Department for Environment Food & Rural Affairs

Environment Act 2021: Frequently Asked Questions (Local Authorities)

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We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.

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Foreword

The world-leading 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.

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.

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.

Local authorities will play an important role in the delivery of 21 of the measures in the Act, many of these being in the “Nature" and “Waste and Resource Efficiency” chapters. This frequently asked questions (FAQ) document provides a comprehensive set of questions and answers intended to give Local Authorities a strategic overview of the impact these measures will have on them. It is intended to complement and not replace detailed guidance on the measures that will be published in due course.

A contact email for the policy team has been provided at the end of each measure should you have any further questions.

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1. Environmental Governance

1.1. New statutory cycle of target setting, monitoring, planning, and reporting (Sections 1-15):

The Act creates a power to set long-term, legally binding environmental targets. It requires 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.

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. Our 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.

1.1.1. What do these sections mean for Local Authorities?

The duty to achieve targets rests with central government, but public authorities, including regulators, will have a role to play. Through their functions relating to waste collection, air quality and planning, they will have a major impact on whether we achieve our ambitions or not. The duty to prepare an EIP also rests with central government and we will work with stakeholders such as business, and public authorities, to design the measures set out in the EIPs.

1.1.2. When and how will we consult on targets over the next year?

Alongside ongoing regular engagement with key umbrella organisations, we will be carrying out a public consultation on proposed targets in early 2022. This will provide an opportunity to hear a range of views on the proposed targets. An Impact Assessment will accompany the consultation setting out the analysis associated with each target.

1.1.3. When and how will the new statutory cycle of target setting, monitoring, and reporting come into force?

To drive significant environmental improvement, the government will set at least one new, long-term target in each of the four priority areas: water, resource efficiency and waste reduction, air quality and biodiversity; as well as targets for fine particulate matter (PM2.5) and species abundance. Statutory Instruments setting these targets will be laid in Parliament by 31 October 2022. In August 2020 we published a targets policy paper which

provides an overview of the scope of targets that government is considering. In early 2022 we expect to publish a public consultation on proposed targets.

Statutory Annual Progress Reports will be published as part of our formal monitoring. The Annual reports on the EIP will include an assessment of progress towards targets alongside wider progress toward the goals and ambitions. Long-term targets will be reviewed at least every five years through the 'Significant Improvement Test'. The Secretary of State will use the outcome of this review to decide whether to set additional long-term targets. We will conduct the first review at the same time as the first statutory review of the EIP, and report to Parliament on its outcome by 31st January 2023.

1.1.4. What implementation activity has taken place to date?

We have identified four steps which will enable us to develop and bring forward targets by October 2022. These include setting the scope of the targets; developing fully evidenced targets; conducting a public consultation on target proposals; and drafting target legislation.

We completed the scoping phase which included the publication of a targets policy paper in August 2020. We are now nearing the end of the evidence development phase and, in early 2022, we expect to publish a public consultation on proposed targets.

1.1.5. Who is responsible for delivering targets?

Government has an explicit duty to ensure long-term targets are met. The Act's statutory cycle of monitoring, planning, and reporting ensures that government will take early, regular steps to achieve long-term targets, and is held to account with regular scrutiny from the Office for Environmental Protection and Parliament. The OEP will have the power to bring legal proceedings if government breaches its environmental law duties, including its duty to achieve long-term targets.

1.1.6. Will you consult on the refreshed EIP?

Government is running a number of public consultations relating to environment policy this year. These include a consultation on new long term, legally binding targets and on individual policies, including on a plan to ban the supply of single-use plastic items and polystyrene food and drink containers. We very much encourage responses to these consultations. We do not plan to overlay these with a further public consultation, adopting the same approach as we did for the original 25 Year Environment Plan (25YEP). The 25 YEP will be subject to the relevant accountability and scrutiny procedures as set out in the Act, ensuring our approach is transparent and collaborative.

1.1.7. What is the difference between the annual review and the five-year review?

Annual reports are a backwards-looking assessment of what has happened in the preceding 12 months. A five-yearly review is a more comprehensive assessment, in which the government must not only look backwards but also forwards.

1.1.8. Where can I find further information?

In August 2020 we published a targets policy paper which provides an overview of the scope of targets that government is considering. It provides an overview of how we intend to develop and bring forwards targets by October 2022, as envisaged in the Act. We want to keep interested stakeholders abreast of target development, for example through newsletters to communicate our progress or invitations to contribute your views on topics. If you would like to receive such information, please go to our Citizen Space page to provide your contact details and signal the target areas of interest to you.

For further information please contact - environmentaltargets@defra.gov.uk

1.2. Environmental Principles (Sections 17-19):

There are five environmental principles; integration, prevention, precautionary, rectification at source and polluter pays. A statutory policy statement will explain how they should be interpreted and proportionately applied, giving policy-makers consistency in their considerations. There will be a duty for Ministers of the Crown to have due regard to the Environmental Principles Policy Statement when making policy. The policy statement has had public consultation and will go through parliamentary scrutiny.

1.2.1. What do these sections mean for Local Authorities?

This new duty applies only to Ministers of the Crown when they are making policy, so Local Authorities do not need to take any action based on the duty. This is because the strategic policies and legislation relating to the environment are developed and managed by central government, not Local Authorities. Central government also sets the strategy and approach for any key decisions taken by other public bodies. For example, the National Planning Policy Framework.

However, Local Authorities should be aware of the new duty as the application of the policy statement by Ministers should mean that the environmental protection promoted by the principles will filter down into local policy and strategic decisions.

1.2.2. What implementation activity has taken place to date?

As the duty to have due regard to the Environmental Principles policy statement applies to Ministers of the Crown, Defra is working closely with government departments to support

them in implementing the duty. Planned work includes the development of training and updates to relevant government documents, such as the Treasury's Green Book.

1.2.3. When and how will the environmental principles come into force?

We published the draft Environmental principles policy statement in March 2021 for public consultation. A revised version will undergo parliamentary scrutiny, after which point the final version will be published. There will be an implementation period to allow government departments to prepare for the new duty.

1.2.4. Where can I find further information?

We will be providing updated access to information shortly.

For further information please contact – Environmental.principles@defra.gov.uk

1.3. Office for Environmental Protection (OEP) (sections 22-43):

The Act establishes the Office for Environmental Protection (OEP) as an independent, statutory environmental body. 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.

1.3.1. When will the OEP begin to operate its statutory functions (monitoring environmental law and receiving/investigating complaints)?

The Office for Environmental Protection began operating with its full statutory functions on 24 January 2022. It has been operating in an interim, non-statutory form since July 2021, providing independent oversight of the Government's environmental progress and receiving complaints about alleged serious breaches of environmental law by public authorities.

The OEP can consider alleged breaches which may have taken place before the date of establishment and, if appropriate, it may take enforcement action according to its normal procedures.

1.3.2. What do these sections mean for Local Authorities in practice?

Criminal law will continue to be enforced and regulated by responsible authorities such as the Environment Agency, Natural England, Local Authorities, and others.

The OEP will provide oversight of existing regulators and will ensure that all public authorities, including Local Authorities, exercise their functions in accordance with their obligations under domestic environmental law. One of the OEP's key roles is to oversee public bodies' implementation of environmental law. It will also receive complaints with powers to investigate potential serious breaches of environmental law by public authorities and take enforcement action where necessary.

All public authorities, including local authorities, must co-operate with the OEP and give it such reasonable assistance as it requests in connection with the exercise of its functions under the Act. There are a small number of exemptions to this cooperation duty set out in section 27 of the Act.

1.3.3. When will the OEP engage with Local Authorities in the process of carrying out its functions?

The OEP will prepare its own strategy that will set out how it intends to exercise its functions. This includes monitoring the implementation of environmental law and the handling and investigation of complaints. The OEP published a draft version of its strategy for consultation on 25 January 2022.

The OEP is also expected to develop their own processes and procedures that will set out how they will engage with public authorities when carrying out their functions.

1.3.4. What complaints can the OEP consider?

Under in the provisions of the Act, people will be able to raise complaints about alleged failures to comply with environmental law as defined in the Act, for possible investigation and enforcement by the OEP.

Complainants must have exhausted any internal complaints processes of the public authority in question before submitting their complaint to the OEP.

