

Environment Bill targets policy paper

September 2020

The Environment Bill targets policy paper is an important step toward the ambitious, legally binding targets necessary to help reverse long term environmental decline.

Targets are needed for a number of critical features of the environment, which together should add up to an overall improvement in the state of nature and the health of our environment. They will be needed in areas where comprehensive legally binding targets do not currently exist (such as for biodiversity and resource use) and in areas where existing targets are either not strong enough or are due to expire (such as air and water quality). In this response, we set out the areas where different or additional targets would be needed to achieve the government's overall aim of passing on the environment in better condition.

First, however, it is necessary to have an effective legal framework for establishing those targets.

The Environment Bill would create a new framework for setting legally binding targets for four aspects of our environment. As a domestic legal instrument for target setting, it is a major step forward. However, there are a number of significant weaknesses in the framework that would render any set of targets less effective—no matter how good the targets themselves may be. This is particularly important because the framework is not simply filling a gap in the domestic statute book; it is also expected to replace the environmental target-setting function that has so often been performed at EU level. In several important respects, the proposed framework is weaker than the system for setting targets under EU law.

In particular, to establish an effective target-setting framework, the Environment Bill should be amended to: (1) create a clearer link between targets and Environmental Improvement Plans (as well as other implementation mechanisms, such as Local Nature Recovery Strategies and ensuring targets are relevant to action by all parts of government); (2) make the interim targets legally binding; and (3) clarify the significant improvement test to ensure that future iterations of the targets framework remain comprehensive and strong.

Environmental improvement plans

Under Clause 7, the government would be obliged to prepare an “environmental improvement plan”, setting out the steps the government intends to take to improve the environment. The bill introduces a cycle of reporting on an annual basis and renewal of the plan at least every five years.

At the moment, however, there is no legal requirement for the EIPs to include measures that can be shown objectively to be (a) capable of achieving interim targets; and (b) likely to enable achievement of long-term targets, nor for the government to actually undertake those measures.

This creates a serious risk that action to deliver any long term targets will be delayed, with no legal compulsion for a government to take the short term actions necessary to enable long term success.

The weakness in the link between EIPs and targets stands in clear contrast to the strength of domestic plan making obligations for climate change (such as the requirement for 5-yearly carbon budgets to be met in the Climate Change Act) and current EU-derived plan making obligations (such as the obligation to publish and implement plans intended to ensure that targets are achieved under the Ambient Air Quality Directive). In this respect, the Environment Bill proposals are weaker than equivalent rules relating to the delivery of existing targets.

An explicit requirement should be added to Clause 7 for EIPs to include measures capable of meeting interim targets, and likely to enable long term targets to be met, and for those measures to be taken.¹

Interim targets

Under Clause 10, the government would be obliged to set interim targets in future EIPs. These would be 5-yearly milestones toward delivery of long-term targets set under Clauses 1 and 2.

Interim targets are crucial in ensuring that the government remains on track for delivery of its long term ambitions, taking the present day actions necessary to facilitate long term success. The importance of strong milestones has been demonstrated by the system of carbon budgets under the Climate Change Act, which are ensuring a credible trajectory toward delivery of net zero emissions by 2050.

As drafted, however, the interim targets in the Environment Bill are non-statutory and there are no legal consequences of missing an interim target. This misses the point of setting long term targets, which are intended to overcome the short term nature of political decision making and investment cycles. Unless there is a mechanism to hold fast to the course needed to deliver long term targets, then they are likely to be missed. Effectively, the interim targets are voluntary goals, which so often lead to failure.

Of course, we recognise that some environmental trends can be unpredictable in the short term, particularly for biodiversity. In some areas, therefore, binding interim targets could be action based—requiring government to deliver certain outcomes necessary to change trends in the long term, such as a managing a particular number of hectares under higher tier agri-environment schemes. In other areas, interim targets that use the same metrics as long term targets would be appropriate.

Overall, however, unless the bill is strengthened to make interim targets legally binding then there is a risk that targets set under the framework will lack credibility.

