

Environment Bill: briefing for Commons Committee

23 November 2020

Commencement (amendment 2 + 151 + 152 + 153)

The provisions for commencement of the various provisions in the bill are set out in Clause 131. As is commonplace for a long and varied bill, commencement is staggered.

Part 8 of the bill (Miscellaneous and General Provisions) will come into force on the day the bill is passed. Other provisions will come into force two months following Royal Assent following the convention that bills should not come into force for two months after Royal Assent to give business and individuals time to adjust to a change in the law. However, the majority of the bill's provisions will come into force on "such day as the Secretary of State may by regulations appoint" meaning the timescale is less clear. Corresponding provision is made in respect of Welsh ministers, Scottish ministers and the Northern Ireland department/Assembly respectively in subsections (4), (5) and (6) to (9).

Amendment 2 seeks to prevent the Secretary of State from choosing not to enact parts of the bill. Currently multiple provisions, including the whole of Part 1 (environmental governance), Part 6 (nature and biodiversity) and Part 7 (Conservation Covenants), could never be enacted, even after the bill has received Royal Assent.

Amendments 151, 152 and 153 seek to ensure similar certainty in relation to Wales, Scotland and Northern Ireland.

Following Royal Assent, decisions can be made to only commence certain powers or to delay commencement, for example in the event of a general election, no sitting parliament, lack of parliamentary time or a change in political circumstances. **We therefore support these amendments as they would provide welcome certainty.**

However, there is a more pressing issue in relation to commencement that we would wish to draw to the attention of the committee. This is the commencement of the provisions relating to the Office for Environmental Protection in England and Northern Ireland and the provisions on environmental principles, as these replace legal governance mechanisms that are currently provided by EU institutions until 31 December 2020.

The passage of the Environment Bill has been seriously delayed, partly because of the impact of coronavirus restrictions on parliamentary timetabling and partly due to the government's decision to amend the bill mid passage, as the Secretary of State [explained](#) to the APPG for the Environment on 2 November.

Normal conventions on commencement should not apply in relation to time critical measures. There are several examples where, because of reasons of urgency, the government has opted to allow for parts, or in some cases the whole of a bill, to come into force on the day of Royal Assent. For example:

- During the passage of the delayed Agriculture Bill, the government introduced amendment 299, which amended Clause 53 to enable legislative powers created by the bill to be exercised on or after the day on which the bill receives Royal Assent.

- [Section 100](#) of the Climate Change Act 2008 provided for Part 2, including Clause 32 which established the Committee on Climate Change as a legal entity, to be commenced on the day the Act was passed.

Following [pressure](#) from stakeholders and in response to a [letter](#) from the EFRA Committee and Environmental Audit Committee, the government has now provided more details on its plans for an interim environmental governance secretariat. This is intended to bridge the [governance gap](#) that will exist until the Environment Bill receives Royal Assent and the Office for Environmental Protection is established as a legal entity and is ready to exercise its statutory functions.

In his [response](#) to the letter from the select committees, the Secretary of State provided this welcome assurance:

“We are seeking to establish the Office for Environmental Protection as soon as practical after Royal Assent, with no delay longer than is necessary. We anticipate that clause 21, which establishes the Office for Environmental Protection as a legal entity, would be commenced within a few days of Royal Assent.”

However, given the catalogue of delays to this bill, which was first [promised](#) by the Prime Minister in July 2018, there is a compelling case for including the above assurance in the legislation by amending Clause 131(1) and (3).

There is also a strong case for urgent commencement of the provisions relating to the Office for Environmental Protection in Northern Ireland given the lack of clarity on what, if any, interim environmental governance arrangements will be in place on 1 January.

The provisions on environmental principles should also be commenced at the point of Royal Assent. The draft policy statement should have been available for public and parliamentary scrutiny at an earlier stage of the bill’s parliamentary passage, and must be published urgently, bearing in mind it was also [first promised](#) in 2018.

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