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Environment Act 2021

The Environment Act 2021 is a long piece of legislation – over 260 pages – that has taken a long time to pass through Parliament – draft provisions were subject to pre-legislative scrutiny at the start of 2019. It does many things and some of its provisions are a response to the gaps in environmental governance created by the UK's withdrawal from the European Union. However, the Bill has also provided a vehicle for a large number of other legislative changes, notably introducing into planning law in England a requirement that new developments achieve a Net Biodiversity Gain.

Its provisions cover a wide range of topics, some added at a very late stage, and a note of this length can indicate only what is covered, rather than offering a detailed analysis. Most of the Act will require further regulations or guidance to be issued before its full impact can be determined. The application of the Act to Scotland is complicated, with some provisions applying across the UK, some affecting the reserved powers of the UK Government wherever exercised, some applying only to other parts of the UK and others giving powers to Scottish Ministers in parallel with those conferred in the other nations.

Environmental targets, plans and principles

The Act begins by requiring the Secretary of State to produce for England and Wales a number of environmental targets and an environmental improvement plan (Part 1, Chapter 1). Targets are specifically required on a number of issues, including air quality, especially particulate matter, water, resource efficiency and waste reduction, and species abundance. Reports on progress are required and the targets must be reviewed every five years. The environmental improvement plan must seek to significantly improve the natural environment over a period of at least 15 years.

The Act also establishes for the UK Government a set of environmental principles. The principles are the same as in Scotland under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, but while the principles in the Scottish Act apply to all public authorities in Scotland, the Environment Act's principles apply only to UK Ministers. In making policy they are required to have due regard, not to the principles themselves, but to the policy statement on them which must be produced. When introducing new environmental legislation at Westminster, Ministers also have to make a statement on whether this entails reducing any existing environmental protections.

Office for Environmental Protection

The Act creates the Office for Environmental Protection (OEP) as a new environmental watchdog, looking at compliance with and the implementation of environmental law (Part 1, Chapter 2). The OEP cannot consider devolved matters in Scotland or Wales but will operate for Northern Ireland as well as England and in relation to reserved functions of the UK government. Compared to Environmental Standards Scotland (see (2021) 208 SPEL 123), it has a wider remit (including advising government and monitoring progress on environmental plans and targets), weaker enforcement powers and less independence from ministerial control.

Waste

Many of the waste provisions (Part 3) apply in Scotland and give Ministers the power to impose stronger producer responsibility obligations. These can include regulations on preventing products or materials becoming waste (or reducing the amounts that do so), ensuring the re-use, recovery or recycling of products or materials and requiring the payment of sums in respect of disposal costs. Requirements can also be imposed in relation to resource efficiency, including obligations relating to

providing information about this (e.g. life expectancy of goods and the availability of repairs). An electronic system for tracking waste is to be established. Measures applying only south of the border include provisions on a deposit and return scheme, hazardous waste, charges for single-use items and requiring the separate collection of recyclable and compostable household waste.

Air Quality

In addition to adjustments for local air quality management and smoke control in England, a UK-wide power is created for the recall of motor vehicles that do not comply with environmental standards (Part 4).

Water

Substantial changes are made in relation to water resources in England and Wales (Part 5), including a requirement for drainage and sewerage management plans. Plans to reduce the number and volume of storm overflows releasing untreated sewage into rivers and the sea are also required, a provision that attracted a lot of attention during the final stages of the Bill's passage.

Biodiversity

A number of provisions deal with biodiversity (Part 6). English and Welsh public authorities are placed under a strengthened duty to conserve and enhance biodiversity and report on their activities. In England the designated responsible authority (which can be a local authority, National Park authority or Natural England) must produce a local nature recovery strategy which will map biodiversity and set out priorities for the area, while Natural England must produce strategies for protected sites and species. The felling of trees on urban roads will be subject to public consultation.

A further provision targets the problem of forests across the world being lost in order to enable the production of beef or crops such as soya or palm oil to meet demand in the UK and other developed countries. Throughout the UK, companies making commercial use of "forest risk commodities" must establish a due diligence system to assess and mitigate the risk that local laws on land ownership and use have been not complied with in their production. Such commodities are those produced from plants or animals where it is considered that forests are or may be converted to agricultural use for the purpose of producing the commodities.

Net Biodiversity Gain and Covenants

In terms of planning law in England, the big innovation introduced by the Act is the requirement for Net Biodiversity Gain (Part 6). It will be a condition of planning permission for new developments that a net gain for biodiversity is achieved, with an equivalent requirement for projects approved as nationally significant infrastructure projects. A metric is available to determine the biodiversity value of sites before and after development, with a 10% gain required. This can be provided on-site or on other sites, e.g. by enhancing habitat elsewhere to make up for losses at the development site. Developers will be able to show that they have provided a gain by purchasing biodiversity credits from the Secretary of State, the money obtained being dedicated to the enhancement of habitat. A new legal mechanism is provided as one way of ensuring that any sites identified as providing a gain will continue to be managed appropriately, in the form of conservation covenants (Part 7); these are broadly equivalent to conservation burdens in Scotland.

Conclusion

There will be a lot of activity over the next few years as the Act is gradually brought into force and the necessary regulations and guidance are made. With contradictory statements from the UK Government continuing to promote both environmental ambition and deregulation to encourage economic recovery and growth, it will be some time before it can be determined how significant a step the Act is in reversing the continuing degradation of the environment on which we all depend.

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