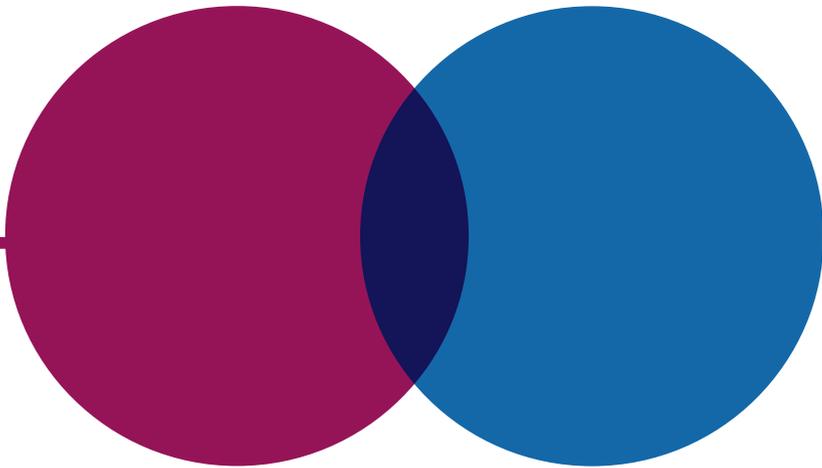




National Audit Office



REPORT

Regulating to achieve environmental outcomes

Department for Environment, Food & Rural Affairs

SESSION 2022-23
21 APRIL 2023
HC 1283

Key facts

2018

year the government established the 25 Year Environment Plan

Four

priority areas in the 2021 Environment Act: air; biodiversity; waste; and water

Around 30

bodies involved in regulating for environmental outcomes (excluding local authorities)

38% Sites of Special Scientific Interest in England in favourable ecological condition in 2021

97% percentage of industrial sites, regulated by the Environment Agency under Environmental Permit Regulations, in their top compliance bands (A/B/C)

16% percentage of water bodies in England meeting good ecological status in 2020 under the Water Framework Directive, against a target of 75% by 2027

63% percentage of packaging waste recycled in the UK in 2021

Summary

Introduction

1 The government wants this to be the first generation to leave the natural environment of England in a better state than it inherited. In 2022 it published binding statutory targets in four priority areas: air quality; water; biodiversity; and resource efficiency and waste reduction, which came into force in January 2023. Achieving these targets will require action, not just from the government but also from businesses and individuals.

2 The Department for Environment, Food & Rural Affairs (Defra) has lead responsibility in government for environmental policy areas except net zero. In January 2023 it published the Environmental Improvement Plan, revising the 2018 25 Year Environment Plan in light of the statutory targets. The Environmental Improvement Plan (EIP) sets out the importance of both existing and planned regulatory interventions in contributing to environmental goals.

3 We use the term regulation to describe a set of rules and expected behaviours that people and organisations should follow, which will often involve bodies with regulatory powers enforcing and influencing compliance with those rules or behaviours. Defra already uses regulation extensively in achieving environmental outcomes, particularly through arm's-length bodies such as the Environment Agency and Natural England, alongside other interventions.

Scope and purpose of this report

4 This report examines whether Defra and its arm's-length bodies are using regulation effectively to achieve its environmental objectives. We reported in 2020 on how government was set up to deliver its long-term environmental goals.¹ This report also reviews progress against recommendations we made in our 2020 report, where they are particularly connected to Defra's use of regulation. This report maps out where these bodies are already using regulation, often alongside spending or other government activity. It also assesses how regulation is working in practice in case studies of individual regulatory interventions. Our evaluation and recommendations are based on our good practice guidance on the principles of effective regulation.² The report does not assess the government's overall performance against environmental goals, or the coherence of environmental strategies.

¹ Comptroller and Auditor General, *Achieving government's long-term environmental goals*, Session 2019–2021, HC 958, November 2020.

² National Audit Office, *Principles of effective regulation*, May 2021.

