



EFRA Select Committee Environment Bill Inquiry

CIEH submission

November 2019

About the Chartered Institute of Environmental Health (CIEH):

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Key messages in this submission:

- We welcome proposals for new binding targets for air quality, particularly on fine particulate matter. However, to show real ambition and to protect public health, the government must make a legally binding commitment to achieve World Health Organization (WHO) guideline levels of air pollution by 2030.
- Power and decision-making for setting air quality targets seems to be concentrated with the Secretary of State and targets would be set in the distant future rather than to achieve compliance in the shortest possible time. Furthermore, there is only a requirement for two air quality targets to be set, rather than the current 12 pollutants that are covered by EU legislation. This is unacceptable when people's health is at stake.
- Although the Bill provides some welcome new powers to local authorities, it also pushes the burden of responsibility onto them while failing to require action from central government or committing additional resources, including financial, to drive effective local action.
- The control of noise pollution should be part of the provisions of the Environment Bill and it is a serious omission for reference to noise to be completely absent from the Bill.
- The Bill must include a 'clean air duty' to ensure all levels of government and public bodies and agencies are contributing to reducing air pollution through their decision-making.
- Providing powers to the Secretary of State to recall some vehicles, which break their own emissions standards, are welcome but do not go far enough. Road transport is responsible for the majority of Air Quality Management Areas being introduced in the UK and therefore a range of ambitious measures is needed to reduce the number of the most polluting vehicles on the road and accelerate the adoption of clean vehicles.

1. Does the Environment Bill meet the Government's commitment to non-regression from EU environmental standards?

The target-setting section of the Environment Bill gives us the most cause for concern. The process and requirements set out in this section of the Bill could mean that lower or more extended targets could be set after Brexit.

The provisions in the Bill mean that only 2 targets for air quality would be required – one on PM_{2.5} and another on another aspect of air quality (Clause 1(2) and Clause 2). If the minimum requirement is implemented, this would mean



that we will have far fewer targets than those currently set by the EU limit values, which cover 12 different pollutants.¹ At the very least, we would like to see targets set for NO_x and PM₁₀, as these pollutants are the main reasons for the declaration of Air Quality Management Areas (AQMAS) across the UK.² These pollutants are also recognised by the WHO as having no 'safe concentration'.³ As a result, new targets must seek to drive down these pollutants as soon as possible. Targets should not be seen to be, or used, as a limit to pollute up to. We need ambitious action to reduce the pollutant concentrations as much below that 'target' as is reasonably possible, based on local circumstances, such as deprivation, geography, population needs and other health and environmental determinants. The Bill should also ensure that there are ongoing resources in place to continue to monitor all relevant pollutants. Monitoring data is fundamental to understanding the impact as well as targeting and evaluating interventions.

The projected time to be taken to meet targets, as set out in the Environment Bill, would mean that we have at least 17 years from now to meet new targets. The air quality targets are due to be set in secondary legislation laid in October 2022 (Clause 3(9)). There is no mention in the Bill of legally binding interim targets on air quality, only long-term targets. Whilst the target for PM_{2.5} can be long term, the other air quality target must be at least 15-years (Clause 1). We consider this to be too long, taking compliance to 2037 at the earliest. Given that the UK has failed to meet EU limit values for many years, and currently 83% of reporting zones still have illegal levels of air pollution,⁴ this kind of time frame will not help to speed up progress to cleaner air.

Furthermore, the process of setting the targets does not ensure that the targets will be sufficiently ambitious (or non-regressive) and does not mean that targets will not be watered down at a later date. Power and decision-making for setting targets appears to be concentrated with the Secretary of State rather than being independently set. Clause (3)(1) requires that advice will be sought from "persons the Secretary of State considers to be independent and to have relevant expertise." Advice should be sought from independently appointed and well resources expert panel and this advice should be published. The Secretary of State should also have to take this advice into account when setting targets.

We would like to see a specific requirement within the Environment Bill for targets on air pollution to match WHO guidelines and for these to be met by 2030 at the very latest, with legally binding interim targets to encourage earlier action.

