

# The Environment Act 2021

## Parliamentary Briefing

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### Background

After what has been a long and drawn-out process, ClientEarth welcomes the passing of the Environment Act. The government made the passing of this Act a key plank in its 2019 manifesto, and has consistently promised to deliver *‘the most ambitious environmental programme of any country on Earth’* and that this Act *‘is just the start’*.

Our legal teams have been following the development of the Act closely for several years and argued that it is crucial the UK has strong environmental laws post-Brexit. The Environment Act has been hailed by the government as world-leading legislation that will protect and enhance our environment for future generations, improving air and water quality, tackle waste, increase recycling, halt the decline of species and improve our natural environment.

At ClientEarth, we nevertheless remain disappointed that the details of the Act do not quite meet the world-leading ambition that the government set out to ensure, particularly around provisions for environmental governance, forest protection, and clean air. We also acknowledge, however, that the work to achieve the government’s ambitions only really begins now. As a framework law, the Act is an important foundation, with much relying on further targets, policies and detailed rules that are still to be developed. ClientEarth has consistently taken the position that, in order for the Act to fulfil its purpose, these must be strong enough and effectively enforced to protect people’s health and the environment.

*“We welcome that, after a drawn-out process, the Environment Act is now completed.*

*“It’s hugely important for the UK to have environmental laws post-Brexit, but the Act falls short of the world-leading ambition that the government initially set out to ensure, particularly for environmental governance, the protection of forests, and air pollution.*

*“But now the work really begins to making sure that the UK does have some of the best environmental legislation in the world. As a framework law, the Act is only a foundation – and much relies on further targets, policies and detailed rules that are yet to be developed. These will have to be strong enough and effectively enforced to protect people’s health and the environment in order for the Act to fulfil its purpose.”*

- Kyle Lischak, Head of UK

## **Air Pollution**

We broadly welcome that the Act will create at least two new legally binding targets for one of the most harmful pollutants, fine particulate matter (PM<sub>2.5</sub>). Binding targets are essential for driving ambitious action and setting a clear path and direction of travel for public bodies, private organisations and the public alike, and a suite of targets are needed to address the complex challenges surrounding air quality.

However, we remain particularly disappointed that the government rejected amendments that would have committed them to ensuring that the new targets for PM<sub>2.5</sub> pollution were at least in line with World Health Organization (WHO) guidelines. Amendments to see this level of ambition in the Act were tabled in the Commons by Conservative MP Neil Parish, the Chair of the Efra Committee, and by Baroness Hayman in the Lords. Both received cross-party support, and the House of Lords amendment to the air pollution fell short by just 202 votes to 210 at the first consideration of the Commons amendments, showing a substantial level of support in the Lords to set this level of ambition in legislation. It can only be seen as a missed opportunity, one that people will pay with their health, that the UK government failed to champion this amendment - especially considering that it already recognises air pollution to be the greatest environmental health risk in this country.

Existing UK legal limits for this harmful pollutant are four times weaker than current WHO guidelines published in September 2021. The equivalent of an estimated 40,000 early deaths a year are linked to air pollution in the UK alone, and it reduces the quality of life of many millions more people in communities right across the country. ClientEarth has been taking a leading role within the Healthy Air Campaign coalition in advocating for essential improvements to the legislation to ensure that the law acts to better protect people from dirty air, including meetings with the then Environment Secretary Michael Gove, who agreed that the Act should set targets in line with WHO guidelines, as well as Minister Rebecca Pow MP, then Minister for air quality in March 2021.

The Environment, Food and Rural Affairs Committee has, on numerous occasions, called on the government to address levels of poor air quality in England, highlighting a ‘strong and established’ case that air pollution disproportionately affects those from lower socioeconomic backgrounds. Along with the Transport and Health Select Committees, they have also previously made statements in support of aligning with the WHO guidelines.

In December 2020, a Coroner’s Court in London found that air pollution above legal limits of nitrogen dioxide (NO<sub>2</sub>) and the WHO PM<sub>2.5</sub> guidelines “made a material contribution” to the death of nine-year-old Ella Adoo-Kissi-Debrah in 2013. Ella became the first person to have air pollution formally listed as a cause of death on her death certificate, and this highlighted the very real impact that polluted air can have on individuals and their families. In fact, in his Prevention of Future Deaths report, the Coroner subsequently recommended to the government that “[l]egally binding targets based on WHO guidelines would reduce the number of deaths from air pollution in the UK.”

