

39 from 39, Series 3 Episode 1: The Environment Bill – Will it weaken or strengthen the UK's environmental protections?

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Office of Environmental Protection

- HMG's stated ambition for OEP is to create “ a new, world-leading, independent environmental watchdog” to replace the European Commission
- OEP intended to be an arms length non-departmental public body
- On 22 12 20 Dame Glenys Stacey was appointed (by the SoS) as OEP Chair to start in February.
- Will the OEP prove to be an environmental game changer or a fig leaf for a reduction in standards post-Brexit?

OEP Main Provisions Part 1

OEP established by Cl. 21, with aim to “contribute to (a) environmental protection and (b) the improvement of the environment [Cl. 22(1)]. Specific duties include to:

- act objectively and impartially [Cl. 22(2)]
- prepare a strategy re exercise of functions [Cl. 22(3)] including enforcement policy [Cl. 22(6)] to be laid before Parliament and published
- monitor/report to SoS on env. improvement plans/targets [Cl. 27] and env. law [Cl. 28]
- advise on changes to env. law [Cl. 29]
- enforce v. public authority re breaches of env. law [Cls. 30-40]

OEP Main Provisions Part 2

OEP:

- must handle complaints made by any person re a public authority breached of env. law [Cl. 31]
- may investigate a complaint [Cl. 32]
- may serve a public authority with an information notice where it has reasonable grounds for suspecting a serious breach [Cl. 34]
- may issue a public authority with a decision notice if satisfied on the BoP of a serious breach [Cl. 35]
- may apply to court for an environmental review [Cl. 37]; JR principles apply [Cl. 37(5)] and the court must make a statement of non-compliance if it finds that env. law has been breached. JR remedies apply minus damages [Cl. 37(8)]

Comment on OEP Draft Provisions

- Some new functions e.g. monitoring/advisory roles [Cls. 28 & 29] but not clear whether this will be ad hoc or systematic/comprehensive
- Enforcement structure is similar to the EuComm with flexible multi-tiered structure (investigation, information, decision, env review, statement of non-compliance)
- But no provisions re damages/fines or therefore real teeth
- Most critically OEP independence is a concern. SoS responsible for appointment of non-exec Board members and budget and many of the powers are discretionary only
- **Bottom line:** If HMG is serious about its new watchdog it may need to remove the leash (dependence) and the muzzle (no damages).

Environmental Targets - Key Provisions

- Queen's Speech 2019: "...To protect and improve the environment for future generations, a bill will enshrine in law environmental principles and legally binding targets, including for air quality"
- But do the Bill's target provisions meet the mark?
- Pt 1 sets out a framework for legally binding targets including:
- Cl. 1: SoS may set long-term (i.e. >15 yrs [Cl. 1(6)]) environmental targets re the natural environment / people's enjoyment of it. Priority areas are AQ, H₂O, biodiversity, resource efficiency / waste reduction. Targets must specify an objectively measurable standard and a deadline

• Cl. 2: SoS must set a particulate matter (PM2.5 AQ) target

Environmental Targets – Key Provisions cont.

- Cl. 3: SoS to seek advice from independent and expert persons before regulating under Cls. 1-2
- Existing targets (ETs) may be revoked/lowered if SoS is satisfied that (a) meeting ET would have no signif. benefit or cf not meeting it or meeting a lower target or (b) changed circs mean ET is disproportionate re social/economic/other costs, with reasons to Parl.
- Cl. 4: SoS must ensure targets are set and met
- Cl. 5: on/before reporting date SoS must inform Parl. re whether targets met/reason for failure to do so and steps to be taken to achieve them
- Cl. 6: SoS must review targets and consider whether “significant improvement” test (objectively measured)

Comment on Key Target Provisions

- Earlier (pre-Oct '19) versions of the Bill had no target provisions at all.
- The current draft Bill has no set targets which are left to later stages. The devil is in the stringency. Unambitious targets would thwart the promise “to lead the way... by enshrine[ing] in law...legally binding targets.”
- Cl. 3 requires SoS to seek independent expert advice but not to follow it and Cl. 3(3) gives great latitude to SoS to consider ETs disproportionate in soc/econ terms.
- **Bottom line:** Current draft leaves target ambition almost entirely up to the SoS of the day and creates a real risk of regressive weakening of env. standards.