¹ <https://ec.europa.eu/environment/air/quality/standards.htm>

² 625 AQMAS are declared due to NO_x and 91 AQMAS are declared due to PM₁₀. <https://uk-air.defra.gov.uk/aqma/summary>

³ https://apps.who.int/iris/bitstream/handle/10665/69477/WHO_SDE_PHE_OEH_06.02_eng.pdf;sequence=1

⁴ <https://www.clientearth.org/uk-air-pollution-how-clean-is-the-air-you-breathe/>



Whilst our analysis of the Bill has mainly focussed on the air quality sections, Clauses 79-81 are particularly concerning for the future of groundwater quality. It is a wide-ranging power to amend the regulations that implement the EU Water Framework Directive, controlling the quality of groundwater. These include vital rules about the way water quality is measured and the different chemicals and pollutants that must be considered. There may be some justification for a power to make technical updates to regulations, but this should not be a licence to weaken important targets via secondary legislation.

2. Does the Bill ensure that the Government and public bodies will act in accordance with environmental principles and law and be held to account if they don't?

The independence of the Office of Environmental Protection (OEP) is not fully guaranteed by provisions in the Bill. Despite a lot of debate and comment from stakeholders, much of the section concerning the OEP has not changed substantially.

Although the Bill provides some welcome new powers to local authorities in Schedule 12, it also passes the burden of responsibility to local authorities, without increasing the resources available to exercise those powers. It is encouraging to see that all 'relevant public authorities' will be asked to have regard to the air quality strategy, however someone will need to hold these bodies to account and ensure that they fully comply with the requirements in the local strategy. As no detail is given in the Environment Bill about who will be responsible for enforcing this new responsibility locally, this is likely to fall on the local authorities (district councils), which are tasked with leading air quality work. This could be resource-intensive, as even at a local level 'relevant public bodies' are numerous and work to hold these bodies to account, not to mention escalating any disagreements to the Secretary of State, will need to be factored into the local authorities resources to implement air quality improvements. Similarly, the identification of the sources of pollutants, as required by the legislation, will be resource intensive.

Dedicated ring-fenced funding should be provided to local authorities in order to resource air quality work locally. The production of guidance and facilitation of information-sharing on effective strategies would also be useful to support local areas in carrying out these duties.

Whilst the Bill makes useful provisions for all types of local authorities and 'relevant public agencies' to have regard to the local air quality strategy, it does not require all national agencies to make meaningful commitments to reducing air pollution. Ambitious action will need to be taken on a national scale to protect human health and produce reductions in pollution in the shortest possible time. The Bill should introduce a 'clean air duty' requiring all levels of government and



all public bodies to factor air quality into their decision-making, including targets for relevant national agencies. One such key body would be Highways England, which currently has no specific targets to tackle air pollution on their roads. Central government should also assume responsibility for enforcing this duty on any national agencies.

3. Will the Office for Environmental Protection (OEP) have the powers, resources and independence from Government to effectively fulfil its role?

The government has agreed that in order to ensure its financial independence, the OEP will be provided with a five-year indicative budget which is formally ring fenced by HM Treasury within any given Spending Review period. This is a welcome development.

However, in other areas, the Environment Bill does not go far enough to ensure and guarantee the independence for the OEP from central government. Firstly, the process of appointing the Chair and other non-executive members of the OEP board has not changed since the publication of the draft bill.

The remit of the OEP could also be widened to ensure that this new body can function effectively. Many of the OEP's functions rely on the identification of a potential 'failure to comply with environmental law' by a public authority. However, the definition of this term in Clause 26(2) is too prescriptive. This is already a clear phrase with an obvious meaning – it does not require elucidation in legislation. This definition should therefore be removed.

The OEP must be empowered to conduct broader inquiries into systemic issues and make recommendations or issue guidance as a result of its investigations. This could be established in Clause 24 (monitoring and reporting on environmental law) and could help prevent breaches of law before these occur. Clause 28(9) should be amended to require the publication of the reports that the OEP prepares, following an investigation.

4. Are there concerns about the powers and provisions (including on setting targets) relating to air quality, biodiversity, water resource management and waste management and whether they will be effective? Has the Government provided enough detail on the secondary legislation, or other non-legislative policy measures, that would be required?

We mentioned our concerns around the processes of target-setting in response to Question 1. We highlighted that the time taken to set targets in secondary legislation as well as the long-term nature of the targets makes it likely that



there will be a long time lag to achieving the targets set. Interim targets must be set to encourage earlier action, rather than relying only on distant targets. At the same time, the Secretary of State will have powers to amend and reduce targets if these are deemed to be too costly or unrealistic in the future (Clause 3(3)).

New powers for the Secretary of State to require a recall for cars, which do not meet emissions standards under real world conditions, are a step in the right direction. This should ensure that the legacy of Euro 5 and 6 cars can be retrofitted or owners of these vehicles to be compensated. However, this provision is only one part of a suite of proposals needed in order to reduce emissions and pollution from personal vehicles.

