

**Seven essential ‘clean air’ amendments for the Environment Bill (HC Bill 9)**

1. Human right to clean air must be enshrined precisely and explicitly in UK law
2. Targets must include the latest published World Health Organisation guidelines for air quality
3. Fundamental environmental principles must be adopted
4. Office for Environmental Protection (OEP) must have ‘teeth’
5. Air Pollution Improvement Areas (APIAs) should replace outdated ‘Smoke Control Areas’
6. Climate Change Committee must be given enhanced duties and powers to consider ‘air’ holistically
7. People must be warned about air pollution

The COVID-19 pandemic makes it more important than ever that the Environment Bill is amended to achieve cleaner air and mitigate and adapt to climate change.

The seven proposed amendments include new duties and powers to ensure clean air for ministers, Mayors for combined authority areas, local authorities and the Committee on Climate Change, to broaden environmental principles provisions and to include essential air quality monitoring, information and reporting requirements.

Clean Air in London (CAL) has been advised by Kate Harrison at Harrison Grant Solicitors

**Reasons for the amendments**

1. Rights protected by the European Convention on Human Rights mean it is the duty of the state to ensure that the air is fit to breathe and that we are protected from the impact of climate change.
2. When the Secretary of State is considering which targets to adopt or amend and what those targets should be, they must first have regard to the latest published World Health Organisation (WHO) guidelines for ambient and indoor air quality.
3. This will ensure that the Secretary of State has access to and consideration of up to date scientific advice before decisions on targets are made.
4. The duty to “take into account” the WHO guidelines mirrors the requirement contained in the Climate Change Act 2008 in relation to advice of the Committee on Climate Change.
5. The amendments also incorporate powers for the OEP to impose penalties where public authorities have failed to comply with its decision notices. These powers ensure that the OEP will be able to enforce its decisions.
6. This power to impose penalties is similar to the power of the CJEU to impose fines on Member States for failing to comply with its judgments (Art.260(2) TFEU).
7. Appropriate powers have been introduced to ensure that ministers, Mayors of combined authority areas and local authorities can bring about the necessary remedial action to meet targets.
8. The acceleration in climate change and the short time left within which to take measures to prevent further irreversible damage mean that measures to tackle air quality should include measures to tackle GHG emissions and vice versa. The amendments therefore focus on ‘air’ and ‘air pollution’ rather than the narrower ‘air quality’.

**\*\*\*EXISTING TEXT\*\*\***

The existing text of Part 1 Chapter 1, clauses 1 to 3 of the Environment Bill is:

<https://services.parliament.uk/bills/2019-21/environment.html>

**IMPROVING THE NATURAL ENVIRONMENT**

*Environmental targets*

**1 Environmental targets**

(1) The Secretary of State may by regulations set long-term targets in respect of any matter which relates to—

- (a) the natural environment, or
- (b) people’s enjoyment of the natural environment.

(2) The Secretary of State must exercise the power in subsection (1) so as to set a long-term target in respect of at least one matter within each priority area.

(3) The priority areas are—

- (a) air quality;
- (b) water;
- (c) biodiversity;
- (d) resource efficiency and waste reduction.

(4) A target set under this section must specify—

- (a) a standard to be achieved, which must be capable of being objectively measured, and
- (b) a date by which it is to be achieved.

(5) Regulations under this section may make provision about how the matter in respect of which a target is set is to be measured.

(6) A target is a “long-term” target if the specified date is no less than 15 years after the date on which the target is initially set.

(7) A target under this section is initially set when the regulations setting it come into force.

(8) In this Part the “specified standard” and “specified date”, in relation to a target under this section, mean the standard and date (respectively) specified under subsection (4).

(9) The Secretary of State may not by regulations under this section make any provision which, if contained in an Act of the National Assembly for Wales, would be within the legislative competence of the Assembly.

**2 Environmental targets: particulate matter**

(1) The Secretary of State must by regulations set a target (“the PM<sub>2.5</sub> air quality target”) in respect of the annual mean level of PM<sub>2.5</sub> in ambient air.

(2) The PM<sub>2.5</sub> air quality target may, but need not, be a long-term target.

