

Briefing for the second reading of the Environment Bill FEBRUARY 2020

ABOUT US

The Aldersgate Group represents an alliance of major businesses, academic institutions and civil society organisations, which drives action for a competitive and environmentally sustainable UK economy. Our corporate members have a collective global turnover of over £550bn and include companies with operations across the UK economy such as Associated British Ports, Aviva Investors, BT, CEMEX, the John Lewis Partnership, Johnson Matthey, Michelin, Siemens, SUEZ, Tesco and Willmott Dixon. They believe that ambitious environmental policies make clear economic sense for the UK, and we work closely with our members when developing our independent policy positions.

THE ENVIRONMENT BILL: SUMMARY

The Environment Bill is a vital opportunity to establish a new, ambitious and robust governance framework that protects and enhances the natural environment. Businesses fully support the strong enforcement of environmental law and the protection of the natural environment. Amongst other things, the provisions within the Bill set the foundation for a new independent environmental watchdog to hold the government to account, provide a process for setting long-term binding targets within priority areas (air quality, water, biodiversity, and resource efficiency and waste reduction), and establish environmental principles in law. The Aldersgate Group welcomes the high level of ambition set out in the Bill but recognises that further improvements need to be made.

The Aldersgate Group believes that **further changes are needed to ensure the UK has “the most ambitious environmental programme of any country on earth”¹**. We would like to see the governance regime in Part 1 of the Bill strengthened, particularly in relation to the target setting process and the status of interim targets. This is set out in detail below and **we hope that Members of Parliament will be able to raise the following points during the second reading of the Environment Bill.**

WHY BUSINESSES WANT AN AMBITIOUS AND ROBUST ENVIRONMENTAL REGIME

Businesses want a strong environmental regime that is fit for the future and improves the natural environment, and this is what informs this briefing. When well-designed and properly enforced, ambitious environmental regulations provide a stable environment for businesses to invest in, support innovation in new green solutions and products, and provide a level playing field across the economy. This delivers both environmental improvements and economic growth, including the development of high-quality products and services and an increase in business competitiveness – resulting in job creation and enhanced research, development and skills².

If the Environment Bill is designed and implemented correctly, it will energise private sector investment in the natural environment and provide a clear vision for the future of environmental protection. The Aldersgate Group sets out its key recommendations below and is supportive

¹ Department for Environment, Food and Rural Affairs (2020) 30 January 2020: Environment Bill 2020 policy statement <https://www.gov.uk/government/publications/environment-bill-2020/30-january-2020-environment-bill-2020-policy-statement>

² Burohappold Engineering (2017) Help or Hindrance? Environmental Regulations and Competitiveness <https://www.aldersgategroup.org.uk/asset/896> (commissioned by Aldersgate Group)

of the Broadway Initiative's briefing on the Environment Bill³, which highlights five key changes that are needed in the Bill.

TARGETS (CLAUSES 1-6)

Businesses welcome the ambition set out in the Bill and the commitment to long-term binding targets, but further action is needed to strengthen the process underpinning the target-setting process. Once in legislation, these targets can genuinely shape environmental policies over the next couple of decades, provide much needed long-term policy direction to businesses and help drive private sector cost-effective investment in the natural environment. To ensure the targets are fit for purpose, the Aldersgate Group would recommend the following changes to the long-term target clauses in the Bill.

Overall, the Environment Bill needs to establish the future ambition of targets, set out the criteria underpinning these targets and provide information on the consultation process that the Secretary of State needs to take prior to setting these targets. Clarifying these aspects will ensure that future long-term targets deliver coherent environmental improvements in all priority areas.

As set out in the amendments put forward by the Broadway Initiative, **the expected ambition of the targets needs to be set out clearly in the Bill, providing a direction of travel for future targets**

- **Clause 1** should be clearer in terms of setting out the objective and degree of ambition of future targets. This will give further assurances to businesses, public authorities and civil society as to the expected ambition of future targets.
- **Clause 6** establishes that the Secretary of State must be satisfied that the targets will deliver significant environmental improvement after they have been set. This should be integrated in the process from the outset, not a consideration later in the process. It is also not clear what is meant by 'significant environmental improvement'. At the minimum, a clear definition of what this constitutes is required, together with assurances that the test will be carried out on a target specific basis rather than on a cumulative assessment basis. If carried out on a cumulative basis, there is a risk that shortcomings within specific priority areas are not adequately recognised or addressed.

