have developed fully evidenced targets with stakeholders and independent experts by September 2021 and have completed public consultation and select committee scrutiny by February 2022.¹⁰

1.1.2 Environmental improvement plans

Clause 7 would place a statutory duty on the secretary of state to produce an “environmental improvement plan”. This is defined as “a plan for significantly improving the natural environment in the period to which the plan relates”. This period must not be shorter than 15 years. The plan must set out steps the Government intends to take to improve the natural environment. Clause 7 stipulates that [A Green Future: Our 25-Year Plan to Improve the Environment](#), which was published in January 2018, is an environmental improvement plan. This document is often referred to as the 25-year environment plan. The Government has argued that plans of at least 15 years are needed because “some aspects of the natural environment change slowly and require continuity in how they are managed”.¹¹

Clause 8 would require the secretary of state to prepare annual reports on the implementation of the current environmental improvement plan, on whether the natural environment has improved. Clause 9 would require the secretary of state to review the environmental improvement plan by 31 January 2023, and at least every five years thereafter. The secretary of state must lay before Parliament either:

- a revised improvement plan and a statement explaining the revisions; or
- a statement explaining why the plan has not been revised.

Clause 10 would require that, at each review of the environment

⁹ Department for Environment, Food and Rural Affairs, ‘[Environment Bill: Environmental targets](#)’, 19 August 2020, updated 21 October 2020.

¹⁰ *ibid*, ‘[Annex 1: Diagram depicting the target-setting steps](#)’.

¹¹ [Explanatory Notes](#), p 27.

improvement plan, the secretary of state must set at least one interim target for each long-term target and the PM2.5 air quality target. The interim targets would last five years until the next review of the environment improvement plan. However, there is no requirement for an interim target if the deadline for achieving the long-term target or the PM2.5 air quality target would fall before the next five-year review of the environment improvement plan.

Clause 11 specifies that when reviewing an environmental improvement plan, the secretary of state must consider:

- what has been done to implement the plan since it was published or last reviewed;
- whether the natural environment has improved (having regard to environmental monitoring data and reports from the Office for Environmental Protection); and
- whether the government should take further or different steps to improve the natural environment for the remainder of the period to which the plan relates.

Clauses 12 to 14 set out the steps the secretary of state must take to prepare a new environmental improvement plan to be ready immediately after the end of the period covered by the previous plan. This includes the setting of interim targets in the new plan. The Government has stated that the provisions in clauses 12 to 14 allow for plans to be completely replaced (whereas clauses 9 to 11 allow for the amendment of existing plans).¹² The Government anticipates that “future governments may choose to renew environmental improvement plans before they reach the end of their lifetime to enable them to include longer term actions”.

1.1.3 Environmental monitoring

Clause 15 would require the secretary of state to make arrangements for obtaining data about the natural environment they consider appropriate for monitoring whether the natural environment is improving in accordance with the environmental improvement plan and progress towards long-term targets, the PM2.5 air quality target and interim targets. The secretary of state must make a statement to Parliament within four months of clause 15 coming into force setting out the kinds of data to be obtained. Clause 15(5) requires the data to be published.

1.1.4 Policy statement on environmental principles

Clause 16 would place a statutory duty on the secretary of state to prepare

¹² [Explanatory Notes](#), p 31.

a policy statement on environmental principles. The environmental principles are:

- (a) the principle that environmental protection should be integrated into the making of policies,
- (b) the principle of preventative action to avert environmental damage,
- (c) the precautionary principle, as far as relating to the environment,
- (d) the principle that environmental damage should as a priority be rectified at source, and
- (e) the polluter pays principle.

The policy statement must explain “how the environmental principles should be interpreted and proportionately applied by ministers of the crown when making policy”.

Clause 17 would require the Government to publish a draft environmental principles policy statement, to consult on it and to lay it before Parliament. Clause 18 would require ministers of the Crown to “have due regard” to the policy statement on environmental principles, although this would not apply to policy relating to the armed forces, defence, national security, taxation, spending and the allocation of resources within government.

The Government published a [Draft Environmental Principles Policy Statement](#) on 10 March 2021. The public consultation on this draft closed on 2 June 2021.¹³

The Government has stated that legislating for the environmental principles would:

[...] protect the environment from damage by making environmental considerations central to the policy development process across government. The principles work together to legally oblige policy makers to consider choosing policy options which cause the least environmental harm.¹⁴

1.1.5 Environmental protection: statements and reports

Clause 19 would require a minister introducing a bill into either House of Parliament to make a written statement before second reading if the bill, once enacted, would be environmental law. The statement would have to set out the minister’s view that the bill would not reduce the level of protection provided by any existing environmental law, or explain that the

¹³ Department for Environment, Food and Rural Affairs, ‘[Consultation on the draft policy statement on environmental principles](#)’, accessed 3 June 2021.

¹⁴ [Explanatory Notes](#), p 14.

minister could not make such a statement but wished the House to proceed with the bill anyway. The Government has suggested this might be the case where an existing UK environmental protection is no longer justified by new scientific evidence.¹⁵

Clause 20 would require the secretary of state to report every two years on “developments in international environmental protection legislation which appear to the secretary of state to be significant”. These reports would have to be laid before Parliament.

1.1.6 Office for Environmental Protection

Chapter 2 of the bill governs a new statutory body, the Office for Environmental Protection (OEP). The Government has described this as:

[...] a domestic independent body that will be responsible for taking action in relation to serious breaches of environmental law. 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 take a proportionate approach to managing compliance issues relating to environmental law.¹⁶

Clause 21 would establish the OEP. Clause 21 also introduces schedule 1, which would make provision about membership, remuneration, staffing, powers, committees, procedure, funding, annual accounts, and the status and independence of the OEP, among other things.

Clause 22 would set the principal objective of the OEP as being to contribute to environmental protection and the improvement of the natural environment. It would be under a duty to act objectively and impartially and to have regard to the need to act proportionately and transparently. It would have to prepare a strategy setting out how it would exercise its functions, including how it would avoid overlap with the Committee on Climate Change (CCC). The CCC is an independent statutory body established under the Climate Change Act 2005 to advise the UK and devolved governments on emissions targets.¹⁷ Clause 25 would require the OEP and the CCC to prepare a memorandum of understanding on how they plan to cooperate with each other.

¹⁵ [Explanatory Notes](#), p 36.

¹⁶ *ibid*, p 14.

¹⁷ Committee on Climate Change, ‘[The UK’s independent advisor on tackling climate change](#)’, accessed 28 May 2021.

Clause 22 would also require the OEP's strategy to contain an enforcement policy. Clause 24 would enable the secretary of state to issue guidance to the OEP on the enforcement policy.

Clause 23 sets out the process for the OEP to publish its strategy, revise it at any time and review it at least every three years.

Clauses 27 to 29 set out the OEP's scrutiny and advice functions. It would have a duty to monitor progress in improving the natural environment in accordance with the current environmental improvement plan and progress against long-term targets, the PM2.5 air quality target and interim targets. It would have to produce an annual progress report. These reports would have to be laid before Parliament and the secretary of state would have to respond to the reports within 12 months.

Clause 28 would place a duty on the OEP to monitor the implementation of environmental law and could report on this. However, it could not monitor or report on matters within the remit of the CCC. Reports would have to be laid before Parliament and the secretary of state would have to respond within three months.

Clause 29 would require the OEP to give advice to a minister of the crown about any proposed change to environmental law or any other matter relating to the natural environment on which the minister required it to give advice.

Clauses 30 to 40 set out the OEP's enforcement functions in relation to failures by public authorities to comply with environmental law. Under clause 31, a person could make a complaint to the OEP if they believed a public authority had failed to comply with environmental law. The Government has stated that while legal and natural persons could bring a complaint, public authorities would be excluded from complaining to the OEP "as this would amount to one arm of government or the public sector complaining about another".¹⁸ Complainants would have to have exhausted the internal complaints process of the public body they were complaining about before they could take a complaint to the OEP. A complaint would have to be brought to the OEP within three months of the conclusion of the public body's complaints procedure, or within a year of the last alleged breach of environmental law, whichever was the later. However, the OEP could waive these deadlines if it considered there were exceptional reasons for doing so.

