

Briefing

How the new government should legislate for people and the planet



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Legislation and
Governance Unit

The last parliament had to grapple with a rush of poorly drafted legislation, much of which had to be amended substantially during its passage to address errors and oversights.

Successive governments have had a preference for seeking unfettered powers and capitalising on political opportunities, above the primary purpose of law making for the effective functioning of society, to protect citizens and the environment, and to provide clear rules for government, businesses and the public.

The dawn of a new government offers an opportunity to reset how laws are made and implemented, including on environmental protection. We propose ten priorities for a new approach.

1. Commit to effective and meaningful public consultation

Public consultation should be reinstated as an essential part of policy development, with increased use of green papers where policy is undecided. This should be part of a renewed compact between the government and civil society.

Cabinet Office [consultation principles](#) should be reviewed, in particular, Principle E, which states that consultations should “last for a proportionate amount of time”. This has allowed consultations to be rushed. Instead, we suggest that the principles should require early notice of forthcoming consultations. Twelve week written consultations should be conducted unless there is a clear rationale for a shorter timeframe or more informal approach.

Specific guidelines to departments will deliver a more consistent experience for stakeholders across policy areas. Updated principles should be published within the first six months of the new parliament.

Consultation responses should be published routinely to aid transparency and guard against ‘closed doors’ lobbying for regressive outcomes.

2. Embed environmental principles into policy making

[Section 19](#) of the Environment Act 2021 requires government ministers to have due regard to a [policy statement](#) on the following five internationally recognised environmental principles in the policy making process:

- the integration principle
- the prevention principle
- the rectification at source principle
- the polluter pays principle
- the precautionary principle

The duty went live on 1 November 2023 and applies to all policy making, including proposals for legislation. The Cabinet Office [Guide to making legislation](#) should be updated to provide guidance on how to incorporate these principles into legislation. And further work is needed to embed the principles more fully into the work of all departments, including in impact assessments, policy consultations, and the implementation and post-implementation review of legislation.

3. Reinvigorate pre-legislative scrutiny and the use of draft bills

The government should consider more frequent publication of bills in draft, allowing pre-legislative scrutiny both inside and outside parliament.

Previous governments have [accepted](#) that publishing bills in draft for pre-legislative scrutiny improves the process of scrutiny and leads to better draft legislation, especially for constitutional bills. However, this can also benefit other bills, as the pre-legislative scrutiny of the [draft Environment \(Principles and Governance\) Bill](#) demonstrated. This resulted in significant improvements to the drafting of the full bill and the establishment of the new oversight body, the Office for Environmental Protection, which is now providing important public benefit.

4. Rethink the approach to drafting laws

Successive governments have imbalanced the law making process through their preference for unfettered powers in bills, via framework legislation. These mean that policy change the bill is intended to implement is, in effect, left to delegated legislation, and is subject to significantly less oversight than it should be, with ministers more or less free to legislate at will.

One of the most extreme examples of this was the Retained EU Law (Revocation and Reform) Act 2023 in which ministers sought sweeping powers to remove or amend thousands of important laws. The [Secondary Legislation Scrutiny Committee](#) concluded that “the Bill runs directly counter to the principles of parliamentary democracy”, and “would lead to a significant shift of power not to Parliament but to ministers”. The [Delegated Powers and Regulatory Reform Committee](#) characterised the bill as “a blank cheque placed in the hands of Ministers”.

This approach was part of a worrying trend towards vague and broadly defined powers and processes which raised [significant concern](#) in parliament. The government should accept the recommendation of the House of Lords Delegated Powers and Regulatory Reform Committee, that the principal aspects of policy should be on the face of a bill and only its detailed implementation should be left to delegated legislation. The *Guide to making legislation* and the [drafting guidance](#) of the [Office for Parliamentary Counsel](#) should be updated to reflect this.

5. Address the flaws in assessing the impacts of proposed legislation

The previous government’s [Better Regulation Framework](#) has changed the way bill impact assessments are scrutinised, creating an unhelpful loss of transparency. Impact assessments were previously examined by the independent Regulatory Policy Committee (RPC); its opinion on whether an impact assessment was fit for purpose was published and available to inform the parliamentary scrutiny of the bill.

The RPC generally no longer scrutinises impact assessments. Instead, it is involved at an earlier ‘options assessment’ stage. This involves the government completing a [template](#) which is not expected to be published. The RPC’s opinion is instead required when collective agreement on a proposed Regulatory Provision is sought. This process is internal to government, so the RPC is not able to seek external input. This undermines its scrutiny of technical provisions relating to the environment.

The new government should reconsider how the Better Regulation Framework is applied to support transparency, participation and technical expertise throughout the process.

