



## Clean Air (Human Rights) Bill

### HL Bill 5 of 2022–23

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The [Clean Air \(Human Rights\) Bill](#) is a private member's bill. It was introduced in the House of Lords by Baroness Jones of Moulsecoomb (Green Party).

The bill seeks to improve air quality in England and Wales. It would establish a human right to clean air and would require the government to limit the concentration of pollutants in the air in accordance with World Health Organization (WHO) guidelines and scientific evidence. WHO guidelines for limits are, in most cases, more stringent than current UK limits.

The bill would also require the government to implement targets recommended by the Committee on Climate Change for limits on pollutants causing climate change.

The bill would place duties on some national authorities to exercise their functions so as to work towards clean air. The bill would also establish environmental principles the government and certain national authorities would have to follow when carrying out their duties under the bill and under other air quality legislation.

The UK currently has statutory limits for certain pollutants. These are generally less stringent than WHO guidelines. In recent years, these limits have been adhered to for all specified pollutants except nitrogen dioxide.

Poor air quality has significant health effects, including increased risk of asthma, cardiovascular diseases and death in the first year of life. Many of the negative health effects are particularly acute for young people, older people and those with pre-existing health conditions.

The Environment Act 2021 requires the government to set targets for air quality and for reducing concentrations of fine particulate matter. These targets must be set by 31 October 2022. A consultation on these targets is due to close on 27 June 2022.

## **I. Provisions in the bill**

### **I.1 Clause 1: Overview**

Clause 1 of the bill provides an overview of the main purposes of the bill. These are:

- establishing a right to breathe clean air
- requiring the secretary of state to achieve clean air throughout England and Wales within five years of the bill receiving royal assent
- requiring the secretary of state to provide sufficient funding for the relevant bodies to fulfil their duties as specified by the bill

Clause 1 also defines clean air, pollutants, limits for pollutants and relevant national authorities for the purposes of the bill.

### **I.2 Clause 2: Reviewing and revising the pollutants and limits in schedules 1 to 4**

Clauses 2(1) to 2(7) concern reviews of the pollutants set out in schedules 1 to 3 of the bill. These schedules concern pollutants relating to local and atmospheric pollution, indoor air pollutants and pollutants causing primarily environmental harm.

Clause 2(1) would require the [Environment Agency](#) (EA) to annually review the pollutants and their limits as set out in schedules 1 to 3 of the bill.

Clause 2(2) provides that in carrying out such a review, the EA would be

required to consider the best scientific knowledge and guidance from various bodies, including:

- the best available scientific knowledge, guidance and good practice statements on ambient air pollutants from the [World Health Organization](#) (WHO)
- advice from the [UK Health Security Agency](#) and epidemiologists about the effects of pollution on public health
- the best available scientific knowledge, guidance and good practice statements on indoor air pollutants from the WHO and the [International Organization for Standardization](#) (IOS)
- the best available scientific knowledge and guidance on atmospheric pollutants from the [United Nations Economic Commission for Europe](#) (UNECE)
- advice from scientists on the effects of air pollution on the environment

Clause 2(2) would also require the EA to apply the precautionary principle. The precautionary principle, as set out in the 1992 United Nations Rio Declaration on Environment and Development, states that if there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.<sup>1</sup>

Under clause 2(2), the EA would be required to undertake a public consultation as part of its annual review of pollutants and limits.

Clause 2(3) states that, following its annual review, the EA would be required to advise the secretary of state whether any additional pollutants should be added to the list in schedules 1 to 3 of pollutants subject to limits. The EA would also be required to advise the secretary of state whether the pollutant limits in the schedules should be lowered.

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<sup>1</sup> United Nations General Assembly, '[Rio Declaration on Environment and Development](#)', 12 August 1992.

