



PINS NOTE 17/2021r1

To: All Inspectors, All Examining Inspectors, All Casework Managers

Relevancy: All Planning and Enforcement Casework, Local Plans, Infrastructure and Specialist Casework

Date of Issue: 29 November 2021

Last Updated: 21 January 2022 – Revised Annex C setting out the various statutory provisions coming into force at different dates this year under the Commencement No. 2 Regulations SI 2022/48.

Review Date: 29 April 2022

Environment Act 2021

Introduction

1. On 9 November 2021, the [Environment Act 2021 \(c. 30\)](#) (the Act) received Royal Assent. The purpose of the Act is to make provision for targets, plans and policies with the intention of improving the natural environment; for statements and reports about environmental protection; for establishing the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall of products that fail to meet environmental standards; about water management; about nature and biodiversity; for conservation covenants and about the regulation of chemicals and for environmental connected purposes.
2. The Act consists of 8 parts and 21 schedules, which address two broad themes. The first theme concerns environmental governance, to ensure that there are no gaps in oversight following the UK's departure from the European Union (part 1) whilst the second theme addresses a range of environmental improvement measures (parts 3-7):

- Part 1 – Environmental Governance
- Part 2 – Environmental Governance: Northern Ireland
- Part 3 – Waste & Resource Efficiency
- Part 4 – Air Quality and Environmental Recall
- Part 5 – Water
- Part 6 – Nature & Biodiversity
- Part 7 - Conservation Covenants
- Part 8 – Miscellaneous & General Provisions

Environmental Governance

3. The environmental governance provisions set out in part 1 include:
- The establishment of a framework for setting long term, legally binding environmental targets.
 - A requirement for government to prepare and maintain an Environmental Improvement Plan (EIP), with a statutory cycle of monitoring, planning and reporting.
 - The need to prepare a policy statement on environmental principles, alongside a list of the principles that the statement will cover.
 - Formally establishing the Office for Environmental Protection (OEP) who will be responsible for taking action in relation to serious breaches of environmental law and holding public authorities to account.

Environmental Targets

4. In relation to the framework for the setting of environmental targets, the Secretary of State for Environment, Food and Rural Affairs (SoS) must set out long-term, legally binding targets of at least 15 years in duration for each of the following priority areas:
- Air quality;
 - Water;
 - Biodiversity;
 - Resource efficiency and waste reduction.

Each target must specify a standard to be achieved, which must be capable of being objectively measured, and a date by which it is to be achieved.

5. The Act also creates specific duties to set targets on:
- an annual mean concentration level of fine particulate matter (PM_{2.5}) in ambient air, which 'may but need not be' a long-term target; and
 - species abundance, with a specified date for this target of 31 December 2030.
6. Draft regulations on the process for target setting must be laid before parliament by 31st October 2022. The SoS must review targets and the first review must be completed by 31 January 2023 with subsequent reviews subject to a 5-year cycle.

Environmental Improvement Plans

7. The Act specifies that the EIP must set out the steps the government will take to improve the natural environment during the lifetime of the plan; and that the period of each plan must be at least 15 years. The 25-year Environment Plan¹ (published by Defra in January 2018) must be treated as the first EIP, with the first annual review of the plan to be completed by 31st January 2023. As part of the first review of the EIP, and for subsequent reviews, the SoS must set at least one interim target for each relevant matter.

¹ [A Green Future: Our 25 Year Plan to Improve the Environment](#)

