

The Environment Bill 2020



The Environment Bill has made limited progress since first entering parliament over a year ago and triggering widespread discussion about the opportunity that mandatory biodiversity net gain presents for the rural sector. It is now set to move forward with committee debates in the House of Commons due to resume on 3 November and conclude by 1 December 2020. This briefing note recaps the government's policy and what it is seeking to achieve through the Environment Bill.

As influential as the Agriculture Bill may be in re-designing the future of payments to land managers, the [Environment Bill](#) (the 'Bill') promises a revolution in the conditions attached to land ownership. In our view farmers and land managers have more to gain than fear in its immediate impact, but the long-term direction of travel is significant.

Scope

The Bill's [policy statement](#) makes it clear that the majority of its provisions apply to England only, as the environment is a devolved matter. However, elements are intended to be national and government has said that it wants to work closely with the Devolved Administrations to ensure a consistency of approach across the home nations. The Bill is split into eight sections, covering everything from environmental governance to chemicals legislation. This note covers the most pertinent topics to land managers only. The primary goal of the Bill is to improve environmental governance. It does this through creating a new Office for Environmental Protection (OEP), which will also oversee the work of the Committee on Climate Change (CCC). The OEP will work much like the CCC in routinely reporting to government on how its policies are delivering on the obligations created in the Bill.

Part 1 - Targets

Section 1 of the Bill provides that the Secretary of State may set 'long-term targets' for the improvement of any element of the 'natural environment' and people's enjoyment of it. The term 'natural environment' is widely drafted to include plants, wild animals, habitats, air, water and land (excluding buildings and structures), but it does not specifically refer to soil. 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 a positive obligation to set a target for reducing fine particulate matter, which is largely derived from solid fuel heating systems, and an obligation to set a target for at least one matter in four priority areas of air quality, water, biodiversity, and resource efficiency and waste reduction. These five targets have to be set before 31 October 2022. Greenpeace has objected that this date plus the 15 year timeframe implies that no enforcement action can be taken against the government on the targets until 2037 at the earliest.

Section 7 requires the Secretary of State to prepare an Environmental Improvement Plan (EIP) to deliver significant improvement in the natural environment over a period of not less than 15 years. The Bill specifies that for England, the 25 Year Environment Plan will be the first recognised EIP under the Bill. An EIP has to be reported on every year, including on the performance of the targets set under section 1 of the Bill, and it has to be reviewed every five years.

Environmental principles

Section 16 of the Bill seeks to introduce better environmental consideration into all future policy making. Five 'environmental principles' are specified, although the interpretation and proportionate application of the principles is to follow in a separate policy document. The five principles are:

1. The inclusion of environmental protection in policy making
2. Preventative action to avert damage
3. The precautionary principle, for the environment only
4. Rectification at source
5. Polluter pays principle.

Strictly interpreted, these principles introduce a much greater burden on land managers to avoid environmentally damaging behaviours, but their practical application remains to be seen. The Stacey Review of farming inspection and regulation suggested that a strict application of polluter pays was impractical.

Office for Environmental Protection

The Bill proposes the creation of an Office for Environmental Protection (OEP), to hold Government to account on its targets and EIP, and to advise on the creation and implementation of environmental law. The OEP then has a

duty to hold public authorities to account on their compliance with environmental law. In this regard, it is 'enforcing the enforcers' and ensuring that the priorities being tackled by local agencies are consistent with the government's targets for environmental improvement. There has been criticism that the OEP will not be properly independent from government, and this has recently been renewed as the government has tabled an amendment which will allow it to issue and revise enforcement guidance to the OEP. The delays to the Bill mean that the legal basis for the OEP to act as the independent environmental regulator will not be in place for the end of the Brexit transition period. The UK government will introduce interim arrangements which will continue until the OEP becomes fully operational.