The OEP is not required to investigate all complaints it receives. It will have discretion to prioritise cases in line with its own enforcement policy.

The OEP may undertake an investigation if the complaint indicates that a public authority may have committed a serious failure to comply with environmental law.

Complaints should be submitted to the OEP within one year of the last occurrence of the alleged failure or within three months of exhausting the internal complaints procedure

where one exists. However, the time limit is not absolute, as the OEP has the discretion to waive the time limit where there are exceptional reasons.

In addition to investigating a complaint, the OEP can also initiate an investigation based on any other information to indicate that there has been a serious breach of environmental law. For example, this might be based on information presented in a report on the implementation of a law or arising from a parliamentary inquiry or other source.

1.3.5. What are the different types of notices that Local Authorities could potentially receive from the OEP?

If the OEP decides to commence an investigation in to whether a public authority has failed to comply with environmental law it will notify the public authority. Where the OEP's investigation indicates that a public authority has breached environmental law, the OEP can put those allegations to the public authority, request further information, and recommend remedial measures, through a series of notices.

The Act provides for the OEP's enforcement function, through the process of issuing firstly an information notice and then if necessary, a decision notice to the relevant public authority, to resolve potential failures in a co-operative manner without litigation where possible.

An information notice will describe the alleged failure of the public authority to comply with environmental law and why the OEP considers it to be a potentially serious failure. It will also make a request for information regarding the alleged failure.

A decision notice will also describe the alleged failure of the public authority to comply with environmental law and why the OEP considers it to be a potentially serious failure. It will then set out steps that the OEP considers the authority should take in relation to the failure which may include steps designed to remedy, mitigate, or prevent reoccurrence of the failure.

When a public authority receives an information notice or a decision notice, they must respond in writing within two months of the day on which the notice was given or by such later date as may be specified in the notice. For an information notice, the written response must set out the authority's response to the allegation and what steps the authority intends to take (if any) in relation to the allegation. For a decision notice, the response must set out whether the authority agrees that a failure occurred, whether the authority intends to take the steps set out in the notice and what other steps the authority intends to take (if any) in relation to the described failure.

Most enforcement cases will be resolved by the OEP via the process of information and decision notices and through constructive dialogue with the relevant public authority. This ensures that legal proceedings will only be taken as a last resort.

1.3.6. What implementation activity has taken place on the OEP to date and where can I find further information?

The OEP was constituted on 17 November 2021 and began operating with its full statutory functions on 24 January 2022. The OEP published a draft strategy for consultation on the 25 January 2022. We anticipate that the OEP's Board will take further steps to finalise the OEP's strategy and confirm the practical operating framework following consultation early this year.

The OEP has been operating in an interim, non-statutory form since July 2021, providing independent oversight of the Government's environmental progress and receiving complaints about alleged serious breaches of environmental law by public authorities.

Factsheets on environmental governance can be found on Gov.uk. The latest information on the OEP policies and procedures will be published on the OEP's website.

For further information please contact - rich.stone@defra.gov.uk or robert.ashcroft@defra.gov.uk

2. Waste and Resource Efficiency

2.1. Extended producer responsibility (EPR) (Sections 50, 51):

Extended Producer Responsibility (EPR) is a policy measure that extends the responsibility of producers for the environmental impacts of their products throughout their life cycle. This includes placing financial responsibility on producers for the costs of managing their products when they become waste; an application of the 'polluter-pays principle'. It is also intended to encourage better design and use of products to encourage less use of materials and improved management when products are discarded.

2.1.1. What do these sections mean for Local Authorities?

EPR includes placing responsibility on producers for the cost of managing their products once they reach end of life. For example, EPR for packaging will give producers an incentive to reduce packaging use and design their packaging to be more sustainable, and easier to re-use or to recycle when it becomes waste.

EPR is a measure that 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 products and materials on the market: the 'polluter pays' principle.

As we set out in the Resources and Waste Strategy for England, we intend to apply this measure to packaging first and then to look at other products and materials. We have recently consulted on our detailed proposals for packaging EPR.

2.1.2. How will you calculate the costs of managing product and material waste/disposal to be recovered from producers?

The costs and the calculation of costs will vary for different products and waste streams. For example, the approach to assessing costs of disposing of used fishing gear would be different to those for packaging waste.

In all cases, the costs that may be recovered from producers will be calculated in accordance with regulations made under the Act. The powers in the Act require that proposals are subject to consultation before making regulations.

2.1.3. How will Local Authorities be compensated for the waste management costs that they have incurred?

This will vary for different products and waste streams. A key proposal of EPR for packaging is that producers will pay fees to a scheme administrator who will be responsible for ensuring that all Local Authorities are paid their costs of collecting and managing packaging waste. The payments should reflect the delivery of efficient and effective systems, accommodate local circumstances, such as demographics and geographies, and incentivise and support Local Authorities to enhance their recycling performance. The calculation of costs and distribution of payments will be reliant on packaging waste collection, management and compositional data from various stakeholders involved in packaging waste management, including from Local Authorities.

2.1.4. Will this measure place any additional burdens on Local Authorities?

There will be no direct burdens placed on Local Authorities through this measure as the powers are enabling powers.

EPR for packaging will shift the financial burden on Local Authorities for the collection and management of packaging waste onto producers. Local Authorities will receive payments for managing this packaging waste.

2.1.5. When and how will EPR come into force?

The EPR powers in the Act are enabling powers. They give us the power to make regulations. This will allow us to establish EPR schemes for specified products or materials and to tailor the requirements of each scheme to achieve the outcomes we want.

We intend to use these powers in the first instance to make regulations for packaging.

Our second consultation on detailed proposals for EPR for packaging closed on 4 June 2021. As part of this we consulted on the timing of introducing Packaging EPR. We are currently analysing responses to the consultation on this, and other matters, and will publish our government response early this year.

Information on the commitments made to introduce EPR and product standards can be found within the Resources and Waste Strategy for England.

For further information please contact - packaging@defra.gov.uk

2.2. Deposit return schemes (DRS) (Section 54):

Under the Act we have powers to introduce deposit return schemes (DRS). DRS can be set up to sustain, promote or secure an increase in recycling or reuse of materials, or to reduce the incidence of littering or fly-tipping. DRS will help ensure higher quality material is collected by separate recycling streams. The government committed, in its 2019 manifesto, to introduce a deposit return scheme for drinks containers to incentivise people to recycle more. We consulted twice, in February 2019 and March 2021, on introducing the scheme in England, Wales and Northern Ireland and are analysing the responses to the second consultation, with a view to publishing a government response early this year.

2.2.1. What does this mean for Local Authorities?

Some of the material Local Authorities currently collect will be diverted to a deposit return scheme for drinks containers and so no longer collected by local authorities through kerbside collections.

We are also considering, in relation to a deposit return scheme for drinks containers, proposals for what happens to material which still ends up in kerbside collections, with options outlined in the March 2021 consultation.

2.2.2. Which materials would be included in the DRS?

The materials we might consider including in scope of a DRS for drinks containers were presented in the March 2021 consultation. These materials were aluminium and steel cans, PET plastic and glass bottles. The final details of a DRS , including the size and material of drinks container to be in scope, will be published in the government response early in 2022.

2.2.3. How will the DRS work alongside EPR and recycling measures?

We are considering how a DRS works alongside reforms to the packaging producer responsibility system to ensure that these reforms work together coherently and are as effective as possible. Drinks containers that are captured by the DRS would be outside the

scope of the extended producer responsibility proposals, ensuring producers are not charged twice for their packaging placed on the market.

The government is committed to increasing recycling rates. Under the Act, the government will introduce secondary legislation that will specify a core set of materials, including plastics, that will need to be collected from households and businesses.

If consumers choose not to return their drinks container to a designated return point, they could still place this in their kerbside collection for recycling.

2.2.4. How will a DRS for drinks containers reduce littering, increase recycling, and reduce costs for Local Authorities?

By adding a deposit to the price of an in-scope drinks container, consumers will be incentivised to collect and return these containers to redeem their deposits. This will reduce the tendency for drinks containers, particularly those consumed “on-the-go”, to be littered, due to the deposit value attached to the container. Our impact assessment on the introduction of a DRS for drinks containers assumes that the introduction of a DRS can reduce drinks containers included in the scheme being littered by an estimated 85%. It could also reduce costs to Local Authorities associated with clearing litter.

