

Guidance is given in square brackets under each of the headings below. Headings which are discretionary are also in square brackets. Please delete as you go along and remove heading and sections not needed.

Divisions Affected - All

PLACE OVERVIEW & SCRUTINY COMMITTEE

25 JANUARY 2023

ENVIRONMENT ACT 2021

Report by Bill Cotton, Corporate Director, Environment & Place

RECOMMENDATION

1. **The Place Overview and Scrutiny Committee is RECOMMENDED to**
 - a) Feedback any comments on Environment Act 2021 or the implications for the Oxfordshire Climate and Natural Environment Policy Statement to the Corporate Director, Environment and Place.

Executive Summary

2. The Environment Act 2021 became law on the 9th of November 2021. The Act introduces legislation that will improve air and water quality, tackle waste, increase recycling, halt the decline of species, and improve our natural environment. The Act bolsters the environmental role of local leaders by providing additional powers and flexibilities to deliver action, so that they are empowered to play a fundamental role in delivering the environmental improvement needed in local areas.
3. The Act underpins the Oxfordshire Climate and Natural Environment Policy Statement agreed by Cabinet in November 2022 which aims to ensure environmental considerations are placed at the heart of policy and decision-making across the County Council. The agreement to the Oxfordshire Climate and Natural Environment Policy Statement re-affirms commitment to the shared environment principles of the Future Oxfordshire Partnership and leads positive change through a new County wide strategic framework.
4. The Act creates a power to set long-term, legally binding environmental targets. It requires central government to set, and achieve, at least one target in four priority areas: air quality, biodiversity, water, and resource efficiency and waste reduction, as well as a target for fine particulate matter (PM2.5). Reporting on progress made towards targets will form part of a new statutory cycle of monitoring, planning, and reporting. At present no targets have been announced.

5. The Act requires the government to have an Environmental Improvement Plan (EIP) covering at least 15 years and setting out steps it intends to take to improve the environment. The 25 Year Environment Plan (published in 2018) becomes the first statutory EIP under the Act. The government must report annually on implementation of the EIP and review it at least every five years. When reviewing the EIP, the government must set out any new interim targets, and consider, given the progress made to date, what further measures may be needed to achieve the interim and long-term targets. The government is required to conduct the first review of its EIP by 31 January 2023.
6. Work on implementing Environment Act policies is well underway and the Office for Environmental Protection began operating with its full statutory functions on 24 January 2022. Public authorities, including regulators, will have a role to play through their functions relating to waste collection, air quality and planning.

Environmental Principles

7. There are five environmental principles; integration, prevention, precautionary, rectification at source and polluter pays. These principles underpin the Oxfordshire Climate and Natural Environment Policy Statement. This ensures consistency in how the principles should be interpreted and proportionately applied through the policy framework, for example through the National Planning Policy Framework.

Office for Environmental Protection

8. The Act establishes the Office for Environmental Protection (OEP) as an independent, statutory environmental body, which has been operating with its full statutory functions since 24 January 2022. Through its scrutiny and advice functions, the OEP will monitor progress in improving the natural environment in accordance with the government's domestic environmental improvement plans and targets. The OEP will also be able to receive and investigate complaints on alleged serious breaches of environmental law by public authorities.

Waste and Resource Efficiency

9. The Environment Act 2021 includes a policy measure of Extended Producer Responsibility (EPR) that extends the responsibility of producers for the environmental impacts of their products throughout their life cycle, which shifts the financial costs of collecting and disposing of products and material from those who manage it, including Local Authorities, to those who place the materials on the market : the "polluter pays principle". This was consulted on in 2018, and we are still awaiting the Government response to the consultation.
10. The Environment Act 2021(which amends the Environmental Protection Act 1990) requires all Local Authorities in England to collect the same recyclable waste streams for recycling or composting from households. These waste streams include paper and card; plastic; glass; metal; food waste and garden waste. A description of the types of recyclable waste to be included in each of

these recyclable waste streams will be set out in secondary legislation which is yet to be published by the Government. A number of measures are included in the Act to enable local authorities to take action and enforce waste and resource efficiency measures, including littering and waste tracking.