Air Quality and Environmental Recall Provisions of Part 4



Ruth Keating

Air pollution



Public Health
England

Guidance

Health matters: air pollution

Published 14 November 2018

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pollution](#)

Summary

Poor air quality is the largest environmental risk to public health in the UK, as long-term exposure to air pollution can cause chronic conditions such as cardiovascular and respiratory diseases as well as lung cancer, leading to reduced life expectancy.

The scale of the problem

Scale of the problem

It is estimated that **long-term exposure to man-made air pollution in the UK** has an annual effect equivalent to:



**28,000 to
36,000
deaths**

Over the following 18 years a **1 $\mu\text{g}/\text{m}^3$ reduction in fine particulate air pollution in England** could prevent around:



50,900 cases of coronary heart disease

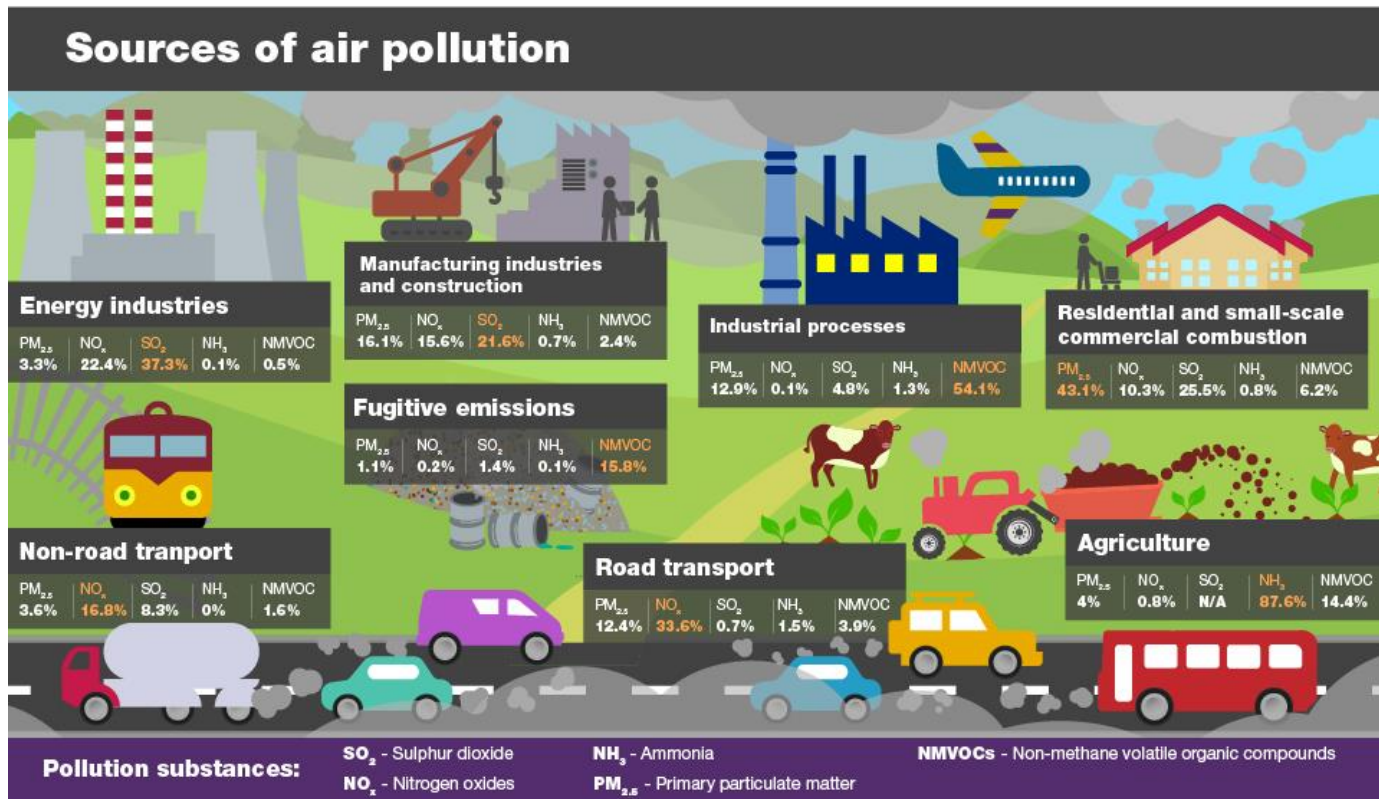
16,500 strokes



9,300 cases of asthma

4,200 lung cancers

The causes



A snapshot of the provisions

Part 4 and Schedules 11 and 12 include:

- A new duty on the Secretary of State to review the Air Quality Strategy at least every five years and to report annually to Parliament on progress (Sch 11).
- Stronger requirements for local authorities under the Local Air Quality Management framework (cl 71 and Sch 11).
- New powers for local authorities to impose civil penalty notices for the emission of smoke in smoke control areas in England (cl 72 and Sch 12).