Long-term targets need to be wider in scope

- **Clause 1** needs to provide further details on the scope of the targets within each priority area (air quality, water, biodiversity, resource efficiency and waste reduction). In practice, meeting one of these targets will require meeting several interdependent targets. For example, driving improvements in resources and waste is likely to require at least one target focusing on resource productivity and another target focusing on waste minimisation. Similarly, the biodiversity target needs to cover aspects such as habitat extent, condition and connectivity, and species abundance. This will recognise the complexity of the issues at hand and ensure that future targets are developed in way that is coherent and result in holistic improvements to the natural environment.

³ Broadway Initiative (2020) The Environment Bill: Seizing the Opportunity
<https://www.iema.net/assets/newbuild/Broadway/Environment%20Bill%20-%20Broadway%20Assurances%20-%20Feb%202020.pdf>

Targets need to be based on the best evidence available and established through a robust consultation process

- The Bill does not sufficiently specify consultation requirements that the Secretary of State must comply with before setting a binding long-term target. **Clause 3** states that “the Secretary of State must seek advice from persons the Secretary of State considers to be independent and to have relevant expertise”. The Bill needs to set out further details on the type of persons that the Secretary of State should consult, together with clear criteria for conducting these consultations, including public consultation. Civil society groups and other organisations whose support are needed to deliver targets are crucial to ensuring that targets are met and should therefore be explicitly involved in the consultation process.
- **Clause 3(3-8)** sets out the conditions under which the Secretary of State can either lower or revoke targets. Revoking or lowering targets can be done if “meeting the existing target would have no significant benefit compared with not meeting it or meeting a lower target”, or if the environmental, social, economic or other costs of meeting it would be “disproportionate to the benefits”. The Secretary of State must then make a statement to Parliament on why targets are revoked/lowered. The Bill should make clear that this power should only be used when taking into account expert advice, carrying out appropriate public consultation and requiring approval by Parliament through the affirmative procedure. This is particularly important when considering the current limitations of interim targets (set out below).

INTERIM TARGETS (CLAUSES 10 AND 13)

The interim target process needs to be strengthened to give businesses more confidence regarding near-term delivery

The Environment Bill establishes interim targets in Clause 10 and 13, stating that interim targets should be set when revising Environmental Improvement Plans (EIPs) every five years. The interim targets should be “in respect of each relevant matter” and the Secretary of State “must be satisfied that meeting the target, or the revised target, would make an appropriate contribution towards meeting” the long-term targets.

As currently drafted, action to meet the long-term targets could potentially be backloaded. As Professor Maria Lee of UCL pointed out as the first draft Environment Bill was published, “the minimum fifteen-year timespan (Clause 1(6)) pushes legal compliance far into the future”.⁴ The five yearly-interim targets do come with a framework of monitoring and review but they are not legally binding as is currently the case for carbon budgets under the Climate Change Act.

For the long-term targets to be seen by businesses as credible and investible, there needs to be confidence that successive governments will take sustained, regular action to deliver these targets. This allows businesses to have confidence that the interim targets will genuinely drive government action and that remedial policy action will be taken, should it appear that interim targets will be missed.

⁴ Professor Maria Lee (18 October 2018) “The Environment Bill: A framework for progressive environmental law?” <https://www.brexitenvironment.co.uk/2019/10/18/framework-progressive-environmental-law/>

With this in mind, we believe that the interim target delivery process as it currently stands in the Bill is too vague and needs to be made more robust. In particular, it is essential that the Bill explicitly states that EIPs need to set out steps that enable the interim and long-term targets to be met, that there will be annual reporting on progress and that the five-yearly review process requires the government to take remedial action (including introducing new policies or measures), if an interim target be missed or is likely to be missed.

