



**High Peak Borough Council**  
*working for our community*

# ***Information Digest***



**Date: 17 August 2022**

***On the Environment Act 2021***

**Councillor Jean Todd**  
**Climate Change, Environment and Community  
Safety**

**David Smith**  
**Head of Communities and Climate Change**

## 1. Reason for the Report

1.1 To provide a briefing on the Environment Act 2021

## 2. Recommendation

2.1 That the contents of the report be noted.

## 3. Executive Summary

The Environment Act 2021 comprises two thematic halves. The first (Part 1 and 2) provides a legal framework for environmental governance. The second (Parts 3 onwards) makes provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants. The Act received Royal Assent on 9 November 2021; although not all provisions are currently in force.

## 4. How this report links to Corporate Priorities

4.1 Aim 1: To help create a safer and healthier environment for our communities to live and work  
Aim 4: to protect and improve the environment and respond to the climate emergency

Neil Rodgers  
**Executive Director**

### Web Links and Background Papers

[www.gov.uk/government/publications/25-year-environment-plan](http://www.gov.uk/government/publications/25-year-environment-plan)

[Resources and waste strategy for England - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/publications/resources-and-waste-strategy-for-england)

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## 5. Detail

- 5.1 Most of the UK's environmental law and policy has been derived from the European Union (EU). Oversight and enforcement have similarly been provided through EU structures and processes. The Environment Act 2021 ("The Act") was introduced to fill the environmental governance gap following the UK's exit from the EU although arrangements have been made to transpose other EU-based legislation into UK law separately.
- 5.2 The Act comprises two thematic halves. The first (Part 1 and 2) provides a legal framework for environmental governance. The second (Parts 3 onwards) makes provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants. The Act received Royal Assent on 9 November 2021; although not all provisions are currently in force.
- 5.3 The Act consists of 8 Parts and 21 Schedules:

Contents		Key Provisions
Part 1	Environmental Governance	
Chapter 1	Improving the natural environment	Environmental targets, improvement plans and monitoring
Chapter 2	Office for Environmental Protection	Actions in response to a failure of public authorities to comply with environmental law
Chapter 3	Interpretation	
Part 2	Environmental Governance: Northern Ireland	
Part 3	Waste and resource efficiency	Producer responsibility obligations, resource efficiency information and requirements, deposit schemes, charges for single use items and carrier bags, separation of waste, enforcement powers
Part 4	Air quality and environmental recall	Local air quality management framework, amendments to smoke control areas, environmental recall of motor vehicles.
Part 5	Water	Water resources and drainage and sewage management plans, storm overflows, water abstraction, water quality, valuation of land in drainage district
Part 6	Nature and biodiversity	Biodiversity gain in planning, general duty to conserve and

		enhance biodiversity, local nature recovery strategies, species and protected sites strategies, habitat regulations
Part 7	Conservation covenants	Conservation covenant agreements
Part 8	Miscellaneous and general provisions	
Schedules		

## Part 1 Environmental Governance

- 5.4 Part 1 of the Act sets out a comprehensive framework for legally binding targets to deliver environmental improvements in England.
- 5.5 Section 1 provides a new power for the Secretary of State to set long-term (at least 15 year) environmental targets by regulations. It requires the Secretary of State to set at least one long-term target in each of four priority areas, which are:
- Air quality.
  - Water.
  - Biodiversity.
  - Resource efficiency and waste reduction.
- 5.6 In addition, the Secretary of State is required to bring forwards regulations to set:
- a target to reduce fine particulate matter (PM2.5) in ambient air ("the PM2.5 air quality target"); and
  - a species abundance target with a specified date of 31 December 2030.
- 5.7 The introduction of new, lower, air quality targets is likely to increase pressure on the councils to improve air quality.
- 5.8 The Secretary of State is required to prepare an environmental improvement plan (EIP), covering at least 15 years, to significantly improve the natural environment in England. The government's current 25 year plan (A Green Future: Our 25 Year Plan to Improve the Environment) to improve the environment is to be treated as the first EIP giving the plan statutory status.
- 5.9 Section 22 (and Schedule 1) establishes a new independent Office for Environmental Protection (OEP) as an environmental watchdog that will be responsible for taking action in relation to breaches of environmental law. The OEP provides a domestic replacement for the scrutiny function of the European Commission and the European Environment Agency. The OEP's enforcement functions include the power to scrutinise complaints about the failure of public authorities to comply with environmental law. This may result in the OEP:

- Issuing an information notice, requesting an authority to provide information
- Issuing a decision notice, if the OEP is satisfied that there has been a serious failure to comply with environmental law;
- Applying to the court for an environmental review which can lead to a statement of non-compliance and granting of a remedy (other than damages); or
- Applying for a judicial review if the OEP considers that the conduct constitutes a serious failure to comply with environmental law and there is an urgent need to prevent, or mitigate, serious damage to the natural environment or to human health.