Clause 2(4) states that in advising the secretary of state whether to amend the relevant schedules, the EA should consider a number of factors, including:

- pollutant emissions and concentrations
- human exposures and health impacts and outcomes
- the need to address pollution across England and Wales in all settings
- where people spend time, including the “worst locations”
- the needs of sensitive population groups including children, the elderly and other individuals who are considered particularly susceptible to air pollution
- exposure to pollutant concentrations when travelling by public transport in ambient air or underground
- biogeographical region-specific ozone flux models and critical levels for individual plant species or groups

Clause 2(5) states that the secretary of state is required to amend the relevant schedules “in accordance” with the EA’s advice and the precautionary principle. The bill states that the secretary of state would be required to add pollutants and lower any limits. It does not provide that the secretary of state could remove pollutants or increase limits. These amendments would be made by statutory instrument.

Under clause 2(6), the secretary of state would be required to also amend the bill’s schedules to reflect revised guidance and good practice statements from the WHO, IOS and UNECE. If these statements conflicted with advice from the EA, clause 2(7) provides that any additional pollutions listed by the above organisations would have to be added and lower limit values adopted.

Clauses 2(8) to 2(11) concern reviews of pollutants and limits in schedule 4. This schedule concerns pollutants that cause climate change.

Clause 2(8) would require the [Committee on Climate Change](#) (CCC) to review the pollutants and limits in schedule 4 on an annual basis. Clause 2(9) states that in carrying out such a review, the CCC would be required to consider the best available scientific knowledge and advice from the Intergovernmental Panel on Climate Change (IPCC) and advice from scientists about the effects of air pollution on the climate. As in clause 2(2), the secretary of state would be required to apply the precautionary principle and undertake a public consultation.

Under clause 2(10), the CCC would have to advise the secretary of state whether to revise schedule 4 to protect the environment and “safeguard future generations”. As in clause 2(5), it would require the secretary of state to add new pollutants and lower limits in accordance with the review. These would include emission limits on international aviation landing in or taking off from the UK. Clause 2(11) states that these amendments would be made by statutory instrument.

Clause 2(12) provides that the secretary of state could advise setting a pollutant or emission limit for a short, medium or a long timeframe. Clause 2(13) provides that if schedules 1 to 4 were amended, the new limit would take effect 12 months after the amending regulations came into force. Clause 2(14) provides that statutory instruments made under clause 2 would be laid under the negative procedure.

### **1.3 Clause 3: Secretary of state’s duty concerning assessing air pollutants**

Clause 3(1) would require the secretary of state to ensure that air pollution in England and Wales was assessed accurately and regularly, and that detailed information about air pollution was provided to the public. It would allow the secretary of state to make regulations to comply with this duty.

Clause 3(2) sets out requirements concerning regulations about assessing air pollution, including how pollutants should be sampled and measured. Clause 3(3) states that regulations would have to place requirements on owners of

certain types of building and developers concerning air quality. It would also, among other things, require UK-based organisations of all sizes to report their greenhouse gas pollutants.

Clause 3(4) states that the regulations would have to ensure that daily information regarding ambient concentrations of the pollutants in schedule 1 (local and atmospheric pollution) was provided to members of the public. Clause 3(5) sets out what this information would have to include. Clause 3(6) states that if any threshold set out in schedule 1 was breached, the public would have to be informed.

Under clause 3(7), the secretary of state would be required to publish an annual report on the effects of each of the pollutants that exceeded the limits over the relevant time frame.

Clause 3(8) states that the Citizens' Commission for Clean Air (which would be established by clause 13) would have to annually review the secretary of state's compliance with the limits in schedules 1 to 4 and with clauses 3(1) to 3(7). Clauses 3(9) to 3(11) concern changes to assessment, publication and reporting under this clause.

Clause 3(12) provides that statutory instruments under made clause 3 would be subject to annulment by a resolution of either House of Parliament.

#### **1.4 Clause 4: Additional provisions concerning the secretary of state's duties**

Clause 4 would place additional duties on the secretary of state. These include that, when carrying out the duties under clause 1, the secretary of state would be required to comply with the [United Nations Convention on Long-Range Transboundary Air Pollution](#) and its protocols, as set out in schedule 5, and would be required to work with the relevant national authorities to do so.