5 The report covers:

- the extent to which the government has set a clear direction for environmental regulation and how well it understands how its regulatory interventions fit into its overall ambition (Part One);
- how well Defra oversees its regulatory bodies in respect of delivering its environmental objectives, and evidence on current regulatory performance and capacity to deliver (Part Two); and
- whether Defra has suitable arrangements for evaluating and measuring the performance of regulators and regulatory interventions in supporting Defra's environmental objectives (Part Three).

Key findings

Defra's environmental aims and use of regulation

6 Defra has put in place a legal framework for its ambitious environmental objectives but is still developing the indicators it needs to measure progress towards them. Defra's 25 Year Environment Plan, published in 2018, set out ambitious environmental objectives. The Environment Act 2021 required statutory targets in four priority areas. It also created an independent body, the Office for Environmental Protection (OEP), which must monitor progress against the wider objectives and the statutory targets. Defra has not yet finalised the indicators to measure progress for more than half of its new targets (paragraphs 1.3 to 1.4, 1.9 to 1.11, Figure 2).

7 Defra is planning to use regulation and regulatory reform as a tool to achieve its environmental objectives, as set out in the January 2023 Environmental Improvement Plan. The Environmental Improvement Plan recognises that Defra requires action to be taken by individuals, businesses and the government to achieve its objectives. Regulation is included as a tool to deliver all ten of the goals set out, such as to protect habitats and prevent air pollution, alongside other measures including direct funding and private investment. It also includes commitments to improve specific regulatory frameworks, such as expanding environmental permits, reviewing farming and building regulations, and supporting regulators in ensuring compliance (paragraphs 1.5, 1.12 to 1.14).

8 Despite starting work in 2018, Defra is still at an early stage in understanding how existing regulations affect its plans. In 2011 Defra published a biodiversity strategy on how it would implement international and EU commitments up until 2020. It is yet to publish an update. Defra published detailed strategies on resources and waste in 2018 and air quality in 2019. It published a water strategy in April 2023. It is still developing its understanding of how existing regulation operates. For example, in 2021 Defra's air quality team mapped the industries it regulated and considered the impact of net zero policies on air quality. In 2022 it started work to review the regulatory system for industry emissions to ensure alignment with government priorities for air quality. Work in other areas, particularly biodiversity and water quality, is less advanced. Without knowing what is in place, Defra will be unable to identify what changes may be required to deliver its targets (paragraphs 1.15 to 1.20).

9 Defra is not on course to achieve the goals it set in 2018, according to its own performance indicators and reporting from the OEP. Its new Environment Act targets, set in 2023, are broadly similar, so Defra will need to significantly improve its performance to achieve them. In many areas where there are performance data, Defra is failing to make the progress necessary to achieve its 2018 goals. The new targets are broadly similar, so Defra will need to improve its performance to achieve its new statutory targets. For example, in its 2018 goals Defra set a goal to take action to recover threatened, iconic or economically important species. However, there was a decline of 17.2% in priority species abundance between 2013 and 2018. Defra's 2022 biodiversity targets include halting the decline of species abundance by 2030, and then ensuring that species abundance in 2042 is greater than in 2022. Defra told us that most of the measures that will affect future performance on species abundance, principally reforms to farm payments through the Environmental Land Management schemes, are yet to take effect. In January 2023, the OEP reported that the 2018 25 Year Environment Plan had so far failed to bring about the changes needed, at the pace and scale required, to meet the government's stated ambitions (paragraphs 1.3 to 1.4 and 1.10 to 1.11, Figure 2).

10 Some of Defra's proposed changes may need legislative change or other longer-term regulatory reform. It can take years before changes will be in force and contributing to achieving Defra's objectives. For example, Defra expects its programme to update regulations for industrial emissions on the basis of Best Available Techniques to take around a year to agree changes. It will then take time to pass secondary legislation and will allow businesses four years to meet the standards. Some of the changes that Defra is considering making to its environmental framework would require legislative change. For example, significant reform of habitats regulations would need new primary legislation (paragraphs 1.21 to 1.23).