We estimate the UK currently recycles around 70% of drinks containers. Other countries such as Germany, Norway, and the Netherlands, have achieved increased collection/ recycling rates of 98%, 92% and 95% for plastic drinks bottles through the introduction of a DRS and we are confident that a well-designed scheme could lead to similar recycling rates in the UK.

2.2.5. When and how will the DRS come into force and where can I find further information?

There are several activities required in advance of a DRS being implemented, these include: the secondary legislation in place; establishing the Deposit Management Organisation; developing new IT solutions; and rolling out infrastructure and other mobilisation activities. The consultation in March 2021 sought views on the implementation timeline, and further details of this will be presented in the government response. A final impact assessment for the DRS will also be published.

2.2.6. How would a Deposit Management Organisation (DMO) be structured?

We want the leadership of the DMO to be representative of, and trusted by, the industry. To this end we expect the DMO(s) to be an industry led organisation made up of individual companies and trade associations which represent a range of obligated stakeholders. The specifics of any management structure that a DMO wishes to put in place would ultimately be down to the DMO itself to decide.

For further information please contact – DRS@defra.gov.uk

2.3. Recycling (Section 57):

The government is committed to increasing both the quality and quantity of materials collected for recycling. The Act measures will make it easier for householders to recycle by ensuring that all Local Authorities collect the same materials for recycling. This will increase confidence in the recycling system and will increase participation by householders. The Act measures will also ensure that non-domestic premises that produce household waste, such as schools and hospitals, and businesses that produce household-like waste, such as packaging and food waste, separate these waste streams and arrange for them to be collected separately for recycling.

2.3.1. What does this mean for Local Authorities?

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.

These measures will help increase the quality and quantity of material collected for recycling, as householders will know what can and can't be recycled and have more confidence in the recycling system. Local Authorities should also see a decrease in their waste disposal costs, as more waste is recycled and diverted from landfill.

New financial burdens introduced through new statutory duties on Local Authorities will be assessed and the net additional cost covered by the government. We are bringing forward £295 million of capital funding which will allow Local Authorities in England to prepare to implement free weekly separate food waste collections for all households from 2025.

2.3.2. How frequently will Local Authorities have to collect waste?

Local Authorities are best placed to decide on the frequency of bin collections based on local circumstances. However, the government believes that householders should have comprehensive and frequent services. We asked for views on whether we should set out in statutory guidance minimum service standards in our 2021 consultation – we are currently analysing responses to this consultation.

The Act states that food waste must be collected weekly. This will maximise the amount of food waste collected and will ensure this is taken away frequently to avoid biodegradable waste being left on kerbsides or in people's homes for extended periods.

2.3.3. How will Local Authorities be supported in improving their recycling performance?

All Local Authorities will be affected by the measures. We will consider how we can work closely with Local Authorities to help them improve their recycling performance.

Good practice will be set out in guidance.

2.3.4. What guidance will be provided to Local Authorities and when will it be issued?

The Secretary of State may issue guidance in relation to the duties imposed by sections 45 to 45AZD of the Environmental Protection Act 1990. Following support in our first consultation (February 2019) for providing statutory guidance on minimum service standards for rubbish and recycling, we consulted further on detailed proposals on guidance in our second consultation (May 2021). We intend to consult on the content of statutory guidance in 2022.

2.3.5. What implementation activity has taken place to date?

With support from the Waste and Resources Action Programme, who work with organisations to improve resource efficiency, we have developed workstreams to support implementation activity for the roll out of consistency measures across households and across the non-household municipal sector in England. The work aims to address major barriers to scheme roll out; initiate cross-sector preparations in advance of roll-out and increase the likelihood of high performing schemes that ensure high satisfaction with consumers.

We have engaged with a wide range of stakeholders across the value chain to refine and sense check the plans. The support provided will continue to be refined, following further engagement with the sector, and will be reviewed at regular intervals to measure progress.

For further information please contact - naomi.fitzgibbons@defra.gov.uk or eleanor.kirby-green@defra.gov.uk

2.4. Waste Tracking (Section 58):

An independent review into serious and organised crime in the waste sector recommended that the mandatory electronic tracking of waste should be introduced at the earliest opportunity. Mandatory electronic (digital) waste tracking will transform the way we track waste and resource flows through the economy; supporting a shift to a circular economy, boosting productivity, and helping us tackle waste crime. The Act provides the powers for mandatory waste tracking to be introduced across all four nations, and a joint consultation on its introduction is now published.

2.4.1. What does this mean for Local Authorities?

We are currently consulting on the practical aspects of how mandatory digital waste tracking will work but we are intending that as with current requirements Local Authorities will not need to track waste from individual household collections. Waste will need to be recorded on the new Waste Tracking Service, currently under IT development, when it arrives at a receiving site and then further tracked in the service as required from there.

If a Local Authority provides waste collections for commercial business or industrial premises, then akin to existing waste duty of care requirements, those waste movements will need to be recorded digitally from the producers' premises.

2.4.2. Why is digital waste tracking needed and how will it work?

The lack of digital record-keeping in the waste industry is frequently exploited by organised criminals, as it provides ample opportunity to hide evidence of the systematic mishandling of waste. The Independent Serious and Organised Waste Crime Review in 2018 recommended mandatory electronic tracking of waste should be introduced at the earliest opportunity. It also observed that the lack of digital records presents a significant barrier to information access by interested members of industry, academia, and the public, limiting opportunities to make more of waste as a resource.

We intend that the system will integrate and simplify the recording of all movements of controlled waste and extractive waste (such as from mines and quarries)– bringing together separate systems covering commercial, household, and industrial waste.

Digital waste tracking will help businesses and other waste holders comply with their duty of care with regards to waste.

We are consulting on the practical aspects of implementing mandatory digital waste tracking.

2.4.3. What additional burdens or saving will waste tracking place on Local Authorities?

It is expected that implementation of mandatory digital waste tracking will help Local Authorities achieve savings by simplifying reporting requirements and reducing administrative burdens.

An initial impact assessment has been published alongside the consultation.

2.4.4. What new skills are required for Local Authorities to implement waste tracking?

We want to make sure that all those required to input information onto the waste tracking service can do so easily and with minimum inconvenience to their current ways of working.

We intend to develop a service that will allow information about waste to be entered in a variety of ways, enabling operators to continue to use their own systems where possible.

We do not believe there will be any significant new skills required for Local Authorities to implement waste tracking. Training, assistance, and support will be available to ensure that people under a duty to put information onto the system are able to do so.

2.4.5. When and how will the waste tracking measures come into force?

We are working towards a go live date for a central digital waste tracking service from 2023 to 2024. This date is dependent upon IT development of the waste tracking system and the transition needs of businesses and other stakeholders.

Views on the latter are being sought via the current consultation.

2.4.6. What implementation activity has taken place to date and where can I find further information?

The development of the IT service is already underway, focussing most recently on a prototype for the export of green list waste.

The development is being supported by a user panel of around 1,200 members representing waste producers, carriers, brokers, dealers, waste site operators, Local Authorities, and regulators from across the UK. Members of this panel help to develop the service by participating in user research and testing of the service.

You can sign up to the user panel. We also produce regular newsletters about the progress of the waste tracking service development. Join our mailing list and receive our monthly newsletters.

For further information please contact - wastetracking@defra.gov.uk

2.5. Littering Enforcement (Section 68):

The Litter Strategy for England was published in 2017. It set out our strategic approach to tackling litter by applying best practice in education, enforcement, and infrastructure to achieve substantial improvements within a generation. The litter measures in the Act form part of our work on enforcement.

2.5.1. What does this mean for Local Authorities?

The measures in the Act will allow us to ensure that enforcement powers are used with a high degree of professionalism, whether by council staff or private contractors, and place our improved enforcement guidance on a firm statutory footing.

2.5.2. What new skills are required by Local Authorities to implement these measures?

The power to prescribe conditions to be met by those authorised to issue fixed penalties for littering may require that Local Authority or private sector enforcement staff undertake some additional training or assessment. These conditions may include the attainment of a specific qualification, accreditation, or charter-mark, for example.