Clause 4(3) states that if the secretary of state received evidence that a source of pollution “presents an imminent and substantial threat to current or future public health or the environment”, they could take “proportionate and necessary action” to restrain anyone responsible in order to stop the emission of pollutants. Clause 4(4) states that if the secretary of state were to exercise the powers under clause 4(3), they would have to lay a statement before both Houses of Parliament setting out what action they took and why they considered it was necessary and proportionate.

Clause 4(5) states that regulations would have to enable the sale and use of appliances generating wholly renewable energy. Clause 4(6) states that regulations would have to enable energy efficiency improvements to domestic and non-domestic premises. Clause 4(7) states that regulations would have to restrict the sale and use of combustion appliances that emit pollutants to the air.

## **1.5 Clauses 5 to 12: Duties for certain bodies regarding pollutants and air quality**

Clauses 5 to 12 place duties on certain bodies regarding clean air.

Clause 5 would amend the Environment Act 1995 to place duties on the EA to work towards clean air.

Clause 6 would amend the Climate Change Act 2008 to create a duty for the CCC to advise the government on emission limits.

Clause 7(1) would place a duty on local authorities in England and Wales to achieve clean air in their area within five years of the bill receiving royal assent. Clause 7(2) would require local authorities to use their powers and functions to improve the “environmental wellbeing” of their local area and reduce exposure for their residents to the pollutants listed in schedule 1. Clause 7(3) would require the secretary of state to provide funds to local authorities to enable them to carry out their duties under clause 7.

Clause 8 would require the [Office for Environmental Protection](#) to exercise its functions so as to ensure that clean air is achieved.

Clause 9 would amend the Civil Aviation Act 1982 to require the [Civil Aviation Authority](#) to contribute to maintaining clean air in England and Wales and to apply the provisions of the UN Convention on Transboundary Pollution.

Clause 10 would amend the Infrastructure Act 2015 to place a duty on [Highways England](#) to contribute to the maintenance of clean air and to follow instructions from the secretary of state to contribute to the achievement of clean air.

Clause 11 would amend the National Heritage Act 1983 to require the commission of [Historic England](#) to contribute towards achieving and maintaining clean air.

Clause 12 would amend the Natural Environment and Rural Communities Act 2006 to require [Natural England](#) to contribute towards achieving and maintaining clean air.

## **1.6 Clauses 13 to 16: Citizens' Commission for Clean Air**

Clause 13(1) would establish the Citizens' Commission for Clean Air (CCCA). Clause 13(2) provides that the CCCA would monitor and enforce the right to breathe clean air and the duties to achieve and maintain clean air in England and Wales. Schedule 7 contains the constitution for the CCCA.

Clause 14(1) provides that the CCCA could participate in legal proceedings, including for judicial review, if they were relevant to its functions. Clauses 14(2) and 14(3) provide that the CCCA could assist an individual in relevant legal proceedings.

Clause 15 would give the CCCA the power to assess national authorities'

compliance with their clean air duties and take action against them if they were deemed not to be complying with their duties. Under 15(2), the CCCA would first issue a notice requiring the body to take steps to comply with their duty. If the CCCA concluded an authority had not complied with the requirements of the notice, the CCCA would be able to apply to the court for an order requiring them to comply.

Clause 16 would require the CCCA to report annually to the secretary of state on his or her compliance with the provisions of the bill. This report would be published by the CCCA, laid before both Houses of Parliament, and shared with the European Environment Agency.

### **1.7 Clause 17: Environmental principles**

Clause 17 sets out environmental principles that the secretary of state and relevant national authorities would be required to apply in carrying out their duties under the bill and under other clean air legislation, as set out in schedule 6. These are:

- **Prevention:** environmental regulation must anticipate, prevent and attack the causes of environmental harm.
- **Precaution:** where there are threats of serious or irreversible damage to the environment, including human health, lack of full scientific certainty must not be used as a reason for postponing cost-effective measures to prevent harm.
- **Polluter pays:** the costs of pollution or of clean-up should be borne by the person responsible for causing the pollution.
- **Use of the best available scientific knowledge.**
- **Rectification at source:** environmental damage should, as a priority, be remedied at its source.
- **Integration:** environmental protection requirements should be integrated into the definition and implementation of all policies and activities, in particular with a view to promoting sustainable development.