- (3) In this section “PM<sub>2.5</sub>” means particulate matter with an aerodynamic diameter not exceeding 2.5 micrometres.
- (4) Regulations setting the PM<sub>2.5</sub> air quality target may make provision defining “ambient air”.
- (5) The duty in subsection (1) is in addition to (and does not discharge) the duty in section 1(2) to set a long-term target in relation to air quality.
- (6) Section 1(4) to (9) applies to the PM<sub>2.5</sub> air quality target and to regulations under this section as it applies to targets set under section 1 and to regulations under that section.
- (7) In this Part “the PM<sub>2.5</sub> air quality target” means the target set under subsection (1).

### **3 Environmental targets: process**

- (1) Before making regulations under section 1 or 2 the Secretary of State must seek advice from persons the Secretary of State considers to be independent and to have relevant expertise.
- (2) Before making regulations under section 1 or 2 which set or amend a target the Secretary of State must be satisfied that the target, or amended target, can be met.
- (3) The Secretary of State may make regulations under section 1 or 2 which revoke or lower a target (the “existing target”) only if satisfied that –
  - (a) meeting the existing target would have no significant benefit compared with not meeting it or with meeting a lower target, or
  - (b) because of changes in circumstances since the existing target was set or last amended the environmental, social, economic or other costs of meeting it would be disproportionate to the benefits.
- (4) Before making regulations under section 1 or 2 which revoke or lower a target the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (3).
- (5) Regulations lower a target if, to any extent, they –
  - (a) replace the specified standard with a lower standard, or
  - (b) replace the specified date with a later date.
- (6) Regulations under section 2 may not revoke the PM<sub>2.5</sub> air quality target (but may amend it in accordance with this section).
- (7) For the purposes of this Part a target is met if the specified standard is achieved by the specific date.
- (8) Regulations under section 1 or 2 are subject to the affirmative procedure.
- (9) A draft of a statutory instrument (or drafts of statutory instruments) containing regulations setting –
  - (a) Each of the targets required by section 1(2), and

(b) The PM<sub>2.5</sub> air quality target set under section 2 is met,

Must be laid before Parliament on or before 31 October 2022.

The existing text of Part 1 Chapter 1, clause 16 of the Environment Bill is:

*Policy statement on environmental principles*

**16 Policy statement on environmental principles**

(1) The Secretary of State must prepare a policy statement on environmental principles in accordance with this section and section 17.

(2) A “policy statement on environmental principles” is a statement explaining how the environmental principles should be interpreted and proportionately applied by Ministers of the Crown when making policy.

(3) It may also explain how Ministers of the Crown, when interpreting and applying the environmental principles, should take into account other considerations relevant to their policy.

(4) The Secretary of State must be satisfied that the statement will, when it comes into effect, contribute to—

- (a) the improvement of environmental protection, and
- (b) sustainable development.

(5) In this Part “environmental principles” means the following principles—

- (a) the principle that environmental protection should be integrated into the making of policies,
- (b) the principle of preventative action to avert environmental damage,
- (c) the precautionary principle, so far as relating to the environment,
- (d) the principle that environmental damage should as a priority be rectified at source, and
- (e) the polluter pays principle.

The existing text of Part 1 Chapter 2, clause 34 of the Environment Bill is:

**34 Linked notices**

(1) If the OEP gives an information notice or a decision notice to more than one public authority in respect of the same or similar conduct, it may determine that those notices are linked.

(2) A Minister of the Crown may request that the OEP determine that information notices or decision notices are linked and the OEP must have regard to that request.

(3) The OEP must provide the recipient of an information notice or a decision notice (a “principal notice”) with a copy of every information notice or decision notice which is linked to it (and such a notice is referred to in this section as a “linked notice”).

1. (4) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence, relating to a linked notice, between the OEP and the recipient of that linked notice.

(5) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence between the OEP and the relevant Minister that relates to a linked notice.

(6) Subsection (5) does not apply where either the recipient of the principal notice or the linked notice is a Minister of the Crown.

(7) The obligation to provide a copy of any notice or correspondence under this section does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.

(8) For the purposes of this section, correspondence is relevant if—

- (a) it is not correspondence in connection with an environmental review or any other legal proceedings (such as judicial review), and
- (b) it is not correspondence sent by virtue of section 37(1)(a) or (b).

The existing text of Part 4, clause 69 of the Environment Bill is:

## AIR QUALITY AND ENVIRONMENTAL RECALL

### *Air quality*

#### **69 Local air quality management framework**

Schedule 11 contains amendments of Part 4 of the Environment Act 1995 (air quality).

