

## **ENVIRONMENT OVERVIEW AND SCRUTINY PANEL**

### **9 SEPTEMBER 2022**

## **ENVIRONMENT ACT NEW REQUIREMENTS**

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### **Summary**

1. The Cabinet Member with Responsibility for Environment and the Assistant Directors / Senior Officers of the Economy and Infrastructure Directorate have been invited to the meeting to update the Panel on new requirements arising from the Environment Act.

### **Background**

2. The Environment Act, 2021 operates as the framework for environmental protection, replacing some of the environmental protections which originally came from the EU, and offers new powers to set binding targets for air quality, water, biodiversity and waste reduction.

### **Issues for the Panel to Consider**

3. The Environment Act has a broad scope, covering a wide range of environmental matters. Some of the details of the Act are still to be confirmed through further guidance or a requirement for secondary legislation which is required to come before parliament. This report considers each of the key matters arising from the act in turn. These are:

- a. Biodiversity
- b. Waste
- c. Pollution

### **Biodiversity**

4. The Act introduces requirements for biodiversity net gain, local nature net gain and strengthens the biodiversity duty and reporting requirements.

5. The requirement for Biodiversity Net Gain (BNG) is currently included within the National Planning Policy Framework (NPPF), with all developments being required to deliver biodiversity net gain. The Environment Act changes this approach and mandates the percentage of BNG which developments must deliver. This is expected to be 10% and to become a requirement from October 2023.

6. This requirement will be mandated through an amendment to the Town and Country Planning Act, 1990, ensuring that biodiversity net gain becomes a legal requirement.

7. Developers will be able to deliver BNG onsite as part of their development or offsite if the requirement cannot be delivered onsite. A biodiversity metric has been developed by the Department for Environment, Food and Rural Affairs (Defra) which enables value of the existing biodiversity of a development site to be measured

alongside the proposals for net gain. Planning authorities, including Worcestershire County Council (the Council) as the minerals and waste planning authority, will become responsible for auditing the net gain as part of the planning process and subsequent compliance monitoring and reporting.

8. The Council has secured funding from the Natural Environment Investment Readiness Fund to commence work to prepare for this new duty which is currently underway. Defra have estimated that the resource impact of this requirement of Local Planning Authorities (LPAs) will be an indicative 2 FTE.

9. The Act further introduces the requirement to produce Local Nature Recovery Strategies (LNRS) in England. This is a new system of spatial strategies to map priorities and proposals for delivery which contribute to the Nature Recovery Network and the Government's 25-year Environment Plan.

10. It is proposed that there will be 50 Local Nature Recovery Strategies produced by responsible authorities, appointed by Defra. Coverage of the country will be continuous with no gaps or overlaps. The responsible authorities are upper tier and unitary authorities plus the National Park Authorities.

11. The ambitions within the 25-year Environment Plan, which include 500 000 hectares of wildlife rich habitat, increased national tree cover and enhanced ecosystem services with economic and social benefits, will be delivered through the nature recover strategies. It is expected that biodiversity net gain will be one of the main delivery mechanisms for the local nature recovery strategies alongside land management initiatives.

12. Further detailed guidance on the development of the local nature recovery strategies is expected from Defra in autumn 2022. However, they are expected to be developed as a partnership between the different environmental interests and will be subject to public consultation with a regular cycle of review and updating.

13. Whilst the full resources impact of producing the LNRS is to be confirmed depending on the guidance, the Council has updated their ecological evidence bases including the Biodiversity Action Plan and Habitat Inventory as part of our preparatory work. The item is a standing item for the Local Nature Partnership and a shadow steering group has been established.

14. Finally with regard to biodiversity, the biodiversity duty of the Natural Environment and Rural Communities Act has been strengthened through the Environment Act, to a requirement to further the conservation and enhancement of biodiversity with a requirement to review and update any specific policies and publish a biodiversity report. This is an ongoing requirement and once enacted reporting will be required every 5 years and will cover progress on elements outlined above including reporting on biodiversity net gain.

