

Committee(s): Port Health & Environmental Services Committee – For Information Communications and Corporate Affairs Sub (Policy & Resources) Committee – For Information	Dated: 24 May 2022 7 June 2022
Subject: Environment Act 2021	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	2, 5, 11
Does this proposal require extra revenue and/or capital spending?	No
Report of: Remembrancer	For Information
Report author: Kiki Hausdorff, Assistant Parliamentary Affairs Counsel	

Summary

The Act amends existing environmental legislation and introduces new measures in a range of environmental policy areas. Having received Royal Assent in November 2021, recent commencement regulations have provided for the Act’s provisions to come into force over the course of this year. Provisions relating to the local air quality management framework and smoke control areas came into force on 1st May.

As reported to the former Public Relations Sub Committee and the Port Health and Environmental Services Committee, the Corporation was active during the Act’s passage and amendments were tabled by Lord Tope (Liberal Democrat), seeking discretionary powers for Local Authorities to control emissions from combustion plant. The proposals prompted discussion in the Lords and received cross-party support but were not ultimately adopted by the Government.

Recommendation

Members are asked to note the contents of this report and the continuing engagement on air quality noted at paragraph 21 of this report.

Main Report

Commencement of the Act

1. Recent regulations provide for various sections of the Act to come into force over the course of 2022. Sections on environmental targets, improvement plans and monitoring, as well as provisions related to the new Office for Environmental Protection, came into force on 24th January 2022. Provisions relating to the local air quality management framework and smoke control areas came into force on 1st May 2022. Further parts of the Act will be brought into force in July and September 2022. Environmental targets required to be set under the Act must be laid as draft Statutory Instruments by 31 October 2022 and will come into force once approved by Parliament.

Background to the Act

2. First announced in July 2018, the Bill was re-introduced in 2020 after its previous incarnation fell at dissolution of Parliament for the General Election in 2019. The Bill underwent a long and complicated passage through Parliament, including several delays and the carrying over of the Bill between parliamentary sessions.
3. The Government stated that the Act was introduced in response to “the clear and scientific case, and growing public demand, for a step-change in environmental protection and recovery” and “as a key part of delivering the government’s manifesto commitment to create the most ambitious environmental programme of any country on earth.”
4. Previous UK environmental policy and law derived from the EU, with implementation largely monitored and enforced by EU institutions. The Act addresses the loss of established environmental principles and EU governance mechanisms following Brexit, by creating a new domestic framework for environmental governance. It also makes provision on specific environmental policy areas including waste, air quality, water, nature and biodiversity, and conservation covenants.

Engagement on Air Quality

5. Following discussions with officials over the enhancement of powers for local authorities to address air quality issues and ministerial engagement led by the Chairman of the Joint Health and Environmental Services Committee, the Corporation was active in Parliament during the Act’s passage through amendments drafted by the Corporation and tabled by Lord Tope (Liberal Democrat) at Committee and Report stages in the Lords, in collaboration with London Councils and Clean Air in London. The amendments sought discretionary powers for Local Authorities to control emissions from combustion plant, if they chose to declare their area an ‘Air Quality Improvement Area’. The proposals prompted discussion in the Lords on local authority powers and received cross-party support but were not ultimately adopted by the

Government, although as noted in paragraphs 8 and 9 of this report, the Government committed to the setting of environmental targets.

6. The amendments mirrored the provisions of the Emissions Reduction (Local Authorities in London) Bill, which had been developed and drafted by the Corporation on a collaborative basis with London Councils. This Private Member's Bill had been first introduced by Lord Tope in January 2020 but was unable to progress further owing to a lack of parliamentary time. Following the debates on the amendments, on 16 December 2021 Lord Tope re-introduced the Bill in the House of Lords.
7. In response to the debates on his amendments in the Lords, in liaison with the Corporation, Lord Tope tabled Parliamentary Questions on the Government's plans to consult on potential measures to control air pollution from small combustion plant, and non-road mobile machinery.

Current Engagement on Environmental Targets

8. The Act obliges the Secretary of State to set long-term environmental targets for air quality, water, biodiversity, resource efficiency and waste reduction. These targets must be of at least 15 years in duration and must be set out in secondary legislation by 31 October 2022. During the passage of the Bill, attempts were made to place a duty on the Government to set legally binding interim targets, to ensure the long-term targets are met. The Government rejected this proposal, and instead it was agreed that non-legally binding interim targets will be monitored as part of the government's "Environment Improvement Plan".
9. During the passage of the Bill, Defra Minister Lord Goldsmith of Richmond Park assured peers that the long-term targets would be set "following a robust, evidence-led process that will include seeking independent expert advice, a role for stakeholders and the public, as well as scrutiny from Parliament." Lord Goldsmith asserted the targets would "build on progress towards achieving the long-term vision of the 25-year environment plan, complement our net-zero target and help tackle some of the serious challenges that remain."
10. As part of its continued engagement with Defra in relation to the Act, the Remembrancer's Office is providing the Corporation's responses to consultations on the proposed environmental targets in collaboration with officers from the Environment Department. Copies of the consultation responses are available from the Remembrancer's Office.