We will consult further with the industry, training providers, Local Authorities, and campaigners before exercising this power. We will also make appropriate transitional provisions to avoid disruption to enforcement activity while any additional training or accreditation is undertaken.

2.5.3. Any there any efficiencies/cost saving to Local Authorities from these measures?

Taking enforcement action is one-way councils can deter littering. Therefore, ensuring that it is carried out effectively, proportionately and to a high standard may reduce the amount of litter that needs collecting. These measures may also reduce Local Authority costs associated with handling complaints and disputes about fixed penalties.

2.5.4. When and how will the littering enforcement measures come into force and where can I find further information?

The power to prescribe conditions will need secondary legislation in order to be implemented. This will be brought forward in due course. We will consult with all interested parties, including Local Authorities; the public; the enforcement industry; and campaigners before exercising this power.

Our current enforcement guidance is contained in the Code of Practice on Litter and Refuse. Section 68 requires the Secretary of State or Welsh Ministers to consult on proposed statutory enforcement guidance (or revised guidance) before issuing it, which will enable interested authorities and persons to give their views on any changes to the guidance. We will provide further updates on timings for updated enforcement guidance in due course.

2.5.5. What assessment has been made of 'Local Authorities' capacity to meet any additional burdens (litter)?

The statutory enforcement guidance we propose to issue under the new power is expected to be substantially similar to the enforcement guidance currently contained in the Code of Practice for Litter and Refuse. A New Burdens Assessment was carried out as part of that process, based on consultation feedback from Local Authorities, and no additional burdens were identified.

When we come to exercise the power to prescribe conditions to be satisfied by those issuing fixed penalties for littering, we will consult with Local Authorities about the specific proposals in order to understand any new burdens that they may face.

For further information please contact – litter@defra.gov.uk

2.6. Waste Crime (Sections 64, 66, 69, 70):

Waste crime and poor performance in the waste sector have significant impacts upon people, the economy, and the environment through pollution to air, water, and land. The Act introduced measures to improve the regulators' effectiveness in tackling waste crime and inappropriate waste management.

The waste crime sections of the Act focus on ensuring waste is managed appropriately and ensuring there are appropriate measures in place to deal with it when it is not.

Having an appropriately regulated waste sector enables businesses to manage waste as a resource in an environmentally and economically sustainable way.

2.6.1. Charging (Section 64)

2.6.1.1. What additional burdens will this measure place on Local Authorities?

New Environment Agency charges may apply to Local Authorities where they make use of waste exemptions or have environmental permits. The impact on Local Authorities will be considered before any new charges are introduced.

2.6.1.2. Are there any efficiencies / cost savings to government / Local Authorities?

The charging powers will collectively fund activities to better monitor compliance and allow recovery of costs from those operating illegally outside of the permitting system. These actions will reduce waste crime, and the costs associated with it.

2.6.2. Enforcement powers (Section 66)

2.6.2.1. What additional burdens will this measure place on Local Authorities?

Enforcement authorities in England already exercise many of the powers that are to be extended in this measure (such as powers of entry, which have been extended to make them more fit for purpose). Any use of the extended powers will be at the discretion of each individual Local Authority. The powers expand the opportunities to intercept and enforce against waste crime, reducing the incidence of waste criminality and helping the Local Authorities to recover their costs.

2.6.2.2. What new skills are required for Local Authorities to implement these measures and what support is being provided by Defra? (S108 powers)

Local Authorities already make use of the powers available in section 108 and are familiar with how to use them. The measure is primarily aimed at expanding powers for Environment Agency (EA) and Natural Resources Wales (NRW). It will be at the discretion of Local Authorities as to whether they make use of the powers and if so to ensure their officers are sufficiently trained.

2.6.2.3. Are there any efficiency gains from the enforcement powers measure to Local Authorities?

The enforcement powers measure will improve the ability of enforcement authorities to tackle waste crime effectively, thus reducing the costs accrued in clearing up waste crime and pursuing prosecution. Enforcement authorities including the EA and NRW requested changes to the powers of entry and search and seizure to improve their ability to tackle illegality in the waste sector.

2.6.2.4. What impact will this measure (Vehicle Seizure) place on Local Authorities?

Currently if the EA or NRW officer is not present, the Police can only seize the vehicle as if done on behalf of the waste collection authority. The measure removes that minor burden as the Police can seize the vehicle on behalf of the EA or NRW instead.

2.6.3. Fixed Penalty Notices (FPN) (Section 69)

2.6.3.1. What additional burdens will this measure place on Local Authorities (FPNs)?

There will be no immediate impact on Local Authorities. When penalty levels are changed in future, it is expected that any additional burden to Local Authorities in changing the levels will be outweighed be the benefit of the penalties remaining fit for purpose.

2.6.3.2. Are there any efficiencies or cost savings to government or Local Authorities (FPNs)?

This measure will future-proof fixed penalty notices to ensure that they remain a proportionate and effective enforcement measure for Local Authorities, avoiding the costs of more expensive prosecution.

2.6.3.3. How are you going to ensure that Local Authorities use this measure (FPNs)?

Local Authorities already make use of these FPNs. On the occasion that the power is used in the future to amend FPN levels, the processes used by enforcement authorities to issue them will remain the same.

2.6.4. Exemptions (Section 70)

2.6.4.1. What additional burdens will this measure place on Local Authorities (Exemptions)?

The powers will enable regulators to set the conditions of exempt activities in accordance with any regulations. There will not be any additional burden directly placed on Local Authorities from this measure. Where Local Authorities are making use of exemptions, they could be affected along with any other business using that exemption if changes are subsequently made. More effective regulation of exempt waste sites will reduce the costs of responding to waste crime and the environmental and social damage it can cause.

For further information please contact - waste.regulationandcrime@defra.gov.uk

3. Air Quality

3.1. Legally binding target for fine particulate matter (PM2.5) (Section 2):

Introducing a duty to set a legally binding target for the pollutant with the most significant impact on human health, fine particulate matter (PM2.5), alongside at least one further long-term target on air quality.

3.1.1. What does this mean for Local Authorities?

The responsibility for meeting the PM2.5 target will sit with the national government. However, Local Authorities will have a role to play in delivering reductions in PM2.5.

We will be reviewing the local PM2.5 objective as part of the review of the Air Quality Strategy, which will be published in 2023. Any impacts on Local Authorities and delivery partners of any revisions to standards and objectives would be assessed at that stage.

Public bodies designated as relevant public authorities will be required to propose measures that they will carry out to reduce air pollution in order to support compliance with local air quality standards and objectives by a specified date. These actions will be included in local air quality action plans. We are aiming to consult on the designation of National Highways as a relevant public authority early this year. Further bodies will be considered for designation in due course subject to consultation.

3.1.2. What new powers will Local Authorities get to address the challenge of meeting the PM2.5 target?

Local Authorities already have powers available to them to tackle air pollution – for example powers to tackle idling and smoke emissions from domestic chimneys.

Through the Act we are making it easier for Local Authorities to use their existing powers to tackle a major contributor to fine particulate matter emissions – domestic solid fuel burning. The Act also enables greater local action on air pollution by improving the local air quality management framework. It ensures that responsibility for addressing air pollution is shared across local government structures and with relevant public authorities.

Additionally, in May 2021, new legislation came into force across England which restricts the sale of the most polluting solid fuels, such as wet wood and traditional house coal, used for domestic heating. The new legislation introduced a mandatory certification scheme which makes it easier for consumers and enforcement officers to identify those fuels that are cleaner and can be legally sold.

These measures form part of a wider package of action to tackle pollution from domestic burning. Since the 1 January 2022 all stoves placed on the market in the UK must be Ecodesign compliant We have also developed a dedicated communications campaign targeted at domestic burners, to improve awareness of the environmental and public health impacts of burning and help reduce exposure to harmful pollution.

3.1.3. Who is legally responsible for delivering the target for fine particulate matter (PM2.5), what penalties will be in place and how will they be administered?

The Government has a legal duty to ensure the PM2.5 target is met. The Act's statutory cycle of monitoring, planning, and reporting ensures that the government will take early, regular steps to achieve targets, and is held to account with regular scrutiny from the OEP and Parliament. The OEP will have the power to bring legal proceedings if the government breaches its environmental law duties, including its duty to achieve targets.