Clause 32 would enable the OEP to investigate a complaint if it took the view that a public authority may have failed to comply with environmental law and if it has, the failure would be a serious failure. The OEP could also

¹⁸ [Explanatory Notes](#), p 44.

launch an investigation without first receiving a complaint, subject to the same thresholds. The OEP would have to notify the public authority it was launching an investigation. It would have to prepare a report on the investigation setting out whether it considered there had been a failure to comply with environmental law, why it came to that conclusion and any recommendations in light of those conclusions. However, it would not have to prepare such a report if it had applied for an environmental review, judicial review, or statutory review.

Clause 33 would require the OEP to keep a complainant informed about its handling of the complaint.

The OEP could take enforcement action in the form of an information notice (clause 34) or a decision notice (clause 35). If the OEP has reasonable grounds for suspecting that a public authority has failed to comply with environmental law, and that the failure would be serious, it could issue an information notice to request information from the public authority about the suspected failure. The public authority would have two months to respond in writing, or longer if the information notice specifies an extended deadline.

If the OEP is satisfied on the balance of probabilities, that a public authority has failed to comply with environmental law, and it considers the failure serious, the OEP could issue a decision notice, setting out the steps it considers the public authority should take. The Government has suggested these might include preparing a new strategy, undertaking remedial action to rectify any harm done, asking an authority to change a decision (eg designating a certain area as a protected site), or taking steps to pursue a particular environmental quality standard.¹⁹ The OEP could only issue a decision notice if it had already issued at least one information notice to the public authority. Clause 34 would require the recipient of a decision notice to respond in writing within two months (or later if the decision notice specifies an extended deadline) but it would not require the public authority to take the steps set out by the OEP in the decision notice.

Clause 36 would enable the OEP to issue 'linked' information or decision notices to more than one public authority concerning the same or similar breaches or suspected breaches of environmental law.

Clause 37 establishes a process for the OEP to bring legal proceedings against a public authority for an alleged breach of environmental law. If the OEP has issued a decision notice to a public body, it could apply to the court for an environmental review, if it is satisfied on the balance of probabilities that the authority has failed to comply with environmental law and it considers that the failure is serious. The Government has described the

¹⁹ [Explanatory Notes](#), p 50.

environmental review process as “a bespoke form of legal proceedings which applies solely to cases brought by the OEP [...] based on the normal standards and principles of judicial review”.²⁰ The proceedings would be before the High Court in England and Wales and Northern Ireland, and the Court of Session in Scotland.

If the court finds that the authority has failed to comply with environmental law, it must make a statement of non-compliance. Under clause 37(7), a statement of non-compliance does not affect the validity of the conduct found to be non-compliant. For example, if the court found that planning permission had been granted unlawfully, the planning permission granted would remain valid unless the court also imposed a quashing order.²¹ If the court made a statement of non-compliance, it could grant any remedy that it could grant on judicial review, except for awarding damages. However, it could only grant a remedy if it was satisfied it would not:

- be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or
- be detrimental to good administration.

A public authority found to have been non-compliant would have to publish a statement within two months of the conclusion of the review proceedings setting out what steps it intended to take in response. This would not apply if the statement of non-compliance had been overturned on appeal.

Clause 38 would enable the OEP to apply for an urgent judicial or statutory review without going through the usual process of issuing an information notice and a decision notice and applying for an environmental review. A statutory review is similar to a judicial review, but is a legal challenge brought under specific legislation, eg the Town and Country Planning Act 1990.²² The OEP could apply for judicial or statutory review if it considered the conduct of a public authority constituted a serious failure to comply with environmental law and the urgent application was “necessary to prevent, or mitigate, serious damage to the natural environment or to human health”. As with an environmental review, a public authority found not to have complied with environmental law would have to publish a statement within two months of the conclusion of legal proceedings setting out the steps it intended to take in light of the finding (unless the finding was overturned on appeal).

Clause 38 would also enable the OEP to intervene in third party judicial or statutory review proceedings relating to an alleged failure by a public

²⁰ [Explanatory Notes](#), p 52.

²¹ *ibid*, pp 52–3.

²² *ibid*, p 55.

authority to comply with environmental law if the OEP considered the alleged failure would be serious.

Clause 39 would require the OEP to notify the relevant minister of the crown when it issued an information or decision notice or applied for an environmental review, judicial review or statutory review, if the minister was not a recipient of the notice or a party to the legal proceedings. Clause 40 would require the OEP to publish a statement when issuing a notice or bringing proceedings. However, the requirements to notify the minister of a notice and to publish a statement would not apply if the OEP did not consider it was in the public interest to do so.

Clause 41 sets out obligations and exemptions in relation to persons disclosing information to the OEP. Clause 42 sets out confidentiality duties of the OEP and public authorities and when they may or may not disclose information relating to OEP investigations and enforcement proceedings.

The Government has said it is establishing the OEP as “an independent body to hold public authorities to account on environment law”, a domestic body that will fulfil this function following the UK’s withdrawal from the EU.²³ Prior to Brexit and the end of the transition period, the UK was subject to EU environmental governance and enforcement mechanisms for EU-derived environmental law. Under article 258 of the Treaty on the Functioning of the European Union (TFEU), the European Commission can bring infringement proceedings against member states that it considers are not fulfilling their obligations. It can take alleged breaches of EU law to the Court of Justice of the European Union, which has the power to levy fines against member states.

Some critics of the bill have argued that the OEP is not as independent or as powerful an environmental watchdog as the previous arrangements under the EU. For instance, Greener UK, an alliance of environmental organisations, has voiced its concerns that:²⁴

- The secretary of state would be responsible for the ultimate decision over appointments and dismissals of the chair and non-executive board members. It called for the consent of the Commons Environmental Audit Committee and Environment, Food and Rural Affairs Committee to be required for the appointment of the chair of the OEP, and for the chair then to be responsible for the appointment of board members.

²³ Department for Environment, Food and Rural Affairs, ‘[Environmental governance factsheet \(Parts 1 & 2\)](#)’, updated 21 October 2020.

²⁴ Greener UK, [Briefing for Commons Second Reading of the Environment Bill](#), February 2020, pp 7–8.

- The Government’s commitment to give the OEP a ring-fenced indicative five-year budget during a given spending review period is not on the face of the bill, nor does the OEP have the ability to produce and present its own estimate to Parliament. Paragraph 12 of schedule 1 simply provides that the secretary of state must “pay to the OEP such sums as the secretary of state considers are reasonably sufficient to enable the OEP to carry out its functions”.

Greener UK also argued that the OEP “is not given a sufficiently wide remit to ensure adequate oversight of environmental law or to properly fulfil its potential”.²⁵ For instance, it believed the OEP’s investigatory function would be undermined by the fact that information and decision notices would not be legally binding. Greener UK suggested “it is not clear that these will be an effective way to remedy failures to comply with environmental law”. It also argued the OEP should be “empowered to conduct broader inquiries into systemic issues”, allowing it to “take a more strategic approach that could prevent issues arising in the first place”. It also argued that the environmental review process should not be based on judicial review principles, “which have proved unsatisfactory in dealing with environmental complaints”, but should be able to “consider technical facts and issues, with experts who are thoroughly able to review the substantive matter at hand”.