ClientEarth has a history of fighting for cleaner air, both in the UK and across the EU. Following ClientEarth's three legal challenges between 2011 and 2018, the UK government has now directed over 60 English councils to identify local solutions to reduce pollution to within the legal limit for the toxic gas, NO<sub>2</sub>, in the shortest possible time. The government's own research has found that Clean Air Zones (CAZs) are the best way to rapidly reduce illegal levels of air pollution across our towns and cities. A number of CAZs are currently being rolled out across the country and ClientEarth has been calling on the UK Government to ensure that these are underpinned by financial help and support to affected people and businesses.

*"The new air quality targets to be set under the Act provide the government with a golden opportunity to set truly world-leading ambition to clean up our air, which will not only protect people's health but drive innovation and growth in clean technologies and the solutions that are already at our finger tips on to tackle air pollution in the UK and across the world.*

*"This needs to be led by the evidence on what is necessary to ensure that the health of people now and in the future does not suffer as a result of the air that they have no choice but to breathe. We look forward to working with the government and other stakeholders through the target-setting process to make sure this is achieved."*

- Katie Nield, Clean Air Lead, UK & Western Europe

## The Office for Environmental Protection

We broadly welcome that the Act has now established a new environmental watchdog, the Office for Environmental Protection (OEP), led by Dame Glenys Stacey, a solicitor and civil servant. This new body will hold the Government and other public bodies to account and ensure that environmental laws are complied with after Brexit. It will have various environmental governance roles, including monitoring progress against environmental improvement plans and new environmental targets developed under the Act, enforcement of non-compliance with and the enforcement of breaches of environmental laws by public authorities.

Senior ClientEarth lawyers believe that the OEP must act independently, and that its core objectives of environmental protection and improvement are not undermined. Dame Glenys has been clear that she recognised the substantial importance that the OEP will play in safeguarding environmental standards across the UK, and has previously stated that she intends for the OEP to be an *'approachable'* and *'porous'* organisation that can *'act intelligently'*. She intends that will be *'encouraging people to come and work with us for fixed periods of time – perhaps on time-limited pieces of work'*.

The OEP was originally meant to be fully operational by the end of January 2021 but was understandably plagued by Covid-19 delays. It will now be fully established in its functions and powers by early 2022. ClientEarth has championed good environmental governance for the UK, and the extent to which the OEP will have constitutional oversight of environmental decisions made by parliament. The OEP's duties must ensure that existing environmental standards are not just maintained after Brexit, but enhanced. ClientEarth will continue to closely monitoring the ability for this watchdog to act independently and the availability of an authoritative enforcement process, which regrettably has not been specifically guaranteed in the Act. ClientEarth remains concerned about the restrictions on the availability of remedies following a finding of unlawfulness by a court in an environmental review.

*“The Office for Environmental Protection will be an important tool that holds the UK government and public bodies to account now that we have left the EU. Its scope is wide-ranging, including monitoring progress against environmental improvement plans and new environmental targets, as well as having the ability to enforce non-compliance with environmental law when public authorities fall short.*

*“We look forward to continue working with Dame Glenys and the OEP to champion good environmental governance across the UK.”*

- Gillian Lobo, Acting Head of Litigation

## **Forest Risk Commodities**

We broadly welcome the new legal framework to address the UK’s deforestation footprint but remain concerned with its limited scope and ambition of the proposed forest risk commodities framework. Given the limitations of the framework adopted in the Environment Act, the UK’s deforestation footprint will not be comprehensively tackled by this initiative despite the government reassuring both Houses of Parliament that it would develop a world-leading proposal. We believe that urgent action is still needed to align the production and consumption of forest risk commodities with what nature can provide on a sustainable basis, and that the UK’s forest risk commodities framework needs improvement if it is to have a meaningful impact.