Significant improvement test

The government has recognised that the environment is a complex system and setting individual targets can lead to unintended outcomes, unless targets are considered together. Furthermore, achievement of overall improvement in the natural world is unlikely unless all of its major component parts are improved together. For example, reversing the decline in biodiversity is unlikely to be successful unless water quality, air quality and habitat condition are all improved together.

With this mind, it is welcome that the Targets Policy Paper attempts to set enough targets in each area to cover the main interdependent aspects of environmental improvement. There are some significant gaps, but in some priority areas the proposals go beyond the proposed minimum of a single target.

The risk, however, is that gaps emerge in the targets framework over time. There are two legal duties proposed in respect of the scope of targets: Clause 1(2) requires at least one target in each priority area; and Clause 6 requires that when the targets framework is reviewed, the Secretary of State should be satisfied that the proposed targets add up to a “significant improvement” in the environment. Together, these duties are not sufficient to ensure adequate coverage of the environment.

The significant improvement test is weak because there is no legal requirement for the improvement to apply to the whole environment as a system, nor for people’s health to be considered. As a result, significant improvement could be demonstrated for some aspects of the environment, while the environment as a whole continues to decline. The government’s policy documents state an intention to deliver systemic improvement, but this is not explicitly required by the law. Furthermore, the test of significant improvement is subjective, based on the Secretary of State’s judgement. It is unclear whether such a discretionary test would be challengeable in court and the system of setting targets through statutory instruments means that opportunities for Parliamentary and public scrutiny and accountability will be limited.

A particular risk is that new targets may be set in this first round of the process, but existing targets may not be replaced when they expire. For example, many air pollution targets expire in 2030, targets for the marine environment expire in 2020, and targets for the freshwater environment expire in 2027. Most of these targets were set by the European Union and are expected to be replaced at that level. Under the current Environment Bill framework, they could be allowed to expire without replacement, leaving significant holes in our suite of domestic environmental targets.

The bill should be amended to require that sufficient targets are set to ensure significant environmental improvement across the whole environment as a system, with benefits for the overall state of nature and for human health.²

The process for setting targets

To ensure that the significant improvement test is applied rigorously in future—and to ensure that this first round of target setting is scientifically robust—there should be a better process for transparent and independent scientific advice and Parliamentary scrutiny.

If the government's intention were to rely on hand picked scientific experts to review its targets proposals, before taking final decisions about the scope and ambition of targets within government, this would be too open to political compromise and risk missing out on the wide pool of potential expertise potentially available. Advisory and peer review groups should contain a blend of expertise, including on the policy measures and plans required to deliver targets as well as their scope and the level at which they should be set.

In the first round of target setting an open public-appointment process should be rapidly undertaken to select the best qualified experts to advise on the scope and ambition of targets. Their advice should be published, alongside representations from civil society and open public consultation. The government should commit itself to publish a response and justification for any departure from the scientific advice.

At the moment, when the first set of targets is published in 2022, it will be considered in Parliament through the affirmative delegated legislation procedure, allowing no scope for amendment. In order to facilitate proper democratic input, the government could publish a number of different options for the level of ambition in each Statutory Instrument and make time for a debate on a substantive motion for Parliament to have its say on the right level of environmental ambition.

In future rounds of target setting, a similar open process for appointing experts should be agreed, with open public consultation and clear justification for any departure from scientific advice, along with an enhanced role for supervision of the process and quality control by the Office for Environmental Protection.

Conclusion

No matter how good the government's proposals for individual targets may be, they will be undermined unless the legal framework to support them is strengthened. There should be a legal requirement for EIPs to be capable of meeting targets; the interim targets should be binding; tests to ensure the targets remain comprehensive should be strengthened; and the process of scientific advice and public and Parliamentary scrutiny should be made more independent and transparent.

Endnotes

¹ This is likely to include plans and obligations for specific sectors and public authorities, as well as local and regional objectives, as way to divide up responsibility for delivery of national targets. A strong national framework of targets provides a regulatory certainty and a robust basis for allocating action to businesses and other relevant actors capable of reducing pressures on the environment and investing in improvements.

² One helpful step would be to set a headline target for species and habitats on a “one-out-all-out” basis, ensuring that improvement is achieved in each of the significant aspects for nature (species abundance, distribution and extinction risk; and the extent, condition and connectivity of wildlife-rich habitat).

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