

Complaint to the Office for Environmental Protection

Failure to meet a legal requirement of the flagship 2021 Environment Act

On 31 October 2022, we submitted a [complaint](#) to Defra on behalf of members of Greener UK, Wildlife and Countryside Link and the Healthy Air Coalition relating to the government's breach of its legal duty to lay the draft statutory instrument(s) on Environment Act targets in Parliament before the statutory deadline of 31 October 2022. This was submitted under the online Defra complaints procedure and falls under the "policies or legal issues" section.

We urged the department to lay the targets statutory instrument(s) before Parliament in the shortest possible timeframe and to communicate to Parliament and stakeholders without further delay what this timeframe will be and what remedial plan would be put in place to address the breach at the earliest opportunity. We expressed concern about the open ended nature of the [written ministerial statement](#) made on 28 October 2022 given the seriousness of the breach and the delays that the targets development process has encountered to date.

We also suggested that an independent review is commissioned to examine why this deadline was missed and what changes may be needed to departmental programming and delivery mechanisms to avoid such breaches happening in the future.

The Environment Targets team [responded](#) to our letter on 24 November 2022. While we welcome their assurance that the department will continue to work at pace to lay draft statutory instruments as soon as practicable, no specific timescale was provided as we had requested.

Our proposal for an independent review of why the statutory deadline was missed was dismissed. Instead, the department plans to undertake an internal lessons learned exercise at some point in 2023 once the Environmental Improvement Plan has been published.

We are not satisfied with the department's [response](#). As there is no other available mechanism within the Defra internal complaints procedure, we are submitting a formal complaint to the Office for Environmental Protection on this significant legal breach and the lack of a specific timescale to remedy it.

We would also like to raise the following matters for the OEP's consideration as it investigates this complaint.

- We are concerned that neither the written ministerial statement (28 October) nor the department's response to our complaint (24 November) recognises that the government has broken the law.
- The department's response states that the Secretary of State needs to be satisfied that the targets to be set are deliverable as required by Section 4(2) of the Environment Act 2021. However, the response makes no reference to the requirement in Section 7(3) of the Act that targets must deliver a significant improvement of England's natural environment. It appears to us therefore that there is a risk that this focus on deliverability may affect the level of ambition of the targets package.
- We are concerned that delays to important policy priorities and programmes are at risk of becoming the default departmental culture, as the Environmental Audit Committee recognised in its [letter](#) to the Secretary of State of 22 November 2022. We note that the Committee expects to see targets under the Environment Act published before global environmental leaders come together to discuss protecting biodiversity at the upcoming landmark COP15 conference, which starts on 7 December.

- In this context, we would therefore seek reassurance that alongside the targets statutory instruments, the department also publishes the following:
 - A commitment to further public consultation on proposals for additional targets in those areas where the public consultation and expert advice presented strong evidence for new targets – for example, this might be expected to cover targets on terrestrial protected site condition, river health and resource efficiency – although our strong preference remains for targets in each of those areas to be included in this set of statutory instruments.
 - A clear statement of intent on how the Section 1 power of the Environment Act 2021 will be used to set further targets, for example with respect to other air pollutants, as well as matters outside the first four priority areas.

- As one month has already elapsed since the statutory deadline of 31 October was missed, we are increasingly concerned that this will have an impact on the statutory deadline to publish the Environmental Improvement Plan by 31 January 2023, and on its ability to properly substantiate its policy proposals and interim targets in light of the new long-term targets. We note there has been no discussion with stakeholders on the substantive content of this plan, including proposed interim targets. We are wholly committed to contributing our expertise and submitting evidence to the refresh of the Environmental Improvement Plan in whatever form the department would find most helpful. We suggest a structured process would be the most efficient way to deliver this.

- We proactively sent the department our thoughts on the lessons that we felt could be learned from our experience of the target development process in June 2022. We look forward to contributing to the lessons learned exercise that the department has indicated will be undertaken in 2023 and will use that to build on the suggestions that we have made to date. We continue to believe that a review conducted independently of the department would be more likely to identify the most beneficial learnings.

Members of Greener UK, Wildlife and Countryside Link and the Healthy Air Coalition

The RSPB
National Trust
The Wildlife Trusts
Friends of the Earth (England, Wales and Northern Ireland)
ClientEarth
The Woodland Trust
Greenpeace
Marine Conservation Society
Amphibian and Reptile Conservation
Asthma & Lung UK
Bat Conservation Trust
Born Free
Bumblebee Conservation Trust
Butterfly Conservation
Campaign for National Parks
Chester Zoo
Environmental Investigation Agency
Environmental Protection UK
Institute of Fisheries Management
Keep Britain Tidy
Open Spaces Society
People's Trust for Endangered Species
Plantlife
Rewilding Britain
RSPCA
Soil Association
The Angling Trust
The Conservation Volunteers
The Mammal Society
The Ramblers
The Rivers Trust
The Zoological Society of London (ZSL)
WildFish
Wild Justice
Woodmeadow Trust
WWT

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Wildlife & Countryside Link
Healthy Air Coalition