In the domestic context, the clear requirements under our legal framework to comply with court orders make a system of fines unnecessary.

3.1.4. Where will the target apply and how will levels of fine particulate matter be measured?

Establishing a credible and achievable target is not just about adopting a new level and a date for achievement but must consider how the target will be met, how it will be assessed and the costs and benefits of doing so.

The Act establishes a framework for setting targets through secondary legislation. The technical detail for the target, including how it will be measured, will be developed during the target setting process, which will be subject to consultation, and will follow in secondary legislation.

We have a widespread monitoring network for PM2.5 and its components as well as a range of other pollutants and this is supplemented by air quality modelling. As stated in our Clean Air Strategy, we are committed to ensuring continued investment to update and

improve this infrastructure, and expand this monitoring network, to ensure appropriate assessment is possible and progress can be tracked.

3.1.5. When and how will the legally binding target for fine particulate matter (PM2.5) come into force and where can I find further information?

The air quality targets will be brought forward in secondary legislation by 31 October 2022. We will shortly be consulting on these.

Further information on the air quality targets being set through the Act can be found on the UK-AIR website.

For further information please contact - Daniel.Waterman@defra.gov.uk

3.2. Strengthening ability of local government to tackle air quality issues (Section 72):

Improving co-operation within the local air quality management framework (LAQM) to strengthen the ability for local government to tackle air quality issues in their areas.

3.2.1. What do these sections mean for Local Authorities and what are the changes to the LAQM that will strengthen the ability of local government to tackle air quality issues in their areas?

We have broadened the range of bodies required to work with local authorities to improve air quality. Local Authorities will contact Air Quality Partners (neighbouring Authorities, relevant public authorities, Environment Agency) where they have identified a source of pollution causing an exceedance in the Air Quality Partner's area of responsibility. Air Quality Partners will then be required to collaborate with the local authority in developing and implementing air quality action plans.

The authorities designated as relevant public authorities will be set out in secondary legislation, following a public consultation. We are aiming to consult on the designation of National Highways as a relevant public authority early this year. Further bodies will be considered for designation in due course subject to consultation.

3.2.2. Under what circumstances would a Local Authority declare an Air Quality Management Area?

Local Authorities are already required to assess air quality within their boundaries and provide an annual report detailing their monitoring results and any air pollution hotspots they have identified. Where an objective for a specific pollutant is exceeded, the Local

Authority must declare an Air Quality Management Area (AQMA) and produce an Air Quality Action Plan for addressing the exceedance.

3.2.3. Which level of local government will be required to prepare action plans and how will different tiers of local government co-operate to develop and deliver the plans?

The requirement to prepare an Air Quality Action Plan rests with the district council or unitary authority, however, all layers of local government have legal duties to act to address elevated levels of air pollution. Relevant public authorities who will have been designated by the Secretary of State along with neighbouring local authorities and the Environment Agency may act as Air Quality Partners where their activities are relevant to a local exceedance of air pollution concentration limits.

Specifically, the steps are to identify sources of pollution that are contributory to a local exceedance which will identify if a relevant pollution source sits within the remit of an Air Quality Partner. In which case the Local Authority will contact that authority who will be required to co-operate. In the event of a contributory source being within the control of a public authority not yet designated as a relevant public authority then the Local Authority can seek voluntary co-operation as now or can request the Secretary of State to designate that body to compel co-operation.

3.2.4. What additional burdens will these changes to the LAQM framework place on Local Authorities and how and when will funding be provided?

Any new burdens placed on Local Authorities through the air quality measures in this Act will be funded by Defra as per the new burden's principle. Local Authorities who have been directed to reduce their nitrogen dioxide emissions can apply for funding under the Clean Air Fund. The Clean Air Fund offers £220m of funding to eligible Local Authorities. This comes in addition to the £275m Implementation Fund.

3.2.5. What changes are being made to strengthen local authority responsibilities to address exceedances of local air quality objectives and standards?

The 2021 Act introduces new Section 83A to the Environment Act 1995 which strengthens requirements in respect of local Air Quality Action Plans.

Under the new requirements Air Quality Action Plans must set out how the local authority will exercise its functions to secure that air quality standards and objectives are achieved in the area to which the plan relates, and how standards and objectives will be maintained thereafter, rather than a requirement only to "work towards" achievement. Local authorities must also specify a date by which each measure within the Air Quality Action Plan will be

carried out. Air Quality Partners are required under the Act to collaborate with local authorities in developing and carrying out Air Quality Action Plans.

3.2.6. What progress towards implementation of these changes has taken place to date and when and how will these changes to the LAQM framework come into force?

Measures in the Act give the Secretary of State the power to designate relevant public authorities as air quality partners. Designated authorities will be set out in secondary legislation, following a public consultation. We are aiming to consult on the designation of National Highways as a relevant public authority early this year. Further bodies will be considered for designation in due course subject to consultation.

It is expected that the measures will come into force in 2022. Statutory guidance on the revised framework is being developed and is due to be published in 2022.

For further information please contact - Keith.Crane@defra.gov.uk

3.3. Powers to tackle domestic solid fuel burning (Section 73):

Amending the Clean Air Act 1993 to create a simpler mechanism for Local Authorities to tackle emissions from a major contributor to fine particulate matter emissions – domestic solid fuel burning.

3.3.1. What does this section mean for Local Authorities?

Local Authorities already have powers available to tackle air pollution – for example powers to tackle idling and smoke emissions from domestic chimneys.

Through the Act we are making it easier for Local Authorities to use their existing powers to tackle a major contributor to fine particulate matter emissions – domestic solid fuel burning. The Act provides powers for Local Authorities to issue civil penalty notices (i.e. fines) for smoke emissions from chimneys in Smoke Control Areas. It will remove current statutory defences (including the use of an exempt appliance or an authorised fuel) which currently hinder enforcement. If needed, Local Authorities will be able to take more substantive action under statutory nuisance provisions where someone repeatedly emits smoke that is prejudicial to health.

3.3.2. What assessment has been made of Local Authorities' skills and capacity to meet any additional burdens resulting from this section, and how and when will funding be provided?

Local Authorities and businesses already have the necessary skills required to carry out their responsibilities under these measures. We will continue to engage with Local

Authorities and businesses and produce guidance to support the delivery of these measures.

For example, Local Authorities already have a duty to monitor and assess air quality and to take action to reduce pollution where these breach statutory limits. The measures in the Act will make local action easier and less burdensome.

We expect a small extra cost to Local Authorities with a smoke control area as a result of improvements to the Clean Air Act depending on whether their smoke control area applies to moored vessels, including inland waterway vessels such as canal boats.

3.3.3. What is a smoke control area (SCA) and which emission sources are covered within them?

The Clean Air Act already enables Local Authorities to designate Smoke Control Areas, to achieve improvements in air quality. A Smoke Control Area defines an area within the Local Authorities' boundaries in which it becomes an offence to emit smoke from chimneys of buildings and chimneys which serve the furnace of any fixed boiler or industrial plant unless certain fuels or appliances are used. Following the changes made in the Act, Local Authorities will also be able to bring moored vessels, including inland waterway vessels such as canal boats, into scope of SCAs so chimney smoke from such vessels could be subject to a financial penalty subject to the amended framework.

3.3.4. What new powers will Local Authorities have to impose financial penalties for the emission of smoke in a SCA and what is the process for imposing the fines in the case of non-compliance under the Clean Air Act?

The Act amends the current SCA framework, replacing the criminal offence with a civil penalty regime. This means LAs will have powers to issue financial penalties for smoke emissions under the civil regime but will also have an alternative option to pursue persistent offenders under a criminal regime through nuisance legislation (which has not been possible to date).

The Act will enable Local Authorities in England to issue fines up to £300 for smoke emissions in Smoke Control Areas– we expect them to use fines at the higher end of the scale for repeat offenders.

Further detail on the process will be set out in statutory guidance due to be published in 2022.

3.3.5. Will Local Authorities be able to retain the receipts from the civil penalties?

Yes, Local Authorities will be able to retain the funds from civil penalties issued under the SCA framework. Further detail will be set out in statutory guidance due to be published in 2022.

