

# Environment Bill

## Second Reading

### House of Commons

28 October 2019

#### Key messages

- It is essential that as a nation we tackle climate change and protect our natural environment. We need to continue to improve air quality, protect against flooding, and ensure our transport, waste and energy policies are environmentally sustainable.
- The Environment Bill sets the framework for what Government wants to deliver but does not contain all of the detail. The policies will follow in subsequent work streams and in secondary legislation. We will work with the Government to ensure that the Bill and Office for Environmental Protection (OEP) is effective in addressing the concerns of communities.
- The OEP will have enforcement functions over public authorities who fail to comply with environmental law. It will be essential that the OEP board contains knowledge, and direct experience of, local government as one of the key public authorities it will work with.
- The Local Government Association (LGA) supports the Bill's intention to strengthen local powers in relation to air quality enforcement. Existing mechanisms are decades old and need to be reformed, but additional resources will need to be made available for councils to deal effectively with environmental protection.
- We support the principle of increasing biodiversity net gain through the planning process. We have concerns about the implementation of these proposals and the new burdens for councils. Planning departments will need to be supported with the right skills and resources to make this work.
- The LGA has long called for retailers and manufacturers to pay for recycling and disposing of packaging in household waste. We welcome the commitment in the Bill to do this but it does not provide enough details for councils to assess the financial and service impacts of the reforms. The next steps must provide clarity for local government on the full funding of costs.
- We support proposals for councils to collect a core set of dry recyclable material but how those materials are collected should be a local decision. There are a range of issues such as geography, property type and rurality which will impact on this decision. It is helpful that the Bill proposes councils will have local flexibility where there are technical, economic and environmental reasons for collecting materials together.
- The Bill points to a new environmental relationship between local and national government, with potentially a greater responsibility sitting with councils. Local government is well placed to take the lead on this agenda but its ability is limited by financial constraints, a lack of devolved powers and restricted access to complex Government funding pots. For the Bill to be a success, new responsibilities must be fully funded and councils should have the support and capacity they need to deliver on these ambitions.

## **Background information**

The measures in the Bill seek to: establish a new system of green governance and accountability; drive a shift in maximising resource efficiency; enable greater local action on air pollution; secure long-term, resilient water and wastewater services; create or restore wildlife habitats; and give the Secretary of State the power to amend legislation regulating the use of chemicals.

The Bill is structured around key themes:

- Governance (including environmental principals, targets and establishment of the OEP)
- Waste and resource efficiency
- Air quality
- Water
- Nature and biodiversity (including trees and conservation covenants)

### **1. Governance and the OEP (Part 1: Chapter 1 and Chapter 2)**

The Bill introduces a new framework for setting long-term, legally binding targets for environmental improvement. These targets will sit with the Secretary of State. We support the model of focussing challenge at the level of national government. It will be important to retain this external drive and vision.

The Bill will legally oblige policy-makers to have due regard to the environmental principles policy statement when making policy decisions. This will provide a clear national focus and direction, with the flexibility to allow different local solutions. We particularly welcome the inclusion of the polluter pays principle and anticipate that this will apply to producers of waste packaging.

The Bill establishes the new OEP as an independent, domestic watchdog. A body whose functions include those of a public nature will have a duty to co-operate with the OEP in connection with the exercise of its functions.

The OEP will have enforcement functions over public authorities who fail to comply with environmental law and powers to deal with significant environmental complaints. It can issue notices to public authorities and there are powers in the Bill for the OEP to apply for judicial review of public authorities where serious failure to comply with environmental law takes place. It will be essential that the OEP board contains knowledge and direct experience of local government, as one of the public authorities which it will have to work with.

The OEP should focus on the gaps which will arise after EU withdrawal and any new policy which will be developed in the future. Its remit over public bodies should be kept very focussed and specific and not add in a wider variety of responsibilities.

### **2. Waste and Resource Efficiency: recycling (Part 3)**

Local government wants to see measures that reduce the amount of unnecessary and unrecyclable material becoming an issue in the first place. The Bill includes provisions that will require producers to pay the full net cost of managing specified products and materials at end of life, to incentivise more sustainable use of resources. We welcome this commitment. The LGA has long called for the system to be reformed and for producers to meet the costs of local authorities, including the cost of littering and fly tipping discarded packaging.

While the Bill sets out the headlines of a producer responsibility scheme, it does not provide enough detail to assess the financial and service impacts of the reforms. Within the section on disposal costs, litter and fly tipping of discarded packaging is not included. We will be working with Department for Environment Food and Rural Affairs (DEFRA) to shape the reformed producer responsibility scheme by the proposed implementation date in 2023. The next steps must provide clarity for local government on full funding of costs.

The provisions also establish a deposit return scheme for drinks containers but again do not set out the details or how it would work. A deposit return scheme has the potential to increase recycling and change consumer behaviour, but it needs to be based on sound analysis of the cost and benefits. We look forward to further engagement with DEFRA on the impact on local authority kerbside collections, litter and fly tipping.

The Bill proposes introducing a core set of consistent materials for recycling, which the LGA supports. Most councils already collect these and we look forward to working with government to develop the proposals and secure any additional funding that councils might need to implement the reforms successfully. At the same time, retailers and packaging manufacturers must reduce the amount of unnecessary and non-recyclable packaging.

The process by which materials for recycling are collected should be a local decision. Collecting materials in separate streams will not work in many areas. If councils are compelled to introduce separate collection streams this will have financial implications, for example on existing contracts for sorting waste, which will need to be fully funded. It is helpful that the Bill proposes councils will have local flexibility where there are technical, economic and environmental reasons for collecting materials together. We will be working with DEFRA on the implementation of this proposal.

