

The Environment Act



The Environment Bill has gained Royal Assent, completing its parliamentary journey 1,056 days after it was first introduced. The Environment Act 2021 is the UK's new domestic environmental legislation; it replaces enforcement mechanisms that were lost as the UK left European environmental jurisdiction and introduces new policies.

The Act is the enabling legislation for new policy focused on environmental protection, but it doesn't contain the detail of how specific targets will be achieved or mechanisms structured. This detail will lie in secondary legislation that the government will introduce. The environment is a devolved matter so the majority of the provisions within the Act apply to England only. However, certain elements are intended to be national and government wishes to continue to work closely with the devolved administrations to take a consistent approach across the home nations.

Which parts of the Act will impact the rural sector?

The Act contains multiple policy mechanisms intended to protect and enhance the natural environment. For the rural sector, this provides new opportunities due to the increasing desire to invest in the resilience of natural capital, however it also poses future risks with rising regulatory baselines and environmental responsibilities.

- **Environmental principles** - there are five environmental principles within the Act which will now be enshrined within policy making. These are the prevention, precautionary, integration, rectification at source and polluter pays principles. The Act requires all future policy to 'pay regard' to these principles, although the Ministry of Defence and Treasury are exempt, which will limit the extent to which fiscal tools such as taxes will be used to drive environmental outcomes. These principles will likely mean rural businesses have to take more individual or collective responsibility for their negative environmental impacts, and they could be influential in how, for example, the future land management regulations needed to replace cross-compliance are drafted.
- **Long term environmental targets** to improve air and water quality, waste reduction, resource efficiency and biodiversity. Targets can only be set for matters that can be objectively measured, achieved within a given timeframe and over a period of not less than 15 years. There is also an overall target to halt the decline of nature by 2030, which includes a legally binding species abundance target. For rural managers, these targets mean that environmental protection is prioritised by government, which will create opportunities for investment into the environmental resilience of rural land.
- **Biodiversity net gain** - under the Act biodiversity net gain (BNG) will become a mandatory condition of planning permission for future developments in England. BNG means there must be a 10% increase in biodiversity after development, compared to the level of biodiversity prior to the development taking place. For more information on how BNG works, please see our [briefing note](#). In England, BNG will boost the private market for biodiversity offsets, offering a new diversified income stream for long term (over 30 years) land use change. There are still questions around the practicalities of BNG and the capacity of local planning authorities to effectively implement it. It is expected that BNG will become a mandatory planning requirement in 2023.
- **Local Nature Recovery Strategies** (LNRS) will be required in every local authority. These are new spatial strategies for nature which will plan, map and help drive more coordinated action and investment in nature's recovery to build the national Nature Recovery Network. Defra has run a consultation on what the process around LNRS creation will look like and, going forward, rural land managers will need to be open to collaboration and partnerships for both landscape scale and local nature recovery. New Species Conversation and Protected Site Strategies will also be a part of LNRSs, and local planning authorities will have to cooperate with Natural England in their establishment and operation.
- **Conservation covenants** can now exist in law and be used to secure environmental benefits for the long term. They must be formed by a deed and allow landowners to set legally binding positive or negative obligations on their land which bind themselves and subsequent owners. They could be used within BNG agreements to secure the land management changes necessary to generate the biodiversity uplift.
- **Forestry enforcement measures** - increased (and potentially unlimited) fines for illegal felling and a new streamlined administrative process for the Forestry Commission.

- **Supply chain due diligence** - the Act requires businesses to establish a system of due diligence for each regulated commodity used in their supply chain and requires businesses to report on their due diligence. There will be an enforcement system put in place to make it illegal for UK businesses to use key commodities if they have not been produced in line with local laws protecting forests and other natural ecosystems. This may present more opportunities for shorter supply chains, but given local laws could be comparatively weak on deforestation, supermarkets own commitments to source responsibly are likely to have more impact.
- **Veteran trees and ancient woodland** - the National Planning Policy Framework (NPPF) will be reviewed to ensure that it is being correctly implemented where ancient woodland is involved. There will be a consultation on 'strengthening the wording of the NPPF to ensure the strongest protection of ancient woodland' and local planning authorities will be required to consult the secretary of state for levelling up, housing and communities if they are minded to grant planning permission for developments affecting ancient woodland.
- **Water abstraction licences** - a measure within the Act enables the Environment Agency to vary or revoke certain water abstraction licences without liability for compensation from 1st January 2028. Licences that are underused or cause disproportionate environmental harm are most likely to be reviewed. This may be of concern to farmers relying on groundwater abstraction in water stressed areas and mean that investment in reservoirs is needed to secure enterprise viability.
- **Water pollution** has been a high profile issue recently. Within the Act there is a new duty on government to produce a statutory plan to reduce discharges from storm overflows and a duty on water companies and the Environment Agency to publish rigorous data on storm overflow operation. There is also a new duty on water companies to monitor the water quality upstream and downstream of storm overflows and sewage disposal works. The House of Lords proposed a stronger amendment to force companies to completely stop discharging sewage in England's rivers and seas, however this was rejected in the House of Commons.
- **Waste crime** - there are measures in the Act aimed at tightening the legislation around waste crime, through better access to evidence and increasing the proportionality of littering offences.

Environmental governance

The primary goal of the Act is to improve environmental governance. It does this through creating a new Office for Environmental Protection (OEP), which is the new green watchdog for England and Northern Ireland – subject to the Northern Ireland Assembly approving it. The OEP is intended to hold public authorities, including ministers, to account if they fail to comply with environmental law. The level of independence given to the OEP was a sticking point during debates and ultimately, government still has a level of oversight on the Office. The OEP already exists as an interim body, however it will become legally established at the start of the new year.

Conclusion

The Environment Act is a landmark piece of legislation which is intended to set the precedent for how the UK's natural environment will be protected and enhanced for future generations. Although it was initially hoped that the Act would receive Royal Assent before the start of COP26, it did achieve it before COP26 concluded. Some stakeholders are critical of the Act, saying it hasn't gone far enough in providing the future environmental legislation that the country needs and that it falls short of setting the foundation for a brave new clean and green world.

The effectiveness of the Act depends on the quality of the secondary legislation that is now created. If the secondary legislation is robust, the Act has the potential to have a significant impact. Rural land managers need to ensure they are eloquent in the opportunities that the new environmental legislation creates in terms of natural capital and supply chain investment. They must be prepared to innovate and collaborate to make the most of these opportunities. However, the rural sector must also be aware that it needs to work within the rising regulatory baseline in terms of environmental standards and this may pose risks to farming systems and land management practices.

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