Air Quality Provisions

11. The Act introduces a duty on the Government to set a target for the annual average level of fine particulate matter (PM2.5) in ambient air. A second, long-term target will be set in relation to population exposure to PM2.5, which the Government has said will assist to "prioritise action that is most beneficial for public health and drive continuous improvement". The Government resisted calls from campaigners and parliamentarians to match World Health

Organisation guidelines; an amendment that would have required the Government to adopt a target on PM2.5 pollution “less than or equal to” the WHO’s guideline level by 2030 was passed by peers but rejected by MPs.

12. The Act amends provisions in the Environment Act 1995 on the local air quality management (LAQM) framework, to “enable greater cooperation at local level and broaden the range of organisations that play a role in improving local air quality”, according to Defra. Responsibility for tackling local air pollution will now be shared with designated relevant public authorities, all tiers of local government and neighbouring authorities. The environment secretary will be required to review the Air Quality Strategy at least every five years, and to publish an annual progress report to parliament.
13. Amendments to the Clean Air Act 1993 replace the criminal offence of emitting smoke from a chimney in a smoke control area with a civil penalty regime. This seeks to assist local authorities to reduce pollution from domestic burning, by enabling “quicker, simpler and more proportionate enforcement at a local level.” The Act also strengthens offences in relation to the sale of certain solid fuels for use in smoke control areas.
14. Amendments to the Environmental Protection Act 1990 assist local authorities to take action against those who repeatedly emit smoke and endanger human health, by extending the system of statutory nuisance to private dwellings in smoke control areas. Local authorities may issue an abatement notice where smoke from chimneys causes a nuisance, breach of which is a criminal offence and could result in a fine.

Water Quality

15. During the passage of the Bill, an amendment tabled by the Duke of Wellington regarding the amount of sewage released into rivers attracted a great deal of attention. The Duke sought a duty on “sewerage undertakers to take all reasonable steps to ensure untreated sewage is not discharged from storm overflows into inland and coastal waters”. The dispute led to the Government proposing a compromise amendment placing a duty on water companies to “progressively reduce the impacts of sewage pollution from storm overflows.”

Office for Environmental Protection

16. The Bill addresses the cessation of EU environmental principles and governance mechanisms following Brexit, by creating a new domestic framework for environmental governance through the new Office for Environmental Protection (OEP). The OEP will scrutinise environmental law and the Government’s environmental improvement plan and assume the enforcement role for breaches of environmental legislation, which was previously held by the European Commission. The OEP is due to publish its finalised strategy, enforcement policy and first corporate plan in June 2022.

Waste

17. The Act reduces the responsibility of local authorities by introducing “extended producer responsibility”, enabling regulations to require manufacturers to contribute to the disposal costs of the products they produce. The Government have stated that this will shift costs from local authorities to businesses, which will be incentivised to design products that are easier to recycle. The intricacies of how the funding model will work have not yet been fully elucidated.
18. The Act empowers the Government to implement “consistent and frequent recycling collections” across England and create deposit return schemes for drinks containers. Retailers will be obliged to charge deposits and receive relevant items if they sell them. Where bottles are purchased and consumed on premises, for example in pubs, the premises will be responsible for managing the deposits. The substance of these policy changes is due to be set out in secondary legislation yet to be published, and therefore much of the detail regarding implementation has not yet been announced.

Biodiversity

19. Local authorities are required by the Act to produce a “Biodiversity Report” every five years, describing action taken to support biodiversity and its impact. The reports will also provide valuable information to update Local Nature Recovery Strategies.

Conclusion

20. The Act introduces new measures in a broad range of environmental policy areas, with provisions continuing to come into effect over the course of the coming year. Since the substance of many of the Act’s provisions is due to be set out in secondary legislation, much of the detail regarding implementation of the policies introduced by the Act has yet to be detailed.
21. Following its extensive engagement via Lord Tope’s amendments during the Act’s parliamentary proceedings, the Remembrancer’s Office continues to engage with Defra officials on the implementation of the Act through Defra consultations. The Office also continues its engagement with the Department on the broader issue of local authority powers to control air quality, in collaboration with Lord Tope and the Chairman of the Port Health and Environmental Services Committee.

Kiki Hausdorff

Assistant Parliamentary Affairs Counsel

Remembrancer’s Office

Kiki.Hausdorff@cityoflondon.gov.uk