

Environment Act 2021 – A Short Summary

The Environment Act 2021 was passed into law on 9th November 2021. Below we have summarised over 250 pages of legislation. We have skipped a few sections where we felt that it was unlikely to make any difference to you. If anybody feels the need to fill in these blanks, please let me know what we have missed. This is intended as a very brief summary and not a comprehensive interpretation. Please use it as an indication of whether you need to read the full text or seek further advice.

The whole document can be found at:

<https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>

Or as a PDF:

https://www.legislation.gov.uk/ukpga/2021/30/pdfs/ukpga_20210030_en.pdf

JM, 18/11/21

What is The Environment Act 2021 and what is it trying to achieve?

At the highest level, it is creating the structures needed to replace those parts of our legal processes that have been torn in half by Brexit and lay the foundations for good environmental regulation in the future.

Adapting the opening paragraph, it is an *Act to make provision:*

- *About targets, plans and policies*
- *For improving the natural environment.*
- *For statements and reports about environmental protection.*
- *For the Office for Environmental Protection.*
- *About waste and resource efficiency.*
- *About air quality.*
- *For the recall of products that fail to meet environmental standards.*
- *About water.*
- *About nature and biodiversity.*
- *For conservation covenants.*
- *About the regulation of chemicals.*
- *And for connected purposes.* – which is a lovely catch-all.

Part 1 Environmental Governance

Chapter 1 Improving the natural environment

1 Targets

This includes sections about setting targets to improve the natural environment with regard to:

- Air quality
 - Particulate matter (smaller than 2.5 micrometres – set targets to reduce small particle pollution)
- Water
- Biodiversity, including targets for species abundance
- Resource efficiency / waste reduction

17 Environmental Principals

The Government needs to publish a statement about how the ‘Environmental Principals will be interpreted

Important bit: The Environment Act contains 5 principals that will commit the Government to being greener:

- Integration – Policy makers should embed environmental protection into other fields of policy that can affect the environment
- Prevention – Government policy should always seek to prevent, mitigate or reduce harm to the environment
- Rectification – if pollution cannot be prevented it should be tackled at origin
- Polluter pays – Those that cause harm or pollution will have to mitigate or compensate
- Precaution – If there is a risk of environmental damage, uncertainty shall not be a reason to postpone cost effective measures to prevent degradation

20 Statements about Bills containing new environmental law

Ministers will be required to make a statement as to whether new legislation will reduce environmental protection before the 2nd reading.

21 Reports on international environmental protection legislation

The Secretary of state will have to publish a report every 2 years outlining changes to changes to legislation affecting environmental protection in other countries – Interesting but I am not sure this will achieve anything useful.

Chapter 2 The Office for Environmental Protection (OEP)

22 The Office for Environmental Protection

See Schedule 1



The OEP will be the umpire of all things environmental as we move forward. During the discussions about the Environment Act, there was considerable discussion about whether the OEP will be able to chastise the Government if it breaks promises. It will be interesting to see whether it has the teeth it needs in future.

Chapter 3 Interpretation of Part 1

Some definitions

Part 2 Environmental Governance: Northern Ireland

48 Improving the natural environment: Northern Ireland

See Schedule 2

49 The OEP: Northern Ireland

See schedule 3

Part 3 Waste and resource efficiency

50 Producer Responsibility Obligations

See Schedule 4 – confers powers to regulate and enforce regulations

51 Producer responsibility for disposal costs

See Schedule 5 - Allows regulations requiring payments towards the cost of disposing of products and materials

52 Resource efficiency

See Schedule 6 - Confers powers to regulate and enforce regulations

53 Resource efficiency requirements

See schedule 7 - Confers powers to regulate and enforce regulations

54 Deposit Scheme

See Schedule 8 - Confers powers to make regulations.

55 Charges for single use items

See schedule 9 – Confers powers to make regulations.

56 Charges for carrier bags

Amends Schedule 6 of the Climate Change Act 2008 and allows regulations that require sellers to be registered

57 Separation of waste

Amends the EPA 1990

Requires:

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- Recyclable waste to be collected separately from other waste
- It is to be collected to be recycled or composted and
- Collected separately
- Recyclable household waste may be mixed when it is not economically viable and feasible or of there is no benefit to separate collection
- Recyclable streams are:
 - Glass, Metal, Plastic, Paper / card, Food waste, Garden waste
- Food waste must be collected weekly

- Similar rules will apply to non-domestic premises which include:
 - Residential homes, educational premises, hospitals or nursing homes, and others specified by the Secretary of State
- Similar rules will apply to industrial and commercial waste
- Waste collectors will have to justify mixing the wastes that were to be collected separately.
- The Secretary of State may issue guidance about what is feasible and commercially practical in relation to separate waste collection.