Environmental Principles

8. The SoS is required to lay before parliament a policy statement on environmental principles, setting out how these principles are to be interpreted and proportionately applied by Ministers when making policy. The statement must contribute towards the improvement of environmental protection and sustainable development. The following principles are identified within the Act:
- Integration principle - the principle that environmental protection should be integrated into the making of policies,
 - Prevention principle - the principle of preventative action to avert environmental damage,
 - Precautionary principle - where there are threats of serious damage, lack of certainty cannot be used as reason for inaction, so far as relating to the environment,
 - Rectification at source principle - that environmental damage should as a priority be rectified at source, and
 - Polluter pays principle - costs of pollution and remediation are borne by the polluters, rather than the community.
9. The SoS is required to lay the draft statement before parliament and must respond to any recommendations made. The final statement has effect once the SoS has laid it before parliament. It may be revised at any time, subject to the same scrutiny procedures as the initial statement. A draft statement was the subject of public consultation during summer 2021².
10. The Act also requires that Ministers must make a statement to parliament setting out the effect of any Bills on existing levels of environmental protection, which if enacted, would be environmental law. There is also a commitment that the SoS will review and report to parliament on international environmental protection legislation, on a two-year reporting cycle.

Office for Environmental Protection

11. The OEP will replace the oversight functions of the European Commission and the European Court of Justice following the UK's departure from the European Union³. The OEP will:
- report to Parliament on progress towards national environmental goals and targets, and on environmental law;
 - advise Ministers on proposed changes to the law and other matters affecting the environment;
 - investigate complaints about potential breaches of environmental law by government and public bodies;
 - enforce environmental law through legal action where necessary.
12. The Act makes provision for the following legal actions:

² [Consultation on the Draft Policy Statement on Environmental Principles](#)

³ Legally formed with effect from 17th November 2021. Between July - November 2021, an interim OEP undertook a limited range of functions with oversight from Defra, as set out in agreed terms of reference. Between January and June 2021, an Interim Environmental Governance Secretariat had been in operation.

- issuing an Information Notice to a public authority, where a serious breach of environmental law is suspected;
 - issuing a Decision Notice where satisfied that a public authority has failed to comply with environmental law;
 - in serious cases, making a court application for an Environmental Review;
 - in urgent cases, apply for, or intervene in, a Judicial Review.
13. The principal objective of the OEP in the exercise of its functions is to contribute towards environmental protection and the improvement of the natural environment. It must act objectively and impartially and have regard to the need to act proportionately and transparently.
14. The Act places a duty upon the OEP to prepare a strategy that sets out how it intends to exercise its functions. When considering its enforcement policy, the OEP must have regard to the particular importance of prioritising cases that have or may have national implications, and the importance of prioritising cases that:
- Relate to ongoing or recurrent conduct;
 - Relate to conduct that the OEP considers may cause or has caused serious damage to the natural environment or human health; or
 - The OEP considers may raise a point of environmental law of general public importance.

The strategy must be laid before parliament and is subject to review within three years of publication, and a cycle of subsequent reviews every 3 years thereafter.

15. The SoS may issue guidance in relation to the OEP's enforcement policy and functions, to which the OEP must have regard in preparing its enforcement policy and exercising its enforcement functions. The SoS is required to lay the draft guidance before parliament and must respond to any recommendations made. The final guidance has effect once the SoS has laid it before parliament. The guidance may be revised at any time, subject to the same scrutiny procedures as the initial guidance. The government has confirmed that it will not issue guidance to the OEP before it has developed its own enforcement policy⁴.
16. The Act requires that the OEP and the Committee on Climate Change must prepare a memorandum of understanding which sets out how they intend to cooperate with one another and avoid overlap in the exercise of their functions.

Environmental Improvements

17. The environmental improvement measures contained in parts 3-7 are summarised at [annex A](#). A summary of the Biodiversity Gain (BG) and the Local Nature Recovery Strategy (LNRS) provisions can be found at [annex B](#).

Action

18. The Act can be accessed via the knowledge library. Details of initial commencement provisions are set out in [annex C](#) of this note. Some provisions apply from the date of

⁴ See House of Commons Hansard, [volume 703](#) debated 8th November 2021, column 85.

Royal Assent, some 2 months after, and the remainder by commencement orders. The note will be updated when commencement orders are laid in respect of the remaining provisions.