- **Clause 10** does not sufficiently lay out what consequences there will be if the government misses interim targets. If an EIP is revised, the Secretary of State needs to put a statement before Parliament; but it is not clear what remedial action the government would take when interim targets are missed or look likely to be missed. Setting this out clearly will be crucial in making sure interim targets are met as soon as possible and that we remain on track to achieve the long-term targets. This can also help to prevent backloading of interim targets.
- **Clause 10(8)** establishes that interim targets should make “an appropriate contribution” towards the long-term targets. We would welcome strengthening the language in this clause to reflect the importance of interim targets going towards meeting the long-term targets. This will also strengthen the role of EIPs in the target setting process.
- **Clause 13** similarly needs to acknowledge that remedial action – including through the announcement of new policies - is required if previous interim targets have not been met.

THE OFFICE FOR ENVIRONMENTAL PROTECTION (CLAUSES 21-40 AND SCHEDULE 1)

Having an independent and well-resourced watchdog with effective enforcement powers is essential to the proper application of environmental law and to the creation of a level playing field for business. We welcome the decision by the government to bring all climate change legislation, including carbon budgets, into the remit of the OEP. This will ensure that all aspects of environmental law, including climate change, will benefit from the same degree of oversight, which is vital in ensuring a comprehensive environmental governance regime. However, there are still changes that are required to ensure that the OEP can fulfil the government’s vision for a world-leading, independent body.⁵

Generally, the Environment Bill needs to guarantee the OEP’s independence, giving it long-term financial security and enabling Parliament to scrutinise appointments made to its leadership. It is also essential that the OEP has sufficient powers to enforce breaches of environmental law.

Guaranteeing its independence

The most crucial aspect will be ensuring that the OEP is fully independent from government. This will provide businesses with confidence in the robustness of the environmental regulatory regime in England and Northern Ireland.

⁵ Department for Environment, Food and Rural Affairs (11 January 2018) Prime Minister's speech on the environment: 11 January 2018 <https://www.gov.uk/government/speeches/prime-ministers-speech-on-the-environment-11-january-2017>

- **Schedule 1, Clause 2** sets out how non-executive members are to be appointed to the OEP. As currently drafted, there is no role for Parliament to play, particularly with regards to the appointment of the Chair of OEP, although we understand the government intends for appointments to be subject to a pre-appointment Select Committee hearing. The Bill needs to set out a formal role for the relevant parliamentary committee in approving the Chair of the OEP, akin to the role of the Treasury Select Committee in the process to confirm the appointment of the Chair of the Office for Budget Responsibility. This is supported by recent recommendations from both the Environment, Food and Rural Affairs Select Committee and the Environmental Audit Committee following the pre-legislative scrutiny process of the draft Bill. The appointment of the non-executive members of the OEP should be the responsibility of the OEP Chair, once appointed.
- The new **Schedule 1, Clause 4** gives the Secretary of State the power to appoint an interim chief executive of the OEP until the Chair appoints the first permanent chief executive. It states that the interim chief executive will “act in accordance with any directions given by the Secretary of State” and “may incur expenditure and do other things in the name and on behalf of the OEP”. Because of the importance of the initial stages of establishing the OEP, we would urge that there is a defined time limit on how long the interim chief executive can be in place in order to guarantee that every effort is made to appoint the permanent chief executive as quickly as possible, giving stability to this new body. We are also concerned that Para 4(3) of Schedule 1 appears to amount to a power of direction for the Secretary of State, despite assurances from ministers that they will seek no such power over the OEP.

Giving it long-term financial security

- **Schedule 1, Clause 12** establishes that the Secretary of State “must pay the OEP such sums as the Secretary of State considers are reasonably sufficient to enable the OEP to carry out its functions”. Additional funding can be provided “subject to such conditions as the Secretary of State may determine”. While we welcome the commitment made in the government’s response to the pre-legislative scrutiny process that the OEP will have a five-year, ring-fenced budget, we are concerned that this does not provide the OEP with sufficient long-term certainty, and we would welcome this five-year indicative budget being written into the Bill. This has already been recognised by the government as an important aspect following the pre-legislative scrutiny carried out by the Environment, Food and Rural Affairs Committee⁶, and we would therefore welcome greater certainty in this area.