For further information please contact - Jonathan.Sturdy@defra.gov.uk or Andrew.Baxter@defra.gov.uk

4. Water

4.1. Drainage and Wastewater Management Plans (Section 79):

Our policy is to make the drainage and sewerage management planning process statutory, by placing a new legal duty on sewerage undertakers through an amendment to the Water Industry Act 1991.

4.1.1. What do these sections mean for Local Authorities?

The new Drainage and Sewerage Management Plan regime will provide for consultation between sewerage companies and others. This consultation should help facilitate collaboration, for example local authorities, sewerage companies and the Environment Agency working together to develop joint solutions to address surface water drainage risks, which would share the costs of those solutions.

Under the Flood and Water Management Act 2010, water companies, local authorities and a number of other bodies are statutory flood Risk Management Authorities.

As such, they are already required to cooperate with other Risk Management Authorities, which may include sharing information.

4.1.2. What assessment has been made of 'Local Authorities' capacity to meet any additional burdens?

An impact assessment for the Act, including this measure, was published on 12 March 2020.

There is no direct additional burden to local authorities as a result of this measure.

No new skills are required for Local Authorities/businesses to implement these measures.

Sewerage companies and local authorities and other bodies that are statutory flood Risk Management Authorities have an existing duty to cooperate under the Flood and Water Management Act 2010.

Drainage and Sewerage Management Plans should help local authorities and others fulfil this role, as they will build on existing provision for cooperation and information sharing, including on drainage networks.

This should enable organisations to work more closely together to deliver joint solutions to reduce flooding and environmental problems, reducing overall costs.

4.1.3. What activity has taken place to date and where can I find further information?

Current non-statutory plans are well underway to being completed by early 2023 and it is important that our proposals do not disrupt the planning currently in development.

By adhering to our proposed timeframe for introduction of statutory plans, therefore, we can learn from the first round of non-statutory plans in order to increase the effectiveness of the statutory process.

For further information please contact - simon.carey@defra.gov.uk

4.2. Land Drainage (Sections 94-97):

The land drainage measure enables changes to be made to certain valuation calculations, to address a technical issue of missing or incomplete data which is preventing existing internal drainage boards from expanding and new ones being established. Internal drainage boards use these calculations when they apportion their expenses. The sections in this Act will future proof the valuation calculations by enabling updates to the technical details, such as the data used, to be made in secondary legislation.

4.2.1. What do these sections mean for Local Authorities?

Without these changes local communities will be unable to propose the creation of new, or expansion of existing, internal drainage boards. The land drainage measure will enable technical updates via secondary legislation needed to address missing and or incomplete data to enable new internal drainage boards to be created or existing ones to expand.

It is not for government to assess or determine where new, or expanded, internal drainage boards should be created. This is a matter of local choice and the government will only take forward proposals where there is clear local support, including from Local Authorities.

Internal drainage boards are mainly funded by the beneficiaries they serve, through two separate charges – one of which, the special levy, is paid by Local Authorities.

It is a local choice, including for Local Authorities, where a new internal drainage board is created or an existing one is expanded. If they decide to make this choice, they will do so in the knowledge of the costs they will have to bear and the benefits they will receive.

4.2.2. What assessment has been made of 'Local Authorities' capacity to meet any additional burdens?

It is for Local Authorities to assess whether they have the appropriate capacity to support a proposal to create, or expand, an internal drainage board and then support its work. The government expects each Local Authority to fully understand the benefits and costs of supporting any proposals.

4.2.3. When and how will the land drainage measures come into force?

We aim to have the new regulations in place as soon as possible and are working with stakeholders to develop and test them ahead of a public consultation.

The government will then update the draft regulations, as necessary, before laying them before Parliament. It is expected that the regulations will be implemented later this year/beginning of 2023.

4.2.4. What activity has taken place to date and where can I find further information?

Defra officials have kept stakeholders including the Local Government Association up to date with development of the regulations that the Act provides for. A working group, which includes the Local Government Association, has been set up to help with development of the regulations and Defra will keep Local Authorities informed of progress.

For further information please contact the Defra Flood and Coastal Erosion Risk Management Team via Carol.Tidmarsh@defra.gov.uk

5. Restoring Nature

5.1. Biodiversity Net Gain (BNG) (Sections 98-101):

Biodiversity net gain is an approach to development that leaves biodiversity in a measurably better state than beforehand. 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.

5.1.1. Is biodiversity net gain already happening?

BNG is currently encouraged in the National Planning Policy Framework but is not mandatory. Many local planning authorities already require biodiversity net gain for development or have net gain policies in place.

5.1.2. What is changing with regard to biodiversity net gain?

The Act will introduce mandatory biodiversity net gain for most new development in England. This is due to become a requirement in late 2023 for development under the Town and Country Planning Act 1990. BNG will require planning applicants to deliver at least 10% gain in biodiversity above the current baseline. The Act also makes provision for BNG to be applied to Nationally Significant Infrastructure Projects (NSIP).

5.1.3. How will mandatory biodiversity net gain work in practice?

The government launched a consultation on BNG regulations and implementation on 11 Jan 2022. The consultation is seeking views on how mandatory BNG should work in practice. The consultation closes on the 5th April 2022. The following provides an overview of the BNG process. An outline of the BNG process has been included in the consultation document. In summary this includes:

- Biodiversity on a site will be calculated using a standard biodiversity metric.
- A net gain plan must be submitted by the planning applicant. This will include:
    - an assessment of the value of natural habitat before and after development.
    - details of how at least 10% net gain in biodiversity will be achieved.
    - details of the steps that will be taken to minimise harm to habitats during development.
- Biodiversity gains can be delivered on the development site, off-site, or as a last resort by purchasing statutory biodiversity credits from the government.
- Off-site and significant on-site habitat enhancements must be secured for at least 30 years.
- A biodiversity gain site register will record off-site gains transparently.

The policy will be applied in accordance with the mitigation hierarchy, with the principle being to avoid environmental harm rather than relying on compensation.

5.1.4. What tools are the government providing to help Local Authorities implement mandatory BNG?

Defra is working on a programme of actions to develop the processes and systems needed to embed BNG in the planning system. This includes:

- Publication of a biodiversity metric version for use in mandatory biodiversity net gain, following a consultation.

- Development of the systems required to support BNG as part of the planning system, for example to handle the sales of biodiversity credits and manage the registration of any off-site biodiversity gains.
- Supporting the development of skills and capacity needed for BNG. This includes the development and publication of guidance, tools, templates and support for sectors implementing BNG.
- Setting up systems to monitor, evaluate and report on BNG.

5.1.5. Is the government providing extra funding for Local Authorities to help them implement biodiversity net gain?

The government announced on 11 Jan 2022 that it would make £4M funding available to local planning authorities to prepare for mandatory biodiversity net gain. The government has committed to funding new burdens arising from the Act. We intend to engage further with sectors on support requirements.

5.1.6. Where can I find more information?

We are working with the Planning Advisory Service (PAS) to provide training and guidance to local planning authorities. The PAS website contains information about biodiversity net gain and will be updated as guidance and information become available.

For further information please contact - netgainconsultation@defra.gov.uk

5.2. Strengthened Biodiversity Duty and Reports (Sections 102-103):

Public authorities have an important role to play in improving nature. The Natural Environment and Rural Communities (NERC) Act 2006 currently includes a duty on all public authorities to have regard to the conservation of biodiversity. The changes to the NERC Act require public authorities to consider how they can improve biodiversity through the exercise of their existing functions, helping the country to build back better and greener now and in the future. Strengthening the biodiversity duty better reflects the level of ambition we set with the 25 Year Environment Plan and long-term environmental targets that will be set under the Environment Act.

5.2.1. What do these sections mean for Local Authorities?

The strengthened duty requires public authorities to periodically consider the action they can take to conserve and enhance biodiversity, and then take that action.

We have changed the nature of the duty, away from something that should be a consideration each and every time a function is exercised – when in many cases it will not

be relevant. We want public authorities to periodically take a strategic look over all their functions to identify where they have the opportunities to make a change that will improve biodiversity, and where they can act, they should act. As they carry out this assessment, public authorities must have regard to relevant Local Nature Recovery Strategies, Species Conservation Strategies and Protected Site Strategies.

We are also introducing a requirement for all Local Authorities, and other designated public authorities to report on the actions they have taken to comply with the biodiversity duty. This will provide transparency and accountability and will facilitate the sharing of best practice between public authorities.

