Environment Bill: priority amendments to support

15 October 2021

Summary

The Environment Bill returns to the House of Commons on Wednesday 20 October, when MPs will be asked to consider 15 non-government cross party amendments that were passed by the House of Lords. **The amendments below are the ones that the environmental NGO sector considers would strengthen this important legislation in the most strategic way and future proof our new environmental governance system.**

Other proposed improvements, for example those aiming to strengthen the bill’s provisions on air and water quality, depend on independent, robust oversight and a whole government approach to the environment, which the amendments below would deliver.

Once the government’s motion for the debate has been published, we will update this briefing.

**Priority amendments to support during the debate**

1. **Binding interim targets (amendment 11 – Baroness Brown of Cambridge)**

We welcome the bill’s framework to set legally binding targets and the addition of a new target to halt species decline by 2030. Clause 6 places a welcome duty on the Secretary of State to ensure that targets are met. However, there is nothing to compel governments, including future ones, to start taking action now to meet targets, or to take remedial action where targets are missed. Ensuring that action is taken early will be critical to meeting the long term targets. **We therefore support Lords amendment 11** which would place a duty on the Secretary of State to meet interim targets, which would follow the sensible targets system in the Climate Change Act 2008.

The government has expressed a concern that binding interim targets would lead to short term thinking, which it is keen to avoid. We agree that a long term approach is needed, but this is not an either/or decision: successful implementation of long term targets will depend on sustained and targeted progress in the short term.

Binding interim targets are supported by many in the business community as they provide near term **certainty for businesses**, creating the sort of stable environment which encourages investment in their workforce, and in green products and services. They would focus businesses on planning the trajectory towards the long term targets and help drive innovation in their business models.

2. **Environmental principles (Lords amendment 20 – Baroness Parminter)**

The Environment Bill will introduce a new system for ensuring that government departments integrate environmental considerations into their policy making. Ministers will be subject to a new duty to have due regard to a policy statement on environment principles, which was published for **consultation** earlier this year.
However, the bill, as drafted, contains a loophole for government policy relating to defence, the Armed Forces and national security, as well as spending, resource allocation and taxation.

We support Lords amendment 20 which would remove these exceptions and ensure that environmental considerations are applied evenly across government policy. The aim of the environmental principles policy statement is to place environmental considerations at the heart of government policy making, but this will only be achieved if approached consistently by all departments. For further details see this briefing note on why the defence loophole must be closed.

The government has said that the principles will be embedded in the Green Book, which is very welcome. However, the total exclusion of fiscal policy making from the bill will cause confusion and send the wrong signals to other departments, who may be less inclined to follow the Green Book advice if its authors are exempt from it.

3. Independence of the Office for Environmental Protection (Lords amendments 24 and 30 – Lord Krebs and Baroness Ritchie of Downpatrick)

The independence of the Office for Environmental Protection (OEP) has been a standout issue in parliamentary debates, with exceptionally strong cross party support for the bill to be strengthened. The OEP’s constitution must be able to stand the test of time. It is not enough to rely on the goodwill and sincerity of the current set of Defra ministers for its future interpretation and the robustness of the OEP should not rest on personalities.

We support Lords amendments 24 and 30 which would safeguard the OEP’s independence in the long term by removing the ability of the Secretary of State to ‘guide’ how the OEP will hold ministers to account on any environmental wrongdoings. Instead, they provide the OEP with complete discretion to undertake its activities.

Given it was intended to be a “world leading body to give the environment a voice and hold the powerful to account”, affording the OEP discretion to act should be incontestable.

The amendments also replicate existing arrangements for appointing the board members of comparable oversight bodies – the Office for Budget Responsibility and the OEP’s sister body Environmental Standards Scotland – where the respective parliament plays a greater role, ensuring that ministers cannot hire and fire board members at will.

The amendments also protect the OEP’s financial independence by requiring the Secretary of State to publish a multi-annual budget, along with a response to any funding shortfalls.

4. Environmental review remedies (Lords amendment 27 – Lord Anderson of Ipswich)

The availability of meaningful and effective remedies to correct unlawfulness is a crucial aspect of any successful enforcement mechanism. However, the constraints proposed by the government would significantly restrict the Court’s ability to grant remedies following an environmental review, thus undermining the entire enforcement process.

This is a deeply concerning aspect of the bill which must be corrected if the OEP is to have any chance of being the world leading body the government has promised.
Where the Court determines that a public authority has failed to comply with environmental law it must be able to remedy that breach. However, the bill contains two very significant caveats. Critically, the Court can only grant a remedy where it is satisfied that to do so would not:

a) be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority; or
b) be detrimental to good administration.

This would place, in every case, the interests of any third party above those of the environment and those seeking to defend it. In environmental cases, there will often be a third party – such as a developer or a fossil fuel extractor – who may suffer a degree of hardship because of a finding of public authority unlawfulness.

Instead, the interests of any such third parties should be balanced with other interests: those of the environment and of other third parties, including members of the public, who may not have a financial stake in the matter but are likely to have other relevant interests.

We support Lords amendment 27, which would preserve the Court’s discretion in granting remedies while indicating factors to be considered when determining what outcome would be in the interests of justice. For further information see this legal advice prepared for ClientEarth and the Bingham Centre for the Rule of Law’s report.

5. Charges for single use items (Lords amendment 40 – Baroness Jones of Whitchurch)

Schedule 9 seeks to reduce the consumption of single use plastic by allowing charges to be imposed. However, the provision for charges to only apply to single use plastic items risks merely shifting the environmental burden, as alternative materials may be used with equal environmental recklessness. The problem lies with the single use throwaway culture, not with plastic per se.

An inability to charge for alternatives to plastic will therefore see the market simply switch to other unnecessary single use items, instead of driving reuse and reduction as the government intends. This clause must be amended to future proof government action on reduction and reuse and is supported by many businesses.

We support retaining Lords amendment 40 to enable charges to be made for all single use materials. This would ensure that the government can successfully tackle our throwaway culture at the same time as tackling plastic pollution. For more detail see this briefing note.

6. Habitats regulations – limits on powers to amend (Lords amendment 99 – Lord Krebs)

The Habitats Regulations 2017 form the first line of defence for our most precious habitats and species, providing a regime of strict protection for the UK’s finest wildlife sites (SACs, SPAs and Ramsar sites) and for European Protected Species.

Clauses 113 and 114 of the bill grant new powers to the Secretary of State to amend the Habitats Regulations, with considerable freedom of manoeuvre, binding them only to “have regard” to the need to enhance biodiversity when making changes, and to satisfy only themselves that environmental protections have not been reduced.
These wide ranging new powers open the door to a potential weakening of protections, and the consequent enabling of developments that damage important wildlife sites.

We support Lords amendment 99 which would close that door by only allowing Habitats Regulations changes that would enhance compliance with international agreements (such as the Bonn Convention, the Bern Convention, the Ramsar Convention and the Convention on Biological Diversity) or contribute to the favourable conservation status of species or habitats, or favourable condition of protected sites. The amendment also strengthens the requirement to ensure that changes do not reduce environmental protections and involves technical experts (including the OEP, Natural England and JNCC) in making that judgement.

The amendment provides a crucial safeguard to ensure that environmental protections can only be enhanced, not weakened. Given that the government has stated that the intention behind the new powers is only to enhance, we hope that the amendment can be retained. As Lord Krebs highlighted in the Lords “there is nothing that the Government are not already committed to in this amendment, so why not accept it?”.

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