

READING BOROUGH COUNCIL

REPORT BY DIRECTOR FOR ECONOMIC GROWTH & NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING & TRANSPORT COMMITTEE		
DATE:	7 JULY 2022		
TITLE:	IMPLICATIONS OF THE ENVIRONMENT ACT 2021		
LEAD COUNCILLOR:	CLLRS PAGE, LENG & ROWLAND	PORTFOLIO:	CLIMATE STRATEGY & TRANSPORT; PLANNING & ASSETS; ENVIRONMENTAL SERVICES & COMMUNITY SAFETY
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out the key implications of the Environment Act 2021 as they relate to the Council, its policies and functions. The Report sets out the timescales over which key provisions of the Act come into force, summarises the resource implications of these provisions, and invites SEPT to consider and advise on how some of these implications might be addressed going forward.
- 1.2 Appendix 1: summary of Environment Act provisions and implications for local authorities.

2. RECOMMENDED ACTION

- 2.1 That the new obligations and powers arising from the Environment Act 2021 as they apply to central and local government be noted;
- 2.2 That the Council's collaboration with the other Berkshire authorities, including the pooling of resources as required, to discharge the new responsibilities in relation to the provisions of the Act on 'Restoring Nature', particularly in relation to the development of a Local Nature Recovery Strategy for Berkshire be approved.

3. POLICY CONTEXT

- 3.1 The Environment Act passed into law in November 2021 and creates new obligations and powers, or amends the existing framework of obligations and powers, for protection and enhancement of the natural environment. The Act gives statutory force to some of the policy aspirations set out in the Government's 25 Year Environment Plan.
- 3.2 Key provisions of the Act, and the main implications for the Council and other local authorities, are set out in Appendix 1. While most of the provisions within the Act have some implication for local authorities, either as a regulator, a public body or a decision-maker, the following are likely to be among the most important implications for Reading Borough Council:

- **Waste and resource efficiency:** subject to final details of the schemes, the proposed introduction of Extended Producer Responsibility (EPR), Deposit Return Schemes (DRSs) and new requirements on the range of materials which will need to be collected for recycling could have significant implications for both the amount and the mix of recycled materials the Council collects. Further details are awaited of secondary legislation, and the re3 partnership is responding to related ‘open’ consultations on charging at HWRCs and Booking Systems, and proposals to include Energy from Waste (EfW) plants within the UK Emissions Trading System which would result in a levy being placed on EfW tonnage. These consultation responses are being reported to the Joint Waste Disposal Board in July, and any further decisions required arising from these and other areas of the Act will be referred to Heritage, Neighbourhoods and Leisure Committee.
- **Air quality:** the Act will strengthen both the obligations of the Council to tackle air quality and the powers available to deal with it, whilst also requiring other bodies to work with the Council to implement measures designed to improve air quality. The Act strengthens the current requirement for Air Quality Action Plans to ‘work towards’ air quality objectives to ‘achieve’ and ‘maintain’ them. While the sanctions for non-compliance are at this stage unclear, recent legal cases have illustrated the significant reputational damage associated with failures to tackle air quality.

The main changes relating to AQ are:

- The Environment Bill will deliver cleaner air for all by requiring the government to set targets on air quality, including for fine particulate matter, the most damaging pollutant to human health.
- Councils and other relevant public bodies will be required to work together more closely to tackle local air quality issues, and it will be easier for local authorities to enforce restrictions on smoke emissions from domestic burning. The government will also be required to regularly update its National Air Quality Strategy.
- The Bill gives the government the power to make vehicle manufacturers recall vehicles if they do not comply with relevant environmental standards, ensuring illegally polluting vehicles are taken off the road quickly.
- **Restoring nature:** new requirements for development to deliver a statutory minimum 10% ‘net gain’ in biodiversity on the current baseline, and for the production of a Local Nature Recovery Strategy, will have significant implications for the Council’s planning and biodiversity functions. Biodiversity Net Gain (BNG) may also provide significant opportunities and income streams for the Council and its partners to deliver enhancement to the natural environment.