Commenting on the package of amendments the Government made to the OEP provisions at committee stage in the Commons, Greener UK argued that:

[...] they appear to represent an intention to narrow the scope and influence of the OEP. This package of amendments is so prescriptive and limiting as to thoroughly undermine the strategy and working practices of the OEP—as well as restricting its remit and powers.²⁶

The Government maintains that the OEP will “hold the government to account on progress towards achieving targets and every year can recommend how it can make better progress, to which the government must respond”. The Government has also stated that the OEP will have the power to “investigate complaints and enforce breaches of environmental law by government and public authorities, as a last resort, in a strategic and proportionate manner”.²⁷

The OEP was originally supposed to be operational from 1 January 2021, the

²⁵ Greener UK, [Briefing for Commons Second Reading of the Environment Bill](#), February 2020, p 10.

²⁶ Greener UK, [Environment Bill: Briefing for Commons Committee](#), November 2020, p 1.

²⁷ Department for Environment, Food and Rural Affairs, ‘[Environmental governance factsheet \(Parts 1 & 2\)](#)’, updated 21 October 2020.

point at which the Brexit transition period ended and the UK was no longer subject to EU oversight.²⁸ The Government announced in March 2021 that an interim OEP would be launched in non-statutory form July 2021, in the expectation that the bill would receive royal assent in autumn 2021.²⁹

1.1.7 Interpretation of environmental governance provisions

Clauses 43 to 45 define “natural environment”, “environmental protection” and “environmental law” respectively. Clause 46 contains other definitions relating to part 1 of the bill.

1.2 Part 2: Northern Ireland

Under the Northern Ireland Act 1998, the Northern Ireland Assembly has legislative competence for several areas of environmental law. Clause 47 introduces schedule 2, which would include provision for environmental improvement plans and policy statements on environmental principles in Northern Ireland. The Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA) ran a public consultation on environmental plans, principles and governance for Northern Ireland that closed in February 2021.³⁰

Clause 48 introduces schedule 3, which would make provisions for the OEP to exercise its functions in Northern Ireland. The Government has stated that the bill would:

[...] provide the OEP with equivalent powers in England and Northern Ireland, and ensure that operationally it can still function across both administrations. In some cases, this has meant providing for slightly different processes that reflect the different legal and policy frameworks. In others, it has meant ensuring appropriate Northern Ireland representation, for example on the board of the OEP.³¹

There is a convention that Westminster will not normally legislate on matters that are within devolved legislative competence without the consent of the relevant devolved legislature. The Northern Ireland Assembly agreed a legislative consent motion on the Environment Bill in July 2020.³²

²⁸ [HL Hansard, 20 January 2020, col 920](#).

²⁹ Department for Environment, Food and Rural Affairs, ‘[Interim Office for Environmental Protection to be launched](#)’, 1 March 2021.

³⁰ Department for Agriculture, Environment and Rural Affairs, ‘[Environmental plans, principles and governance for Northern Ireland—public discussion document](#)’, accessed 31 May 2021.

³¹ [Explanatory Notes](#), p 14.

³² Northern Ireland Assembly, ‘[Letter to John Benger: Legislative Consent Motion](#)’, 1 July 2020.

1.3 Part 3: Waste and resource efficiency

Part 3 of the bill contains provisions on waste and resource efficiency. Explaining the background to these provisions, the explanatory notes to the bill state:

In the 25-year environment plan, the Government committed to using resources from nature more sustainably and efficiently, and to minimising waste. In December 2018, the previous government [under Theresa May] published its resources and waste strategy, [Our Waste, Our Resources: A Strategy for England](#), to help move towards a more sustainable, circular economy. Waste management is based on a ‘waste hierarchy’, which sets a priority order when shaping waste policy and managing waste. It gives top priority to preventing waste in the first place. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (for example, landfill). The bill will provide the legislative framework needed to deliver on many of the commitments in the resources and waste strategy, by introducing new powers and amending existing legislation such as the Environment Act 1995 and Environmental Protection Act 1990.³³

The proposals include measures in the following areas:

- Reforming the packaging producer responsibility scheme, with the aim of making producers responsible for the full net costs of managing their products at the end of their life.
- Providing powers to the secretary of state and devolved ministers to set minimum requirements for manufacturers and producers to provide information about the resource efficiency of their products.
- Providing a framework to introduce a deposit return scheme for single-use drinks containers.
- Providing a framework for charges to be applied to single-use plastic items which are supplied in relation to goods or services.
- Making changes to standardise waste collection requirements to require local authorities in England to collect the same range of material for recycling from households and provide a separate, weekly, food waste collection.
- Allowing for the introduction of electronic waste tracking in Great Britain, with associated criminal offences and civil penalties.
- Enabling the secretary of state to regulate the import, export, or transit of waste and hazardous waste.

³³ [Explanatory Notes](#), p 15.

- Amending the existing charging powers available to the relevant environmental regulators in England, Scotland, and Wales in respect of environmental licences and producer responsibility schemes.
- Amending enforcement powers in relation to waste crime offences.
- Providing the basis for the secretary of state to issue guidance on the use of litter enforcement powers by local authorities.³⁴

1.3.1 Producer responsibility

Clause 49 introduces schedule 4 which would allow the relevant national authority (the secretary of state for England, Scottish ministers, Welsh ministers or DAERA) to make regulations about producer responsibility obligations, and their enforcement. Such provisions are a means by which businesses who place in-scope products or materials on the market are obligated to take greater responsibility for those products or materials, including once they have become waste.³⁵

An existing producer responsibility scheme for packaging has been in place since 1997. The Government states it has helped to increase recycling of packaging waste from 25% then to 63.9% by 2017.³⁶ However, concerns have been expressed by the National Audit Office and by the Government itself that the current scheme could be improved.³⁷

The Government has launched a second consultation exercise on Extended Producer Responsibility for packaging, which is due to close shortly.³⁸ The consultation includes the scope of full net costs, producer obligations, scheme governance, regulation of the scheme, and packaging waste recycling targets.

1.3.2 Resource efficiency

Clauses 51 and 52 of the bill would provide powers to the secretary of state and devolved ministers to set minimum requirements for manufacturers and producers to provide information about the resource efficiency of their products (subject to some exceptions including medicines and food).³⁹

³⁴ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, pp 68–9.

³⁵ [Explanatory Notes](#), p 156.

³⁶ Department for Environment, Food and Rural Affairs, [Extended Producer Responsibility for Packaging: Consultation Document](#), 24 March 2021, p 4.

³⁷ *ibid*, and National Audit Office, [‘The packaging recycling obligations’](#), 23 July 2018.

³⁸ Department for Environment, Food and Rural Affairs, [Extended Producer Responsibility for Packaging: Consultation Document](#), 24 March 2021.

³⁹ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#),

1.3.3 Deposit return scheme, single use plastic items and single use carrier bags

Clause 53 of the bill would provide a framework for the introduction of a deposit return scheme for single-use drinks containers. Again, the Government has followed up an earlier consultation exercise which concluded in 2019 with a further consultation which is due to conclude shortly.⁴⁰ In addition, clause 54 would provide a framework for charges to be applied to single-use plastic items which are supplied in relation to goods or services (for example plastic take-away food containers or plastic cutlery). Clause 55 would also allow the secretary of state in England and the DAERA in Northern Ireland to make regulations to require sellers of single use carrier bags to register with an administrator. The purpose would be to allow an “accurate record” to be kept of those required to charge for single use carrier bags.⁴¹

1.3.4 Managing waste and electronic waste tracking

Clause 56 of the bill would make changes to standardise waste collection requirements to require local authorities in England to collect the same range of material for recycling from households and provide a separate, weekly, food waste collection. At present, the Government suggests that there is a variety of collection practices in place across different local authorities with different categories of materials being collected. The reasons for this variety are often linked to the cost of collection, the available infrastructure, contractual collection arrangements, geography, and housing stock.⁴²

In 2018, the Government published a resources and waste strategy that stated that it would legislate to enable the specification of “a core set of materials to be collected by all local authorities and waste operators”.⁴³ It also committed to “take action, including, where necessary legislating, to ensure that businesses present recycling and food waste separately from residual waste for collection”.⁴⁴ Between February and May 2019, the Government consulted on a consistent set of recyclable materials to be collected from all households and businesses.⁴⁵ Following that consultation,

6 March 2020, p 68.

⁴⁰ Department for Environment, Food and Rural Affairs, [Introducing a Deposit Return Scheme in England, Wales and Northern Ireland](#), 24 March 2021.