- The Secretary of State has the power to make regulations for the recall of relevant products (for example, vehicles) (cl 73 and 74).

A snapshot of the provisions

Although the main provisions on air quality are set out in Part 4, there are other provisions on air quality in other parts of the Bill. In particular:

- Clause 1 provides for a new power for the Secretary of State to set long-term environmental targets by regulation.
- Clause 2 requires the Secretary of State to make regulations setting a legally-binding target to reduce fine particulate matter (PM2.5) in ambient air.

Achieving the objectives

- The 'Clean Air Strategy', 'tackling all sources of air pollution, making our air healthier to breathe, protecting nature and boosting the economy.
- Tomorrow's work?
- The National Air Quality Strategy.
- Duty to report on air equality in England.
- Changes to the Clean Air Act 1993.
- Power to recall motor vehicles.
- Co-operating with public authorities and local authorities.
- Brexit.

Water Provisions of Part 5



Gethin Thomas

The problem in one map

Figure 1 from NAO report

Proportion of the year water can be taken sustainably in 2019

Red = less than 30%

Green = greater than 95%

Water shortages are an impending risk for the UK

CCC in 2017 Risk Assessment highlighted water shortages as one of five priority risks requiring stronger policies and urgent action

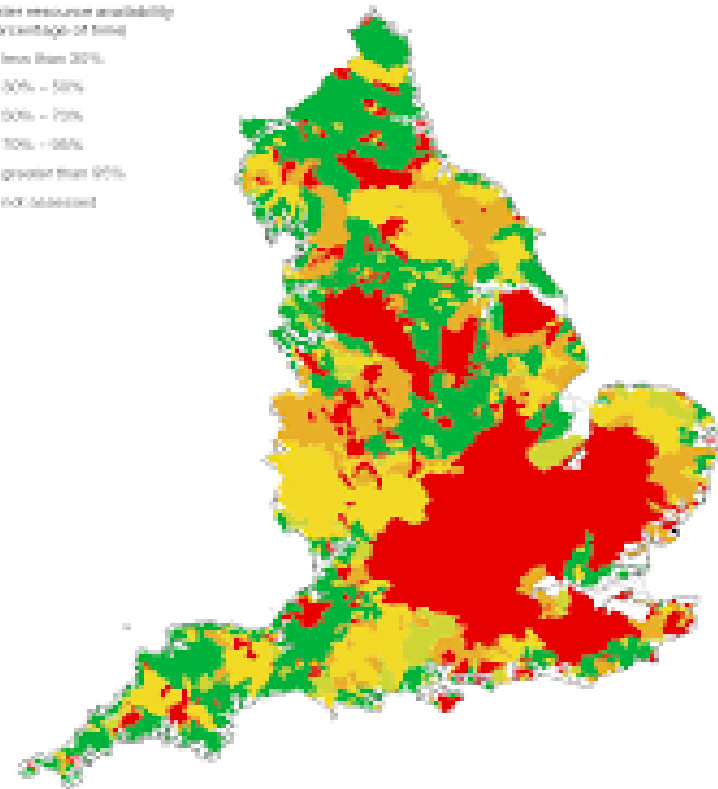
Figure 1

Proportion of the year when water could be taken sustainably from the environment in England in 2019