## **Waste**

### **Resources & Waste**

15. With regard to resources and waste the Environment Act 2021 ('the Act') will deliver:

- Extended Producer Responsibility (EPR) to make producers pay for 100% of cost of disposal of products, starting with plastic packaging; *Clause 50, Schedule 4 Producer responsibility obligation and Clause 51, Schedule 5 Producer responsibility for disposal costs*
- A Deposit Return Scheme (DRS) for single use drinks containers; *Clause 54, Schedule 9 Charges for single use items*
- Charges for single use plastics; *Clause 55, Schedule 9 Charges for single use items*
- Greater consistency in recycling collections in England; *Clause 57 Separation of waste*
- Electronic waste tracking to monitor waste movements and tackle fly-tipping; *Clause 58, Schedule 10 Enforcement powers*
- More ability to tackle waste crime; *Clause 66, Schedule 10 Enforcement powers*
- Power to introduce new resource efficiency information (labelling on the recyclability and durability of products); *Clause 52, Schedule 6 Resource efficiency information and Schedule 7 Resource efficiency requirements*
- Regulate shipment of hazardous waste; *Clause 60, Hazardous waste England and Wales*
- Ban or restrict export of waste to non-Organisation for Economic Co-operation and Development countries; *Clause 62 Transfrontier shipments of waste*

16. Consultations on the major reforms of EPR, DRS and Consistency in household and business recycling were carried out in 2019 and 2021. Government response to EPR consultation was published in March 2022 with response to the latest consultations on DRS and Consistency awaited. Indications are that these will now be published in the autumn.

17. With regard to EPR, payments to Local Authorities for dealing with packaging waste are to be determined from April 2024. A Scheme Administrator (likely to be a public sector organisation) will be responsible for setting up and managing EPR. Payments to Local Authorities who handle packaging waste (initially from households) will be based on consideration of 'efficient and effective' services. Producers will be required to use clearer labelling of recyclability. Plastic films and flexibles are to be collected for recycling from households and businesses by 31 March 2027.

18. Defra will continue to explore payments for commercially collected packaging waste from businesses and other organisations that pay for waste collections. This will be relevant to local Waste Collection Authorities with regards to their commercial waste collection services.

19. The Environmental Protection Act (EPA) 1990 provides the legal framework for the collection and disposal of waste. Section 45A of the EPA relates to the separate collection of household waste. Section 57 of the Environment Act 2021 makes significant changes to Section 45A with the whole section being replaced with new legislation. Section 45A of the EPA now states:

- Household recycling streams must be collected separately unless it is not technically or economically practicable to do so or there is no significant environmental benefit.

- The recyclable waste streams are:
  1. glass;
  2. metal;
  3. plastic;
  4. paper and card;
  5. food waste;
  6. garden waste.
- Recyclable household waste which is food waste must be collected at least once a week.

20. The same arrangements will apply to non-domestic premises (e.g. residential homes or schools), industrial and commercial waste in England with the exception of garden waste.

21. The Secretary of State may issue guidance to deal with:

- the circumstances in which it may not be technically or economically practicable to collect recyclable household waste separately, or in which separate collection may not have significant environmental benefit ('TEEP');
- the frequency with which household waste other than recyclable household waste which is food waste should be collected.

22. There are no further details around whether free collection of garden waste from all households or a prescribed maximum charge will be allowed to be levied on residents.

23. The Waste Framework Directive introduced a requirement for recyclable materials to be collected separately. Where it is technically, environmentally and economically practicable, four key recyclable materials, paper, glass, plastic and metals were to be recycled by means of separate collection, where it is necessary or appropriate to meet the quality standard for the relevant recycling sectors. The Herefordshire and Worcestershire authorities prepared a 'TEEP' statement to support the commingled method of collecting recyclables together. A 'TEEP' statement outlines the Technical, Economic and Environmental reasons to support the method of recycling collection.

24. Further information is expected on EPR, DRS and Consistency in household and business recycling by the end of 2022. Defra have indicated that additional consultation will occur before secondary legislation is published before the end of 2022.

25. The Act provides the primary legislation which enables Government to implement a Deposit Return Scheme. As with Consistency measures, further details are awaited on the response to the most recent consultation regarding plans for implementation.