⁴¹ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 87.

⁴² *ibid*, p 88.

⁴³ HM Government, [Our Waste, Our Resources: A Strategy for England](#), 2018, p68.

⁴⁴ *ibid*.

⁴⁵ Department for Environment, Food and Rural Affairs, [Consultation on consistency in household and business recycling collections in England](#), February 2019.

ministers confirmed that they would seek to amend legislation to require all English local authorities to collect at least the following consistent set of dry materials from 2023:

- glass bottles and containers—including drinks bottles, condiment bottles, jars;
- paper and card—including newspaper, cardboard packaging, writing paper;
- plastic bottles—including clear drinks containers, HDPE (milk containers), detergent, shampoo, and cleaning products;
- plastic pots, tubs and trays; and
- steel and aluminium tins and cans.⁴⁶

The Government also confirmed it would legislate to ensure that every local authority provides householders with a separate food waste collection. The consultation response stated that “Government’s preference is that this should be a separate weekly collection of food waste and not mixed with garden waste”, but that further consideration was needed with respect to local circumstances.⁴⁷

Clauses 57 and 58 of the bill would also allow for the introduction of electronic waste tracking in Great Britain, with associated criminal offences and civil penalties.

1.3.5 Hazardous waste

Clauses 59–61 would provide powers to regulate the import, export or transit of waste and hazardous waste in Great Britain. Those regulations may include:

- prohibiting or restricting what can be done with hazardous waste;
- imposing requirements about how hazardous waste may be kept;
- providing for the registration of hazardous waste controllers, and for them to inform authorities when carrying out activities in relation to hazardous waste;
- providing for the keeping and inspection of records relating to hazardous waste (inspection by the Environment Agency, Natural Resources Wales or “specified persons”); and
- the circumstances in which waste that is not hazardous waste should be treated as hazardous for the purpose of these regulations;

⁴⁶ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 91.

⁴⁷ *ibid.*

- providing for the supervision of hazardous waste activities/controllers by the Environment Agency or Natural Resources Wales;
- providing for records to be kept by the Environment Agency or Natural Resources Wales (including registers of hazardous waste controllers and places where hazardous waste may be kept);
- providing for the recovery of expenses/charges for the treatment, keeping or disposal of hazardous waste.⁴⁸

The bill also provides for enforcement powers, including that contravention of the regulation of hazardous waste is to be a criminal offence.⁴⁹

1.3.6 Waste enforcement and regulation

Clauses 62–63 of the bill would amend the Environmental Protection Act 1990 to consolidate the parliamentary procedure requirements for regulations and orders under the act, including for regulations and orders made under new powers in the Environment Bill. They would also amend the Environment Act 1995 to insert additional powers to allow the Environment Agency, Natural Resources Wales and (in some cases) the Scottish Environment Protection Agency. These include the power to make charging schemes to recover their enforcement costs. Clause 64 would introduce new powers for the DAERA to make charging schemes in Northern Ireland.

Clauses 64 and 65 concern enforcement powers, including for the seizure of vehicles with regard to waste offences, and powers of entry, including provision to:

- search a premises;
- seize and remove documentary or other evidence;
- require electronic information to be produced in a form that enables it to be removed or produced as documentary evidence; and to
- operate equipment found on the premises in order to produce information from it.⁵⁰

Clause 67 also would provide for new powers regarding littering enforcement, including for the secretary of state or Welsh ministers to issue guidance to litter authorities on the exercise of their enforcement functions by them and their officers.

⁴⁸ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 97.

⁴⁹ *ibid.*

⁵⁰ *ibid.*, p 103.

Clause 68 would amend the Environmental Protection Act 1990 to allow the level of fixed penalty notices for unauthorised or harmful depositing, treatment, or disposal of waste to be varied in the future. In addition, clause 69 would allow the Environment Agency and/or Natural Resources Wales to set conditions for exempt activities (ie those that do not require a permit), rather than the current approach which requires new regulations. Finally, clause 70 Waste and Contaminated Land (Northern Ireland) Order 1997 to reflect departmental changes in the Northern Ireland Executive.

1.4 Part 4: Air quality and environmental recall

Part 4 of the bill concerns air quality and would amend the requirements and management of Local Air Quality Management Frameworks. It would also provide local authorities with greater powers in smoke control areas and includes provision to require the recall of motor vehicles on environmental grounds.

1.4.1 Air quality

Clauses 71 and 72 of the bill would implement changes proposed in the Government's *Clean Air Strategy*, published in January 2019.⁵¹ These include updating the local air quality management regime and modifying local council powers in relation to smoke control areas. Those changes would include the following:

- To require the national air quality strategy be reviewed regularly within specified review periods.
- To require the secretary of state to report annually to Parliament on an assessment of progress made in meeting air quality targets in England and steps taken to meet those targets.
- To specify factors that local air quality management areas and corresponding action plans must identify and/or include.
- To impose a duty on “air quality partners” (an air quality partner can include bodies exercising public functions where they have been designated in regulations made by the secretary of state), to cooperate with the local authority, including requiring air quality partners to provide measures they would take to contribute to the action plan being developed by a local authority.
- To make provision regarding the collaboration between district and county councils in relation to air quality action plans, with similar provisions made for London and combined authorities. District councils have the responsibility to declare LAQMs and prepare action plans.

⁵¹ HM Government, [Clean Air Strategy 2019](#), January 2019.

- To introduce a requirement for local authorities to have regard to any guidance published by the secretary of state regarding local air quality standards and the local authorities' functions in that regard.⁵²

The bill would also introduce changes, in England only, to allow local authorities to issue financial penalties for emitting smoke from a chimney in a smoke control area. Control and enforcement measures regulating the sale of controlled solid fuels would also be extended.

1.4.2 Environmental recall of motor vehicles

Clauses 73–76 of the bill concern the environmental pollution caused by motor vehicles. The bill would provide that regulations could be made to confer a power on the secretary of state to issue a “compulsory recall notice” if they have reasonable grounds for believing a product does not meet a relevant environmental standard.⁵³ Such a compulsory notice may include requirements to publicise the recall, to achieve a minimum recall rate, to pay compensation, or to prevent any relevant products being sold while subject to a notice.

The bill would also allow for regulations that could impose a duty on both manufacturers and distributors to notify the secretary of state if they consider that a relevant product does not meet an environmental standard. Such regulations may also confer investigative and information gathering powers for the purposes of deciding whether to issue a compulsory recall notice and enforcement requirements, including financial penalties.⁵⁴

1.5 Part 5: Water

Part 5 of the bill relates to water quality, resources, drainage and the regulation of water and sewerage companies. Many of the measures in the bill were consulted upon by the Government in 2019.⁵⁵

1.5.1 Water and sewage management plans

Clause 77 of the bill would insert new sections into the Water Industry Act 1991 to give the secretary of state (or Welsh ministers in the case of Wales) the power to direct that water companies prepare and publish joint

⁵² House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 107.

⁵³ *ibid*, p 109.

⁵⁴ *ibid*.

⁵⁵ Department for Environment, Food and Rural Affairs, [‘Improving our management of water in the environment’](#), 19 January 2019.

proposals for improving the management and development of water resources. Clause 78 would also put a requirement for each sewerage company in England and Wales to prepare and publish a drainage and sewerage management plan on a statutory footing.

1.5.2 Regulation of water

Clauses 79–81 of the bill concern Ofwat’s role in regulating the water industry. They would make provision to amend Ofwat’s powers to require information from water companies in England and Wales, the process by which Ofwat can modify company licences in England only, and allow Ofwat to formally serve water company documents by email in England and Wales.