The Reading Local Plan already includes policies to deliver Biodiversity Net Gain ‘wherever possible’ (Policy EN12b) but the Act makes this mandatory from November 2023. The development of a Local Nature Recovery Strategy (LNRS), which Government has decided should be at the Berkshire scale, provides an opportunity to progress the strategic Biodiversity Opportunity Areas and other sites in the ‘green network’ identified in the Local Plan (Policy EN12), with BNG potentially providing additional resources for their delivery.

4. THE PROPOSAL

- 4.1 **Current Position:** the Council already has policies in place covering many of the areas included in the Act, either in its Local Plan, Local Transport Plan, Air Quality Action Plan, Waste Strategy or the Reading Climate Emergency Strategy. Changes to these policies or their implementation may be required, however, to take account of the new obligations and powers created by the Act.

- 4.2 Options Proposed:** one issue for the Council to consider is how best to take forward those obligations which either need to be progressed jointly with neighbouring authorities (such as the duty to prepare a Local Nature Recovery Strategy at Berkshire scale) or which might benefit from being taken forward jointly (e.g. the approach to Biodiversity Net Gain where it may be beneficial to ensure a degree of consistency and to work together to deal with opportunities for biodiversity enhancement which cross local authority boundaries). The recommendations in this report therefore provide for such collaboration and for the pooling of resources where this would enable new obligations to be met more effectively. This could include the pooling of 'additional burdens' funding received or the creation of joint roles where this would better enable the provisions of the Act to be implemented more effectively.
- 4.3 Other Options Considered:** in the context of the approach to pooling resources suggested above in 4.2, the alternative would be for the Council to retain all additional burdens funding and seek to meet the new obligations on its own account, which may be a less efficient way of doing so.

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 Reading Borough Council's vision is: *'To help Reading realise its potential - and to ensure that everyone who lives and works here can share the benefits of its success.'*

Healthy environment

- The Act is designed to make it easier for people to recycle a wider range of waste products and incentivise this through Deposit Return Schemes.
- The new requirements for Biodiversity Net Gain should improve the Borough's environment and provide resources to support enhancements.

Thriving Communities

- Environmental inequalities are closely related to wider social and health inequalities, and by improving the environment as the Act intends, these inequalities can be addressed.
- Strengthening of policies on air quality will help address this important public health issue.

Inclusive economy

- The Act will stimulate the development of new skills, products and services to address environmental challenges and create opportunities in the 'green economy' locally.

6. ENVIRONMENTAL AND CLIMATE IMPLICATIONS

- 6.1 Effective implementation of, and compliance with, the provisions of the Act within Reading should deliver environmental benefits in the areas covered by the legislation. A climate impact assessment has been conducted which suggests a net medium positive impact, with particularly significant positive impacts in the area of waste. It will therefore be important for the Council to take action to ensure effective implementation and compliance, deploying additional burdens funding being made available by Government for this purpose accordingly.

7. COMMUNITY ENGAGEMENT AND INFORMATION

- 7.1 Section 138 of the Local Government and Public Involvement in Health Act 2007 places a duty on local authorities to involve local representatives when carrying out "any of its functions" by providing information, consulting or "involving in another way". Government has consulted on the development of the Act and continues to consult on

various policy initiatives arising including those for which secondary legislation may be required.

8. EQUALITY IMPACT ASSESSMENT

- 8.1 Government has conducted impact assessments on the implications during the development of the legislation. No Equalities Impact Assessment is required for the purposes of this report.

9. LEGAL IMPLICATIONS

- 9.1 The Act creates new obligations and powers for local authorities, or amends the existing framework of obligations and powers, for protection and enhancement of the natural environment as summarised in Appendix 1. Most of these provisions will come into force in the coming months and years and while this report sets out the context, further reports may need to be brought forward where key decisions are required.