19. A number of the environmental improvement measures are dependent upon secondary legislation and/or further consultation on detailed aspects of policy development; further updates will be published as necessary. Until new targets are formally established all current policy requirements, such as for particulates, continue to apply.
20. The Act is unlikely to have an immediate effect on local plan examinations or appeals so there is no need to refer back to parties as a matter of routine. Should provisions within the Act become a significant issue in any local plan examinations, Inspectors should raise the matter with the relevant Professional Lead (PfL).
21. Inspectors should note that the provisions relating to mandatory BG are not yet in force. Until the commencement and any transitional arrangements relating to mandatory BG have effect, the policy within the National Planning Policy Framework to encourage net gain for biodiversity⁵ continues to apply. Guidance on net gain is set out in PPG for the Natural Environment (paragraphs 20-28), with specific guidance on BG at paragraphs 22-27.
22. Examining Inspectors should note that the provisions for BG for nationally significant projects are not yet in force and similarly do not have immediate effect in relation to National Policy Statements (NPSs). As set out in [annex C](#), there is a consultation process and a phased transition for the impacts on NPSs.
23. Further advice on mandatory BG and its application will be issued as information on its implementation comes forward.

Further Information

24. Please contact [Knowledge Centre](#) if you have any general queries on this Note.
25. For case-specific queries, Inspectors should contact their IM in the first instance. The IM may raise the matter with the relevant PfL if necessary.
26. Non-salaried Inspectors should approach [Resource and Process Ownership Team](#) with any queries in the first instance.

⁵ Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by...(d) minimising impacts on and providing net gains for biodiversity. This is reinforced at paragraphs 179(b) whereby plans should identify and pursue opportunities for securing measurable net gains for biodiversity; and paragraph 180 (d) that when determining planning applications, opportunities to improve biodiversity in and around development should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity.

Environmental Improvements

The Act makes provision for specific improvement of the environment in a number of policy areas. A summary of the key provisions is set out below:

Part 3 - Waste and Resource Efficiency

- Provides for regulations related to producer responsibility obligations and for disposal costs relating to their products;
- Makes provision for regulations relating to resource efficiency information and efficiency requirements, such as deposit schemes and charges for single use items and carrier bags;
- Make provision for waste management, such as separate collection arrangements, electronic waste tracking, the regulation of hazardous waste, powers to prohibit or restrict transfrontier shipments of waste, and amendments to the procedures for making regulations and orders under the Environmental Protection Act 1990;
- Amends the Environment Act 1995 to provide powers to make charging schemes available to Environment Agency;
- Amends legislation relating to enforcement powers for waste and environmental matters;
- Amends the Environmental Protection Act 1990 in relation to littering enforcement and penalties for fly tipping;
- Enables the SoS to regulate polluting activities relating to permits and exemptions from permits.

Part 4 - Air Quality and Environmental Recall (of motor vehicles etc)

- Amends the Local Air Quality Management Framework provisions within the Environment Act 1995, to require that the SoS reviews the Air Quality Strategy at least every 5 years and publishes annual progress reports. Also requires the production of local authority action plans for Air Quality Management Areas. All tiers of local government, and neighbouring local authorities where relevant, will be required to co-operate in the development of the plans;
- Amends the enforcement powers of the Clean Air Act 1993, giving local authorities the power to impose financial penalties for the emission of smoke from a chimney within a smoke control area (SCA);
- Removes the exemption in the Environmental Protection Act 1990 so that smoke emitted from a private dwelling can be enforced by local authorities as a statutory nuisance;
- Enables local authorities to extend the scope of SCA to cover moored vessels, subject to local consultation;
- Removes the limit on the fine in relation to the selling of controlled solid fuels for delivery, and creates a new duty for retailers to notify customers of the law relating to the purchase of controlled solid fuels;
- Enables regulation for the recall of products, such as motor vehicles, that do not meet relevant environmental standards;
- Introduces powers for the SoS to issue compulsory recall notices

Part 5 - Water

- Amends the Water Industry Act 1991 in relation to the procedures for the preparation and review of water resources management plans and