58 Electronic waste tracking: GB

EPA 1990 amended to include provisions for electronic waste tracking

59 Electronic waste tracking: NI

Waste and Contaminated Land (NI) Order 1997 amended to include provisions for electronic waste tracking

60 Hazardous waste: E&W

Amends EPA 1990 to allow amendment of hazardous waste regulations

61 Hazardous waste: NI

Amends the Waste and Contaminated Land (NI) Order 1997 to allow amendment of hazardous waste regulations

62 Transfrontier shipment of waste

Amends section 141 of the EPA 1990 to allow restrictions on the shipment of waste into / out of the UK

63 Regulations under the EPA 1990

Amended to include “160A Regulations and orders....”

64 Powers to make charging schemes

EPA 1995 amended to allow regulations to recover costs incurred while performing a function in this act and others.

65 Waste charging: NI

Waste and Contaminated Land (NI) Order 1997 amended to include powers to make charges to recover costs incurred while performing a function in this act and others.

66 Enforcement powers

See Schedule 10 for changes to enforcement powers in relation to waste and the environment.

67 Enforcement powers: NI

Waste and Contaminated Land (NI) Order 1997 amended to include powers to collect controlled waste and make reasonable charges for doing so.

68 Littering enforcement

Part 4 of the EPA is amended

69 Fixed Penalty Notices

The EPA is amended

70 Regulation of polluting activities

Schedule 1 of the Pollution Prevention and Control Act is amended in para 4 (permits)

71 Waste regulation: amendment of the NI Order

Waste and Contaminated Land (NI) Order 1997 – specifies DAERA (not DOE NI)

Part 4 Air quality and environmental recall

72 Local air quality management framework

See Schedule 11

Amending Part 4 of the EA 1995 in relation to air quality

73 Smoke Control areas: amendments of the Clean Air Act 1993

See Schedule 12 – makes provision for penalties for emitting smoke, offences relating to sale of solid fuel in England, smoke control orders for vessels in England and allows authorised fuels / exempted fireplaces to be listed in Wales.

74 Environmental recall of motor vehicles etc

Allows for regulations to recall products that do not meet a relevant standard

Part 5 Water

OK, I have skipped through most of this section and only covered the main area that we feel is likely to affect most businesses that we deal with

78 Water resources management plans, drought plans and joint proposals

Amends the Water Industry Act 1991, Chapter 1 of part 3 to require water companies to have plans for water management and drought plans

New rules will be introduced that require water companies to take steps to prevent wastewater from storm overflows. Currently, water companies are allowed to allow diluted wastewater to escape into rivers in order to prevent wastewater from backing up in drains and back into homes or businesses.

Part 6 Nature and Biodiversity

98 Biodiversity gain as condition of planning approval

See schedule 14 which makes provision for biodiversity gains to be a condition of planning.

99 Biodiversity in nationally significant infrastructure projects

See schedule 15 which makes provision for biodiversity gains to be a condition of planning.

100 Biodiversity gain site register

Regulations may be established to allow biodiversity gain sites to be monitored for at least 30 years.

101 Biodiversity credits

The Secretary of State may make arrangements under which a land developer can buy his way out of a tight corner – I may have paraphrased this too much! You will have to read the section to find the truth.

102 General duty to conserve and enhance biodiversity

Amends section 40 of the Natural Environment and Rural Communities Act 2006 the duty to ‘conserve’ is now ‘conserve and enhance’.

103 Biodiversity reports - adds section 40A to the Natural Environment and Rural Communities Act 2006 – requires local authorities to publish biodiversity reports.

104 Local nature recovery strategies for England

As it sounds.

109 Species conservation strategies

Invites Natural England to prepare strategies to improve conservation of fauna and flora.

112 Habitats Regulations: power to amend general duties

The Secretary of State may amend the Conservation of Habitats & Species Regulations 2017 to set targets relating to biodiversity and improvements to the natural environment as needed in improvement plans.

113 Habitats Regulations: power to amend Part 6

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The Secretary of State may amend the Conservation of Habitats & Species Regulations 2017 to improve conservation and enhance biodiversity

114 Controlling the felling of trees in England

See Schedule 16 – amends the Forestry Act 1967 in relation to control the felling of trees.

115 Local highway authorities in England to consult before felling trees

Adds section 96A to the Highways Act 1980 requiring local authorities to consult before felling trees on urban roads

116 Use of forest risk commodities in commercial activities

See Schedule 17 about use of products (like palm oil) that may lead to de-forestation

Part 7 Creation of Conservation Covenants

117 Conservation Covenant agreements

Agreements to conserve land or apply it to public good.

118 Conservation covenants

This one is a bit nebulous – I think this defines a conservation covenant.

119 Responsible bodies

Defines responsible bodies?

120 Local land charge

A bit more mumbo-jumbo – relates conservation covenants to the Local Land Charges Act 1975

[Loads more guff about how a conservation covenant works...](#)

137 Crown application

See schedule 19 for details of how this applies on Crown land.

139 Consequential amendments relating to Part 7

See schedule 20.

Part 8 Miscellaneous and general provisions

140 Amendment to REACH legislation

See schedule 21 for powers to amend REACH Regulations and the REACH Enforcement Regulations 2008.