1.5.3 Water abstraction

In September 2020, the Government published its water abstraction plan, setting out how it intended to reform water abstraction to protect the environment and improve access to water.⁵⁶

Clause 82 would implement some of those proposals by making changes to the abstraction licensing regime. Those modifications would allow the secretary of state to revoke or make changes to permanent abstraction licences in England (from 1 January 2028) without paying compensation where the change is necessary to protect the environment or to “remove excess headroom” (where the abstractor abstracts less water than their licensed volume).⁵⁷

The House of Commons Library analysis of the bill notes that agriculture industry groups objected to Defra’s earlier consultation on the abstraction licensing change.⁵⁸ For example, the National Farmers’ Union (NFU) argued that the licences represent valuable business assets and property rights, and compensation should be available to abstractors whose permanent rights are changed.⁵⁹

In contrast, the summary of responses to Defra’s consultation stated that environment and rivers groups, individuals and local government were generally in favour of the proposals, arguing that the Environment Agency should be able to act to protect the environment from damage without paying compensation.⁶⁰ (Though the respondents did raise some caveats

⁵⁶ Department for Environment, Food and Rural Affairs, ‘[Water abstraction plan](#)’, September 2020.

⁵⁷ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 119.

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ *ibid.*

regarding the excess headroom proposals, warning against incentivising unnecessary use by abstractors to avoid licence change.)

1.5.4 Water quality

Clause 83 of the bill would give the secretary of state the power to make regulations to amend the substances and/or standards by which the chemical status of water bodies in England are assessed. Similar powers would be provided to the Welsh ministers and Northern Ireland Department for their respective areas in clauses 84 and 85.

Clause 86 would confer a power to be exercised by the secretary of state to amend the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 to allow future changes to the exercise of functions in the Solway Tweed River Basin District. Clause 87 would provide for definitions of water quality.

1.5.5 Land drainage

Clauses 88–90 of the bill would allow regulations to be made to establish changes to the valuation calculations for land within the districts of drainage boards in England and Wales.

As explained in the policy statement accompanying the bill:

Internal drainage boards use these valuation calculations to correctly apportion their expenses between agricultural landowners (via drainage rates) and local authorities (via the special levy). The powers will enable the government to address the issue posed by the unavailability of certain valuation data, whilst also future proofing the legislation, by enabling any future updates to other aspects of the valuation calculations to be made in secondary legislation as necessary. Since internal drainage boards are funded locally the government will only establish them where there is local support.⁶¹

Finally, clause 91 would make provision for the disclosure of certain revenue and customs information to those involved in completing valuation calculations.

1.6 Part 6: Nature and biodiversity

Part 6 of the bill concerns nature and biodiversity, and the objectives set out in the Government's 25-year environment plan to use resources from

⁶¹ Department for Environment, Food and Rural Affairs, '[Environment Bill 2020 policy statement](#)', 30 January 2020.

nature more sustainably and efficiently; and to enhance beauty, heritage and engagement with the natural environment through a natural capital approach.⁶²

1.6.1 Biodiversity gain and biodiversity credits

Clause 92 and schedule 14 make provision for ‘biodiversity net gain’—ie action that leaves biodiversity in a better state than before—to become a condition of planning permission in England. As part of this, a developer would have to submit, and have approved, a “biodiversity gain plan” to obtain planning permission. The secretary of state would also have the power to designate an ‘irreplaceable habitat’, and to exclude or amend how the legislation applies to them.

Clause 93 would also make provision for a national biodiversity gain site register. In addition, clause 94 would make provision for the secretary of state to set up a system to sell a supply of statutory biodiversity credits to the habitat compensation market (in England only). Proceeds of any such sale must only be used for the following purposes:

- a) carrying out works, or securing the carrying out of works, to enhance the habitat enhancement (within the meaning of Part 7A of the Town and Country Planning Act 1990) on land in England;
- b) purchasing interests in land in England with a view to carrying out works, or securing the carrying out of works, to enhance the biodiversity of the habitat on that land;
- c) operating or administering the arrangements.⁶³

1.6.2 Biodiversity objective and reporting

Clause 95 would also amend the duty placed on public authorities to have regard for the conservation of biodiversity when delivering their functions. Under the amended clause, public authorities will have to consider what action they can take to “further the general biodiversity objective” of conserving and enhancing biodiversity.⁶⁴ The first consideration must be completed within a year of the clause coming into force, and every five years after that. Public authorities will have to have regard to any relevant local nature recovery strategy.

⁶² HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), January 2018; and House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 133.

⁶³ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 139.

⁶⁴ *ibid.*

Clause 96 would also create a duty on public authorities to report on biodiversity, including a summary of action taken and plans over the next five-year period.

1.6.3 Local nature recovery strategies and conservation measures

Clauses 97–101 would make provision regarding local nature recovery strategies (LNRS) in England. Such strategies will cover the whole of the country, to be published by designated responsible authorities and which must contain:

- (a) a statement of biodiversity priorities for the strategy area, and
- (b) a local habitat map for the whole strategy area or two or more local habitat maps which together cover the whole strategy area.⁶⁵

Clauses 102–106 also make further provision with regard to species conservation strategies, protected site strategies, wildlife conservation licenses and habitats regulations. As part of these measures, the secretary of state would be required to prepare and publish a national habitat map for England, identifying national conservation sites and areas which are of particular importance for biodiversity.

1.6.4 Tree felling and planting

Clauses 107 and 108, and schedule 15, contain measures to enhance the Forestry Commission’s ability to enforce tree felling rules and to give local communities a say over plans to cut down urban street trees.

1.6.5 Use of forest risk commodities in commercial activity

Clause 109 introduces schedule 16, which would set out requirements on prescribed businesses using forest risk commodities in their commercial activities to tackle illegal deforestation in their supply chains.

1.7 Part 7: Conservation covenants

A conservation covenant is a voluntary, legally binding private agreement between a landowner and a “responsible body” (like a public body or conservation charity). The landowner agrees to do or not to do something on their land in order to achieve a conservation purpose for the public benefit.⁶⁶ Currently no such mechanism exists in the law of England and

⁶⁵ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 141.

⁶⁶ *ibid*, p 143.

Wales. The Law Commission recommended the introduction of a new statutory scheme in 2014, stating that:

[T]he public interest in conservation, and the enthusiasm of landowners to protect important features on their land, requires something much wider than these [current] limited arrangements; and there is a broad range of conservation bodies whose expertise could be drawn on in order to ensure the conservation of private land.⁶⁷

Subsequently, the Government made a commitment in its 25-year environment plan to work with landowners, conservation groups and other stakeholders to take forward proposals for conservation covenants. This formed part of a wider strategy to tackle biodiversity loss in England and provide opportunities for species conservation and the reintroduction of native species.⁶⁸

Consequently, clauses 110–132 of the bill would introduce a new statutory scheme of conservation covenants in England only (a departure from legislation proposed by the Law Commission). House of Commons Library analysis of the bill notes:

- A conservation covenant would be a voluntary, legally binding private agreement for conservation purposes between a landowner (freeholder or lessee with a leasehold interest of at least seven years) and a “responsible” body designated by the secretary of state (such as a local authority, conservation charity, or other body). An application by a local authority would need to satisfy the secretary of state that it is suitable to be a responsible body. A public body or charity would also have to show that at least some of its main purposes or functions relate to conservation; in any other case, at least some of the body’s main activities must relate to conservation.
- A conservation covenant agreement would set out benefits and obligations in respect of the relevant land. These obligations would be legally binding on the landowner (and their successors) and on the responsible body. However, it would be possible to modify a conservation covenant by agreement.
- In the event of a breach of a conservation covenant agreement, enforcement proceedings could be brought but there would be some statutory defences.⁶⁹

⁶⁷ The Law Commission, [Conservation Covenants](#), 2014.

⁶⁸ House of Commons Library, [Commons Library Analysis of the Environment Bill 2019–20](#), 6 March 2020, p 145.