Water resource availability is lowest in the east and south-east of England. Additional resources are available less than 30% of the time in many parts of the country

Water resource availability
(Percentage of time)

- less than 30%
- 30% – 50%
- 50% – 70%
- 70% – 90%
- greater than 90%
- not assessed



Notes

- 1) Water resource availability is considered for average winter flows
- 2) Availability is the percentage of days during the year additional water resources can be taken sustainably from the environment

Source: Environment Agency, waterbodies data

PART 5

WATER

Plans and proposals

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Water resources management plans, drought plans and joint proposals (clause 77)

- First, the Minister would have the power to make regulations about the procedure for preparing and publishing: (a) a water resources management plan, (b) a drought plan, and (c) a joint proposal, including any revised plans or proposals.
- Secondly, the Minister would also have the power to give a direction to two or more water undertakers to prepare and publish ‘a joint proposal’, defined as a proposal that identifies measures that may be taken jointly by the undertakers for the purpose of improving the management and development of water resources.

Drainage and sewerage management plans (clause 78)

- A ‘drainage and sewerage management plan’ is defined as a plan for how the sewerage undertaker will manage and develop its drainage system and sewerage system so as to be able, and continue to be able, to meet its obligations.
- Sewerage undertakers would also be obliged to undertake period reviews of their plans, and report their conclusions to the Minister. A regulation making power would be conferred on the Minister to prescribe the procedure for preparing and publishing a drainage and sewerage management plan.



Regulation of water and sewerage undertakers (clauses 79 to 81)

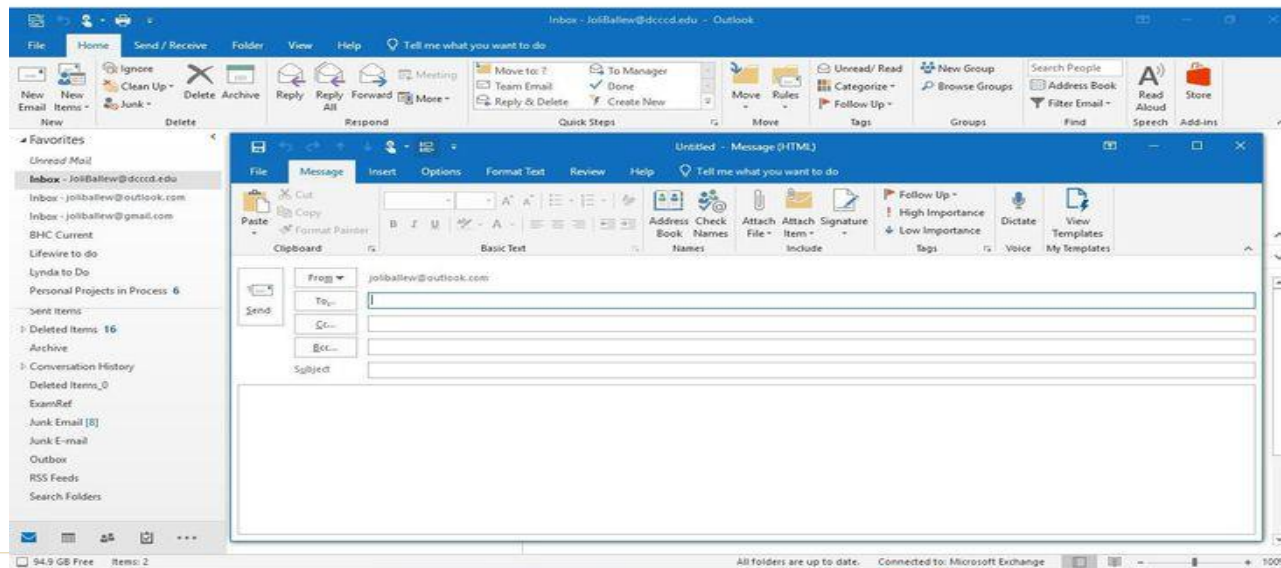
- (1) First, clause 79 would confer a power on the Water Services Regulation Authority (“Ofwat”) to require a water or sewerage undertaker, or a water supply or sewerage licensee to provide information to it, in accordance with its duty to keep their activities under review.
- (2) Secondly, clause 80 changes the process for modifying water and sewerage company licence conditions in England. Ofwat would be empowered to make modifications to licence conditions, in accordance a process that prescribes notice requirements in detail.