- Conservation of the ecosystem structure and functioning, in order to maintain ecosystem services.
- Anticipation, prevention or minimisation of the causes of climate change and mitigation of its adverse effects.
- Sustainability: the health of present generations and the needs of future generations must be taken into account.

## **1.8 Clauses 18 and 19: Interpretation, extent, commencement and short title**

Clause 18 defines terms used in the bill. Clause 19 states that the bill extends to England and Wales only, as well as setting out its commencement and short title.

## **2. Background**

### **2.1 Air quality in the UK**

Many of the pollutants listed in schedules 1 to 3 of the bill are monitored by the Department for Environment, Food and Rural Affairs (Defra), as required by the Air Quality Standards Regulations.<sup>2</sup> These regulations set 'limit values' for ambient air concentrations of some pollutants. Limit values are legally binding.<sup>3</sup> The regulations also set 'target values', which are similar to limit values but are not legally binding. Defra's 2021 air quality report, which covered the period up to the end of 2020, found that the UK did not exceed limit values for any of the monitored pollutants except annual mean nitrogen dioxide.<sup>4</sup> Target values for nickel and benzo[a]pyrene were exceeded in 2020 and the long-term objective for ozone was also missed.

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<sup>2</sup> [Air Quality Standards Regulations 2010](#).

<sup>3</sup> Department for Environment, Food and Rural Affairs, '[Air pollution in the UK 2020](#)', September 2021, p 8.

<sup>4</sup> Department for Environment, Food and Rural Affairs, '[Air pollution in the UK 2020](#)', September 2021, p 5.

There are also limits under the National Emission Ceilings Regulations 2018. The latest statistics, published in February 2022, found that in 2020 the UK was compliant with all these emission ceilings except that for ammonia.<sup>5</sup> The government states that if non-compliance results from applying “improved emission inventory methods”, adjustments are allowed. The government contends that if the UK’s changes in monitoring are taken into account, ammonia emissions for 2020 will be compliant.

Limits for nitrogen dioxide have been breached many more times than for other pollutants in recent years.<sup>6</sup> However, in 2020 the number of breaches decreased significantly. In the 2021 report, Defra states that the Covid-19 restrictions caused a decrease in urban ambient nitrogen dioxide by reducing traffic.<sup>7</sup> However, the House of Commons Environment, Food and Rural Affairs Committee found that by September 2020 most areas had seen a return to pre-lockdown levels of air pollution.<sup>8</sup>

A 2018 joint report by four House of Commons committees found that the current limit and target values in UK legislation for most pollutants were not as stringent as those recommended by WHO.<sup>9</sup> The committees recommended that the government introduce new legislation to incorporate WHO targets into UK law.

## 2.2 Health impacts of poor air quality

In 2017, Defra and Public Health England described poor air quality as the

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<sup>5</sup> Department for Environment, Food and Rural Affairs, ‘Emissions of air pollutants in the UK: Background’, 18 February 2022.

<sup>6</sup> Department for Environment, Food and Rural Affairs, ‘[Air pollution in the UK 2020](#)’, September 2021, p 50.

<sup>7</sup> Department for Environment, Food and Rural Affairs, ‘[Air pollution in the UK 2020](#)’, September 2021, p 6.

<sup>8</sup> House of Commons Environment, Food and Rural Affairs Committee, ‘[Air quality and coronavirus: A glimpse of a different future or business as usual](#)’, 11 February 2021, HC 468 of session 2019–21, p 3.