### **\*\*\*TEXT OF THE AMENDMENTS\*\*\***

#### **1. New text: Human right to clean air must be enshrined precisely and explicitly in UK law**

1. Chapter 1, page 1, line 4: after “ENVIRONMENT” insert new sub-heading and new clause 1 and renumber clauses and references accordingly:

### *Rights and duties*

#### **1 Rights and duties**

(1) The powers and duties in this Act are to be exercised in pursuance and recognition of the duties of the state and public authorities at all levels to protect human life and health and to ensure a healthy environment now and for future generations under Article 2 of the ECHR (Right to life) and Article 8 (Right to respect for private and family life and home).

(2) There is a right to breathe clean air.

(3) Public authorities at all levels shall act compatibly with –

- (a) the National Air Quality Strategy,
- (b) the national Environmental Improvement Plan,
- (c) any national air quality plan,

- (d) any national short-term action plan on air quality,
- (e) any Air Pollution Improvement Area and
- (f) the need to achieve net zero emissions by 2030.

when exercising any relevant function.”

## **2. New text: Targets must include the latest published World Health Organisation guidelines**

2. Clause 2, page 2, line 31: after “under subsection (1).” insert new clause 3.

“3. (1) Before making or amending any targets under section 1 or 2, the Secretary of State must take into account, the latest published World Health Organisation guidelines for ambient and indoor air quality, when deciding –

which targets to set,  
what those targets should be,  
where those targets should be met, and  
when the targets should be met by.

(2) The Secretary of State must, when considering the making or amending of targets under section 1 or 2, send copies of the latest published World Health Organisation guidelines to the other national authorities.

(3) If any regulations made or amended under section 1 or 2 –

- (a) fail to establish a specific target,
- (b) exclude any location where there is human exposure to air pollution, or
- (c) establish a different target or timescale for compliance,

than that recommended by the latest published World Health Organisation guidelines, the Secretary of State must publish a statement setting out the reasons for that decision.

(4) Within six months of the publication of new World Health Organisation guidelines the Secretary of State shall review targets and timescales for compliance in accordance with this Act.

## **3. New text: Fundamental environmental principles must be adopted**

3. Sub-heading page 10, line 1: delete “Policy...” and replace with “Duty to adhere to and policy...”.

4. Clause 16, page 10, line 2: delete “Policy...” and replace with “Duty to adhere to and policy...”.

5. Clause 16, page 10, line 3: before “The Secretary” insert new sub-clause (1) and renumber remaining sub-clauses accordingly:

“(1) In exercising their functions and carrying out their duties under this Act the Secretary of State and all public bodies and authorities must adhere to the environmental principles.”

6. Clause 16, page 10, line 16: replace sub-clauses (a) to (e) as follows:

- (a) progress (i.e. non-regression, continuity and tightening), which means that measures aimed at protecting human health and the environment must be aimed at achieving an improvement in human health and the environment, must ensure continuous and comprehensive information (e.g. assessments, monitoring and modelling and zones and agglomerations) and must not weaken standards;
- (b) prevention, which means that environmental regulation must identify and take effective action to reduce the causes of environmental harm before that harm takes place;
- (c) precaution, which means that where there are threats of serious or irreversible damage to the environment, including human health, lack of full scientific certainty must not be used as a reason for postponing measures to prevent harm;
- (d) polluter pays, which means that the costs of pollution or of clean-up should be borne by the person responsible for causing the pollution;
- (e) use of the best available scientific knowledge;
- (f) rectification at source, which means that environmental damage should, as a priority, be remedied at its source;
- (g) integration, which means that environmental protection requirements should be integrated into the definition and implementation of all policies and activities, in particular with a view to protecting public health and promoting sustainable development;
- (h) conservation of the ecosystem structure and functioning, in order to maintain ecosystem services;
- (i) anticipation, prevention or minimisation of the causes of climate change and adaptation to its adverse effects;
- (j) the principles of public participation enshrined in the Aarhus Convention; and
- (k) sustainability, which means to take into account the health of present generations and the needs of future generations.