- drought plans. Introduces new powers for the SoS to direct water undertakers to prepare and publish joint proposals;
- Amends the Water Industry Act 1991 to require that sewerage undertakers to prepare, publish and maintain drainage and sewerage management plans.
 - The SoS must publish a storm overflow discharge reduction plan by 1 September 2022 and must publish progress reports every three years thereafter;
 - Creates a duty upon sewerage undertakers to take all reasonable steps to ensure untreated sewage is not discharged from storm overflows into inland and coastal waters, and requires that they publish near real time information and annual reports on discharges. The Environment Agency must also publish annual reports in relation to the operation of storm overflows of sewerage undertakers;
 - The SoS must report on the actions needed to eliminate discharges from the storm overflows of sewage undertakers by 1 September 2022;
 - New powers for OFWAT to require information for monitoring purposes;
 - Amendments to the Water Industry Act 1991 set out a new process for modification of appointment conditions of water and sewerage undertakers;
 - Amends the Water Industry Act 1991 to enable the electronic service of documents;
 - Modifies the Water Resources Act 1991 to extend the circumstances where water abstraction licences can be varied or revoked on or after 1 January 2028 without the payment of compensation to protect the environment;
 - New powers for the SoS to regulate about substances to take into account when assessing the chemical status of surface water or groundwater, and to specify standards for those substances;
 - Enables new regulations to be made regarding the valuation of agricultural or other land in an internal drainage district.

Part 6 - Nature & Biodiversity

- Biodiversity gain (BG) to be a general condition of planning permission. Further information about BG is detailed in [annex B](#);
- Introduces the requirement for a public biodiversity net gain register;
- Makes provision for a system of biodiversity credits;
- Extends the Natural Environment and Rural Communities Act 2006 biodiversity duty to include the conservation and enhancement of biodiversity;
- New requirement to produce reports on action undertaken by public authorities under the biodiversity duty;
- Creation of a system of Local Nature Recovery Strategies (LNRSs). Further information on these strategies is detailed in [annex B](#);
- Makes provision for the preparation of species conservation strategies and protected site strategies by Natural England;
- Make amendments to the system of licensing for wildlife conservation. These include enabling licenses to be issued under the Wildlife and Countryside Act 1981 for reasons of overriding public interest, and ensures that no licence may be issued unless there is no other satisfactory solution and the granting is not detrimental to the survival of any population of the species concerned. It also extends the maximum period for which a licence may be issued from two to five years. Establishes that where a licence has been granted under the Conservation of Habitats and Species Regulations 2017, the licence will

provide a defence in relation the same activity under the Wildlife and Conservation Act 1981;

- Provides for the amendment of general duties within the Conservation of Habitats and Species Regulations 2017, including power for the SoS to refocus the regulations to support the delivery of domestic priorities;
- New powers for the Forestry Commission through amendment of the Forestry Act 1967, to create a land charge where either illegal felling has taken place, or a licence has not been complied with;
- New requirement within the Highways Act 1980 for local highway authorities to consult before felling street trees.

Part 7 - Conservation Covenants

- Makes provision for the creation of conservation covenant agreements between the landowner and responsible body, to provide for the conservation of the natural environment and heritage assets for the public good and gives statutory effect to the qualifying provisions. The responsible bodies are defined as the SoS, and those bodies designated by the SoS;
- Requires that agreements are executed as a deed and registered as a local land charge, and provides that each obligation has a specified duration, either for the default period specified in the Act or for a shorter period specified in the agreement;
- Specifies who is responsible for complying with an obligation, what amounts to a breach and the proceedings for enforcement;
- Creates a means for modification or discharge of an agreement.

Biodiversity Gain & Local Nature Recovery Strategies

Biodiversity Gain

Sections 98-101 of the Act and schedules 14 & 15 provide for mandatory BG in the planning system.

Section 98 refers to schedule 14, which applies a new general condition to all planning permissions, subject to certain exceptions, to secure that the biodiversity gain objective is met. The condition requires that a biodiversity gain plan must be submitted and approved before development may lawfully commence.