## **Part 2 Environmental Governance: Northern Ireland**

5.10 This describes arrangements in Northern Ireland

## **Part 3 Waste and resource efficiency**

5.11 Part 3 provides the legislative framework needed to deliver on many of the commitments in the Resources and Waste Strategy 2018, by introducing new powers and amending existing legislation such as the Environment Act 1995 and Environmental Protection Act 1990.

5.12 It allows government to extend producer responsibility to require producers to pay the full net cost of managing their products at end of life to incentivise them to design their products with sustainability in mind. Some producer responsibility schemes were developed under previous arrangements with a focus on low volume materials such as batteries, waste electrical or electronic products (WEEE). The Environment Act extends these schemes and seeks to ensure that disposal costs for products are paid by producers removing the burden of waste disposal from local authorities. The mechanism for cost recovery is not detailed and it is anticipated that further information will be provided by Government on this in early 2022 by which time it is expected that they will have reviewed the responses to the Enhanced Producer Responsibility consultation which they undertook in summer 2021.

5.13 Part 3 clarifies that producer responsibility obligations can include prevention of waste and redistribution, making it clear that action can be taken on food waste.

5.14 Part 3 also gives the Secretary of State the powers to make regulations about (i) resource efficiency requirements; and (ii) the provision of resource efficiency information for non-energy-related products. The Act also allows for clear labelling to enable consumers to identify products that are more durable, repairable and recyclable.

5.15 Section 57, which is not yet in force, requires recyclable household waste to be collected separately from other household waste. "Recyclable waste streams" as defined by the Act are glass, metal, plastic, paper and card, and food waste.

- 5.16 Part 3 allows for the introduction of deposit return schemes (DRS) where consumers pay an up-front deposit when they buy an item (such as a drink in a bottle or can), which is then redeemed on return of the used item. It also allows for the introduction of charges for any single-use plastic item
- 5.17 Finally, Part 3 allows regulations to be made to introduce provision for the purpose of tracking relevant waste, including provision about the establishment of an electronic system for that purpose. It also allows regulations to be introduced to set conditions that must be met by officers that are authorised to issue fixed penalty notices.
- 5.18 The introduction of a DRS may reduce the amount of plastic, metals and glass collected from properties at the kerbside across the borough and have a negative financial consequence for the Alliance. Reduced recycling tonnage may impact gate fees with our recycling reprocessor but will inevitably lead to a reduction in the highest value materials (ie aluminium) being removed from the stream altogether. This will reduce the income levels our recycling can generate.
- 5.19 Inevitably it is likely that the waste and recycling collection services provided by the Alliance will need to change in the coming years. Government have committed to new burdens funding to cover the cost of change and it is expected that additional funding for local authorities will be established as a result of the producer responsibility obligations. Hopefully this funding stream will cover the costs of service delivery which is ultimately its intention. The introduction of producer responsibility will increase the recyclability of packaging, and should plastic film be added to the list of compulsory materials Government require to be collected in future, this would ensure that there is a suitable end destination market for this packaging waste stream, which may lead to a small increase in our recycling performance.
- 5.20 Additional frontline staff may be required to operate new segregated collection services, which will increase the financial cost of the service. Recruiting further staff to operate our current collection service is already proving difficult in the post-COVID landscape.
- 5.21 As the new regulations also apply to commercial premises, this will provide a new opportunity to increase our current commercial client base and provide a financial benefit to the Alliance. All commercial premises, including SMEs, will have to comply and have a recycling collection. We can therefore use this opportunity to liaise with local businesses to provide a competitive commercial waste and recycling service. We will have to ensure that our commercial service is versatile and is able to engage with businesses to collect all relevant waste streams. Implementing and growing our commercial operation will inevitably increase our operational costs, as we would have to ensure we have sufficient vehicle capacity, staffing levels and containers. Whilst the increased commercial recycling will not increase our recycling performance, it will reduce both carbon and methane emissions from businesses whose waste may be disposed via landfill or incineration currently.

5.22 The introduction of a mandatory, weekly food waste collection as is being proposed will increase our recycling rates and reduce the tonnages being collected within our residual waste bins. The best performing authorities for recycling across England all operate a weekly food waste collection separate from their garden waste schemes. The introduction of such a service will reduce tonnages sent for incineration or landfill, reducing methane emissions (from landfill) and will move our food waste up through the waste hierarchy. From a collection perspective, the introduction of the scheme may not provide any environmental benefits as we may need to utilise additional vehicles to collect this waste stream which is currently co-collected with garden waste, though this may be offset by the reduced methane or carbon emissions through the disposal.