For bills containing environmental provisions, [Section 20](#) of the Environment Act 2021 requires ministers to publish a statement ahead of a bill's second reading, setting out their view of whether it would reduce the existing level of environmental protection.

This provision lacks transparency as there is no requirement for the government to publish its underpinning assessment. The statement does not need to be updated, even if subsequent bill amendments would significantly reduce environmental protections. The provision should be strengthened in the post-legislative review of the Environment Act.

6. Restore targeted post-legislative scrutiny as a working convention

Post-legislative scrutiny (PLS) of acts of parliament has ground to a halt, with the underpinning conventions untouched from a [2008 white paper](#). The government at the time proposed a proportionate approach which concentrated on appropriate acts, not detailed reviews of every act.

Such a targeted approach would allow the scrutiny process to be directed appropriately. We suggest two acts as early candidates for PLS. The [UK Internal Market Act 2020](#) continues to be a brake on environmental progress across the UK. The Environment Act 2021 would also benefit from targeted scrutiny of its implementation and impacts, to inform the government's progress against its environmental priorities.

We also suggest the government works with the house authorities to take forward [recommendations](#) to improve the PLS process, including the publication of a central repository of post-legislative memoranda and encouraging a more proactive approach from select committees.

As recommended by the Environmental Audit Committee in its [end of session report](#), ministers should publish a report on the implementation and operation of the Environment Act 2021, to inform PLS in the new parliament.

7. Implement important legislation faster

Implementation of important legislation has often faltered, delayed by poor planning, cross government disputes and a lack of resources. For example,

the implementation of [Schedule 17](#) of the Environment Act 2021 – a new due diligence scheme for products contributing to illegal deforestation – has been severely delayed. This was an urgent government priority during the passage of the Environment Bill in 2020-21 and was promised at successive international climate conferences but is yet to be activated.

The government should publish a timetable to implement a bill's provisions, reporting annually on the implementation of environmental legislation to the Environmental Audit Committee. All bill provisions should be in force fully no later than two years after Royal Assent.

8. Improve parliamentary scrutiny of delegated legislation

We recommend that the government consults on the central recommendations of the Hansard Society's [review of delegated legislation](#), including that all statutory instruments should be laid before parliament in draft form, other than in exceptional circumstances, and that House of Commons Delegated Legislation Committees should be abolished and replaced with a more meaningful form of scrutiny.

Post-implementation reviews of delegated legislation have been conducted sporadically. In 2023, the Office for Environmental Protection [found](#) that the government was consistently failing to complete legally required post-implementation reviews of environmental laws.

The Department for Environment, Food and Rural Affairs (Defra) responded by [reporting](#) to the EFRA Committee on progress on post-implementation reviews. This should continue, with care taken to ensure that the reviews involve external input, including from the Office for Environmental Protection, and are not rushed to meet missed deadlines.

9. Reset the approach to law making affecting the devolved governments

The process of seeking legislative consent from devolved governments on UK bills which affect devolved competencies, known as a Legislative Consent Memorandum, has been toxified by Brexit. During this period, the concerns of devolved governments were routinely ignored, and legislation has been passed without their consent.

The Labour manifesto makes several welcome commitments to improve the relationship between the UK's governments. [Action](#) to implement these commitments should include reinvigorating intergovernmental workings on

climate, nature and resource use, establishing a new council of the nations and regions, involving devolved administrations in trade negotiations and restoring devolved decision making on structural funds.

The UK Internal Market Act 2020 should be implemented better. This could be achieved via a more open approach to the use of exclusions to the market access principles allowed for under the act and through improved guidance. Working with the Cabinet Office, the Department for Business and Trade should publish a memorandum on the post-legislative scrutiny of the act in the first session of the new parliament.

10. Focus on meeting the Environment Act's legally binding targets

There has been a substantial amount of primary legislation relating to the environment since the UK left the EU. Three flagship government acts were passed on environmental governance, the agricultural transition and fisheries management. Others gave ministers powers to update existing environmental legislation, for example on environmental impact assessment.

Some 'unfinished business' remains from the last parliament. Important laws were not progressed, despite them enjoying cross party support. Two environment bills are needed in the first parliamentary session: to end the sale of horticultural peat products and to ratify the Global Oceans Treaty.

Regulations to ban the sale and supply of single use vapes should be expedited to give businesses a period of adjustment before the ban comes into force in April 2025. Regulations to activate the due diligence of forest risk commodities should also be introduced early in the first parliamentary session, with the [recommendations](#) of the Environmental Audit Committee re-examined to see what improvements can be made to the regulations.

The government's priority for the natural environment should be to focus on meeting the Environment Act's targets, including through swift review of the Environmental Improvement Plan, to ensure that action on environmental improvement is sped up, scaled up and stacks up, as [advised](#) by the Office for Environmental Protection.

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