Giving it the ability to adequately enforce environmental breaches

Clauses 28-38 set out the OEP’s enforcement powers. It is welcome to see that the OEP will have a more bespoke arrangement for enforcement, with the ability to apply to the Upper Tribunal for an environmental review. However, as currently drafted, amendments are needed to ensure that the OEP has sufficient enforcement powers.

- The OEP can launch investigations, it can issue information notices and decision notices, and eventually launch an environmental review in the Upper Tribunal. **The**

⁶ House of Commons Environment, Food and Rural Affairs Select Committee (16 October 2016) *Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill: Government response to the Committee’s Fourteenth Report of Session 2017-19*

watchdog will not be able to issue financial penalties for any breaches of environmental law, as currently drafted. While we recognise that environmental breaches are not wholly prevented through financial penalties and that corrective action will often be the best remedy, we would recommend that this option is made explicitly available to the Upper Tribunal when considering the outcome of an environmental review where the breach of environmental law has been severe and other remedial options are unlikely to be effective.

- **Clause 35** sets the parameters of an environmental review, which can only be carried out after a decision notice has been issued. When carrying out the review, the Upper Tribunal must apply “the principles applicable on application for judicial review”. The current parameters of the principles applicable to a judicial review are narrow in scope and risks undermining the bespoke arrangement set up for the OEP. We would welcome the removal of the requirement for these principles in Clause 35(5).

More generally, crucial areas that affect the environment fall outside the purview of the OEP. Planning for example is not included but can have significant environmental impact; this would fall outside the remit of the OEP’s investigatory and enforcement powers because of the narrow definition of environmental law in **Clause 43**. To address this, we propose that the definition is broadened; for example, to include an explicit recognition that planning laws should be included within the OEP’s remit.

ENVIRONMENTAL PRINCIPLES (CLAUSES 16-18)

Robust and consistent application of environmental principles in future policy and decision-making will be crucial to achieve the ambition of the Bill and provide a clear sense of policy direction to businesses. To bolster the environmental principles set out in the Environment Bill, Aldersgate Group would highlight the following suggested amendments:

Extending the responsibility to consider the environmental principles

- **Clause 18** states that “[a] Minister of the Crown must, when making policy, have due regard to the policy statement on environmental principles currently in effect”. We would recommend that this is changed to “act in accordance with” and apply to all relevant public authorities, not just ministers.
- **Clause 18(3)** sets out the exemptions to environmental principles and includes taxation and spending or allocation of government resources. Given the importance of taxation policies and departmental budgets in delivering environmental targets in practice, this will limit the real-life effectiveness of the principles. We therefore suggest that this exemption should be removed or, failing that, be restricted to a clearly specified and material set of circumstances.

Strengthen domestic oversight in the process of setting out a policy statement

- According to **Clause 17**, the Secretary of State must lay a draft of the policy statement on environmental principles before Parliament. Either House of Parliament can pass a resolution, or a committee of either House of Parliament, or a joint committee, can make recommendations in respect of the draft statement. There is no requirement on the Secretary of State to take note of these recommendations. Aldersgate Group would therefore recommend that this clause sets out a stronger role for Parliament, along the

lines of how other policy statements, such as those relating to national energy projects are considered.

MAINTAINING STRONG ENVIRONMENTAL STANDARDS

- More broadly, it is essential that the ambitions set out in the Environment Bill are achieved in a way that builds on and continuously improves on current environmental standards. Consequently, we would **welcome the inclusion of a provision preventing future regression on environmental standards** in addition to the proposed Clause 19, which is intended to provide transparency on any proposed regression.
- **Clause 19** establishes that a Minister of the Crown must make a statement in Parliament before the second reading of a Bill, clarifying whether the Bill will impact the level of environmental protection provided under existing environmental law. The clause provides a recognition that there may be changes to environmental legislation, but it falls short of guaranteeing non-regression. As currently drafted, the statement only applies to primary environmental legislation. Planning and transport bills, for example, are not included in the scope of this statement despite their significant impact on the environment. Any secondary legislation on the environment would also not fall under the remit of the requirement to report on any changes. We believe that this clause should be expanded to include all legislation that has an environmental impact, including secondary legislation.