The detail of what will need to be covered in the reports will be set out in secondary legislation and guidance. As a minimum we expect the report should cover what action has been taken over the previous 5 years and its impact and any planned action in the subsequent 5 years. For local planning authorities, reporting will also cover the overall contribution of mandatory Biodiversity Net Gain activity.

Authorities will become subject to the strengthened duty once the secondary legislation has been enacted designating the additional public authorities required to report and the quantitative data to be included in those reports. The secondary legislation will be introduced as soon as possible. Then, the first report will be required within three years of the public authority becoming subject to the strengthened duty.

Subsequently, reports will be produced at least every five years.

5.2.2. What additional financial burdens and skills requirements will this measure place on Local Authorities?

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.

The intention of the strengthened duty, though, is not to oblige public authorities to incur additional costs, but for them to consider seriously how they can improve biodiversity through the exercise of their functions. We anticipate that the principal way in which local authorities discharge their biodiversity duty will be through the actions taken to deliver mandatory Biodiversity Net Gain (BNG) or Local Nature Recovery Strategies (LNRS). We also expect that, in considering any additional action they can take above and beyond BNG and LNRS, local authorities will find ways to benefit biodiversity in a cost-neutral manner, and we will provide guidance to help with this.

5.2.3. Will every function of a public authority be captured by the new duty?

Yes. The legislation requires each public authority to look across all of its functions to determine whether there is action it can take to conserve and enhance biodiversity. It

should then take that action as long as the action does not interfere with its ability to effectively discharge the function.

This allows the flexibility, which is crucial, for public authorities to weigh competing priorities and make decisions that are in the best interest of the public.

5.2.4. When and how will Local Authorities become subject to the strengthened biodiversity duty?

We currently plan that the strengthened duty will come into force once the secondary legislation has been introduced, which is expected to be in late 2022.

5.2.5. What implementation activity has taken place to date and where can I find further information?

A factsheet on the biodiversity duty can be found on Gov.uk. Further information and guidance will be available later in 2022.

For further information please contact - Paul.Simpson@defra.gov.uk

5.3. Local Nature Recovery Strategies (LNRS) (Sections 104-108):

Local Nature Recovery Strategies (LNRS) are a new system of spatial strategies for nature, covering the whole of England. They are designed as tools to drive more coordinated, practical, and focussed action to help nature. LNRSs will support delivery of mandatory BNG and provide a focus for a strengthened duty on all public authorities to conserve and enhance biodiversity which are also being introduced by this Act.

5.3.1. What do these sections mean for Local Authorities?

Preparation of each LNRS will be led by a “responsible authority” appointed by the Defra Secretary of State. In most cases this is likely to be a Local Authority within the strategy area. LNRS preparation is intended to be collaborative so where a Local Authority is not the “responsible authority” they will still be encouraged to be closely involved in the preparation process. All public authorities, including Local Authorities, will be required to have regard to relevant strategies as part of a stronger duty on public authorities to conserve and enhance biodiversity.

5.3.2. How will the area to be covered by an LNRS be determined?

The area to be covered by each LNRS will be set by the Defra Secretary of State. It is anticipated that there will be approximately 50 LNRSs covering the whole of England with no gaps and no overlaps.

5.3.3. What are the duties of a responsible authority?

The “responsible authority” will 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 during 2022. The Government has recently consulted on key questions which will inform the approach these regulations will take.

5.3.4. How will you make sure LNRS are supported by the necessary expertise?

Preparation of LNRSs will be underpinned by evidence and information provided by government, including a national habitat map. We have designed the process of developing the Strategies to ensure those with strong knowledge of the local area have every opportunity to contribute. Defra agencies will also play an important role in providing expertise.

5.3.5. What additional burdens will this measure place on Local Authorities and how and when will this funding be provided?

The appointed “responsible authority” will require sufficient capacity and expertise to lead this process. We are working with colleagues in the Department for Levelling Up, Housing and Communities to further develop our estimates of what this will require.

We will fully fund all new burdens arising from the Act to make this ambition a reality.

5.3.6. What implementation activity has taken place to date and where can I find further information?

Government carried out five LNRS pilots from August 2020 to May 2021. A public consultation to gather views to inform the preparation of regulations and statutory guidance that will shape how LNRSs are rolled out across England ran from August to November 2021.

Further information can be found regarding the LNRS consultation on Gov.uk.

For further information please contact – localnaturerecoverystrategies@defra.gov.uk

5.4. Species Conservation Strategies (Section 109):

Species Conservation Strategies are a broad concept and includes any approach to mitigation or compensation that is wider than the individual project level. They will be particularly helpful where evidence shows individual species are being affected by a range of different impacts. There will be a whole variety of solutions that a strategic approach can lead to depending on the factors affecting the local circumstances. The intention is to

maximise the scope for innovation and flexibility and not to prescribe what might be right in specific localities.

5.4.1. What do these sections mean for Local Authorities?

Local Planning Authorities will be required to cooperate with Natural England and other public bodies in setting up and operating the new strategies. This could involve, for example, providing planning and environmental data so that Natural England can assess cumulative impacts up front.

Local planning authorities will also be required to have regard to relevant strategies when carrying out their functions. In practice, this means they will have to consider how relevant schemes in their area should be built into Local Plans. All public authorities will also be required to have regard to relevant strategies when considering how they will comply with the strengthened biodiversity duty in the Natural Environment and Rural Communities Act 2006.

All new strategies will be developed in collaboration with relevant stakeholders, including Local Authorities, and any burdens will be carefully assessed to ensure they are reasonable and proportional.

5.4.2. Who will be running the strategic schemes?

Each scheme/strategy will be a bespoke solution. In practice it will be necessary for schemes to be delivered in partnership with regulators, commercial firms, landowners, and other organisations. The leading delivery role will be determined by whoever is best placed and able to meet the particular delivery needs of each strategy. Natural England is the regulator and it will need to satisfy itself that effective delivery arrangements will be put in place.

5.4.3. How will Species Conservation Strategies work with Local Nature Recovery Strategies (LNRS)?

The strategies are designed to work together. LNRS will be a system of strategies covering the whole of England and will identify where action can be taken to reverse the decline of nature as a whole.

Species Conservation are more bespoke and targeted measures to help protect specific species at risk. They are intended to ensure public authorities comply with legal protections in a way that achieves better outcomes for nature.

In the areas of the country where these more targeted strategies are put into effect, the measures they include will be integrated into the relevant LNRS. This will allow them to form part of a wider landscape-scale plan for nature.

5.4.4. When will the first strategies be produced?

Strategies are now being developed for water vole, hazel dormouse, and some wider reptiles. They will be piloted in the latter half of 2022 and any roll out will depend on the outcomes of the pilots. We expect to commence the Species Conservation Strategy measures in the Act in the autumn of 2022.

5.4.5. What implementation activity has taken place to date and where can I find more information?

Natural England is working with relevant stakeholders on the design of the initial Species Conservation Strategies.

A factsheet on the strategies can be found on Gov.uk.

For further information please contact – Simon.Mackown@defra.gov.uk

5.5. Protected Site Strategies (Section 110):

A Protected Site Strategy is to be put in place where Natural England has assessed it would be appropriate to manage the impact of plans, projects, or other activities on a European site, Sites of Special Scientific Interest or Marine Conservation Zones.

5.5.1. What do Local Authorities need to be aware of?

Local Authorities need to be aware of Protected Site Strategies when they pertain to areas within their jurisdiction or if their plans or projects may affect nearby protected sites. For certain projects, a Habitat Regulations Assessment (HRA) may need to be carried out if a protected site is at risk of being adversely affected.

5.5.2. Will Protected Site Strategies replace the need for appropriate assessments?

Where a development project is likely to impact adversely on a protected site, a Habitat Regulations Assessment (HRA) will be needed. However, Protected Site Strategies will make compliance with rules quicker by finding solutions in advance to those problems which affect the conditions of a site.

5.5.3. Does every protected site have its own strategy?

No. Protected Site Strategies will be targeted and designed to help protect specific sites where they can be most effective. They will be particularly useful where evidence shows that protected sites are affected by a range of problems.