The biodiversity gain objective is met when the biodiversity value attributed to the development exceeds the pre-development value of the onsite habitat by at least 10%. The value of any habitat or habitat enhancement must be calculated in accordance with the biodiversity metric published by Defra⁶. Any habitat enhancement secured by planning condition, planning obligation or conservation covenant must be maintained for at least 30 years after the development is completed.

Section 99 refers to schedule 15 which makes provision for biodiversity gain in relation to development consent for nationally significant infrastructure projects. This includes a requirement for the creation of a biodiversity gain statement as a statement of government policy, that specifies how development may or must meet the biodiversity gain objective.

Section 100 makes provision for a register of biodiversity net gain sites by regulations. The Act provides some eligibility criteria for land to be included on the register and a requirement that enhanced habitat must be maintained for a minimum period of 30 years after the development is completed.

Section 101 makes provision for the SoS to set up a system whereby developers can purchase credits to ensure that the biodiversity gain objective is met. The sold credits will be equivalent to a specified gain in biodiversity value, which will be eligible for inclusion in a biodiversity gain plan. Proceeds from the sale of credits will contribute towards strategic ecological networks. The SoS is required to report on the operation of the biodiversity credit system on an annual basis.

For Town and Country Planning Act Casework: Defra has indicated the intention to consult on BG legislation and regulations soon after the Act has passed. Defra has also indicated that there will be a transition period of two years after the Act achieves royal assent before BG becomes a mandatory requirement.

For National Infrastructure: Consultation on the biodiversity gain statement is expected to take place during 2022 and the statement is expected to be published in 2023, with implementation of mandatory BG commencing in 2025.

⁶ Currently [version 3.0](#), published July 2021. Natural England has indicated that it will address any errors or problems identified with this version before mandatory BG requirements take effect for Town and Country Planning development.

Local Nature Recovery Strategies

Sections 104-108 contain provisions relating to the creation of LNRSs, to put spatial planning for nature on a statutory footing.

Section 105 provides for the creation of LNRSs. The strategies will cover the whole of England and the SoS will determine the areas to which the strategies will relate. The biodiversity duty under s40 of the Natural Environment and Rural Communities Act 2006, as amended by this Act, requires that all public authorities must have regard to any relevant LNRSs in the proper exercise of their functions.

Section 105 requires that a LNRS for a strategy area must be prepared, published, reviewed, and republished by the responsible body appointed by the SoS. Regulations about the procedures for the preparation of the strategies will be made by SoS.

Section 106 specifies the required content of the strategies. The strategy must include:

- A statement of the biodiversity priorities for the strategy area, including:
 - A description of the area and its biodiversity;
 - A description of the opportunities for recovering or enhancing biodiversity;
 - The priorities for recovering or enhancing biodiversity;
 - Proposals of potential measures relating to those priorities.
- A local habitat map for the full extent of the strategy area, either as one or multiple maps.

The SoS may publish guidance on the information that an LNRS must include, which the responsible authority must have regard to when preparing a strategy.

Section 107 places a new duty upon the SoS to make certain information available to responsible authorities to assist with the production of LNRS. This duty includes the preparation, publication, review, and republication of a national habitat map for England, which must contain national conservation sites and other areas that the SoS considers to be of particular importance for biodiversity. The term national conservation site is defined in section 108(3).

Defra held a consultation between August and November 2021, to gather views on the implementation of LNRSs. The government intends to produce regulations and guidance swiftly after the Act is passed.