141 Amendments to Schedule 7B of the Government of Wales Act 2006

General restrictions on legislative competence of the Welsh Assembly

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142 Consequential provisions

If you are worried, you will have to read it. I read it and just felt numb.

143 Regulations

Regulations can be amended and added to.

[Some really nit-picking details – if you are interested, please let me know what I missed in the details.](#)

Schedules

Schedule 1 The Office for Environmental Protection

This is a detailed list of how to set up the OEP and the rules to govern it. A bit like opening a new game and reading the rules, but still don't really know how to play the game.

Schedule 2 Improving the natural environment: Northern Ireland

Explains how this is intended to work in NI, including

- Improvement plans and reporting,
- Information about how 'Environmental Principals will be applied
- And some definitions

Schedule 3 The Office for Environmental Protection: Northern Ireland

Explains how the OEP is intended to work in NI

Schedule 4 Producer responsibility obligations

Obviously, I will delve into this one in a little more detail:

- Creates a framework for charging schemes where producers will be required to fund clearing up of the waste that their products leave behind.
- I did not spot anything to limit the scope so any and all products could be taxed!

Schedule 5 Producer responsibility for disposal costs

- Lays out a framework for charging to reuse, redistribute, recover, or recycle the products / materials specified.
- Lays out a framework to enforce compliance

Schedule 6 Resource efficiency information

- Lays out a framework to require the provision of information about resource efficiency of specified products
- Lays out a framework for enforcement

Schedule 7 Resource efficiency requirements

- Makes provision to specify the information to be provided

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- Specifically excludes
 - Energy related products as defined in the Ecodesign for Energy-Related Products Regs 2010
 - Medical products as defined in the Human Medicines Regs 2012
 - Veterinary products as defined in the Veterinary Medicines Regulations 2013
 - Food, within the meaning of article 2 of Regulation (EC) No. 178/2002
- Specifically includes packaging for any excluded item (above)
- Provisions for enforcement of these requirements

Schedule 8 Deposit schemes

- Lays out a framework to require the payment of a deposit to promote recycling or reduce the incidence of littering or fly-tipping provision of information about resource efficiency of specified products
- Lays out a framework for enforcement

Schedule 9 Charges for single use items

- As with carrier bags, the title tells us most of what you need to know except for what they will tax next – and the Schedule is not that specific either.

Schedule 10 Enforcement powers

- An assortment of changes relating to waste including:
 - Amends powers to search and seize vehicles under Section 5(6) the Control of Pollution (amendment) Act 1989 (Constables powers to seize a vehicle and its contents)
 - Seems to remove the need for a Constable to be present
 - Amends section 34B(6) the Environmental Protection Act 1990 (constables powers to seize a vehicle and its contents)
 - Seems to remove the need for a Constable to be present
 - Amends section 57 of the Environmental Protection Act 1990 in relation to removal of waste
 - Amends section 108 of the Environmental Protection Act 1995 in relation to powers of entry / inspection

Schedule 11 Local air quality management framework

- Amends the Environmental Protection Act 1995 to require plans to be reviewed and a report published

Schedule 12 Smoke Control in England and Wales

- Amends the Clean Air Act 1993 by adding sections including:
 - Section 19A Penalty for emission of smoke in a smoke control area in England
 - Section 19B Acquisition and sale of controlled solid fuel in England
- Amends the Clean Air Act 1993: Wales by adding sections:

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- Section 20 to publish a list of approved fuels

Schedule 13 Modifying water and sewerage undertakers appointments: procedure for appeals

- Does what it sounds like.

Schedule 14 Biodiversity gains as a condition of planning permission

- Does what it sounds like.

Schedule 15 Biodiversity gain in nationally significant infrastructure projects

- Adds schedule 2a to the Planning Act 2008
- Does what it sounds like.

Schedule 16 Controlling the felling of trees in England

- Does what it sounds like.

Schedule 17 Use of forest risk commodities in commercial activity

- Relates to forest that is being or may be converted to agricultural use for the purposes of producing the commodity.
- Prohibits businesses in the UK from using commodities in their UK commercial activities unless relevant local laws (preventing illegal deforestation) were complied with in relation to that commodity.
- Businesses will have to demonstrate due diligence

Schedule 18 Discharge or modification of obligations under conservation covenants

- As it sounds, developer might want to close an agreement once complete, or a weasel developer might try to change the terms of a covenant after it has been agreed.

Schedule 19 Application of Part 7 to Crown Land

- Clarifies what happens when land is held by the Crown

Schedule 20 Consequential amendments relating to part 7

- Amends 3 other regulations:
 - Acquisition of Land Act 1981, Section 12
 - Housing and Planning Act 2016, Sections 203 / 204
 - Neighbourhood Planning Act 2017, Sections 20, 23, 27 & 30

Schedule 21 Amendment of REACH legislation

- Permits the REACH regulations to be amended
- Allows the REACH Enforcement Regs 2008 to be amended



Phew! If you think these few pages were a struggle, you should try the whole 270 plus pages!

I sincerely hope this has helped you to identify what you need to look at more closely and if you read it closely enough, a couple of smiles when I was losing my sanity.

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