5.5.4. Will Protected Site Strategies impact farm businesses and other landowners?

Landowners and farm businesses can play a key role in addressing the multiple and complex pressures faced by protected sites, including off-site pressures such as diffuse pollution. Protected Site Strategies aim to bring together key stakeholders to address these threats strategically. The section in the Environment Act puts a duty on Natural England to consult a wide range of stakeholders when creating or amending Protected Site Strategies and this may include landowners and farm businesses. If Protected Site Strategies are to be successful, they need to engage all interested parties to find a workable solution.

5.5.5. Will Local Authorities be consulted when Protected Site Strategies are being prepared?

When preparing a strategy, Natural England have a duty to consult a wide range of stakeholders, including relevant Local Planning Authorities, landowners, and farmers.

5.5.6. What role will Local Authorities play in developing Protected Site Strategies?

Public Authorities consulted by NE have an obligation to co-operate in the preparation of a Protected Site Strategy. Local Authorities will be able to use Protected Site Strategies as a tool to secure long term collaborative commitments to address environmental issues impacting protected sites. Natural England are piloting this governance structure with a number of Local Authorities and other key stakeholders over 2022.

5.5.7. What implementation activity has taken place to date and where can I find more information?

Natural England is working with relevant stakeholders on the design of the initial Protected Site Strategies. The new Protected Site Strategies will follow a similar model to the innovative schemes that have shown early evidence of delivering real benefits to nature, such as the award-winning South Humber Gateway mitigation scheme.

A factsheet on the strategies can be found on Gov.uk.

For further information please contact - Elen.Strale@defra.gov.uk

5.6. Duty to consult – Trees (Section 115):

This section introduces a duty on local highway authorities to consult with local communities before felling street trees unless the trees qualify for certain exemptions. We recognise that urban trees, especially street trees, are the closest green infrastructure to people's homes. Through the Duty to Consult measure in this Act we are increasing

awareness and transparency in decision making on these trees and creating a space for the public to contribute to these decisions. This reflects our commitment to enhancing our green spaces and valuing our trees.

5.6.1. What do these sections mean for Local Authorities?

The Government is committed to protecting our urban street trees. In response to feedback from consultees, we have decided to require a more comprehensive consultation for the felling of every street tree to make sure that residents are properly engaged in the process.

The Duty to Consult will increase our understanding of why street trees are felled, and decisions made around the green infrastructure closest to our homes. This will provide greater transparency of the tree felling process to the local community and provide an opportunity for engagement.

The duty requires Local Highway Authorities to have regard for public viewpoints before making a final decision. This knowledge will increase our understanding and strategic planning in the urban environment. We have exempted trees from consultation where there is a statutory obligation to fell the tree, where there are limited benefits to keeping the tree, such as dead trees, and where it would cause duplication, such as where planning permission has been granted.

In our public consultation and legislation, a street tree is defined as a tree in a village, town, or city that is on part of the highway such as a pavement, verge, or reservation. Whilst some trees appear to be on highway land, they could be standing on land managed by a different Local Authority committee or arm's length body, such as housing, education, or parks. In this instance, these trees will not be within the scope of this duty.

5.6.2. What guidance will be provided to cover how this duty will be applied and the process that should be used?

We are developing the guidance for the Duty to Consult with the aim to implement it by April 2023. We will be consulting with Local Authorities in late Winter/Spring 2022 to set standards and process for this duty, including guidance on notice templates, the evidence required for exemptions, and response standards

5.6.3. Who will decide whether to fell a tree and how will the decision be reached?

The purpose of this duty is to increase transparency in decision-making and allow the public a greater voice in decisions. As part of this process, Local Highway Authorities will have to consult on the felling of street trees and consider responses to the consultation in making the final decision. Local Highway Authorities are still empowered to make the decision, including to fell the street tree, and this duty is not intended to undermine that authority.

Local Highway Authorities will decide whether a tree is exempt – in line with exemptions described in the Act. They should keep records, as is standard procedure when felling a tree, evidencing that a tree was exempt from the duty. We will provide guidance for Local Highway Authorities to help them determine if a tree is exempt.

5.6.4. What funding or support will be put in place to support Local Authorities to achieve Duty to Consult?

The Environment Act introduces a duty on local highway authorities to conduct a public consultation before felling a street tree that does not fall under one of the exemptions.

As this is a new burden, new burden funding will be provided to Local Authorities (LAs) to cover the costs of the duty. The method of delivery and amount of funding is being finalised and will be discussed with Local Authorities during our consultations in late winter/spring 2022.

5.6.5. When and how will the duty to consult come into force?

The Duty to Consult will be implemented from April 2023, and guidance is being developed to advise on appropriate standards.

5.6.6. What implementation activity has taken place to date and where can I find further information?

The enforcement measures themselves do not require any implementation; they simply exist as powers. However, in order to better understand how the measure will be used by Local Authorities we developed the measure through consultation with Local Authority Tree Officers in 2018 (Protecting and enhancing England's trees and woodlands: consultation (defra.gov.uk).We are currently developing Implementation Guidance for Local Authorities to help ensure that the new Duty is understood and implemented effectively, and we will consult LAs on the development of the guidance this year.

For further information please contact - jamie.melrose@defra.gov.uk

5.7. Conservation Covenants (Sections 117-139):

A conservation covenant is an agreement between a landowner and a designated “responsible body” such as a conservation charity, public body, or for-profit body which conserves (protects, restores, or enhances) the natural or heritage features of the land. It is a voluntary but legally binding agreement made for the public good, which can continue to be effective even after the land changes hands.

5.7.1. Why do we need conservation covenants and what are their most likely uses?

Landowners can play an important role in conservation of nature or heritage by voluntarily making commitments about the management of their land. But conservation opportunities are being missed because there is no simple way to secure lasting conservation outcomes when land is sold or passed on. Conservation covenants are a versatile legal tool that can deliver lasting conservation benefits for the public good, contributing to a cleaner, greener, and more resilient future.

We expect that the most likely uses will be those with a commercial component, such as providing for payments for ecosystem services and mandatory Biodiversity Net Gain. They also have the potential to be used by charities, public authorities or altruistic landowners wishing to conserve land for the future.

Conservation covenants could be used in a range of other situations including:

- Alternative to land purchase by conservation organisations – a conservation covenant could set out obligations on the landowner to maintain or restore habitats in return for funding from the organisation.
- Securing heritage assets – a conservation covenant could ensure land is managed to protect or restore a heritage feature, such as an archaeological site, in accordance with the landowner's wishes after the land changes hands.

5.7.2. What do conservation covenants mean for Local Authorities?

The measures place no additional burdens or obligations on Local Authorities. However, a Local Authority could potentially take on an obligation under a conservation covenant in either of two capacities. As a landowner, it could agree a conservation covenant with a responsible body. It could also choose to do so as a responsible body. A Local Authority would have to be designated as a responsible body following an application to Defra.

The use of conservation covenants will be voluntary and in general only impact landowners (including Local Authorities) who choose to use them on their land or acquire land already bound by a conservation covenant. Landowners would therefore not be affected unless they choose to enter into a conservation covenant, or they acquire land with an existing covenant on it, which they would be made aware of at the point of purchase.

5.7.3. How can a Local Authority apply to become a responsible body?

A Local Authority will need to apply to Defra to become a responsible body. Their suitability to be designated will be assessed by the Secretary of State against published criteria which we expect will include financial strength, expertise, and the motivation for

applying. The process for becoming a Responsible Body will be available before the conservation covenants measures come into force on 30 September 2022.

5.7.4. What will the financial impacts of conservation covenants be on Local Authorities?

The use of conservation covenants is voluntary, so any impact will be one that people or organisations entering into such an agreement wish to incur. The Law Commission undertook an impact assessment in 2014 which envisaged a low level of costs for those who are a party to a conservation covenant.

5.7.5. What implementation activity has taken place to date and how will conservation covenants come into force?

Working with key stakeholders, we are developing guidance for landowners and responsible bodies which will be published on gov.uk before the conservation covenants provisions come into force. We are also developing the process for organisations to apply to become responsible bodies.

We intend the conservation covenant provisions of the Environment Act 2021 to come into force on 30 September 2022.

5.7.6. Where can I find further information?

A factsheet on conservation covenants can be found on Gov.uk.

For further information please contact – conservation.covenants@defra.gov.uk