The Act currently only restricts forest risk commodities that are produced ‘illegally’ under producer country laws and has therefore locked a major loophole into the legislation. About one-third of global tropical deforestation is considered ‘legal’ under local laws. This is a particularly concerning approach given the Brazilian Government is in the process of passing a package of laws that will weaken or abolish protections for forests, protected areas and Indigenous Peoples which both academics and civil society have assessed as posing an existential threat to the survival of the Amazon rainforest. Despite their involvement in the Glasgow Leaders Declaration on Forests, the Brazilian Government’s current package of legal reforms will legalise millions of hectares of deforestation, continuing to link the UK’s supply chains to ongoing global deforestation regardless of the Act’s ambition to clamp down on it. Other forest-rich countries face similar political or economic pressure to weaken legal protections for forests for the sake of short-term profit, particularly in the aftermath of the COVID pandemic. Without strong and comprehensive implementing legislation, this new Act now risks driving a race to the bottom in global forest laws, as exporting countries seek to maintain their access to the UK market.

The lack of teeth in the Act leaves a critical gap in deforestation activity and undermines the substantial announcements made in Glasgow at COP26. Currently, the Act does little to prevent the end of the Amazon rainforest, and renders the UK Government’s new law effectively meaningless in terms of Brazilian deforestation. It regrettably also undermines the government’s credibility on leading global efforts to increase ambition on deforestation, climate, and biodiversity standards.

We also believe that more must be done to include important protections for human rights, and particularly the rights of Indigenous Peoples and forest defenders, as the conversion of forests to agriculture production often goes hand-in-hand with the displacement of local communities and significant human rights impacts. The Government has recognised the critically important role that Indigenous Peoples and local communities play in protecting forests during the passage of the Act and recently at COP26 in Glasgow, but the Act lacks a requirement that UK supply chains should not be linked to violations of the rights of these same Peoples and communities. Much more is needed for this

law to reflect that recognition and to deliver the ‘radical change’ and ‘decisive action’ needed to deliver on the Government’s commitment to leave a lighter footprint on nature.

We are equally concerned that the volume of public and private funds being directed at ‘nature based solutions’ may lead to poorer outcomes for forests in forest-rich countries, undermining the effect of the new forest risk commodities law, unless local communities, local civil society organisations and Indigenous Peoples have an influential seat at the table and a say in how forests are protected. While we welcome the spirit of the various pledges made during COP26, like the Global Forest Finance Pledge, the Congo Basin Joint Donor Statement, the MDB Joint Statement for Nature, People and Planet and the IPLC Forest Tenure Joint Donor Statement, these ambitions must be implemented in a coordinated way that prioritises the rights and perspectives of forest-based communities and Indigenous Peoples and consciously avoids the commodification of nature. This kind of engagement takes time, and corners must not be cut merely for the sake of expediting the flow of money. We stand ready to help the government take the next crucial steps in implementing these pledges.

*“We are disappointed that the UK Government’s leadership at COP26 in Glasgow to tackle global deforestation has been undermined by its own flagship law on deforestation. The Environment Act currently does little to realistically prevent the end of the Amazon rainforest, as one-third of global tropical deforestation is considered legal under local laws and will be exempt from new legal restrictions.*

*“That percentage is set to grow as millions of hectares of deforestation are set to be legalised, meaning the UK’s supply chains to ongoing global deforestation will continue, regardless of the Act’s ambitions to stamp out this harmful practice.”*

- Brian Rohan, Head of the Forest and Climate Team

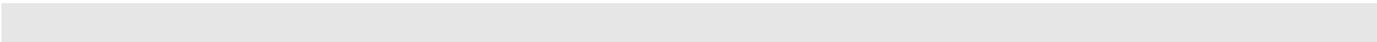
## Conclusion

ClientEarth is keen to work with the government, cross-party politicians and other stakeholders to bridge the gap between the government’s stated ambition for the Environment Act and the current reality where it falls short or has failed to close legislative loopholes. The government set a number of clear and ambitious goals before and during the COP26 summit in Glasgow and the UK parliament has a crucial role in ensuring that the government now meets those goals. The Environment Act is intended to make sure that we have world-leading environmental legislation and secure its position as a global leader in environmental protection. ClientEarth will continue to advocate that the further targets, policies and detailed rules yet to be developed are strong enough for the Act to fulfil this purpose for the sake of the health of people and the environment.

If there is anything that you would like to discuss with our legal experts on the issues above, please do get in touch.

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