

# Environment Bill

## Second Reading

### House of Commons

26 February 2020

#### Key messages

- We welcome the reintroduction of the Environment Bill. It is essential that, as a nation, we tackle the climate emergency 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.
- We have some concerns about the implementation of certain provisions within the Bill, and the new burdens that will be imposed on councils as a result. A key example is the expected increased burden on planning departments. Local government will need to acquire new skills and be given the appropriate resources, to deliver on the ambitious plans in the Bill.
- The Bill contains provisions to establish the Office for Environmental Protection (OEP), which 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.
- We support the principle of increasing biodiversity net gain through the planning process. Where net gain contributions from developers cannot be delivered on site, any financial “credits” should be retained by councils so that local people will have a say in how they are spent.
- We also support proposals to ban exports of plastic waste to non-OECD countries but we are concerned that this will restrict where councils can send recyclable material. The UK market for recycling needs to be expanded and more recycling infrastructure provided to address this.
- In addition, local government wants to see measures that reduce the amount of unnecessary and unrecyclable material becoming an issue in the first place. We welcome the commitment for retailers and manufacturers to pay for recycling and disposing of packaging and household waste. This is a crucial stage in shifting the cost away from the tax payer and back to the polluter. The Bill must set out clearly that producers will be required to pay the full net costs to councils.
- The LGA has long-supported proposals for councils to collect a core set of dry recyclable materials. How the materials are collected should be a local decision. There are a range of local issues such as geography, property type and rurality which determine the method in which waste can be collected.

## **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)

At the same time, Government is proposing ambitious environmental reforms through the Agriculture Bill. This sets out a new approach to land management that seeks to balance food production with environmental protection. Local government has an interest in both of these significant pieces of legislation, and how they will act together to help achieve national and local ambitions to reduce carbon emissions and protect and restore the natural environment.

### **1. Governance and the OEP (Part 1: 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 arising from our withdrawal from the EU 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. The Bill must set out clearly that producers will be required to pay the full net costs to councils. 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 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 want to work with central government to develop the proposals. Any additional burdens on councils as they implement the reforms should be fully funded. 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. We support 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. While we support the need for action, this is costly for local government and the expense of enforcements is not currently covered by the fines.

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 better understand the purpose and value of forthcoming guidance and 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.

The Bill introduces provisions to ban the export of plastic waste to developing countries. We welcome this provision in principle, but this will lead to new costs for councils as it will restrict where they can send recyclable material. The UK market for recycling needs to be expanded and more recycling infrastructure provided to address this.

We will be working with central government and the waste industry to understand the impact of the ban on exports of plastic waste to non-OECD countries and any unintended consequences for household waste and recycling services.

#### **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 the 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)***

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.

A "credit" system will allow the sale of proposed statutory biodiversity units where improvements on site are not possible. Credits should be retained by local authorities so that funding stays in the area where development takes place, and local people can have a say in how this funding can be used to improve the

natural environment.

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.