

The Rt Hon Dr Thérèse Coffey MP
Secretary of State for Environment, Food and Rural Affairs
The Department for Environment, Food and Rural Affairs
2 Marsham Street
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The Joinery,
34 Drayton Park,
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1 December 2022

Dear Secretary of State,

I am writing to you on behalf of ClientEarth, an environmental law NGO, in your capacity as Secretary of State for Environment, Food and Rural Affairs at what is a crucial time for our country and planet.

We welcomed recent statements made by the Prime Minister reiterating the Government's commitment to uphold and deliver on the ambitions contained in the Environment Act 2021. However, we are concerned by the significant delays in implementing two of the key components of the Environment Act, the environmental targets and the policy statement on environmental principles.

The Environment Act targets

ClientEarth welcomed the opportunity to respond to the public consultation on the environmental targets earlier this year and was pleased when the Government extended the consultation period, as requested by us and other stakeholders, following the release of some of the missing evidence reports.

However, the statutory deadline to lay the finalised targets before Parliament on or before 31 October 2022 has been missed. This means that, as Secretary of State, you are now in breach of the Environment Act. Furthermore, no information has been provided by the Government to indicate the date by which the finalised targets will be laid before Parliament.

The introduction of legally binding targets is urgently required to halt the decline in biodiversity in this country and prevent further pollution of our air and water. The delay in finalising the targets risks further environmental degradation across England and undermines the delivery of the Government's existing commitments in relation to the environment and public health.

For these reasons, ClientEarth supported the formal complaint that was sent to Defra on 31 October 2022 by Greener UK, Wildlife and Countryside Link and the Healthy Air Coalition, which called on the Secretary of State to lay the finalised targets before Parliament as soon as possible. We share the view of the Office of Environmental Protection, in its letter of 28 October 2022, that the finalised targets must be in place by the end of 2022 at the latest. This is needed to minimise adverse knock-on effects on other policy documents, such as the environmental improvement plan (also known as the 25 Year Environment Plan), which must be revised by 31 January 2023, under Section 10(3) of the Environment Act.

The Environmental Principles Policy Statement

The Environmental Principles Policy Statement (“the EPPS”) is another fundamental component of the Environment Act that sets out how the environmental principles should be applied by ministers when making policy. However, it is now over six months since the revised draft EPPS was laid before Parliament, following a public consultation on the draft EPPS. As with the environmental targets, no information has been provided by the Government to indicate when the final policy statement will be laid before Parliament.

The EPPS is intended to work alongside the other key components of the Environment Act to integrate environmental protection into Government policymaking and help to deliver the goals in the 25 Year Environment Plan. With this in mind, we urge you to lay the finalised EPPS before Parliament in the shortest possible timeframe and ensure that Section 19(1) of the Environment Act, which requires ministers to have “due regard” to the policy statement when making policy, is brought into force at the earliest opportunity, following the final approval of the EPPS.

The Retained EU Law (Revocation and Reform) Bill

As highlighted in our letter to the Prime Minister dated 26 October 2022, we are deeply concerned about the Retained EU Law (Revocation and Reform) Bill (“the Retained EU Law Bill”), which was introduced to Parliament on 22 September 2022. We are particularly concerned about the ‘sunset’ provisions in the Bill, which give rise to the possibility that a large body of existing EU-derived legislation, that was put in place to protect the environment and people’s health, could be allowed to fall away on 31 December 2023 without equivalent protections being put in place.

Even if the powers in the Retained EU Law Bill are used to amend and replace existing laws, there is a notable lack of parliamentary oversight over ministers’ use of these powers. Furthermore, Clause 15(5), which requires replacement legislation to avoid increasing “*the regulatory burden*”, effectively means that ministers will be precluded from using the powers in the Bill to increase or strengthen existing levels of environmental protection. From a practical point of view, there is simply not enough time or resources available to replace the complex regulatory frameworks that currently govern, for example, habitats, water quality and air quality before the sunset date. If it becomes law, the Retained EU Law Bill will create widespread uncertainty for businesses and investors and will greatly undermine the stability and functioning of our legal system.

The risks presented by the Retained EU Law Bill noted above are compounded by the ongoing delays in the implementation of the primary governance mechanisms in the Environment Act. The Environment Act is intended to form the foundation of our new domestic system of environmental governance, post-Brexit. If the Government continues to delay finalising key elements of Part 1 of the Environment Act, we may be faced with an alarming situation whereby the current EU-derived system of environmental governance and regulation is subject to replacement and automatic revocation under the provisions of the Retained EU Law Bill before the new environmental governance framework has been fully implemented.

This would be a wholly unacceptable outcome given Parliament's clear intention in the Environment Act to significantly improve the state of the environment after Brexit and the Government's own commitments to this objective in the 25 Year Environment Plan. It would also undermine the strong public interest in protecting the environment, on which these legal instruments have been built. Instead, we believe the Government should withdraw the Retained EU Law Bill.

Conclusion

The implementation of the outstanding components of Part 1 of the Environment Act is urgently needed to set strategic direction for environmental policy and regulation and to drive industry investment in nature recovery.

Therefore, we urge you, as Secretary of State, to take the following actions to expedite the implementation of our new environmental governance framework:

- lay the draft statutory instrument(s) setting the environmental targets before Parliament as soon as possible, ensuring that the targets take full account of the consultation responses and are sufficiently ambitious to deliver significant improvements to the natural environment, as required by Section 7(3) of the Environment Act;
- lay the finalised EPPS before Parliament, by the end of 2022 at the latest, and bring Section 19(1) of the Environment Act into force as soon as possible thereafter, to enable ministers to start using the EPPS to embed environmental protection in Government policymaking; and
- ensure that the statutory deadline of 31 January 2023 for reviewing the environmental improvement plan is met, following an appropriate level of stakeholder engagement and public consultation.

We believe these actions should be afforded the highest priority to enable the Government to proceed with the delivery of its environmental commitments, while there is still time to achieve the recovery of nature envisaged by the Environment Act and prevent further harm to people's health. It is particularly important to proceed with these steps in the context of the threats to environmental protection that are currently posed by the Retained EU Law Bill.

We would welcome the opportunity to discuss these matters further with you or a member of your team. We look forward to receiving your response.

Yours sincerely,



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