

Big ambitions seen in 25 year environment plan

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The government's 25 Year Plan for the Environment may be light on new legal obligations but it does provide useful pointers to possible future policy developments. Net environmental gain might become mandatory, warns Helen Bowdren in her article for Construction Law.

Bats, badgers and newts. These can sometimes be the most urgent, and disruptive, environmental issues for construction companies. But a whole host of other green issues – such as waste and resources, contaminated materials, energy efficiency, sustainability and biodiversity – can also impact on timing and costs for construction projects.

Which is why the industry should be interested in the government's 25 Year Plan for the Environment. Published in January 2018, the plan sets out the government's plans for the environment for the next generation. Significant regulatory change could be on the cards following Brexit in March 2019, so the plan is highly relevant and timely.

The 25 year plan is big on ambition although light on legal obligations. Nonetheless it provides some useful pointers on how the government's policy may develop in this area.

Key points for the construction sector

Key points for the construction sector include:

- Focus on 'net environmental gain' from developments – which could become mandatory.
- A new environmental regulatory body for the United Kingdom (to replace the role currently played by the European Union in enforcing environmental law against member states).
- Continued focus on waste and resource efficiency – with a target to eliminate all avoidable waste by 2050.
- Big changes in agricultures – including leaving the Common Agricultural Policy and paying farmers public money for 'public good' such as environmental enhancement.

Why we need a new plan – and why now

The majority of the UK's environmental law derives from European Union law. The European Union (Withdrawal) Bill will ensure that the body of existing EU environmental law continues to bind the UK, at least in the short term, after Brexit.

In the longer term however, the government could in theory move away from European law – and the plan provides

the best indication so far of the government's thinking in this area.

Areas covered by the plan

The plan covers all areas of environmental policy, including:

- waste reduction and resource efficiency;
- clean air;
- water;
- climate change; and
- biodiversity.

It is intended to be an evolving document, with reviews every five years.

'Net Environmental Gain' from development

The plan proposes a concept of 'net environmental gain', where new developments would need to show a positive impact on the local or national environment (including wildlife, green space provision and air and water quality). A key question for planners would be whether a development gives a boost to 'natural capital'.

Natural capital includes all elements of nature that bring value to people and the country, for example providing us with food, clean air and water, wildlife, energy, recreation and protection from hazards. The concept is similar to other forms of capital such as financial, social, human and intellectual capital, although it is notoriously hard to quantify.

The planning system currently requires biodiversity net gains 'where possible'. The government may strengthen this requirement for local planning authorities (LPAs) to ensure environmental net gains across their areas, and will consult on making this mandatory (including any exemptions that may be necessary). It will be interesting to see how this fits with the government's ambitions for a major increase in housebuilding (300k extra homes a year by the middle of the next decade) and infrastructure investment.

Agriculture and land use

Brexit also means the UK leaving the Common Agricultural Policy – and this will lead to a huge shake up for the agricultural sector.

A new land management system

The plan proposes a new land management system featuring incentives to encourage land managers to restore and improve natural capital, calling for an approach to land use that puts the environment first. These might include: new funding and delivery mechanisms, private payments for eco-system services, reverse auctions and conservation covenants. All complex to deal with on development projects.

Defra consultation

Defra has launched a consultation seeking views on the options for gradual phase out of direct payments and the range of public goods that could qualify for government funding under the new schemes, such as high animal welfare

standards, wildlife protection, public access, and new technologies. The consultation closed 8 May 2018.

A new regulator

The government will consult in 2018 on setting up a new environmental body. This is intended to be an independent, statutory body to champion and uphold environmental standards as we leave the EU – it will be tasked with holding the government to account.

The enforcement function

We don't yet know much more detail or how its enforcement function might operate. It may deal with infringements via negotiation rather than a full complaints procedure, turning to the Supreme Court for the final say over which claims can be heard in court. A change in law will be required to create such a body and – in my view – it is unlikely to be in place prior to March 2019.

Building materials

Aside from a brief mention to mineral-based building materials, the plan does not explore house building materials in detail, though it does aim for higher environmental standards and greater resilience in new builds.

Home grown timber

The plan notes the government's plan to increase the amount of home grown timber used in England in construction. It also focuses on resource efficiency such as management of residual waste, more efficient water use, and reduced energy usage and carbon footprint of the UK's housing stock.

Eliminating avoidable waste

The plan sets targets to eliminate all avoidable waste by 2050, and all avoidable plastic waste by 2042. In the building sector, this could mean changes to landfill tax, recycling targets and the aggregates levy to incentivise reuse of materials where possible.

Devolution

Environmental issues are a 'devolved matter' – which means the national governments in Scotland, Northern Ireland and Wales already have powers to legislate on environmental matters. Even before Brexit this has led to changes in environmental policy across borders. This may become more acute after Brexit without EU law to provide common standards and rules. Construction companies operating across several of the home nations should expect additional complexity in dealing with separate regimes and regulators.

Energy efficiency

Perhaps surprisingly, the plan does not explore energy efficiency in housing in any depth. That said, the Minimum Energy Efficiency Standards regime is already in force and is likely to continue unchanged – it is now unlawful to grant new leases for low energy efficiency properties (those rated F or G on an EPC) and this is already incentivising significant change.

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