⁶⁹ *Ibid*, p 146.

1.8 Part 8: Miscellaneous and general provisions

Part 8 of the bill deals with miscellaneous and general provisions, including REACH legislation governing chemical substances.

1.8.1 Amending of REACH legislation

The Registration, Evaluation, Authorisation and Restriction of Chemicals or REACH Regulation requires chemical substances that are manufactured or imported into the EU to be registered with the European Chemicals Agency along with safety data about the chemical, before being placed on the market. It then provides a mechanism to place restrictions on the manufacture or use of certain hazardous chemicals.⁷⁰

Following the UK's exit from the European Union, REACH has been retained in domestic legislation following the end of the transition period and a UK REACH regime has been established in secondary legislation. However, as noted by the House of Commons Library analysis, under the Northern Ireland Protocol the EU REACH Regulation will continue to apply to Northern Ireland after the end of the transition period, while 'UK REACH' will regulate the access of substances to the market in Great Britain, as set out in the REACH etc. (Amendment etc.) (EU Exit) Regulations 2020.⁷¹

Clause 133 would give effect to schedule 20, which in turn would provide the secretary of state the power to amend the articles of the REACH Regulation, as it applies in the UK amended by the REACH Exit statutory instrument. As such, clause 133 extends and applies to the whole United Kingdom.

1.8.2 Miscellaneous

The remaining clauses in the bill deal with miscellaneous provisions, including details on commencement and territorial extent.

2. Commons stages

Due to the coronavirus pandemic, consideration of the Environment Bill has taken place across the 2019–21 and 2021–22 parliamentary sessions. Scrutiny of the bill in the House of Commons began in February 2020, and a carry-over motion was subsequently moved to allow its final stages to take

⁷⁰ House of Commons Library, [Environment Bill 2019–21 and 2021–22: Report on Committee and Remaining Stages in the Commons](#), 24 May 2021, p 51.

⁷¹ *ibid.*

place in May 2021. It is due to have its second reading in the House of Lords on 7 June 2021.

In the background briefing notes to accompany the Queen's Speech 2021, the Government announced plans to amend the bill to introduce new duties to require the Government to publish a plan to reduce sewage discharges from storm overflows by September 2022 and report to Parliament the progress of implementing the plan.⁷² The Government also announced it would be setting a biodiversity target and providing powers to amend the Habitats Regulations; and tabled amendments to the bill to that effect which are discussed below.

2.1 Second reading

Introducing the bill at second reading in the House of Commons on 26 February 2020, the Secretary of State, George Eustice, said the bill was key to the UK's environmental agenda:

[A]s the UK hosts the next climate change conference, COP26 in Glasgow, we will be leading from the front as we write this new chapter for the UK outside the European Union: independent and committed to net zero and to nature recovery. The Government will work to tackle climate change and support nature recovery around the world and here at home, whether through recycling more and wasting less, planting trees, safeguarding our forests, protecting our oceans, savings species or pioneering new approaches to agriculture.⁷³

He noted the key provisions in the bill, including the creation of the Office of Environmental Protection and its powers to enforce compliance with environmental law, complementing and reinforcing the work of the Committee on Climate Change. Mr Eustice also referred to the strengthening of requirements on waste management and producer responsibility, deposit return schemes and other measures to tackle single use plastics.

In addition, the Secretary of State highlighted the provisions in the bill to tackle air pollution, water management and abstraction licensing. He further noted the potential impact of conservation covenants and nature recovery networks, and the powers provided to safeguard important habitats. He also noted the provisions which had been added to the bill following consultation, including to end the export of polluting plastic waste to non-OECD countries.

⁷² House of Commons Library, [Environment Bill 2019–21 and 2021–22: Report on Committee and Remaining Stages in the Commons](#), 24 May 2021, p 6.

⁷³ [HC Hansard, 26 February 2020, col 342.](#)

In conclusion, Mr Eustice said:

[T]his Government are committed to leaving the environment in a better state than we found it, whether through planting 30,000 hectares of trees a year by the end of this parliament, transforming our approach to agriculture, tackling air pollution or improving our waste management. This bill will create the framework to set a long-term course for our country to drive environmental improvement[.]⁷⁴

Responding for the Labour Party, the Shadow Secretary of State, Luke Pollard, said that his party was underwhelmed by the scope of the legislation, arguing that it was “an okay bill, but by no means the ground-breaking legislation we have been promised”.⁷⁵ Mr Pollard argued that bolder, swifter action was needed to decarbonise our economy and to protect vulnerable habitats. He added:

We need to recognise that the crisis is not just about carbon, although it is. It is about other greenhouse gases, too, and it is an ecological emergency, with our planet’s animals, birds and insect species in decline and their habitats under threat.⁷⁶

He added that, as a result:

As a nation, we need a gold-standard Environment Bill. I agree with the Minister that we need world-leading legislation, but this is not it. This still looks like a draft bill; there has not been complete pre-legislative scrutiny for the entire bill, which I think it needs; it lacks coherence as between its different sections; and it lacks the ambition to tackle the climate crisis as a whole with a comprehensive and renewed strategy. Labour will be a critical friend to ministers during this process. We will not be opposing the bill today, but in that spirit we hope that ministers will look seriously at adopting the measures we will put forward to improve and strengthen it, especially in committee.⁷⁷

2.2 Committee stage

The bill’s committee stage took place between 10 March 2020 and 26 November 2020. A number of Government amendments and new clauses were accepted during the committee stage.⁷⁸ A number of them

⁷⁴ [HC Hansard, 26 February 2020, col 347.](#)

⁷⁵ *ibid*, col 348.

⁷⁶ *ibid*.

⁷⁷ *ibid*, col 349.

⁷⁸ This summary of committee proceedings is drawn from House of Commons Library, [Environment Bill 2019–21 and 2020–21: Report on Committee and Remaining Stages in the Commons](#), 24 May 2021.

related to the establishment and functions of the OEP (chapter 2 and schedule 1 of the bill as introduced in the Lords). The Government argued these amendments would bring greater clarity about the OEP's role and consistency with other legal mechanisms. These included:

- Clarification of the remit between the OEP and the Committee on Climate Change, with the aim of ensuring no duplication of work, through the production of a memorandum of understanding.
- Clarification of the threshold for when an environmental review can be initiated by the OEP.
- To change the new environmental review process from being held in the upper tribunal to the High Court.
- To limit the OEP's powers to intervene in judicial review proceedings to "serious" cases.
- To limit the OEP's powers to initiate judicial review proceedings to "urgent" cases.
- A new power for the secretary of state to issue guidance to the OEP on matters concerning its enforcement policy.

New Government clauses added at committee stage (clauses 102 to 104 in the bill as introduced in the Lords) would provide powers for Natural England to implement species conservation strategies and protected site conservation strategies, and changes to how wildlife conservation licences are granted.

The Government also introduced a new clause (clause 109 in the bill as introduced in the Lords) on the use of forest risk commodities in commercial activities, with the aim of reducing deforestation caused by agriculture.

A more detailed summary of the debate on these amendments can be found in the House of Commons Library briefing [Environment Bill 2019–21 and 2020–21: Report on Committee and Remaining Stages in the Commons](#), 24 May 2021. This also contains a summary of debate and votes on opposition amendments and new clauses at committee stage. None of these were added to the bill.

