

Environment Bill: why defence policy must be included

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Overview

The Environment Bill will introduce a new system for ensuring that government departments integrate environmental considerations into their policy making. Once the bill passes, 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.

This issue has been consistently raised [throughout](#) the passage of the bill, and is one that the House of Lords decided to prioritise when it passed a cross party amendment tabled by Baroness Parminter at Report stage which removed the exclusions for defence policy.

International environmental law and national requirements such as Environmental Impact Assessment and the Wildlife and Countryside Act 1981 apply to the Ministry of Defence (MoD). It controls many areas designated for their conservation value and carries out activities to support nature on its land in line with its statutory duties, rendering this blanket exclusion even more perverse. Consideration of the principles in related policy would support the MoD in fulfilling its requirements. Failure to consider them could lead to incoherencies in policy development and would be detrimental to good governance.

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.

The government was elected on a manifesto which [pledged](#) to have the most ambitious environmental programme of any country on earth. This will not be possible to achieve while the defence loophole in the Environment Bill remains so widely cast.

Five reasons why the defence loophole must be closed

1. Defence policy protects sensitive environments

The MoD is a major landowner and controls nearly two per cent of the land area of the UK, including a third of our Sites of Special Scientific Interest and has an influence on marine management including coastal zones. These will play a critical part in the collective effort to meet the aim of the 25 year environment plan for 75 per cent of protected sites to be in a favourable condition by 2042 and the delivery of the new [government target](#) to halt species decline by 2030. The integration of environmental principles into strategic MoD policy making will assist with delivering these government priorities.

2. Environmental principles support a modern military

In 2020, the National Audit Office [noted](#) that while environmental protection had been regarded as “a Cinderella service” in the MoD, the Department had started to reflect its environmental ambitions in policy documents, and to establish new ownership and accountability arrangements.

This can be seen through departmental structures such as the Integrating Operating Concept, the Climate Change and Sustainability Strategic Approach and the Defence Safety and Environment Committee, chaired by the Permanent Secretary.

Commands run individual sites and develop and maintain Environmental Management Systems which the National Audit Office [found](#) provide a systematic approach to embedding environmental principles across sites and activities.

The MoD [recognises](#) that managing environmental effects at an organisational level supports a modern military and achievement of the department's strategic objectives. Considering the principles at a policy level would assist with the MoD's increasing focus on operating in response to natural disasters and conflicts caused by climate change.

This all sits comfortably with the aim of the policy statement on environmental principles, which is to empower ministers and those working on their behalf to think creatively and use environmental principles in an innovative and forward thinking way.

Embracing environmental principles more fully in defence policy making would therefore be entirely commensurate with the MoD's [stated direction of travel](#).

3. To keep the government's 'no regression' promise

Ministers have made repeated promises that environmental standards will be maintained and enhanced now that we have left the EU. The government's drafting of the Environment Bill provides a total exclusion for policy relating to defence, the Armed Forces and national security from the requirement for ministers to have due regard to a policy statement on environmental principles in their policy making. **This is a much weaker position than that under EU law, which [only exempts](#) security issues connected with the production or trade in arms, munitions and war material from considering environmental principles.**

4. To meet the bar set by other UK legislation

The Environment Bill would introduce a much wider exemption for defence policy than existing domestic legislation. For example, **the Equality Act 2010** limits exemptions to the purpose of "[safeguarding national security](#)" and [government intelligence](#).

Legislation on the assessment of environmental impacts includes targeted national defence exemptions, but these fall significantly short of the wide exemption in the Environment Bill. On **environmental impact assessment** the [exemption](#) only applies to development where national defence is the sole purpose of the development and then only where the Secretary of State deems the application of the requirements would have an adverse effect on that purpose. On **strategic environmental assessment**, only plans or programmes the sole purpose of which is to serve national defence are [exempt](#).

5. To establish parity with climate legislation

The MoD is subject, without exception, to the obligations of the **Climate Change Act 2008** and the Climate Change Committee regularly offers [structured advice](#) on how the MoD is applying its climate change targets.

The exclusion in the Environment Bill for defence policy suggests the government is content with a two tier system which places a lower priority on meeting non-climate environmental commitments across government.

The way forward

During Lords Committee stage, Defra Minister Lord Goldsmith [suggested](#) that the MoD exemption is intended to retain agility where there is “an urgent need to achieve operational objectives.” However, as currently drafted the bill risks encouraging the needs of short term, urgent operational objectives to shape the way in which overall, long term MoD policy is developed and to influence the ways in which these pre-existing environmental duties are discharged. It would also limit how the MoD can contribute to the UK’s response to the environmental crises we face.

Most of the land and resource management decisions the MoD makes will be quite remote from operational military matters so its capabilities will not be affected by paying attention to the environmental principles.

In any case, there are already safeguards in the bill regarding the application of the duty that would allow the MoD to retain the agility mentioned by Lord Goldsmith. Notably, the duty is to be “proportionately applied”. Paragraph 178 of the [explanatory notes](#) to the bill explains that this means ensuring that action taken on the basis of the principles balances the potential for environmental benefit against other benefits and costs associated with the action.

There is a cross party consensus that a limited, targeted exemption for defence policy could be appropriate, if drafted carefully. The MoD has [indicated](#) it wishes a “focused disapplication” rather than a blanket exclusion. The existing legislative examples cited above offer a variety of ways in which this might be achieved.

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