Part 5 - Water

The policy statement accompanying the Bill explains that its water provisions are intended to improve the existing framework in order to achieve 'long-term, resilient water and wastewater services'. The key reform of concern to land managers is the proposal to amend the Water Resources Act 1961 to align water abstraction licensing with the obligation in the 25 Year Environment Plan to restore water bodies to 'as close to their natural state as possible'. This includes the ability to revoke or vary abstraction licences without compensation where they are causing 'considerable' environmental damage and/or they consistently abstract less water than their licensed volume. The ability to revoke without compensation will only come into effect after 2028, but the term 'considerable' is likely to prove contentious. It's used in the policy statement but is not defined in the Bill, which provides that the licence revocation or variation must be in pursuit of an environmental objective under the relevant part of the Water Framework Directive, or 'to otherwise protect the water environment from damage'. This may pose a substantial burden on abstractors going forwards.

Part 6 - Net gain

As expected from the 25 Year Environment Plan, the Bill formally introduces the concept of biodiversity net gain on future development. In essence, net gain means that the impact of a development on biodiversity is quantified and an equivalent biodiversity improvement plus a 10% gain is delivered, onsite or offsite. The Bill requires the habitat creation or enhancement to be maintained for 30 years, but amendments are seeking a perpetual obligation. The biodiversity net gain mechanism is not intended to enable development on protected or irreplaceable habitats, but to take an additional slice out of landowners' planning gain to improve a habitat nearby that merits investment. The Bill sets out a detailed mechanism for this brokerage arrangement to occur, and interested landowners should contact Jon Dearsley in the first instance. For detail on biodiversity net gain see [Spotlight: Natural Capital](#).

One of the distinct elements of the use of the planning system to deliver environmental improvement is the localisation of decision making. This is further enhanced through the proposal in England for Local Nature Recovery Strategies (LNRS), which will identify priority areas for local nature improvement. These strategies are likely to target development money through net gain to specific areas. The economics of the planning system and environmental improvement suggest that the easiest wins will be the most attractive to planning authorities, but the pioneers of net gain have been private owners and in existing high-value spaces such as historic parkland. Supply and demand of net gain credits will have a large influence on where agreements can be placed.

Proposed government amendments: species conservation and protected site strategies

The government has tabled amendments to the Environment Bill to enable Species Conservation Strategies and Protected Site Strategies. Species Conservation Strategies will allow a broader scale approach to be taken often at planning authority or catchment scale and reduce the need for reactive, site-based assessments. It is intended that the strategies will help protect species at greatest risk whilst reducing delays to development. This approach is already being used successfully for great crested newt district level licensing, which assesses the impact of developments and collects habitat compensation through developer contributions.

The concept of a Protected Site Strategy is broad and it includes any approach to mitigation or compensation that is wider than the individual project level. Often our best wildlife sites are threatened by indirect, cumulative offsite impacts. Protected Site Strategies will put in place big-picture solutions which deal with these threats at a scale that works. An example of this approach in action is the nitrate credit trading solution to unlock housing development in the Solent. The amendments will place a new duty on local planning authorities to cooperate with Natural England and other public bodies in the establishment and operation of the Species Conservation and Protected Site Strategies. The strategies will be integrated into the LNRS.

Insight - carrot and stick

There was some trepidation that a strict interpretation of the environmental principles proposed in the Environment Bill would make life very different for agricultural operations as they currently stand. The emphasis of the Bill is very much forward looking however, with long term goals in a handful of areas that may or may not directly impact on agriculture. The threat to abstraction licences remains a concern. The wider picture is how effective the OEP will be in holding government and public authorities to account on their environmental performance and new environmental commitments. This will undoubtedly depend on its resourcing.

The carrot for land managers is the formalised approach for biodiversity net gain, which may generate a considerable pot of investment for natural capital improvement in the farmed landscape. It will depend on the proximity to development and careful planning to ensure that agreements are acceptable to planner, developer and land-manager alike. In conclusion, the Environment Bill offers a tasty carrot, which may be out of the reach of many, and a tender sapling, which may eventually grow into a fairly weighty and all-encompassing stick.

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