2.3 Report stage day 1 (2019–21 session)

The first day of report stage took place on 26 January 2021. Only government amendments were made to the bill.⁷⁹ Most of them were

⁷⁹ This summary of proceedings on the first day of report is drawn from House of Commons Library, [Environment Bill 2019–21 and 2020–21: Report on Committee and Remaining Stages in the Commons](#), 24 May 2021.

described by the minister, Rebecca Pow, as being “technical” in nature.⁸⁰ They were all agreed without division. They were:

- **Amendment 6** to provide that in clause 6 (on the review of environmental targets), “England” includes the English inshore region and the English offshore region. The minister, Rebecca Pow, highlighted that it “clarifies that both the terrestrial and the marine aspects of England’s natural environment will be considered when conducting the significant improvement test in clause 6. That has always been our intention as I explained in committee, but the amendment puts it beyond doubt”.⁸¹ The significant improvement test relates to reviews of the environmental targets that the bill would establish. The test would be met where the secretary of state considers that meeting the targets will bring about a significant improvement in the natural environment in England. The first significant improvement test review is due by 31 January 2023.⁸²
- **Amendment 31** to clause 37 to clarify that section 31(2A) of the Senior Courts Act 1981 does not apply on an environmental review.
- **Amendments 9 to 20** to schedule 3, which are intended to align the clauses relating to the OEP’s Northern Ireland enforcement functions with the equivalent provisions in part 1 of the bill relating to England (that were amended previously at committee stage). In the debate, the minister, Rebecca Pow, said that these amendments were requested by the Northern Ireland ministers.⁸³
- **Amendments 32 to 35** to clauses 59 and 62, intended to correct references to existing legislation that is no longer in force following the end of the Brexit transition period.⁸⁴
- **Amendment 7** related to regulations under clause 73 (environmental recall of motor vehicles), specifying relevant environmental standards to avoid the need to amend the regulations each time standards are updated. The minister clarified this meant “that references to EU standards do not require updating to ensure that they are enforceable with this tough new vehicle recall power. It is a technical amendment that ends any risk that we will be unable to issue a recall affecting Northern Ireland”.⁸⁵

⁸⁰ [HC Hansard, 26 January 2021, col 220.](#)

⁸¹ *ibid.*

⁸² [Explanatory Notes](#), p 26.

⁸³ [HC Hansard, 26 January 2021, col 221.](#)

⁸⁴ *ibid*, col 292.

⁸⁵ *ibid.*

- **Amendment 8** to update references in clause 91 to the Criminal Justice Act 2003, as that act has been superseded by the Sentencing Act 2020.

Five opposition amendments and new clauses were pushed to a division, but all of them were defeated and not added to the bill. These were:

- **NC1**, moved by Caroline Lucas (Green Party MP for Brighton, Pavilion), which aimed to require public authorities to act in accordance with environmental principles when exercising their functions.⁸⁶ It was defeated by 366 votes to 266, a majority of 100.⁸⁷
- **NC5**, tabled by Hilary Benn (Labour MP for Leeds Central), which aimed to introduce a new state of nature target. It would have placed a duty on the secretary of state to meet a target to reverse loss of biodiversity in England no later than 2030.⁸⁸ It was defeated by 360 votes to 217, a majority of 143.⁸⁹
- **Amendment 25** to clause 2, tabled by Labour, which aimed to set parameters on the face of the bill to ensure that the particulate matter (PM2.5) target to be set would be at least as strict as the 2005 World Health Organisation guidelines, with an attainment deadline of 2030 at the latest. It was defeated by 354 votes to 227, a majority of 127.⁹⁰
- **Amendment 39** to clause 7, tabled by Labour, which aimed to place requirements on ministers to allow parliamentary scrutiny of exemptions granted to allow plant protection products banned under retained EU law (such as neonicotinoid pesticides), where they would be likely to impact bees and other species covered by an environmental improvement plan.⁹¹ It was defeated by 366 votes to 221, a majority of 145.⁹²
- **Amendment 24** to schedule 20, tabled by Labour, which aimed to set some minimum protections under the REACH chemical regime and remove the possibility that a secretary of state might lower current standards.⁹³ It was defeated by 357 votes to 227, a majority of 130.⁹⁴

⁸⁶ [HC Hansard, 26 January 2021, col 216.](#)

⁸⁷ *ibid*, col 264.

⁸⁸ *ibid*, cols 227–8.

⁸⁹ *ibid*, col 269.

⁹⁰ *ibid*, col 274.

⁹¹ *ibid*, col 221.

⁹² *ibid*, col 279.

⁹³ *ibid*, col 290.

⁹⁴ *ibid*, col 328.

2.4 Report stage day 2 (2021–22 session)

The second day of report stage took place on 26 May 2021. This was in the new 2021–22 parliamentary session, four months after the first day of report. The House of Commons had agreed at the first day of report to carry the bill over to the new session.⁹⁵ Rebecca Pow, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, explained then that the Government was seeking a carry-over because of the “immense pressure put on the parliamentary timetable by the Covid pandemic”.⁹⁶ However, she said “intensive work” relating to measures in the bill would continue.

2.4.1 Government amendments

Two new clauses tabled by the Government, NC21 and NC22, were agreed to without division on the second day of report. These are now clauses 105 and 106 in the bill introduced in the House of Lords. The new clauses created powers to enable the secretary of state to amend aspects of the Conservation of Habitats and Species Regulations 2017 (SI 2017/1012). This statutory instrument (SI) transposed the EU Habitats Directive and elements of the EU Birds Directive into domestic law in England and Wales, and in Scotland and Northern Ireland in relation to reserved and excepted matters.

The SI requires public authorities to comply with or have regard to the requirements of the EU directives when exercising certain functions (the exact requirement depends on which authority is exercising which function). The powers in NC21 (clause 105 in the Lords version of the bill) would enable the secretary of state to make regulations to amend this, so that the authorities would instead have to:

- comply with requirements;
- further objectives; or
- have regard to matters

specified in the regulations, relating to:

- biodiversity targets set by regulations made under clause 1 of the bill;
- biodiversity aspects of the environmental improvement plan; or
- the conservation or enhancement of biodiversity.

⁹⁵ [HC Hansard, 26 January 2021, col 210.](#)

⁹⁶ *ibid*, col 325.

The powers in NC22 (clause 106 in the Lords version of the bill) would allow the secretary of state to amend part 6 of the 2017 regulations, which sets out requirements for the assessment of plans and projects on protected sites.

In both cases, the secretary of state could only make regulations if they were satisfied it would not reduce the level of environmental protection provided by the 2017 regulations. They would have to make a statement to Parliament explaining why they were satisfied this was the case. Any regulations would be subject to the affirmative procedure.

Rebecca Pow said the power in NC21 would allow the Government to “refocus” the 2017 regulations “to ensure that our legislation adequately supports our ambitions for nature, including our new, world-leading 2030 target to halt the decline of species”.⁹⁷ The Government said the power in NC22 would allow it to make the habitats regulatory assessments process clearer and adapt it to domestic developments.⁹⁸ Ms Pow said that through a small working group chaired by Lord Benyon, Minister for Rural Affairs and Biosecurity, and through a forthcoming green paper, the Government was going to consult on initial proposals for regulatory reforms it could make using these powers.⁹⁹ The Government would also consult the OEP before making any regulatory changes.

Caroline Lucas (Green Party MP for Brighton, Pavilion) tabled an amendment to NC21 that would have required public authorities to comply with or have regard to any new requirements in addition to the existing requirements under the 2017 regulations, rather than allowing new regulations to replace the existing requirements.¹⁰⁰ The amendment was negated (rejected without a vote).¹⁰¹

2.4.2 Opposition amendments defeated on division

Four opposition amendments and new clauses were pushed to division, but all of them were defeated and not added to the bill. These were:

National tree strategy: NC25, tabled by Labour, would have required the Government to prepare a national tree strategy for England, including targets for protecting, restoring, and expanding trees and woodland in England. Luke Pollard, Shadow Secretary of State for Environment, Food and

⁹⁷ [HC Hansard, 26 May 2021, col 382.](#)

⁹⁸ *ibid*, and Department for Environment, Food and Rural Affairs, [Supplementary Delegated Powers Memorandum](#), 24 May 2021, p 2.

⁹⁹ [HC Hansard, 26 May 2021, col 382.](#)

¹⁰⁰ *ibid*, col 404.