Air Quality

11. Local Authorities will have a role to play in delivering reductions in fine particulate matter (PM2.5), District Councils have a responsibility to set out local Air Quality Action Plans. Central government will set and have a legal duty to meet legally binding targets for fine particulate matter (PM2.5) to be set out later in 2023 in a review of the national Air Quality Strategy. Measures in the Act give the Secretary of State the power to designate relevant public authorities as air quality partners.

Drainage and Wastewater Management Plans

12. A new Drainage and Sewerage Management Plan regime to ensure the drainage and sewerage management planning process becomes statutory by placing a new legal duty on sewerage undertakers through an amendment to the Water Industry Act 1991. This will provide for consultation between sewerage companies and local authorities to develop joint solutions to address surface water drainage risks and share the costs of implementation.
13. The County Council as a Lead Local Flood Authority already has a responsibility to co-operate with other water companies, public bodies and other statutory flood risk management authorities under the Flood and Water Management Act 2010, there is no direct additional burden to local authorities as a result of this measure. Drainage and Sewerage Management Plans are intended to reinforce and strengthen existing provision for cooperation and information sharing, including on drainage networks.
14. Additional measures for land drainage are included to create new and expand existing internal drainage boards (a type of authority that is established in areas of special drainage need with permissive powers to undertake work to secure drainage and waste level management of which there are two which include very small areas of Oxfordshire), to be funded by the beneficiaries they serve.

Restoring Nature

15. Biodiversity net gain (BNG) will become mandatory for most new development in England, currently encouraged in the National Planning Policy Framework but due to become a requirement to deliver at least 10% net gain in 2023 under the Town and Country Planning Act 1990. The Act also makes provision for biodiversity net gain to be applied to Nationally Significant Infrastructure Projects. This means protecting existing habitats and ensuring that lost or degraded habitats are compensated for by enhancing or creating habitats that are of greater value to wildlife and people.

16. The strengthened duty requires public authorities to periodically assess what action they can take to conserve and enhance biodiversity as part of their functional service delivery. Assessments of public authorities must have regard to relevant Nature Recovery Strategies, Species Conservation Strategies and Protected Site Strategies. All local authorities are required to report on the actions they have taken to comply with this duty, in order to promote transparency, accountability and sharing of best practice between public authorities. The County Council has produced a Tree Policy and is in the process of finalising a Verges and Vegetation Policy which promote increased tree cover and action to maximise biodiversity in green spaces. The Highway assets (lighting) policy has been extensively modified to minimise interference with circadian rhythms caused by unnecessarily intense, geographically or temporarily extended, or high colour temperature lighting.
17. Local Nature Recovery Strategies (LNRS) are new measures intended to support delivery of mandatory biodiversity net gain and provide a focus for a strengthened duty on all public authorities for nature restoration. The strategies are a new system of spatial strategies for nature, covering the whole of England prepared by a “responsible authority” appointed by the DEFRA Secretary of State. The “responsible authority” will be fully funded to lead the preparation, publication, review, and republication of the LNRS for the area for which they are appointed. In so doing they will need to follow the process to be set out in regulations.
18. Local Planning Authorities (LPAs) will be required to co-operate with Natural England to prepare Species Conservation Strategies and consider how relevant schemes in their area should be built into Local Plans. Schemes will be delivered in partnership with key agencies, regulators, landowners and developers and overseen by Natural England as a system of strategies working together across the whole of England, paying particular attention to Protected Site Strategies, such as managing the impact of plans on Sites of Special Scientific Interest.
19. A Duty to consult – Trees section introduces a duty on local highway authorities to consult with local communities before felling street trees unless the trees qualify for certain exemptions. The Duty affords protection to street trees and provides for greater community engagement and transparency of the tree felling process. Local Highway Authorities are still empowered to make the decision to fell the street tree and to decide whether a tree is exempt from the Duty.

