

Environment Bill: Commons Consideration of Lords amendments

20 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, along with the amendments that the government itself proposed during the Lords stages. All the amendments are available [here](#).

In response, the government has offered two concessions on single use item charges and conservation covenants. These government amendments [**LA67 (a) to (e) and LA85 (a) to (c)**], while welcome, do little to tackle the weaknesses in bill which must be addressed if the government's environmental ambitions are to be delivered in the future. These issues are not new as they were identified by the two environment select committees during their pre-legislative scrutiny of the draft bill in 2019. They have also been repeatedly raised at every stage of the bill's long passage through the House of Commons and the House of Lords, with a cross party consensus that change is needed.

The five 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. We encourage MPs to support these during the debate, including in any votes that might be called.

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.

The decision to reject almost all the improvements made in the House of Lords is hugely disappointing, particularly on the eve of COP26. It seems the government remains determined to pass a bill that will see weaker domestic protections for people and nature, particularly in the way that environmental laws are upheld and enforced.

Priority amendments to support during the debate

1. Binding interim targets (Lords Amendment 12)

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 encourage MPs to support Lords Amendment 12** 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.

As Baroness Brown of Cambridge [explained](#) during Lords Report stage:

“In my experience as a scientist, it is easier to predict the impact of actions to support such systems over a five-year timescale than it is to predict outcomes in 15 or 20 years, as the noble Lord, Lord Cameron, reminded us on Monday. The Minister said it discourages large-scale change for a focus on quick wins. I might agree with this if we were talking about a five-year target alone, but evidence shows the effectiveness of the combination of statutory interim targets and a legislated long-term goal. I sincerely hope the Government will reconsider their position on statutory interim targets, because the evidence is clear. They would help ensure that the excellent intent of this important Bill is delivered.”

Several other Peers voiced their support, including Lord Thomas of Cwmgiedd who [reminded us](#) that “[Long term targets] do not easily fit into the short-term electoral cycle; they are not something a politician or decision-maker can say is for a future generation, years and years away. Interim targets are the here and now.”

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 28)

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 encourage MPs to support Lords Amendment 28 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.

The newly published [net zero strategy](#) makes welcome reference to environmental principles in relation to embedding net zero in government decisions. We agree with the strategy’s conclusion that “it is essential that we put in place new levers to ensure that all the Government’s decisions adequately take climate change into account”.

The strategy makes a welcome link with the Environment Bill. However, it mistakenly assumes that “These principles will ensure the environment is at the heart of policymaking across government”.

With such wide exclusions for policy that will be at the heart of the fight against climate change, the Environment Bill is at risk of failing to meet the aspirations of the government’s net zero strategy.

3. Independence of the Office for Environmental Protection (Lords Amendments 31 and 75)

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 encourage MPs to support Lords Amendments 31 and 75 which would safeguard the OEP’s independence in the long term by removing the ability of the Secretary of State and DAERA 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 in England and Northern Ireland.

The government’s claims that there is precedent for such guidance powers in relation to other public bodies requires close examination. It is correct that ministers do have powers to issue guidance to some public bodies, including the Climate Change Committee. However, ministers do not have prescriptive powers in relation to how enforcement bodies operating in other public policy areas, notably human rights and data protection, can hold ministers to account through their legal enforcement functions. To suggest otherwise, is very misleading.

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 exercise its functions 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 33)

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 encourage MPs to support Lords Amendment 33, 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](#).

This amendment attracted heavyweight support in the Lords from several eminent crossbench lawyers. As Lord Anderson of Ipswich [put forward](#) during the Report stage debate, "...the Government cannot credibly claim to have independent and effective safeguards while protecting themselves from being held to account by the very body established for the purpose".

If the government does not accept this amendment, it will make a mockery of the new environmental governance system and undermine the OEP's intended mode of operation. OEP Chair Designate and experienced regulator Dame Glenys Stacey has [described](#) to MPs the "...standard regulatory approach of a cup of tea together, but a stick is in the cupboard, and everyone knows that stick is there, and it will come out if needs be." **Without this amendment, Dame Glenys will find her cupboard bare when she searches for the stick, rendering the new environmental enforcement system toothless.**

5. Habitats regulations – limits on powers to amend (Lords Amendment 65)

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 encourage MPs to support Lords Amendment 65 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?”.

Government concession on Schedule 9 (Lords Amendment 85)

Schedule 9 seeks to reduce the consumption of single use plastic by allowing charges to be imposed. However, throughout the bill’s passage the government sought to limit the charges to single use plastic items. This risked 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.

Parliamentarians and NGOs called for this clause to be amended to future proof government action on reduction and reuse, as did [many businesses](#).

We therefore welcome the government’s decision to accept the principle of Lords Amendment 85 [via LA85 (a) to (c)] to enable charges to be made for all single use materials. This will ensure that the government can successfully tackle our throwaway culture at the same time as tackling plastic pollution. It is regrettable though that the power will only be available in England initially, as it is now too late to amend the legislative consent memorandums that have already passed through the respective parliaments. For more detail see this [briefing note](#).

Commentary on Lords Amendment 45

We welcome **Lords Amendment 45**, which the government proposed during Lords Report stage. This strengthened the bill through new reporting and monitoring duties placed on water companies and a duty on the government to make a plan to tackle sewage pollution. But, without placing a legal duty on water companies not to pollute there is no guarantee of immediate action to tackle sewage pollution.

Lines 7 to 14 were added to Lords Amendment 45 with cross party support and the backing of [96,000 members of the public](#). Those additions placed a legal duty on water companies to reduce harm caused by sewage discharges and required the various agencies to use their powers of enforcement to support the government’s goal of eliminating the harm caused by sewage pollution. It is disappointing therefore that the government is seeking to remove this amendment. This is tantamount to the government admitting it has no intention of tackling the environmental and public health impacts caused by sewage pollution in the near future. More monitoring and reporting, while welcome, is not enough and raises serious questions about the government’s commitment to leave the environment in a better state.

For more information, please contact:

Ruth Chambers, senior parliamentary affairs associate, Greener UK
e: rchambers@greener-alliance.org.uk
t: 020 7630 4524

GREENER UK