10. FINANCIAL IMPLICATIONS

- 10.1 Government is providing funding for local authorities in accordance with the ‘additional burdens’ principle. While some of this funding has been confirmed e.g., in relation to new obligations on Biodiversity Net Gain (£20,094), other funding is less clear, such as for Local Nature Recovery Strategies which may be provided to the lead authority. Where obligations need to be progressed in partnership with neighbouring authorities (e.g. for development of a Local Nature Recovery Strategy which will be at the Berkshire scale), it may be advisable to ‘pool’ resources to enable these obligations to be met more effectively and efficiently, particularly given skills shortages in this sector.

11. BACKGROUND PAPERS

- 11.1 There are none.

APPENDIX 1: ENVIRONMENT ACT PROVISIONS AND IMPLICATIONS FOR LOCAL AUTHORITIES

ENVIRONMENT ACT PROVISIONS	IMPLICATIONS FOR LOCAL AUTHORITIES (LAs)
1. ENVIRONMENTAL GOVERNANCE	
<p>A new statutory cycle of environmental target setting and reporting for air quality, biodiversity, water and waste reduction/resource efficiency with a requirement for Government to have a minimum 15 year Environmental Improvement Plan (EIP). The Government’s existing 25 Year Environment Plan of 2019 becomes the first EIP under the Act, against which there is now a duty to report annually.</p>	<p>LAs, through their waste management, air quality and planning functions, will be expected to contribute towards the aims of the EIP.</p>
<p>A new duty for Ministers to have regard to five environmental principles which have been enshrined in law: integration, prevention, precautionary, rectification at source and polluter pays. A statutory policy statement will elaborate on their application.</p>	<p>The new duty applies only to Ministers but LAs ‘should be aware of the new duty’ as the principles will filter down into local policy.</p>
<p>The Act established an Office for Environmental Protection (OEP), an independent statutory regulator with scrutiny and advisory functions and powers to investigate complaints on alleged serious breaches of environmental law by all public bodies. The OEP began operating in January 2022.</p>	<p>Criminal law will continue to be enforced/regulated by responsible bodies (including LAs), but the OEP will provide oversight of existing regulators. LAs may be subject to investigations and enforcement action by the OEP.</p>
2. WASTE & RESOURCE EFFICIENCY	
<p>Extended Producer Responsibility (EPR) will increase obligations on producers for the environmental impacts of their products throughout their life cycle, including via financial means. The aim is to encourage better design and use of products and improve management of residual waste. The measure will be applied to packaging first (consultation has already taken place on this) before Government will consider other products/materials.</p>	<p>EPR will incentivise producers to reduce packaging use and design packaging to be easier to re-use/recycle, with implications for the balance of different household and commercial waste streams. The Government says there will be no additional burdens on LAs but that EPR will see LAs receive payments for managing packaging waste.</p>
<p>The Act gives government the power to introduce Deposit Return Schemes (DRS) to promote recycling/re-use. Government has consulted on options and will respond shortly.</p>	<p>Introduction of DRSs should reduce some waste streams currently collected by LAs at the kerbside as well as reducing litter.</p>
<p>The Act seeks to make it easier for householders to recycle by ensuring that LAs collect the same materials for recycling. The Act will also ensure greater separation of waste streams from non-domestic premises (schools, hospitals and businesses). Government has consulted on whether it should set out minimum service standards in statutory guidance.</p>	<p>The Act requires all LAs to collect the same recyclable waste streams: paper and card; glass; metal; food waste and garden waste. This should lead to more diversion from landfill. Frequency of collections will remain at the discretion of LAs (except for weekly food collections).</p>