26. Consultation on proposed long-term environmental targets for the policy objectives in the Environment Act 2021 for the areas of air quality, water, biodiversity and **resource efficiency and waste reduction** was carried out from March to May 2022. The proposed targets, set at a national level for England, form a 'cornerstone'

of the Environment Act which passed into law in November 2021 and requires that at least one target is set in each of the four priority areas.

27. The consultation outlines that England has shifted from a reliance on landfill to other treatment options such as recycling, composting, anaerobic digestion, incineration with energy recovery and controlled landfilling. Material resource use continues to grow with extraction, production and disposal of material resources producing significant environmental pressure. The proposed target to address waste reduction is:

**28. *Reduce residual waste (excluding major mineral wastes) kg per capita by 50% by 2042 from 2019 levels. It is proposed that this will be measured as a reduction from the 2019 level, which is estimated to be approximately 560 kg per capita.***

29. The consultation document outlined that a target to measure resource efficiency is not yet fully developed.

## **Worcestershire Councils' response to the Environment Act – Resources and Waste**

30. The new policy measures and legislative changes bring the most significant changes for local authority waste services in many years. Separate weekly collections of food waste are mandated in the Environment Act and there is a need to increase focus on the quality of the recycling we collect. Quality as well as quantity of recycling is reflected throughout all of the reforms. There may be a requirement to implement free of charge garden waste collections. All of these changes require a significant amount of work as the Waste Disposal and Waste Collection authorities review our waste collection and disposal services to meet the new challenges.

31. WRAP (Waste and Resources Action Programme) has provided fully funded support to the seven Worcestershire authorities to assist in planning services for the future. Technical specialist consultants 'Circulogic' have undertaken a detailed project for Worcestershire authorities including:

- Benchmarking current performance;
- An Options Appraisal to assess cost and performance, including a carbon impact assessment, of a number of different ways of collecting recycling, food and non-recyclable waste;
- Food waste processing options.
- An assessment of options to address contamination in recycling;

32. Findings were presented to the Worcestershire Leaders Board and Strategic Waste Management Board (SWMB) on 11 July. The final report along with a summary of key issues raised at the meeting was circulated to members in early August. The report and Circulogic's recommendations will be reviewed in detail by the Worcestershire Partnership's Strategic Waste Management Board in a Task & Finish Group capacity.

33. WRAP have agreed to provide further support to the Worcestershire project both in relation to additional modelling and the work of the Task and Finish Group.

34. Terms of reference, project scope, deliverables – i.e. a report that will recommend an approach to meet the requirements of the Environment Act and the future waste collection and disposal methods in Worcestershire - and a headline timetable for the Task & Finish Group will be prepared in collaboration with the Chair of the Strategic Waste Management Board.

35. As part of its remit, the Task and Finish Group will review the Joint Municipal Waste Management Strategy to ensure it reflects any changes, and the new reforms as needed etc.

## **Pollution**

36. The Act will create at least two new legally binding targets for one of the most harmful pollutants, fine particulate matter (PM2.5). The targets are expected to be part of secondary legislation in late 2022. Once this is published there will need to be more detailed consideration of these requirements.

37. There are also additional requirements for the development of Air Quality Action Plans, including a requirement for co-operation between the different tiers of local government. Further details of this are expected alongside the secondary legislation. To assist Worcestershire Regulatory Services are establishing a working group with the Council and the district councils which will lead on this new requirement. Nationally the new Office for Environmental Protection which will oversee the new requirements and targets.

38. An Air Pollution Supplementary Planning is also being prepared for South Worcestershire Councils, which aims to strengthen the consideration of air pollution in planning applications.

## **Purpose of the Meeting**

39. The Panel is asked to:

- consider and comment on the requirements of the Environment Act
- determine whether any further information or scrutiny is required at this stage
- agree any comments to highlight to the Cabinet Member

## **Contact Points**

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## **Background Papers**

In the opinion of the proper officer (in this case the Assistant Director for Legal and Governance) there are no background papers relating to the subject matter of this report.

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