Defra's oversight of regulatory delivery

11 Defra has recently made changes to its governance arrangements. It has more to do to align these arrangements to new environmental targets and plans. Defra's governance structure for delivering its environmental goals involves boards reporting to an overarching Environment Committee. The structure has developed over time as priorities have changed, and the OEP had raised concerns about the complexity of the arrangements. In 2022, Defra made changes to simplify its board structures and in March 2023 it started to consider further changes it needed to make to oversee the new statutory targets it had set (paragraphs 2.2 to 2.6).

12 Defra is changing how it works with its regulators to improve its oversight of their performance and new arrangements are being put in place. Defra can set priorities directly for its arm's-length bodies, and it does so to ensure that objectives are shared. In 2022 it began the process of developing new sponsorship arrangements for its arm's-length bodies, but their operation is still at an early stage. Both Defra and regulators have identified areas where existing mechanisms for oversight do not provide either side with what they need and are taking action (paragraphs 2.7 to 2.10).

13 The Environment Agency and Natural England have existing workforce issues that have affected their ability to deliver their current workload. They will need further resources in the future to support the EIP but it is not yet clear how much. Both the Environment Agency and Natural England have been recruiting staff to fill existing vacancies planned under Spending Review 2021 and committed to again in the EIP. In February 2023 the Environment Agency had vacancies of around 600 full-time equivalent (FTE) posts, 5% of its planned staffing. Natural England has reduced its vacancy gap from over 250 in September 2022 to one in February 2023 but recognises that it has a significant risk around capability, which it plans to mitigate by increasing spending on learning and development in 2023-24. They are also facing demand to increase activity in some areas, such as monitoring and inspections to respond to failures in water quality. Our case study work has identified specific areas where they and Defra are falling behind with their work, for example backlogs in permit applications or delays in developing plans to administer new waste regulations. The activity set out in the EIP will likely need additional resources over the next spending review period for Defra and regulators to manage it effectively, and Defra told us they are currently estimating their requirements (paragraphs 2.11 to 2.15).

14 Defra is seeking to make changes to existing regulation to ensure that it fits future needs, and there are areas of good practice it could draw on. In response to the Retained EU Law (Revocation and Reform) Bill, Defra is reviewing its stock of retained EU law, which is the largest in government. While Defra's default position is to retain this law, it is considering where legislation and processes can be amended to better fit the UK – for example, on habitats regulation. Our case study work has identified examples where approaches and ways of thinking could be adopted more widely to develop regulation that better fits Defra's current ambitions. These include adopting a broad approach where regulation is designed to tackle multiple issues together, or regulation that adapts based on performance information and technological innovations (paragraphs 2.16 to 2.21).

Evaluation and performance measurement

15 Defra has limited data on the effectiveness of its regulation to inform decisions about future activities and where to prioritise resources. Defra receives performance reporting from the Environment Agency and Natural England via its sponsorship teams, but this data does not allow it to fully understand the effectiveness of their regulatory activities. It is challenging to isolate the impact of regulatory interventions. Defra's logic models are incomplete and we could not always identify how its regulatory interventions contribute to its overall outcome measures. While progress is being made, without a clear understanding of what is and is not working, it is difficult for Defra to make decisions about future activities and where to prioritise resources (paragraphs 3.2 to 3.9).

16 Defra developed a department-wide evaluation strategy in February 2023 and is in the early stages of taking this forward. Defra has a 'hub and spoke' model where most evaluation work is carried out in policy teams, with a small central team that has recently developed a strategy. It does an evaluation audit that provides the central team with oversight of what evaluations are being done and where. It does not routinely share lessons from the evaluations with relevant teams across the department. However, Defra intends to consider how learning can be shared more widely and efficiently. This is still at the early planning stages (paragraphs 3.10, 3.12 to 3.18).