The Act gives enabling powers for mandatory electronic waste tracking to be introduced, to crack down on waste crime. The new system is anticipated to go live from 2023 to 2024.	Government anticipates that mandatory tracking will help LAs make savings by simplifying and reducing reporting requirements.
The Act will allow enforcement powers to be used 'with a high degree of professionalism' and place improved enforcement guidance on a statutory footing.	LA enforcement staff with powers to issue fixed penalty notices may require additional training or assessment.
The Act introduced measures to improve the regulator's effectiveness in tackling waste crime.	Use of extended powers will be at the discretion of LAs.
3. AIR QUALITY	
The Act introduces a duty to set a legally binding target for fine particulate matter (PM2.5). Government will review the local PM2.5 objectives as part of the Air Quality Strategy which will be published in 2023.	While responsibility for meeting targets sits with Government, LAs will be required to propose measures to comply with local standards to be included in Air Quality Action Plans.
The Act should strengthen the ability of LAs to use existing powers to tackle air quality and broadens the range of bodies required to work with LAs to improve air quality. It also strengthens requirements for Air Quality Action Plans from 'work towards' to 'achieve' and 'maintain' with specified dates for measures to be implemented.	Any new burdens will be funded as per the new burdens principle. LAs who have been directed to reduce nitrogen dioxide emissions can seek support from the Clean Air Fund. Statutory guidance is due to be published this year.
The Act amends the Clean Air Act 1993 to give LAs a 'simpler mechanism' to tackle emissions from domestic solid fuel burning including civil penalty notices in Smoke Control Areas.	LAs already have duties to monitor and act where statutory limits are breached. A small extra cost is anticipated in Smoke Control Areas.
4. WATER	
The Act creates a new duty on sewerage undertakers by placing the drainage and sewerage management planning process on a statutory basis.	No direct additional burdens for LAs are anticipated but existing duties to cooperate remain in place.
The Act enables changes to valuation calculations associated with land drainage and enables expansion/creation of internal drainage boards.	Creation/expansion of internal drainage boards is a matter local choice, in which LAs will have a say.
5. RESTORING NATURE	
The Act makes Biodiversity Net Gain (BNG) a statutory requirement in the planning process, strengthening the current position in which it is only 'encouraged'. BNG will require applicants to deliver at least 10% gain in biodiversity above the current baseline and will become a requirement in late 2023.	BNG will need to be applied to development control decisions. £4m has been made available to help LAs prepare for BNG and government has committed to funding new burdens.
The Act strengthens the existing duty on public bodies to 'have regard' to biodiversity by requiring them to consider how they can 'improve' biodiversity through the exercise of their functions.	LAs will need to consider the action they can take to enhance biodiversity, with a requirement to report at least every 5 years.

<p>The Act requires ‘responsible authorities’ (typically LAs) to prepare a Local Nature Recovery Strategy (LNRS) to which all public bodies will be required to have regard.</p>	<p>Government has determined that an LNRS should be prepared at Berkshire scale. Additional burdens funding is being made available to enable this.</p>
<p>The Act enables creation of Species Conservation Strategies targeting recovery of individual species affected by a range of impacts where mitigation/compensation is wider than project level.</p>	<p>LAs will be required to co-operate with Natural England in setting up SCSs and to have regard to them in carrying out their functions.</p>
<p>Natural England can put a Protected Site Strategy (PSSs) in to manage the impact of plans or projects on a European Site, SSSI or Marine Conservation Zone</p>	<p>LAs will need to be aware of PSSs when pertinent to their jurisdictions.</p>
<p>The Act creates a duty on local highway authorities to consult before felling street trees (other than for certain exemptions) from April 2023.</p>	<p>LA’s will need to consult and will be required to have regard for public viewpoints when making decisions.</p>
<p>Conservation Covenants are agreements between a landowner and a ‘responsible body’ such as a charity or public body to protect/enhance natural or heritage features of land. While voluntary they can be made legally binding for the public good. Most likely to be used when there is a commercial component, such as providing payments for ecosystem services and BNG.</p>	<p>The Act creates no new obligations though LAs could potentially take on obligations under Conservation Covenants either as a landowner with a responsible body, or as a responsible body themselves.</p>