

FACTSHEET

WHAT DOES THE ENVIRONMENT ACT MEAN FOR BUSINESSES?

This factsheet outlines the new legislative framework for environmental protection set out by the UK Environment Act 2021 and how this might impact businesses.

Introduction

The UK Environment Act 2021 is a wide-ranging piece of legislation that will replace the previous environmental standards set by the EU. The Act will provide a new framework for environmental protection in the UK by setting targets for clean air, biodiversity, water quality, and waste.

The underlying themes are those which have encompassed environmental organisations for years such as resource efficiency, transparent reporting, and regulation of chemicals and harmful substances. The legislation is guided by five core principles:

- integration
- prevention
- rectification at source
- polluter pays
- precautionary.

WHAT IS IN THE ACT?

The most important elements of the Act are:

- the mandatory environmental targets
- creation of the Office for Environmental Protection
- biodiversity net gain regulations
- Local Nature Recovery Strategies.

Mandatory environmental targets

The legislation gives the Environment Secretary the power to set legally binding targets that will last for 15 years with at least one target in the four priority areas of air quality, water, biodiversity, and resource efficiency/waste reduction.

These targets were consulted on through Spring 2022. However, risks with the consultation were highlighted, with claims that it included limited critical information to enable an informed response.ⁱ Subsequently, the consultation period was extended to 27 June 2022.

Office for Environmental Protection (OEP)

The OEP is a new independent public body that was created in November 2021 and will replace the previous oversight of the European Commission by acting as the environment watchdog for England and Northern Ireland.ⁱⁱ

The office will provide proactive regulatory frameworks and hold stakeholders to account. It will be chaired by Dame Glenys Stacey – previously Chief Executive and Chief Regulator of Ofqual. Stacey has been clear about the importance of OEP in safeguarding environmental standards across the UK, stating that she intends it to be an approachable organisation that acts intelligently.ⁱⁱⁱ



WHAT DOES THE ENVIRONMENT ACT MEANS FOR BUSINESSES?

The OEP will act as a 'supra regulator' in that it will have the power to assess other regulators and public authorities of its own accord and can launch environmental review procedures in the courts.^{iv}

Biodiversity net gain (BNG)

The bill also provides new regulations for developers to ensure that increased biodiversity is a condition for planning permission in England. The regulations will be linked to the Town and Country Planning Act 1990 and Planning Act 2008, in that planning permission granted is subject to 10% biodiversity gains. To ensure that this policy is regulated, each development site will have a publicly available register, and this will be maintained for 30 years after completion. BNG is under a two-year transition period, therefore, will be a legally mandatory requirement by 2023.^v

However, if developers cannot demonstrate net gain, they can offset by going off-site to negotiate a private offsetting arrangement, or by buying biodiversity credits from the government.^{vi} However, offsets should be viewed as last resort as they fail to deal with the current operational impact.^{vii}

Local Nature Recovery Strategies (LNRS)

Local Authorities will be required to create LNRS for the environment and nature's recovery. The idea is to map the most valuable sites and habitats for wildlife and identify where nature can be restored. However, questions have been raised about how applicable this policy is with the limited scope on how local authorities are supposed to fund and implement these strategies.

Circular economy

The Act contains provisions on waste reduction, recycling and waste tracking. This includes new powers to require ecodesign of products and provision of information relating to embodied carbon, reuse, repair and recyclability of products, as well as powers to introduce Extended Producer Responsibility schemes, a Deposit Return scheme, single use charging schemes, and also provisions in relation to a new waste tracking scheme.

WHY DOES IT MATTER?

The Environment Act is necessary as the environmental protections governed from Brussels became obsolete after the UK left the EU. The passage of the bill - with various interventions made by the Lords and legal experts and three official delays – shows that creating robust post-Brexit environmental protections will be no easy task. Additional pressures arise with Number 10 announcing cuts to civil service personnel which limits their capacity to deliver this newly formed piece of legislation.

At the same time, after the latest IPCC report had been published there is a renewed sense of urgency about the climate crisis and the need to build mandatory targets.

This factsheet has outlined some of the risks and opportunities of the Environment Act. Most of this risk is not around the aims and objectives of the bill but with its implementation and practical delivery. This is important for businesses as they will find themselves having to quickly alter their operations to meet the regulatory requirements.

However, the legislation also offers opportunities for responsible businesses to engage with local authorities and communities on nature. Businesses should also work proactively to embrace the changes as research has shown that environmental regulations can boost economic growth by improving business innovation.^{viii}

For instance, with BNG and LNRS, there are plenty of opportunities for businesses, communities, and local authorities to work together with common interests, as well as ensuring the initial first steps are in place. For example, if you are a developer, having early discussions with legal professionals is recommended.

KEY DATES

- **June 2022** – The final strategy, enforcement policy and corporate plan is published by the Office for Environmental Protection.
- **October 2022** – Deadline to set at least one long-term target for each priority area.
- **2022** – Throughout 2022, Government will be developing the third National Adaptation Programme for publication in 2023.
- **2022** – Review and revise the National Air Pollution Control Plan through consultation and final publication in 2023.
- **2022** – National Framework for Water Resources, regional groups and water companies will undertake further consultation and finalise plans in 2023.
- **2023** - First revised Environmental Improvement Plan to be published in 2023.
- **2023** – Taskforce on Nature-related Financial Disclosures (TNFD) will release its final recommendations.
- **November 2023** – Mandatory requirement for biodiversity net gain will come into effect for planning permission in England.
- **2023 to 2024** – Implementation of central digital waste tracking service – higher understanding of waste moments in UK.
- **2025** – Extended Producer Responsibility scheme launched whereby producers are given increased responsibility for the treatment or disposal of post-consumer products.

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ENDNOTES

ⁱ ClientEarth (2022), *Letter from ClientEarth to UK Environment Secretary on Defra's proposed consultation on environment targets*, available at: <https://www.clientearth.org/latest/documents/letter-from-clientearth-to-uk-environment-secretary-on-defra-s-consultation-on-environmental-targets/>

ⁱⁱ Office for Environmental Protection (2022), *OEP – What we do*, available at: <https://www.theoep.org.uk/node/17>

ⁱⁱⁱ Office for Environmental Protection (2021), *Dame Glenys Stacey: Aldersgate Group speech*, available at: <https://www.theoep.org.uk/news/dame-glenys-stacey-aldersgate-group-speech>

^{iv} Herbert Smith Freehills (2022), *Environment Act 2021 – HSF Latest Thinking*, available at:

<https://hsfnotes.com/realestatedevelopment/2022/06/21/environment-act-2021-hsf-latest-thinking/#page=1>

^v Herbert Smith Freehills (2022), *The Environment Act 2021 – biodiversity net gain and its implementation*, available at:

<https://hsfnotes.com/realestatedevelopment/2022/01/11/the-environment-act-2021-biodiversity-net-gain-and-its-implementation/#page=1>

^{vi} Wright Halsall (2021), *Biodiversity net gain – update*, available at: <https://www.wrighthalsall.co.uk/knowledge-base/biodiversity-net-gain-update>

^{vii} Friends of the Earth (2018), *Biodiversity offsetting and net gain*, available at:

<https://friendsoftheearth.uk/nature/biodiversity-offsetting-and-net-gain-licence-trash-nature>

^{viii} LSE (2014), *The impacts of environmental regulations on competitiveness*, available at:

<https://www.lse.ac.uk/granthaminstitute/publication/the-impacts-of-environmental-regulations-on-competitiveness/>