EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL TARGETS (WOODLAND AND TREES OUTSIDE WOODLAND) (ENGLAND) REGULATIONS 2023

2023 No. 90

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to set a legally binding target relating to woodland cover and trees outside woodlands. This instrument establishes for this target the level to be achieved and the date for its achievement, as well as making provision about measurement to assess whether the target is met.

2.2 This instrument sets a long-term legally binding environmental target under section 1 of the Environment Act 2021 ("the Environment Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument, along with the other 5 environmental target instruments, sets legally binding targets for the Secretary of State. The instrument does not, in itself, set specific policies or new legislation that sectors must follow; nor does it directly impose or require immediate changes of behaviour by others. Given the importance of setting targets without delay, the instrument will come into force at the earliest date after approval (one day after the day it is made).

3.2 Under the Environment Act 2021 the statutory deadline to lay this instrument was 31 October 2022. As stated by Dr Thérèse Coffey MP Secretary of State for Environment, Food and Rural Affairs in a Written Ministerial Statement on 28 October 2022: "We received over 180,000 responses [to the environmental targets consultation], which all needed to be analysed and carefully considered. In light of the volume of material and the significant public response we will not be able to publish targets by 31st October, as required by the Act."

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 Trudy Harrison MP, Parliamentary Under Secretary of State at the Department for Environment Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Targets (Woodland and Trees Outside Woodland) (England) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 1 of the Environment Act provides for the Secretary of State to set long-term targets with respect to the natural environment and people's enjoyment of the natural environment.

6.2 This instrument is part of a group of instruments that will set targets for air quality, water, resource efficiency, waste reduction and biodiversity.

7. Policy background

What is being done and why?

7.1 Through the powers granted by the Environment Act this instrument will place a legal duty on the Secretary of State to increase canopy cover to 16.5% of land area by 2050. Woodland and tree canopy cover in 2022 is assumed to be 14.5% from existing forestry statistics. Further figures on the 2022 baseline will be published in 2023.

7.2 The trees planted to meet this target will contribute to the objectives of the Environment Act by providing thousands of hectares of priority habitat to support species recovery and improving the quality of our air and water courses, The removal of atmospheric carbon by trees planted to meet the target will contribute to meeting the Government's desired outcomes in the Environment Act and to the statutory commitment to net zero emissions by 2050.

7.3 Purpose-grown energy forestry plantations are excluded from contributing to the target. For the purposes of this instrument, energy forestry means plantations of trees, generally single species or single genus, that do not meet the requirements of the UK Forestry Standard (UKFS), do not provide the wider social and environmental benefits that multi-purpose woodlands provide and are grown solely as a feedstock for bioenergy production. The exclusion does not apply to stands of trees within UKFS-compliant woodlands that may be harvested as a feedstock for bioenergy production.

Monitoring the Woodland and Tree Canopy Cover target

7.4 The canopy cover of England is determined by combining woodland cover and the canopy cover of trees outside woodlands across England. The current canopy cover of England has been established using the Forestry Commission's 2021 data on woodland cover, as reported in Forestry Statistics 2021, and the Forestry Commission's 2017 report Tree Cover Outside Woodland in Great Britain. Both reports are official statistics and have been combined by the Forestry Commission's head statistician to give the current canopy cover of England. Further data on the canopy cover of England in 2022 will be published by the Forestry Commission in Forestry Statistics 2023. This instrument provides for the Forestry Commission to measure the overall canopy cover of trees by the end of 2050 and to publish this by 10th of November 2051.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 There is no current legislation which puts a legal requirement on government to increase tree and woodland cover to a specified level within a specific timeframe.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend another instrument and therefore consolidation is not applicable.

10. Consultation outcome

10.1 The Department for Environment, Food and Rural Affairs consulted the general public on the level of ambition, scope and metric of the tree and woodland target through the public consultation on environmental targets held from 16th March 2022 to 27th June 2022.

10.2 No consultation was conducted on the contents of the Statutory Instrument itself.

10.3 In total, over 7000 consultation responses were received, of which 6100 were responses linked to campaigns (Friends of the Earth and the Woodland Trust). Setting a tree and woodland target was supported by respondents. Respondents agreed with the metric we consulted on but generally disagreed with the level of ambition. A large majority of those who disagreed with the level of ambition (92%) supported a higher target for canopy cover by 2050.

10.4 After a review of our evidence and the current progress of planting programmes we have concluded that a canopy cover of 16.5% is the most ambitious that can be set but which is still realistic and therefore in line with the legal requirement in the Environment Act 2021 to be considered achievable. We will fulfil our commitment in the environmental targets consultation to review the target ambition level in the future. We will do so in close consultation with the forestry sector.

10.5 A complete summary of how consultation feedback has been considered is available in the Government Response document: https://www.gov.uk/government/consultations/environment-act-2021-environmental-targets.

11. Guidance

11.1 As this legislation will be a requirement of government only, there is no current need for guidance to be provided.

12. Impact

12.1 The impact on the public sector business, charities or voluntary bodies is dependent on policy pathways not prescribed by this instrument. Illustrative pathways are set out in the Impact Assessment, with an assessment of potential costs and benefits.

12.2 The total social cost for the appraisal period of 2023-2100, based upon illustrative measures to meet the target, is estimated to be £5.97bn and the total social benefit is estimated at £19.35bn. The total net present value is approximately £13.37bn over the appraisal period.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Progress towards meeting the tree and woodland cover target will be monitored through the statutory cycle of monitoring, planning and reporting set out in the 2021 Environmental Act.

14.2 The instrument does not include a statutory review clause as the legal obligations in this regard under the Small Business, Enterprise and Employment Act 2015 do not apply.

15. Contact

15.1 Dan Doherty at the Department for Environment, Food and Rural Affairs Telephone: 07388 387 970 or email: Dan.Doherty@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Bella Murfin and Naomi Matthiessen, Deputy Directors at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Trudy Harrison MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.