The Environment Bill should be introducing incremental minimum standards for all new vehicles, banning the sale of new diesel and petrol cars by 2030. There should also be provisions to phase out older and most polluting vehicles, including personal cars, taxis, minicabs and heavy goods vehicles and vans by 2025. This includes the use of tools, such as a national scrappage scheme, significant government support to incentivise the purchase of new low emissions private vehicles (electric and hybrid), and the development of a national infrastructure charging points for zero emissions vehicles. The Bill should also establish a national vehicle labelling scheme, which is based on real world emissions and extends to the entire market, including second hand vehicles, in order to help guide consumers and businesses to buy the cleanest possible vehicles. Last but not least, prescribed standards for public transport vehicles and vehicles used and commissioned by local authorities and other public bodies should also form part of proposals to reduce and remove polluting vehicles off the roads.

Last but not least, there is no mention of noise in the Environment Bill, which seems like a serious omission. Noise is the single largest issue of complaint made to local authorities in the UK.⁵ Over 80% of people in UK report being exposed to noise pollution in their homes⁶ and in 2012, 48% of a survey sample in the UK reported that their home life was 'spoiled to some extent' by environmental noise.⁷ It is also an important environmental 'pollutant' with health implications on the population. The Department for Food, Agriculture and Rural Affairs (DEFRA) estimates that the annual social cost of urban road noise in England is £7 to 10 billion. This places it at a similar magnitude to road accidents (£9 billion) and significantly greater than the impact of climate change (£1 to 4

⁵ Annual Report of the Chief Medical Officer 2017 (Ibid.)

⁶ Annual Report of the Chief Medical Officer 2017, "Health Impacts of All Pollution – what do we know?": https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690846/CMO_Annual_Report_2017_Health_Impacts_of_All_Pollution_what_do_we_know.pdf

⁷ Noise attitudes defra



billion).⁸ It is important that noise is featured as part of this Bill with some proposals to improve the health and experiences of people in the UK.

5. Does the Bill allow for common frameworks for governance and principles to ensure there is coherent implementation of environmental policy across the UK? What steps do the UK Government and Devolved Administrations need to take to make that a reality?

We would welcome further clarification of the reserved functions of UK Ministers that would be subject to oversight by the OEP. In particular, it would be useful to have more information on the reasons why the reserved functions of UK Ministers in Northern Ireland are rightly subject to the environmental principles (Schedule 2, Paragraph 8(2)) but that this is not the case in regard to the reserved functions of UK Ministers in Scotland and Wales (clauses 127(1) and 18(3)(c), taken together.

6. Has sufficient consideration been given to the resource implications of the Bill for national and local government and other public bodies?

Local authorities leading the work on local air quality strategies will need to have increased resources in order to use the new powers within the Environment Bill effectively.

District councils are likely to be tasked with holding other local bodies to account on air quality. Typically, district councils tend to lead work on air quality, whilst county councils will be in charge of local transport policies. In some areas, the lack of cooperation between these bodies limited the effectiveness of local air quality strategies, especially where these have sought to reduce road transport emissions. The Environment Bill strengthens the duty for county councils to cooperate on air quality plans (Schedule 12) and this is to be welcomed. However, county councils may still disagree with the plans proposed by a district council and the case would need to be taken to Secretary of State for a decision. Furthermore, the less defined other 'relevant public bodies' could be numerous. Local district councils will need resources to draw up good quality local plans and also monitor other public bodies to ensure they are also playing their part.

The duty on controlling the emission of chimney smoke (Schedule 13) is often not enforced, as the existing powers to take action are onerous on the resources of a local authority and a successful prosecution is difficult to achieve. Whilst the

⁸ DEFRA (2014) "Guidance: Noise pollution: economic analysis": <https://www.gov.uk/guidance/noise-pollution-economic-analysis>



changes proposed in Schedule 13 should make it easier for local authorities to give out fines for the emission of smoke from a domestic chimney in a smoke control area, the smoke would still need to be witnessed by an officer. This would involve employing a competent officer to patrol the streets to look for smoke.

Furthermore, the Environment Bill requires local authorities to identify of the sources of pollutants, including where these are coming from a neighbouring authority or within the boundary of a public body or agency (Schedule 12, Clause 5(3)). This is likely to be resource intensive as monitoring needs to be done by appropriately trained staff over a period of time to ensure that periodic emissions are not missed.