Water today, water tomorrow

Regulation of water and sewerage undertakers (clauses 79 to 81)

- (3) Thirdly, clause 81 modernises the requirement for service of documents required or authorised to be served under the Water Industry Act 1991, so that electronic means constitutes valid service. Electronic service cannot be effected on a consumer unless that person has consented in writing to receipt of documents by electronic means.



Abstraction (clause 82)

- Amends the Water Resources Act 1991 to enable the Secretary of State to revoke or vary a permanent abstraction in England (only), without liability for compensation where:
 - the change is necessary having regard to an environmental objective, or to protect the ‘water environment’ (being any inland or underground waters or strata, including any dependent flora or fauna), or
 - the licence is consistently under-used (measured during a 12 year period).

Water quality (clauses 83 to 85)



Water quality

- Clauses 81 to 83 would empower the Secretary of State in England, the Welsh Ministers and the relevant government department in Northern Ireland (respectively) to amend or modify any legislation for the purpose of:
 - (i) making provision about the substances to be taken into account in assessing the chemical status of surface or ground water, and
 - (ii) specifying standards in relation to those substances, or chemical status of the water. The existing powers to update those provisions (contained in section 2(2) of the European Communities Act 1972) will be revoked at the end of the transition period.



Drinking water quality in the EU is in general very good.



For the large supplies,
the vast majority
of EU Member States
show compliance rates
for microbiological
and chemical parameters



between **99%** and **100%**

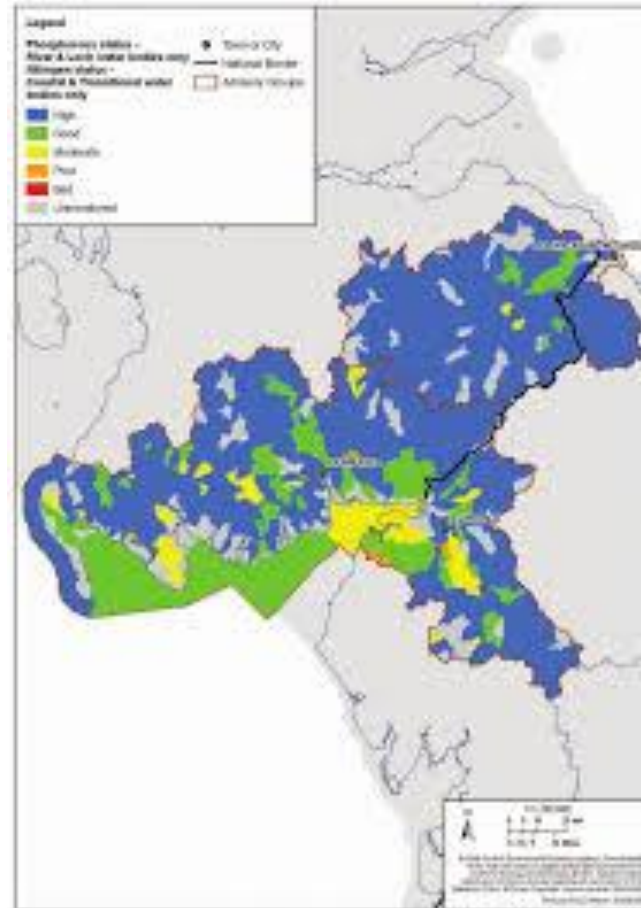


DG Environment

Impact of the Brexit Deal?