#### **4. New text: Office for Environmental Protection must have ‘teeth’**

7. Clause 34, page 20, line 37: after “section 37(1)(a) or (b).” insert a new clause 35:

##### **“35. Penalty notices**

(1) If the OEP is satisfied that a public authority has failed to comply with a decision notice, the OEP may, by written notice (a “penalty notice”) require the public authority to pay to the OEP an amount in sterling specified in the notice.

(2) A penalty notice may not be issued before the earlier of:

- (a) the end of the period within which the authority must respond to the decision notice in accordance with section 33(3), and
- (b) the date on which the OEP receives the authority’s response to that notice.

(2) When deciding whether to give a penalty notice to a public authority and determining the amount of the penalty, the OEP must have regard to the matters listed in subsection (3).

(3) Those matters are—

- (a) the nature, gravity and duration of the failure;

- (b) the intentional or negligent character of the failure;
- (c) any relevant previous failures by the public authority;
- (d) the degree of co-operation with the Commissioner, in order to remedy the failure and mitigate the possible adverse effects of the failure;
- (e) the manner in which the infringement became known to the OEP, including whether, and if so to what extent, the public authority notified the OEP of the failure;
- (f) the extent to which the public authority has complied with previous enforcement notices or penalty notices;
- (g) whether the penalty would be effective, proportionate and dissuasive.

(4) Once collected, penalties must be distributed to the NHS, Mayors for combined authority areas and local authorities for the treatment and research of illnesses related to air pollution.

(5) The Secretary of State must, by regulations, set the minimum and maximum amount of penalty.

(6) Regulations under this section are subject to the affirmative procedure.”

#### **5. New text: Air Pollution Improvement Areas must replace outdated ‘Smoke Control Areas’**

- 8. Part 4, page 61, line 10: replace “quality” with “pollution”.
- 9. Part 4, page 61, line 11: replace “quality” with “pollution”.
- 10. Part 4, page 61, line 12: before “Local” add new clauses 69 and 70 and renumber existing clauses accordingly:

#### **“69 Air pollution improvement areas**

- (1) Where the air in a local authority area or any part thereof, exceeds or is expected to exceed the latest published World Health Organisation guidelines for one or more air pollutants, or exceeds or is expected to exceed Committee on Climate Change guidance for achieving net zero emissions by a due date, the Secretary of State, the Mayor for a combined authority area (the “Designating Mayor”) or the local authority for that area (the “Designating Local Authority”) must designate the area, or part thereof, as an air pollution improvement area.
- (2) Where an air pollution improvement area has been designated, the following provisions of this Act have effect.
- (3) Where the Secretary of State, the Mayor for a combined authority area or the local authority has designated an air pollution improvement area under this Act, the Secretary of State must provide money from central funds to the Mayor for that combined authority area or the local authority responsible for that area sufficient for them to carry out their duties arising therefrom.
- (4) The designation must include:



- (a) the applicable NO<sub>x</sub>, NO<sub>2</sub> and PM emission limits including particle number concentrations, and
  - (b) the GHG emission limits for each type of plant as provided for in regulations made by the Secretary of State, standards set by the Designating Mayor or byelaws made by the Designating Local Authority under this Act.
- (5) Within an air pollution improvement area, the amount of NO<sub>x</sub> and PM emitted by the following must at all times be less than the lowest of an amount specified in regulations made by the Secretary of State, standards set by the Designating Mayor or byelaws made by the Designating Local Authority under this Act:
- (a) in any premises, a boiler which is fired by gaseous fuels and has a rated heat output of less than 1MW,
  - (b) in any premises, a solid fuel boiler with a rated output of less than 1MW,
  - (c) the operation of non-road mobile machinery, and
  - (d) any combined cooling, heat and power plant or combined heat and power plant.
- (6) In any premises within an air pollution improvement area, the amount of NO<sub>x</sub>, NO<sub>2</sub> and PM emitted by a stationary generator with a rated thermal input equal or less than 1MW installed on the premises must at all times be less than the lowest of an amount specified in regulations made by the Secretary of State, standards set by the Designating Mayor or byelaws made by the Designating Local Authority under this Act.
- (7) Within an air pollution improvement area, the use of fireplaces, diesel vehicles and other potential emitters of greenhouse gases and air pollutants may be prohibited by standards set by the Designating Mayor or byelaws made by the Designating Local Authority.