<sup>9</sup> House of Commons Environment, Food and Rural Affairs, Environmental Audit, Health and Social Care and Transport Committees, ‘[Improving air quality](#)’, 15 March 2018, HC 433 of session 2017–19, p 14.

largest environmental risk to public health in the UK.<sup>10</sup>

A 2016 report by the Royal College of Physicians (RCP) estimated that approximately 40,000 premature deaths and 20,200 hospital admissions in the UK could be attributed to air pollution every year.<sup>11</sup> In evidence given as part of the House of Commons joint committees' report on air quality, the RCP outlined the conditions long-term exposure to outdoor air pollution is associated with:

- premature birth
- reduction in foetal growth and low birth weight
- increased risk of death during the first year of life, particularly from respiratory illnesses
- exacerbating the effects of respiratory infections in young children
- affecting the normal growth of lung function during childhood
- cardiovascular diseases (heart attacks, hypertension and stroke)
- chronic obstructive pulmonary disease, pneumonia, accelerated decline in lung function and lung cancer in adulthood
- development of new onset asthma as well as exacerbating asthma in those who already live with the condition
- impaired cognition, dementia and other neurodegenerative disorders
- type II diabetes, obesity and metabolic syndrome<sup>12</sup>

These effects are particularly acute in children and older people and people with pre-existing health conditions such as asthma, chronic obstructive pulmonary disease and coronary artery disease.

In 2020, a coroner found that air pollution was a material contribution to

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<sup>10</sup> Department for Environment, Food and Rural Affairs and Public Health England, '[Air quality: A briefing for directors of public health](#)', March 2017, p 4.

<sup>11</sup> Royal College of Physicians, '[Prescribing clean air](#)', 4 December 2020.

<sup>12</sup> House of Commons Environment, Food and Rural Affairs, Environmental Audit, Health and Social Care and Transport Committees, '[Improving air quality](#)', 15 March 2018, HC 433 of session 2017–19, p 14.

the death of a nine-year-old girl in London.<sup>13</sup> The official cause of her death was listed as asthma contributed to by exposure to excessive air pollution. The coroner found that because the girl had been exposed to concentrations of nitrogen dioxide and particulate matter (PM) in excess of WHO guidelines, which are stricter than the UK's limits, "the level of air pollution she was exposed to was therefore excessive".

### 2.3 Environment Act 2021

The Environment Act 2021 requires the secretary of state to set a legally binding target for annual mean levels of fine particulate matter (PM2.5).<sup>14</sup> It also requires the secretary of state to set a long-term goal for air quality. However, it does not state what these targets should be. Under the act these targets must be set by 31 October 2022.<sup>15</sup>

In a 2021 report on air quality, published while the Environment Bill 2019–21 was progressing through Parliament, the House of Commons Environment, Food and Rural Affairs Committee recommended the government include a specific target of 10 micrograms per cubic metre (the same level as WHO guidelines at the time) by 2030 for annual mean concentration of PM2.5 in the bill.<sup>16</sup>

In September 2021, during the House of Lords report stage on the Environment Bill, Baroness Hayman of Ullock (Labour) moved an amendment which would have ensured that the new target for PM2.5 was 10 micrograms per cubic metre by 2030.<sup>17</sup> The amendment was agreed on division, by 181 votes to 159.

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<sup>13</sup> Adam Vaughan, '[Landmark ruling says air pollution contributed to death of 9-year-old](#)', New Scientist, 16 December 2020.

<sup>14</sup> Environment Act 2021, s 1–2.

<sup>15</sup> Environment Act 2021, s 4(9).

<sup>16</sup> House of Commons Environment, Food and Rural Affairs Committee, '[Air quality and coronavirus: A glimpse of a different future or business as usual](#)', 11 February 2021, HC 468 of session 2019–21, p 3.

<sup>17</sup> [HL Hansard, 6 September 2021, cols 667–9.](#)

Shortly after this amendment was agreed in the House of Lords, the WHO revised its guidelines. It changed its recommended target for PM2.5 from 10 micrograms per cubic metre to 5 micrograms per cubic metre.<sup>18</sup>

When the bill returned to the House of Commons the amendment on fine particulate matter was removed on division, by 307 votes to 185.<sup>19</sup>

The government has instituted a consultation on the targets for air quality and PM2.5. This consultation is due to close on 27 June 2022.<sup>20</sup>

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<sup>18</sup> World Health Organization, '[WHO global air quality guidelines](#)', 2021, p 4.

<sup>19</sup> [HC Hansard, 20 October 2021, col 842](#).

<sup>20</sup> Department for Environment, Food and Rural Affairs, '[Consultation on environmental targets](#)', 16 March 2022.

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