Next Steps

20. Central government recognises that implementing the Environment Act will place additional demands on local authority resources and has committed to fund new burdens arising from new mandatory requirements, such as biodiversity net gain (BNG). However, the detail of this funding is not yet known. We are awaiting publication of secondary legislation and guidance to provide detail on the implementation of the BNG requirement.

21. The transition period to November 2023 gives some time for local authorities to prepare; we are already seeking biodiversity net gain from the majority of planning applications and require applicants to measure this using the Defra Biodiversity Metric, and secure management for a 30 year period.
22. Oxfordshire County Council chairs the Local Nature Partnership Working Group on biodiversity net gain, which is looking to agree a set of county-wide BNG principles. The legislation allows LPAs to set higher percentage targets for BNG at a local or site level, and the group is looking to provide the County and Districts with evidence to support development of planning policy to exceed the minimum 10% BNG requirement. This is in line with the recently approved OCC Climate and Natural Environment Policy Statement, which aspires to a 20% net gain.
23. Minerals restoration provides a significant opportunity for nature recovery, and we need to give particular attention to the implications of the Environment Act BNG requirement in developing Minerals and Waste Local Plan policy to ensure that BNG targets do not limit the aspiration for nature recovery through minerals restoration.

Corporate Policies and Priorities

This proposal supports seven of the nine priorities set out in the Corporate Plan and gives particular emphasis to the following strategic priorities:

1. Put action to address the climate emergency at the heart of our work
2. Tackle inequalities in Oxfordshire
3. Prioritise the health and wellbeing of residents
5. Invest in an inclusive, integrated and sustainable transport network
6. Improve access to nature and green spaces
8. Play our part in a vibrant local democracy
9. Work with local businesses and partners for environmental, economic and social benefit.

Financial Implications

24. The Government has committed to funding all new burdens on local authorities arising from the Environment Act, including those due to the biodiversity duty on public authorities although the intention is for local authorities to achieve net gain through cost neutral measures.

Comments checked by:

Filipp Skiffins

Assistant Finance Business Partner

Filipp.Skiffins@Oxfordshire.gov.uk

Legal Implications

25. The delivery of the aims of and targets in the Environment Act 2021 is covered in the legislation and emerging regulations. Aspects of the Environment Act 2021, particularly the “Responsible Authority” status associated with Nature Recovery Strategies will bring new responsibilities for the County Council. These responsibilities and the decision to proceed with the status of “Responsible Authority” will be covered in a separate Cabinet paper.

Comments checked by:

Jennifer Crouch

Principal Solicitor (Environment Team)

Jennifer.crouch@Oxfordshire.gov.uk

Staff Implications

26. The responsibility for alignment of policy and projects to the Environment Act 2021 will be led through the County Council’s environment strategy team and will inform the current service review priorities and allocation of resources. The environment strategy team is part of the Environment & Place directorate service transformation and restructure, which is ongoing. Meanwhile the County Council continue to use its influence to comment on statutory and non statutory consultations, including all planning applications, the emerging Local Plan consultations and proposed Nationally Significant Infrastructure Projects.
27. Environment and Place is currently undergoing a restructure expected to last another 6 months creating some draw on capacity and a lead time on bringing in new staff to deliver the new responsibilities of the Environment Act 2021.

Equality & Inclusion Implications

28. There are no specific equality and inclusion implications arising from this report. The Environment Act 2021 will have positive impacts across communities of interest and geographical communities in Oxfordshire.

Sustainability Implications

This report sets out the implications of the Environment Act 2021, to positively benefit the long term environmental sustainability of County Council outcomes, policy and priorities.

Risk Management

29. There are no particular risks associated with this report as no proposals are presented.
30. Effective preservation and enhancement of biodiversity is a critical component of successful adaptation to climate change.

Bill Cotton, Corporate Director Environment and Place

Contact Officer: Rachel Wileman, Director for Planning, Environment &
Climate Change

January 2023