



Environment Act 2021

and Planning Law

YOUR TEAM TODAY



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Office for Environmental Protection

Principal Function is to contribute to:

- **environmental protection; and**
- **the improvement of the natural environment**

Strategy

- **Published for consultation (closed 22 March 2022)**
- **Sets out role, mission and approach to enforcement**

Enforcement

- **Monitor performance of public authorities**
- **Investigate failures by public authority to adhere to environmental law**
- **Can issue an Information Notice or Decision Notice**
- **Judicial Review and Court can make a statement confirming the public authority has failed to comply and make a remedy**

Environmental Targets and Environmental Improvement Plans

Long-term targets (15+ years), must relate to:

- The natural environment; or
- People's enjoyment of the natural environment

Targets must be set for at least one matter within each of the following priority areas:

- Air Quality
- Water
- Biodiversity
- Resource Efficiency and Waste Reduction

Targets must specify:

- The standard to be achieved; and
- The date it needs to be achieved by

Also targets for 'P.M 2.5' and species abundance

Draft Statutory Instrument must be before Parliament by 31 October 2022

Environmental Principles Policy Statement

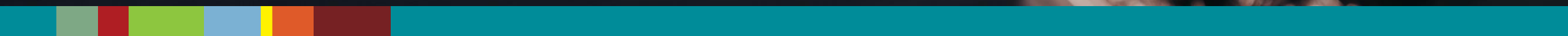


Environmental Principles:

- **Environmental protection should be integrated into policy making**
- **Preventative action to avert environmental damage**
- **Precautionary principle**
- **Environmental damage should be rectified at the source**
- **Polluter pays principle**

Draft statement issued in March 2021, consultation closed in June 2021

OEP made the following comments:

- **Lack of detailed support for policy-makers**
 - **Focus on avoiding environmental harm**
- 

Waste and Resource Efficiency

- **Delivers on commitments in the Waste and Resource Strategy**
- **Producer responsibility to pay full net cost**
- **Charge for single-use plastic**
- **Fixed penalties for litter and fly-tipping**
- **Deposit return scheme**

Air Quality

- **Air Quality Strategy to be reviewed every 5 years**
- **Stronger requirements for local authorities under the Local Air Quality Management framework**
- **Civil penalties for emissions in Smoke Control areas**
- **Secretary of State has power to recall products (including vehicles)**

Conservation Covenants

The Act introduces Conservation Covenant Agreements

Can be described as “an agreement between a landowner and a body such as a charity or public body to do or not do something on their land for a conservation purpose”

Conservation Covenants

The agreement must contain provision which:

‘Is of a qualifying kind’

- **Requires the landowner to do, or not to do, something on the land**
- **Can also allow the ‘responsible body’ to do something on the land.**

‘Has a conservation purpose’

- **Conserve the natural environment of land or natural resources**
- **Conserve land as a place of archeological, architectural, artistic, cultural or historic interest; or**
- **Conserve the setting of land with a natural environment or natural resources**

‘Is intended by the parties to be for the public good’

Conservation Covenants

Responsible Bodies

The Secretary of State is a responsible body.

A local authority (which excludes parish councils) may apply to be designated as a responsible body

A non-local authority such as a public body or charity may be designated if some of its main purposes or functions relate to conservation and it is suitable to be a responsible body

In any other case, at least some of the body's main activities must relate to conservation and it must also be considered suitable to be a responsible body.

Conservation Covenants

Conservation covenants will be a local land charge

Unless the Conservation Covenant provides for a shorter period, it will endure indefinitely if the qualifying estate is freehold or for the remainder of the term if the qualifying estate is held on a lease granted for more than 7 years

A landowner's obligation under a Conservation Covenant is owed to the responsible body

Generally, landowner obligations under Conservation Covenant bind the landowner and successors in title.

Conservation Covenants

Enforcement:

In proceedings for enforcement of an obligation under a Conservation Covenant, the available remedies are:

- (a) specific performance,**
- (b) injunction,**
- (c) damages, and**
- (d) order for payment of an amount due under the obligation**

Planning and the Environment Act 2021

Biodiversity Net Gain

Requirement to secure biodiversity gain through development.

Apply to all planning permissions in England, with the exception mainly of householder and change of use applications

Requirement to guarantee the delivery of a ten per cent biodiversity net gain.

Planning permissions will be granted subject to a new general pre-commencement condition requiring a biodiversity gain plan be submitted and approved by the local planning authority before development can begin

Planning and the Environment Act 2021

Biodiversity Net Gain Plan

- **Assessment of the value of the affected natural habitats pre- and post-development to ensure a biodiversity net gain of at least 10%**
- **Details of the steps taken or to be taken to reduce the adverse effect of the development on biodiversity of the onsite habitat and any other habitat.**
- **Any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development.**
- **Any biodiversity credits purchased for the development.**

The detailed requirements of a biodiversity gain plan will be set out in regulations that have yet to be published

Planning and the Environment Act 2021

Where providing biodiversity gain on-site is not possible or is not the most beneficial option, providing net gain off-site may be deemed sufficient

The Act stipulates that any off-site net gain must be maintained for “at least” 30 years after the work to create or enhance the habitat has been completed.

The Secretary of State for the Environment has the power to review and increase the length of this period.

Onsite enhancements must be secured by planning conditions or section 106 obligations.

Another option may be to enter into a conservation covenant to secure the enhancements

Off-site net gain must also be secured under either a 106 agreement or a conservation covenant.

Planning and the Environment Act 2021

Any off-site enhancements must be entered in the new, publicly available register of biodiversity gain sites.

The Act stipulates that any off-site net gain must be registered for a specific development so that there can be no “double counting” of off-site biodiversity gain across different schemes.

Biodiversity net gain requirements will be calculated using the biodiversity metric, which is published by Defra.

There will be a two-year transitional period from the passage of the Act before the biodiversity net gain requirements become mandatory.

Secondary legislation will be required to enact the regulations to implement the new duty.



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