¹⁰¹ House of Commons, [Votes and Proceedings](#), 26 May 2021.

Rural Affairs, argued this was needed because at current rates of tree-planting, the Government would not meet its own 2050 targets until 2091.¹⁰² Rebecca Pow said the new clause was “completely unnecessary” as the Government had already published a trees action plan the previous week.¹⁰³ NC25 was defeated by 352 votes to 217, a majority of 135.¹⁰⁴

Local nature recovery strategies: Amendment 29, tabled by Sarah Olney (Liberal Democrat MP for Richmond Park) would have amended clause 95 on the general duty to conserve and enhance biodiversity so that public authorities would have to “act in accordance with” any relevant local nature recovery strategy when exercising relevant functions such as taking planning, land use or spending decisions.¹⁰⁵ Clause 95 requires public authorities to “have regard to” any relevant local nature recovery strategy. Rebecca Pow argued it would be “unreasonable” to require national bodies such as Network Rail or Highways England to comply with many strategies.¹⁰⁶ She said the amendment could “perversely, result in lower environmental ambition”. Amendment 29 was defeated by 359 votes to 210, a majority of 149.¹⁰⁷

Fracking: NC12, tabled by Labour, would have prevented the Oil and Gas Authority from issuing any new well consents permitting associated hydraulic fracturing (fracking). It would also have meant that any existing well consents would expire three months after the bill received royal assent. The Government announced an effective moratorium on fracking in November 2019, saying it would “take a presumption against issuing any further hydraulic fracturing consents [...] until compelling new evidence is provided which addresses the concerns around the prediction and management of induced seismicity”.¹⁰⁸ Ruth Jones, Shadow Minister for Environment, Food and Rural Affairs, argued it was time to “put this destructive industry to bed once and for all”.¹⁰⁹ Rebecca Pow said the Government’s moratorium remained in place, sending “a clear message to the sector and to local communities that, on current evidence, fracking will not be taken forward in England”.¹¹⁰ NC12 was defeated by 357 votes to 216, a majority of 141.¹¹¹

¹⁰² [HC Hansard, 26 May 2021, col 386.](#)

¹⁰³ *ibid*, col 430. The [England Trees Action Plan 2021 to 2024](#) was published on 18 May 2021.

¹⁰⁴ [HC Hansard, 26 May 2021, col 432.](#)

¹⁰⁵ *ibid*, col 424.

¹⁰⁶ *ibid*, col 430.

¹⁰⁷ *ibid*, col 436.

¹⁰⁸ House of Commons, ‘[Written statement: Energy policy update](#)’, 4 November 2019, HCWS68. For further background on fracking, see: House of Commons Library, [Shale Gas and Fracking](#), 31 March 2020.

¹⁰⁹ [HC Hansard, 26 May 2021, col 445.](#)

¹¹⁰ *ibid*, col 462.

¹¹¹ *ibid*, col 464.

Peatland burning: NC24, tabled by Labour, would have prohibited the burning of peat in upland areas. Rebecca Pow said the Government had published its peat action plan the previous week, in which it committed to: exploring the environmental and economic case for extending peat protections further in England; immediately funding 35,000 hectares of peatland restoration by 2025; and consulting on the banning of horticultural peat.¹¹² Ruth Jones acknowledged that the Government had committed to ban some peat burning, but she said it was “not enough”.¹¹³ She maintained that 35,000 hectares was only one-tenth of the peatland that needed to be restored in England, and said there were no clear targets for peatland restoration after 2025. NC24 was defeated by 360 votes to 208, a majority of 152.¹¹⁴

2.5 Third reading

Third reading took place immediately after report stage on 26 May 2021. George Eustice, Secretary of State for the Environment, said this “landmark” bill would “deliver on our manifesto commitment to create the most ambitious environmental programme of any country on earth”.¹¹⁵ He said the Government’s “world-leading targets will be supported by provisions in the bill”. He believed the bill took “important strides in tackling air, water and waste pollution”, and everything in the bill would be “underpinned by our new system of environmental governance” under the OEP.¹¹⁶ Commending the bill to the House, he said its provisions would “ensure that this generation leaves our environment in a better state than we found it”.

Ruth Jones, Shadow Minister for Environment, Food and Rural Affairs, argued the bill failed to give the OEP the powers it needed, and did “not go far enough” with the environment improvement plan.¹¹⁷ She regretted the Government had not accepted any of Labour’s amendments which, she said, “sought to build on the limited foundation set by the Conservative Party and make this bill properly fit for purpose”.¹¹⁸ She hoped the bill would return to the Commons from the Lords “sooner rather than later” because “the climate crisis worsens every day and real action is necessary now”.

Similarly, Deirdre Brock, SNP Spokesperson for Environment, Food and Rural Affairs, described the bill as “a missed opportunity”.¹¹⁹ She identified

¹¹² [HC Hansard, 26 May 2021, col 463](#). [The England Peat Action Plan](#) was published on 18 May 2021.

¹¹³ [HC Hansard, 26 May 2021, col 446](#).

¹¹⁴ *ibid*, col 469.

¹¹⁵ *ibid*, col 474.

¹¹⁶ *ibid*, cols 474–5.

¹¹⁷ *ibid*, col 475.

¹¹⁸ *ibid*, col 476.

¹¹⁹ *ibid*, col 478.

enforcement as “the weakest point” of the bill, maintaining that the OEP had “no teeth”, was “not independent” and had a “reduced remit”.¹²⁰ In her view, the measures in the bill had “taken too long and are piecemeal measures compared with the enormity of what is required to tackle the climate emergency”.¹²¹

Tim Farron, Liberal Democrat Spokesperson for Environment, Food and Rural Affairs, thought the bill was “broadly well-intentioned and does a lot of good, but, when it comes down to it, it does not provide itself with the mechanisms to actually deliver what it says”.¹²² He concluded it was “good in principle—weak in practice”.

3. Government amendments to be tabled in the Lords

3.1 Reducing harm from storm overflows

The Government stated in the background briefing to the Queen’s Speech in May 2021 that it would be putting forward amendments to the Environment Bill to reduce the harm from storm overflows to rivers, waterways and coastlines.¹²³ It said new duties would require the Government to publish a plan to reduce sewage discharges from storm overflows by September 2022 and report to Parliament the progress of implementing the plan. The Government explained that during wet weather storm overflows release diluted wastewater into rivers, preventing a combination of sewage and rain from overloading the sewers, but their use has increased in recent years as climate change has led to greater rainfall and water infrastructure has not kept pace with population growth.¹²⁴ The Government intends to introduce these provisions in the Lords.¹²⁵

3.2 Species abundance target

George Eustice announced on 18 May 2021 that, acting on the recommendations of the Dasgupta Review, the Government intended to amend the Environment Bill to require a legally binding target on species abundance for 2030.¹²⁶ He said this would aim “to halt the decline of nature in England” and “be the net zero equivalent for nature, spurring action of the

¹²⁰ [HC Hansard, 26 May 2021, col 479.](#)

¹²¹ *ibid*, col 480.

¹²² *ibid*, col 482.

¹²³ Prime Minister’s Office, [The Queen’s Speech 2021](#), 11 May 2021, p 129.

¹²⁴ Department for Environment, Food and Rural Affairs, [‘New Environment Bill provisions to tackle storm overflows’](#), 11 May 2021.

¹²⁵ [HC Hansard, 26 May 2021, col 381.](#)

¹²⁶ House of Commons, [‘Written Statement: Plans to restore nature’](#), 18 May 2021, HCWS38. [The Economics of Biodiversity: The Dasgupta Review](#) was published in April 2021.

scale required to address the biodiversity crisis”. Mr Eustice said the final target would be set in secondary legislation following the agreement of global targets at the UN Nature Conference—the fifteenth conference of the parties (COP15) to the Convention on Biological Diversity—in Kunming, China this autumn. The Government intends to table this amendment at Lords committee stage.

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