...The Agreement gives both Parties the freedom to set their own climate and environmental policies in the way most appropriate to achieve our world leading domestic aims. The domestic supervisory bodies of the UK and EU will cooperate to ensure effective enforcement of their respective environmental and climate laws. Once again, this chapter is not subject to the Agreement's main dispute resolution mechanism but will instead be governed by a bespoke Panel of Experts procedure.

Solway Tweed river basin (clause 86)



Land drainage (clauses 88 to 91)

- These clauses make amendments to the Land Drainage Act 1991.
- The Government has explained that the purpose of these amendments to address a *‘technical barrier preventing existing internal drainage boards from expanding and new ones being established, where there is local support to do so.’*



Waste & resource efficiency

Provisions of Part 3



Tom van der Klugt

How is waste & resource efficiency problematised in the Bill?

“Material resources are at the heart of our economy and we consume them in large quantities. They allow us to meet our basic human needs as well as generate economic growth and create social value. Our use of resources has become unsustainable however, which is causing harm to the natural environment and contributing to climate change. Economically, we are also at risk of fluctuating prices as a result of resource scarcity.”

(Waste & resource efficiency factsheet, March 2020)

Our waste, our resources: a strategy for England (December 2018)

Litter Strategy for England (April 2017)

How is the Bill framed?

“The Environment Bill will increase efficiency in our use of resources. It will enable us to fundamentally change the way we use resources, whilst reducing polluting plastic waste, increasing rates of recycling and making the products we use every day more durable and easier to recycle. It also contains the powers for us to ban the export of polluting plastic waste to non-OECD countries, as set out in the manifesto.”

(Waste & resource efficiency factsheet, March 2020)

Tension between “increased efficiency in our use of resources” and “fundamentally change the way we use resources”?

How is the Bill structured?

PART 3

WASTE AND RESOURCE EFFICIENCY

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Theme 1: producer responsibility

“More significantly, the Bill presents a rare opportunity to provide the broader legislative framework needed to transform the way we manage our resources and waste. For example, it will not just allow us to make packaging producers responsible for the costs of managing their products when they become waste and introduce a deposit return scheme for drinks containers, but allow us to introduce producer responsibility schemes for other waste streams in the future. This is because we see such schemes and other mechanisms such as resource efficiency standards, as having a significant role to play in reducing our impact on the environment and moving to a circular economy.”

(Waste & resource efficiency factsheet, March 2020)

Theme 2: resource efficiency

“As set out in the Resources and Waste Strategy, our aim is to lead internationally in maximising resource efficiency and minimising waste. The measures we are taking in the Bill will help us achieve that goal which will deliver significant benefits for the environment, economy and wider society. The environment will benefit as we reduce landfill and carbon emissions and use fewer finite natural resources. The economy benefits as producers become more efficient, paying less for resources. And society benefits too – from a healthy, protected environment and a natural world that is being safeguarded from climate change.”

(Waste & resource efficiency factsheet, March 2020)

Themes 3 & 4: managing waste, waste enforcement & regulation

“The Bill stipulates a consistent set of materials that must be collected from all households, including food waste. Organisations that produce waste will have a duty to segregate a consistent set of materials that can be recycled and to arrange for their separate collection. Subject to further consultation, these requirements would come into force from 2023...Measures to tackle waste crime will improve the management of waste, better enabling its use as a resource and reducing the risk of economic, environmental and social harm... This includes powers to introduce a digital system to track waste movements...The Bill also contains powers which will allow government to ban or restrict the exports of waste... We will consult with industry, NGOs and local authorities on any specific restrictions or prohibitions.

(Waste & resource efficiency factsheet, March 2020)

Points to consider

Importance of secondary legislation

Consultations, engagement & political will

FTA & EU regulatory alignment / divergence

Comparative approaches

Defining the debate / discourse

Litigation & enforcement

Thank you for attending

Coming up on Wednesday 27th January:

Webinar: *The UK/EU Trade and Cooperation Agreement – The Environment and Energy*

Invite to follow shortly...

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Thank you for listening!

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