We support the ambition to introduce weekly food waste collections, providing that the cost to councils is fully met through new funding. We are pleased the Bill sets out exemptions and will work with councils and DEFRA to understand the practical challenges in collecting food waste, particularly from flats.

The Bill proposes to enable charges to be applied to specified single-use plastic items. There is little detail on how charges would be applied. We encourage DEFRA to consider applying producer responsibility obligations to single use items such as coffee cups to ensure that producers are paying towards the cost of recycling.

The Bill also proposes to ensure businesses and public bodies present recyclable materials for separate collection and arrange for the separate collection. The LGA supports the principle that businesses should play their part in meeting national recycling targets. We will be working with councils to understand the impact this will have on them and the role they could play in helping businesses recycle.

### **3. *Waste and Resource Efficiency: litter and waste crime enforcement (Part 3)***

The Bill includes new measures for regulators including local authorities to tackle waste crime and illegal activity, including a new power to remove waste when no other route is available.

Littering creates unnecessary additional work for councils. We believe that the public wish to see councils taking enforcement action against those who spoil the

environment for the majority of responsible citizens. We will work with Government to better understand the purpose and value of any new guidance.

Criminal activity is undermining legitimate, responsible waste operators as well as creating additional costs for councils and other public services. We will work with Government to understand the funding and service implications of any new powers.

#### **4. Waste and Resource Efficiency: other measures (Part 3)**

The Bill contains other measures that will have an impact on the wider waste sector. This includes a provision that will enable government to set resource efficient product standards and information and labelling requirements. This ambition is welcome but local government must be closely involved in developing these standards, to ensure that they maximise opportunities for re-use and recycling.

#### **5. Air Quality (Part 4)**

We welcome the Bill's intention to strengthen local powers in relation to air quality enforcement. Existing mechanisms are decades old, misaligned with one another and need to be reformed to fit with modern sources of emissions. Additional resources will need to be available for councils to deal effectively with environmental protection.

The Environment Bill updates, simplifies and strengthens the local air quality management framework (LAQM). In particular it ensures that responsibility for solutions to poor air pollution is shared across local government structures and with relevant public bodies. We would seek as wide as possible interpretation of relevant public authorities and as strong as possible duty for them to co-operate with local authorities in their clean air target.

We would also seek for local authority air quality plans to override the national policy of public agencies where it is in direct conflict with air quality goals. For example Highways England should not exempt their roads from chargeable clean air zones except with local agreement.

The Bill includes Amendments to the Clean Air Act (1993), which will seek a simpler regime for smoke control enforcement, allowing a possible decriminalised regime with a simplified structure for issuing penalty notices. We support increased use of decriminalised enforcement in order to reduce the administrative burden on councils exercising their enforcement functions.

There will also be additional enforcement powers for domestic burning. It will extend these powers to allow enforcement on moored vessels. We have specifically called for powers to tackle emissions from moored vessels and welcome developments in this area.

#### **6. Water (Part 5)**

This section includes measures intended to support new and existing internal drainage boards. The Bill amends the Land Drainage Act 1991 to enable certain valuation calculations to be provided for in secondary legislation, so that necessary updates to the calculations (including data sources) can be readily made.

It is not clear what impact this will have on local authorities, as they part pay for Internal Drainage Boards through a special levy. We request urgent clarity on this

from government.

Councils are under-resourced to deliver their local flood risk management and statutory consultee responsibilities. The Bill is a missed opportunity to address this. There should be a change of the rules relating to council tax referendums so that levies, such as internal drainage board levies, do not count against councils' own referendum limits.

The median cost to process a single land drainage consent application is £250, five times the nationally set £50 application fee. The Land Drainage Act should be amended to allow locally-set fees for flood defence consenting.

We also previously supported the Rivers Authorities and Land Drainage Bill, which did not make it through Parliament. This proposed to establish new bodies known as 'rivers authorities', which would boost efforts to manage flood risk. A rivers authority would be a locally accountable body with the power to issue an additional precept to existing councils to collect Council Tax. The purpose of this revenue would be to fund additional local flood risk management work. We would like this proposal taken forward in the Environment Bill, as it is not currently included within these legislative proposals. Should this be brought forward, we would also welcome details of how Bill makes the rivers authorities democratically accountable through councils.

## ***7. Nature and biodiversity (Part 6 and Part 7)***

The Bill includes provisions to strengthen and improve the duty on public bodies to conserve and enhance biodiversity, including mandating a net gain biodiversity through the planning system. We support the principle of increasing biodiversity net gain through the planning process, but we have concerns about the implementation of these proposals and the new burdens for councils.

Planning departments will need to be supported with the right skills and resources to make this work. We do not support a mandatory national percentage target. Local site variation will affect the appropriateness of a single target. Revenue from the sale of proposed statutory biodiversity units (where improvements on site are not possible) should be collected and spent locally by local authorities.

Any additional policy requirements relating to biodiversity net gain should be taken into account by developments alongside any other costs including their own profit expectations and risks, to ensure that proposals for development are compliant with Local Plans. Consideration should be given as to whether the current national planning practice guidance on viability could benefit from further strengthening in this regard.

The Bill requires the preparation and publication of Local Nature Recovery Strategies. Further work will need to be done with councils to establish what the impact of these will be of conservation covenants.

The Bill also provides greater enforcement powers to the Forestry Commission to reduce illegal tree felling and will require local authorities to consult residents. Decisions on the felling of street trees should remain a matter of local determination. This is a new burden and must be fully funded.