

The Environment Bill: the long view



Martin Baxter & Safia Iman explain why achieving long term environmental targets will rely on holding successive governments to account

Poor air quality, declining biodiversity, plastic waste and climate change are significant long-term challenges which will require concerted effort from government and investment over the long-term to make the necessary improvements. Politicians are in the public glare as people demand immediate action to what essentially are deep-rooted systemic problems that transcend political cycles; a position made harder by declining levels of trust in politics. Additionally, the UK is currently not on track to meet the legally-binding net-zero carbon targets set; if this is not addressed with some urgency, it may very well result in higher economic costs. It's against this backdrop that the Government published its Environment Bill this week

The Bill is a significant undertaking, comprising eight parts (plus 20 schedules and runs to 232 pages; plus there are 208 pages of explanatory memoranda) and has been developed at pace, in part to fill the environmental governance gap as the UK leaves the EU. Pre-legislative scrutiny, which was undertaken at the beginning of 2019, only had part of the governance section to review. As such, given the significant additions that have been included in the Bill and which haven't been scrutinised, we anticipate that a number of correcting amendments will be required during its passage through Parliament.

Part 1 of the Bill covers environmental governance, including: a requirement on the Secretary of State (SoS) to set legally binding environmental targets; a requirement for environmental improvement plans (EIPs) to 'significantly improve' the natural environment and make progress to achieving interim targets; environmental monitoring to keep track of progress; a requirement for ministers to have 'due

regard' to a statement on environmental principles in the development and revision of policy; and the establishment of a new Office for Environmental Protection (OEP) with advisory and enforcement functions (including the power to take legal action for a failure of public authorities to comply with the environmental law). A significant amendment was made to the draft Environmental (Principles and Governance) Bill to remove the exclusion of climate change from the definition of environmental law, such that enforcing climate change laws would fall within the remit of the OEP.

There is much of interest in the Bill which will require careful review, but the area of environmental targets and the interplay with EIPs is worthy of comparison with the Climate Change Act 2008 (CCA 2008).

Balancing the need for action over the long-term without fettering the discretionary powers of the next Government may be in reality a difficult democratic balancing act. Setting a long-term target of net-zero carbon emissions, in line with scientific evidence, against which a successive government will be judged is one thing; however, whether a net zero target will be achieved will require successive governments to take appropriate action to ensure that the trajectory for achievement remains on-track.

The roles of and interplay between Government, Parliament, independent advisers and the public are crucial elements of an effective governance framework to provide long-term certainty. CCA 2008 is seen as an effective model and has informed the process for setting targets in the Environment Bill, in recognition that well-designed targets could offer greater certainty on the strength of ambition and drive action by both businesses and wider society.

CCA 2008 includes a long-term 2050 target, together with a process for setting legally-binding carbon budgets which set the pace for the economy to transition towards the long-term target; the budget for the period 2028–2032 is set at 57% of the 1990 level. The Act (s 13) imposes a duty on the SoS to prepare proposals and policies for meeting carbon budgets. They must prepare 'such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met'.

The Act (s 32) also established an independent Committee on Climate Change (CCC) with both advisory and reporting functions; it has a duty to advise the Secretary of State on carbon budgets and any changes to the budgets or the long-term target; and, a reporting role annually to Parliament on the Government's progress and actions towards meeting the target and budgets.

The Bill (s 1) requires the SoS to set at least one long-term target of at least 15 years in to the future, for each of four specified priority areas by 31 October 2022. The SoS must seek independent advice when setting a target; targets are to be set in statutory instruments through affirmative procedure. On a five-yearly basis, the SoS must review the targets and determine whether significant environmental improvement of the natural environment is being achieved. The SoS must also develop and implement EIPs, with the aim of significantly improving the natural environment. The OEP will monitor progress in improving the natural environment through both EIPs and progress to achieving targets, it will report to Parliament.

A key issue in CCA 2008, and consideration in the Bill, is the credibility of the plans to achieve the targets and the extent to which progress is being achieved. The failure of any government to produce adequate plans for environmental improvement has been a significant issue in relation to air quality, most recently in *R (on the application of ClientEarth) No.3 v Secretary of State for Environment, Food and Rural Affairs and others* [2018] EWHC 315 (Admin), [2018] All ER (D) 131 (Feb) the judge concluded that the 2017 Air Quality Plan was unlawful and granted a mandatory order requiring the urgent production of a supplement to the plan to rectify deficiencies. Time will tell whether the Environment Bill, if it makes it onto the statute book, has equivalent rigour with respect to the credibility of EIPs in setting out how long-term targets will be achieved. **NLJ**

Martin Baxter, chief policy adviser at IEMA.
Safia Iman, barrister at 23 Essex Street & non-executive director of IEMA. IEMA is a worldwide alliance of environment and sustainability professionals working to make our businesses and organisations future-proof.