17 Defra had a backlog of 63 Post-Implementation Reviews (PIRs), as at March 2023. While PIRs are not the only way to determine what works, this limits its insight into how well regulation is working or the burden it is placing on business.

Departments are expected to carry out PIRs on regulation which has a significant burden on business, to gain insight into whether the regulation is working as expected and whether it could be improved. There are delays in producing PIRs across government and the Regulatory Policy Committee has not received the number of PIRs expected given the number that should have been completed. Defra has identified that its own backlog of 63 reviews is due to pressures caused by EU Exit and the coronavirus pandemic. It plans to clear the backlog over 2023 and 2024. Until it has carried out these reviews, Defra lacks an important source of evidence for whether regulation is meeting its objectives and the impact it is having (paragraphs 3.11 and 3.18).

Conclusion

18 Defra put the ambitious targets to deliver its 2018 25 Year Environment Plan on a statutory footing in 2023, and, in 2021, set up the Office of Environmental Protection with a duty to monitor progress. The Environmental Improvement Plan, published in January 2023, sets out the changes Defra is seeking to meet its targets, and envisages an important role for regulation and regulatory reform. However, according to its own data, Defra is not on course to achieve its 2018 environmental goals. It is too soon to judge performance against the targets it has just announced.

19 Defra's work to understand how its current regulation supports its overall environmental objectives is still at an early stage. Key bodies with regulatory functions are falling behind on aspects of their existing work, and the resource requirements for the activity set out in the Environmental Improvement Plan are still being estimated. Defra has started to strengthen its governance arrangements and develop a strategy for evaluation. But it does not have the information it needs on the effectiveness of regulation, and it has a backlog of regulatory Post-Implementation Reviews. These gaps limit its ability both to make evidence-based decisions about where to deploy its resources, and to understand wider impacts of its regulatory approach. These are serious weaknesses, and Defra must take swift and effective action and build on its recent work to address them in order to get the best value from its limited resources and give itself the best chance of achieving its objectives.

Recommendations

20 As Defra takes forward its Environmental Improvement Plan, it still has decisions to make about the design and operation of regulation to ensure that it is meeting its targets. To make good decisions, it will need to have a clear understanding of what works and why. We therefore recommend that Defra should do the following:

- a** **By December 2024, as Defra complies with its statutory reporting requirements under the Environment Act, it should incorporate detailed operational plans for how it will achieve the goals of the EIP, including the role of regulation alongside other policy interventions.** Defra should set out its understanding of where regulation is currently being used to deliver environmental goals and how it operates. The plans should include the skills, capacity and capabilities Defra and arm's-length bodies will require. They should also provide clarity to stakeholders on expected changes to regulation and the timelines for any plans.
- b** **By December 2024, ensure it is meeting deadlines for its workload of Post-Implementation Reviews.** This includes clearing the current backlog of Post-Implementation Reviews, as well as carrying out those that fall due in that period.
- c** **By December 2024, enhance mechanisms for sharing evaluation findings and good practice across the Defra group.** As Defra implements its new evaluation strategy, it should clearly set out and enhance its approach to communicating internally how evaluation findings can be applied to strengthen the design and implementation of regulation.
- d** **By December 2024, identify ways to 'future-proof' regulations, and possible opportunities to put this into practice.** Acknowledging that any significant regulatory changes may require new legislation, Defra should identify existing good practice around flexible regulation that can adapt to meet changing targets and consider adopting this more widely.
- e** **By December 2023, complete its changes to governance of the environmental targets, and set out its plan to review their effectiveness.** This plan should include a timetable for the review.
- f** **By December 2023, clarify what performance information it will expect from arm's-length bodies to be able to assess their effectiveness.** As new sponsorship arrangements between Defra and its arm's-length bodies become more established, Defra should work with regulators to ensure that it has what it needs for oversight of their performance and to manage any issues.