#### **Part 4: Air quality and environmental recall**

5.23 Part 4 contains provisions on air quality and vehicle recall.

5.24 It introduces a new duty on the Secretary of State to review the national Air Quality Strategy at least every five years, and to report annually to Parliament on progress in delivering air quality objectives. Local authorities must have regard for the strategy and are also required to create action plans where local air is in breach of air quality objectives.

5.25 Part 4 also strengthens the requirements for local authorities under the Air Quality Framework. When an Air Quality Management Area is declared by local authorities because air quality objectives and standards are exceeded, local authorities will be required to prepare action plans that will need to set out how the local authority will exercise its functions to ensure that air quality standards are achieved and maintained. All tiers of local government, and neighbouring local authorities where relevant, will be required to co-operate in the development of those action plans. This should be a benefit to the council and encourage greater cooperation and action with other stakeholders.

5.26 Part 4 introduces new powers for local authorities to impose civil penalty notices for the emission of smoke in smoke control areas in England.

5.27 It also gives the Secretary of State the power to make regulations for the recall of relevant products (such as vehicles) that do not meet relevant legal emission standards.

5.28 As noted above, Part 1 of the Act also contains provisions aimed at air quality: namely a requirement for the Secretary of State to set long-term air quality targets and regulations to set a shorter-term legally binding target to reduce fine particulate matter (PM2.5) in ambient air.

#### **Part 5 Water**

5.29 Part 5 sets out provisions seeking to secure long-term, resilient water and wastewater services. It includes:

- Amendments to the duties of water undertakers in relation to water resources management plans and drought plans
- A new duty on sewerage undertakers in England and Wales to prepare, publish and maintain drainage and sewerage management plans
- Amendments to provisions in relation to variation and revocation of water abstraction licences.
- A power for the Secretary of State to make regulations about the substances to be considered in assessing the chemical status of surface water or groundwater, and to specify standards for those substances or in relation to the chemical status of water bodies.
- A requirement that the Secretary of State prepare a storm overflow discharge reduction plan before 1 September 2022, and publish progress reports. Sewerage undertakers must publish annual reports on the performance of their storm overflows from 2021. The Environment Agency is also required to publish a storm overflow report.

## **Part 6 Nature and biodiversity**

5.30 Part 6 sets out a new general condition to all planning permissions in England, which requires a biodiversity gain of at least 10% to be identified before development can commence. The Secretary of State may via regulation amend this percentage figure in future. This 10% gain must be calculated using the Secretary of State's biodiversity metric. It should be noted that the metric is designed to favour on-site biodiversity solutions before off-site solutions (or national credits) and the respective costings of these solutions will reflect this. In the event that applicants intentionally reduce biodiversity on an application site before an application, a base date of 30/01/20 is to be used in calculations. As a condition of planning permission all schemes must have submitted a biodiversity gain plan to the LPA, and this must have subsequently been approved by the LPA. The commencement of these requirements has not yet been formalised, but is anticipated to be winter 2023. The Secretary of State may, by later regulations clarify whether this 10% requirement applies to all forms of development requiring planning permission, or whether certain types of development may be excluded (eg house extensions).

5.31 The general duty of public authorities to have regard for the conservation of biodiversity is extended to include *enhancement* of biodiversity as well as conservation:

“(A1) For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.

(1) A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can

properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.”

- 5.32 Part 6 also introduces a new requirement for local nature recovery strategies (LNRS) including provisions on their preparation and content. These are likely to be a key tool in identifying optimal areas for off-site biodiversity net gain delivery from planning approvals across their areas; and in most cases will be prepared by County planning authorities in partnership with constituent district/borough LPAs.
- 5.33 Part 6 also gives Natural England (NE) the power to publish a species conservation strategy for improving the conservation status of any species of fauna or flora in England, or a protected site strategy for improving the conservation and management of a protected site (such as a site of special scientific interest).
- 5.34 Section 114 makes amendments to the Forestry Act 1967 in relation to the enforcement of the power to control the felling of trees in England, which includes a new power for a local land charge to be created where illegal felling of trees has taken place in England. Section 115 imposes a duty on local highway authorities in England to consult before felling street trees.

#### **Part 7 Conservation covenants**

- 5.35 Part 7 provides for the introduction of conservation covenants, which are private, voluntary agreements between a landowner and responsible body, such as a conservation charity or public body. They provide for conservation of natural environment and heritage assets for the public good. They can bind subsequent owners of the land, so have the potential to deliver long-lasting conservation benefits. They may be utilised for example in relation to the provision of off-site biodiversity net gain requirements described above.

#### **Part 8 Miscellaneous and general provisions**

- 5.36 Part 8 sets out miscellaneous and general provisions including arrangements for commencement.