Environment Act 2021 Commencement Provisions

The following sections of the Environment Act 2021 came into force in relation to England on 9 November 2021 under the provisions of [section 147](#):

Section 63	Procedure for regulations under the Environmental Protection Act 1990
Part 8	Miscellaneous and general provisions

The following sections of the Environment Act 2021 come into force in relation to England on 9 January 2022 under the provisions of section 147:

Section 51 and schedule 5	Producer responsibility for disposal costs
Section 52 and schedule 6	Resource efficiency information
Section 53 and schedule 7	Resource efficiency requirements
Section 54 and schedule 8	Deposit schemes
Section 55 and schedule 9	Charges for single use items
Section 56	Carrier bag charge
Section 58	Electronic waste tracking
Section 66 and schedule 10	Enforcement powers
Section 70	Regulation of polluting activities
Section 80	Storm overflows
Section 84	Report on the elimination of discharges from storm overflows
Section 88	Water abstraction
Section 89	Water quality, except so far as relating to legislation within section 89(2)(d) to (f) and any regulations modifying that legislation made under or by virtue of the European Union (Withdrawal) Act 2018
Sections 90, 92 and 93	Water quality
Section 97	Disclosure of HMRC information

[The Environment Act 2021 \(Commencement No. 1\) Regulations 2021, SI 2021/1274 \(C. 72\)](#)

The following provisions of the Environment Act 2021 came into force in relation to England on 17 November 2021 under [regulation 2](#):

Section 22 and Schedule 1	The Office for Environmental Protection (OEP)
Section 23	Principal objective of the OEP and exercise of its function
Section 24	The OEPs strategy: process
Section 26	OEP Memorandum of understanding
Section 44	Meaning of “natural environment”
Section 45	Meaning of “environmental protection”
Section 46	Meaning of “environmental law”
Section 47	Interpretation of Part 1: general

The Environment Act 2021 (Commencement No. 2 and Saving Provision) Regulations 2022, SI 2022/48 (C. 2)

The following provisions of the Environment Act 2021 come into force in relation to England on 24 January 2022 under [regulation 2](#):

Sections 1 to 7	Environmental targets
Sections 8 to 15	Environmental improvement plans
Section 16	Environmental monitoring
Section 25	Guidance on the OEP's enforcement policy and functions
Section 27	Co-operation duties of public authorities and the OEP
Sections 28 to 30	The OEP's scrutiny and advice functions
Section 31 to 41	The OEP's enforcement functions
Sections 42 and 43	Information
Section 50	Producer responsibility obligations
Section 60	Hazardous Waste: England and Wales ⁷
Section 62	Transfrontier shipments of waste
Section 64	Powers to make charging schemes, so far as relating to the Environment Agency
Section 86	Water and sewerage undertakers in England: modifying appointments
Sections 104 to 108	Local nature recovery strategies
Section 110	Protected site strategies
Sections 112 and 113	Habitats regulations
Schedule 4	Producer responsibility obligations
Schedule 13	Modifying water and sewerage undertakers appointments: procedure for appeals

The following provisions of the Environment Act 2021 come into force in relation to England on 1 April 2022 under [regulation 3](#):

Section 21	Reports on international environmental protection legislation
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The following provisions of the Environment Act 2021 come into force in relation to England on 1 May 2022 under [regulation 4](#):

Section 72	Local air quality management framework
Section 73	Smoke control areas: amendments of the Clean Air Act 1993, so far as it relates to Parts 1 and 3 of Schedule 12
Schedule 11	Local air quality management framework
Parts 1 and 3 of Schedule 12	Smoke control in England and Wales

⁷ [Regulation 6](#) - Notwithstanding the coming into force of section 50(6) of the Act by virtue of regulation 2(i), which repeals [sections 93 to 95 of the Environment Act 1995](#) as regards England, the Producer [Responsibility Obligations \(Packaging Waste\) Regulations 2007](#) remain in force and have effect as if made under [Schedules 4 and 6](#) to the Environment Act 2021 in so far as they apply to England.

The following provisions of the Environment Act 2021 come into force in relation to England on 30 September 2022 under [regulation 5](#):

Part 7	Conservation covenants
Schedule 18	Discharge or modification of obligations under conservation covenants
Schedule 19	Application of Part 7 to Crown land
Schedule 20	Consequential amendments relating to Part 7