

Committee(s): Open Spaces and City Gardens Committee – For Information	Dated: 10 July 2023
Subject: Environment Act 2021 Regulations on Biodiversity	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	

Summary

The Environment Act 2021 amended existing environmental legislation to introduce new measures in a range of environmental policy areas. Since Royal Assent, regulations have come into force to implement the Act’s measures in each policy area. These regulations specify long-term environmental targets for biodiversity and the date by which they must be achieved. Regulations have also brought into force provisions of the Act which place additional duties on planning applicants and local authorities. This report provides a synopsis of the implementation Regulations.

Recommendation

Members are asked to note the contents of this report.

Main Report

The Environment Act 2021

1. The Government stated that the Act was a 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.”
2. The Act addressed 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. It also made provision on specific environmental policy areas including nature and biodiversity.

3. As reported to the Communications and Corporate Affairs 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.

Environmental Targets under the Act

4. 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. 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.
5. Section 1 of the Act requires the Government to set at least one target in the priority area of biodiversity. Section 3 of the Act requires the Government to set a target relating to the abundance of species with a specified date of 31st December 2030.
6. Defra Minister at the time of the Bill's passage, Lord Goldsmith of Richmond Park, asserted that 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." He 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."
7. As part of its continued engagement with Defra in relation to the 2021 Act, the Remembrancer's Office provided 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. Following the support provided to Lord Tope's air quality amendments, the Office further assisted Lord Tope in his contributions to parliamentary debate regarding the air quality target regulations.

Biodiversity Targets

8. The Environmental Targets (Biodiversity) (England) Regulations 2023 came into force on 30 January and set out three long-term targets for biodiversity:
 - 1) **Species' extinction risk target:** to reduce the risk of species' extinction by 2042, when compared to the risk of species' extinction in 2022.

- 2) **Wildlife-rich habitat restoration or creation target:** in excess of 500,000 hectares of a range of wildlife-rich habitats will be restored or created by 31st December 2042.
 - 3) **Long-term biodiversity target to reverse the decline of species abundance:** the overall relative species abundance index by 31st December 2042 will be—
 - a) higher than the overall relative species abundance index for 31st December 2022; and
 - b) at least 10% higher than the overall relative species abundance index for 31st December 2030.
9. The Regulations also establish the **2030 species abundance target:** that the overall relative species abundance index on 31st December 2030 indicates that the decline in the abundance of species has been halted.

Biodiversity Net Gain

10. The Act introduces a mandatory biodiversity net gain condition for new development in England under the Town and Country Planning Act 1990. This provision is expected to be brought into force by regulations in late 2023.
11. The condition, that a biodiversity gain plan must be submitted to and approved by the planning authority, applies to all planning permissions granted in England, subject to certain exceptions. There is, for example, an exception for development granted permission by the General Permitted Development Order, which allows various types of development to proceed without requiring a planning application. Further exceptions may be provided for in secondary legislation.
12. Under the net gain condition, planning applicants will be required to deliver at least 10% gain in biodiversity above the current baseline. Currently, biodiversity net gain is encouraged in the National Planning Policy Framework but is not mandatory. Many local planning authorities require biodiversity net gain for development or have net gain policies in place.
13. Biodiversity gains may be delivered on the development site, off-site, or as a last resort by purchasing statutory biodiversity credits from the government. A biodiversity gain site register will record off-site gains. The Government have announced that they would make £4 million of funding available to local planning authorities to implement mandatory biodiversity net gain.
14. A net gain plan will need to be submitted by the planning applicant. This will include:
 - a) an assessment of the value of natural habitat before and after development.
 - b) details of how at least 10% net gain in biodiversity will be achieved.
 - c) details of the steps that will be taken to minimise harm to habitats during development.

Biodiversity Duties and Reports

15. Before the 2021 Act, there was a duty on public authorities to have regard to the conservation of biodiversity when delivering their functions. The 2021 Act strengthens this duty by requiring public authorities, including the Common Council in its capacity as a local authority, to assess how they can take action to conserve and enhance biodiversity, and then take these actions.
16. The Act also requires local authorities and local planning authorities to produce biodiversity reports at least every five years, detailing the action they have taken to conserve and enhance biodiversity. The first biodiversity report must cover a period chosen by the authority which is no longer than three years from 1 January 2023.
17. Local authority biodiversity reports must include:
 - a) a summary of the action which the authority has taken to conserve and enhance biodiversity in the period covered by the report,
 - b) a summary of the authority's plans for complying with this duty over the five years following the period covered by the report,
 - c) any other information that the authority considers it appropriate to include.
18. Local planning authority biodiversity reports must also include:
 - a) a summary of the action taken by the authority in carrying out functions relating to the mandatory biodiversity net gain condition of planning permission over the period covered by the report,
 - b) information about any biodiversity gains resulting or expected to result from biodiversity net gain plans approved by the authority during that period, and
 - c) a summary of the authority's plans for carrying out these functions over the five-year period following the period covered by the report.

Conclusion

19. The 2021 Act has introduced new measures in a broad range of environmental policy areas. Environmental targets and many other substantive provisions of the Act have come into force more recently by regulations. The new measures in relation to biodiversity include long-term biodiversity targets, a mandatory 10% biodiversity net gain for new development, and strengthened duties on local authorities to conserve and enhance biodiversity and report on their actions.

Kiki Hausdorff

Assistant Parliamentary Affairs Counsel

Remembrancer's Office

Kiki.Hausdorff@cityoflondon.gov.uk