**6. New text: Climate Change Committee must have enhanced duties and powers to consider ‘air’ holistically**

11. Part 4, page 61, line 12: before “Local” add new clauses 69 and 70 and renumber existing clauses accordingly:

**“70 Committee on Climate Change enhanced advisory duty**

- (1) The Committee on Climate Change shall advise the Secretary of State and public authorities on all pollutants and emissions in the atmosphere, taking into account the latest published World Health Organisation guidelines for ambient and indoor air quality and that the UK must meet its target of net zero emissions.

Consequential amendments to the Climate Change Act.

In Part 2 of the Climate Change Act 2008 (functions of the Committee on Climate Change) insert a new section:

**“35 (A) Advice on environmental targets for air quality**

(1) It is the duty of the Committee to advise the Secretary of State on the legally binding targets required for air quality, taking into account the latest published World Health Organisation guidelines for ambient and indoor air quality, and how to achieve the targets.

(2) Advice given by the Committee under this section must also contain the evidence for that advice.

(3) Upon receiving the advice of the Committee, the Secretary of State must lay the advice before Parliament.

(4) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice.

## **7. New text: People must be warned about air pollution**

12. Part 4, page 61, line 13: before “Schedule” insert new sub-clause (1):

“(1) It shall be the duty of the Secretary of State to ensure that adequate monitoring and modelling of air quality and greenhouse gases is undertaken and that an assessment is made in all postcode districts to fulfil statutory obligations and make good quality data available to the public. In furtherance of that duty the Secretary of State shall:

- (a) Use air quality data to generate pollution alerts and messages and use a full range of media to actively inform the general public and health care professionals.
- (b) Publish an annual report of air quality and greenhouse gas emissions data in each postcode district.
- (c) Send a copy of the annual report of air quality and greenhouse gas emissions data to the European Environment Agency to assist it in identifying best practices and understanding transboundary air pollution.
- (d) Make live data from continuous air quality monitors available to the general public.
- (e) Regularly publish guidance for the general public on the efficacy of new air quality sensors.
- (f) Maintain and publish registers of all relevant air pollutants, all known controllable sources of each pollutant and the measures and best available technologies that in their opinion would mitigate those pollutants at source.
- (g) Undertake an annual assessment of air quality in each postcode district to inform progress towards meeting the latest published WHO guidelines for air quality.
- (h) Report on progress towards achieving net zero emissions.

13. Part 4, page 61, line 13: before “Schedule” insert (2).

## **8. Notes**

1. Westminster City Council and the Royal Borough of Kensington and Chelsea have pledged to achieve zero for their councils by 2030 with the aim for their whole boroughs to be net-zero by 2040. Mayor Sadiq Khan has pledged to make London net-zero by 2030 if re-elected.

i. <https://www.westminster.gov.uk/westminster-declares-climate-emergency>

ii. <https://www.rbkc.gov.uk/newsroom/all-council-statements/kensington-and-chelsea-be-carbon-neutral-2030>

- iii. <https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>
  - iv. <http://www.legislation.gov.uk/ukpga/2008/27/section/1>
  - v. <https://www.theguardian.com/politics/2020/jan/17/sadiq-khan-vows-to-make-london-carbon-neutral-by-2030-if-re-elected-mayor>
2. Net zero commitments need to be audited to confirm that 2050 is ‘soon enough’ to ensure that the UK makes its full contribution towards keeping the global temperature rise between 1.5c and 2.0c.
  3. World Health Organisation is expected to publish updated Air Quality Guidelines in 2021.  
<https://www.healtheffects.org/meeting/brussels-meeting-air-pollution-and-health-recent-advances-inform-european-green-deal>
  4. Clean Air Act 1956 permitted limited exemptions for up to seven years from the passing of the Act. The current air pollution crisis, climate emergency and technologies make that period too long today <http://www.legislation.gov.uk/ukpga/Eliz2/4-5/52/enacted>.
  5. The postcode area is the largest geographical unit used by the Royal Mail for the purposes of directing mail within the UK. It forms the initial characters of the alphanumeric UK postcode. There are currently 121 geographic postcode areas in use in the UK with, on average, 20 postcode districts to a postcode area:  
[https://en.wikipedia.org/wiki/List\\_of\\_postcode\\_areas\\_in\\_the\\_United\\_Kingdom](https://en.wikipedia.org/wiki/List_of_postcode_areas_in_the_United_Kingdom)