

Environment Bill: briefing for Day 2 of Report stage

May 2021

The 2019 [State of Nature](#) report found that, since 1970, 41 per cent of species in the UK have declined, with 15 per cent at risk of extinction. In England, the 25 Year Environment Plan recorded a 60 per cent fall in abundance of priority species in the same timeframe. WWF's recent [Living Planet](#) report found that the global populations of mammals, birds, amphibians, reptiles and fish suffered a 68 per cent decline in the same time period. This has been the result of a multitude of factors that continue unabated including climate change, intensive agriculture, pollution, invasive species, urbanisation and mismanaged habitats. The UK is one of the most nature depleted countries in the world.

The Prime Minister has acknowledged the severity of the crisis and committed the UK to reversing the decline of nature by 2030. This ambition is welcome but must be embedded in law. The Environment Bill provides the perfect opportunity to do this and to send a strong message about the UK's role as a global leader in the run up to crucial negotiations for global targets at the UN Convention on Biological Diversity in October.

The [announcement](#) for a 2030 species recovery target is a potential watershed moment for wildlife and will be a very welcome strengthening of the bill. But other parts of the nature framework in the bill must also be strengthened. Local Nature Recovery Strategies must be at the heart of all public authority strategic planning and decision making and habitat created through biodiversity net gain should be maintained in perpetuity. Species Conservation Strategies must contribute to the recovery of nature and verbal assurances on how the proposed new powers to amend the Habitats Regulations will be used must be hard wired into the legislation. The forest risk commodities provisions should be further improved, including through a strengthened review procedure and ensuring that the measure applies to the finance sector.

Amendment 45 – the Convention on Biological Diversity

We support amendment 45, which would extend the general duty to conserve and enhance biodiversity to require public authorities to consider what action they can take to contribute to the achievement of targets arising from the Convention on Biological Diversity (CBD).

The CBD is a multilateral environmental conference, which has met since 1992 under the auspices of the UN with the aim of conserving biological diversity across the globe.

In 2010, the CBD agreed a set of 20 targets to recover nature over the next decade, known as the Aichi Biodiversity Targets. Last year, it was confirmed that [not a single one](#) of these had been met. The UK, along with the 193 other countries which signed up to the targets, failed in their contribution towards these global goals.

The CBD will be meeting again in October in Kunming, China, where the international community is expected to set a new set of global goals for nature for 2030, including an agreement to put global biodiversity on the path to recovery by 2030, and a target to protect 30 per cent of the Earth's land and seas by 2030. The UK government has been a consistent champion of these measures.

Amendment 45 seeks to avoid a repeat of the Aichi failure and would help to ensure that the new 2030 targets are met. The UK can use its leadership position, in this G7 and COP26 year, to set an example on delivery, linking the credibility of negotiating positions to the strength of domestic actions. An excellent start has been made with this month's [commitment](#) to a new target in the bill to halt domestic species decline by 2030. **A requirement on all public authorities to actively consider how they can contribute to CBD targets would effectively extend this approach to the local level, ensuring that work to meet CBD targets 'filters down' to those delivering change on the ground, complementing the national species recovery target with local action.**

A combination of the new national species recovery target and a requirement on all public authorities to act would be a leading example of comprehensive and sustained domestic action to meet international targets. By having both provisions in place, the UK would show the way to the successful delivery of international targets to recover nature.

Amendment 29 – Local Nature Recovery Strategies

We support amendment 29 which aims to strengthen the duty to use Local Nature Recovery Strategies and further embed biodiversity in all public authority decision making. Local Nature Recovery Strategies have the potential to be an extremely effective tool for targeting investment in nature, but as drafted this potential will not be realised because of the very weak duty to apply the strategies in decision making. This is an essential amendment to ensure that Local Nature Recovery Strategies actively influence the important day to day decisions that affect nature.

As drafted, the duty to use Local Nature Recovery Strategies is very weak – it is a duty to “have regard” to the strategies in complying with the duty to “have regard” to the need to enhance nature. This risks creating obligations to develop Local Nature Recovery Strategies, expending precious local resources, only to see this effort wasted by failing to give the strategies any influence on real decision making.

Amendment 29 would require all public authorities to act in accordance with any relevant Local Nature Recovery Strategy in the exercise of their duties, including statutorily required planning and spending decisions. Local Nature Recovery Strategies are intended to co-ordinate the actions of multiple stakeholders, including directing the locality-wide use of biodiversity gains from the planning system, Environmental Land Management systems and other sources, helping to build and maintain ecologically coherent networks of nature recovery sites. **Placing Local Nature Recovery Strategies at the heart of all public authority strategic planning and decision making will help them to fulfil this central, strategic purpose.**

Amendment 22 – maintaining biodiversity net gain habitats in perpetuity

Done well, biodiversity gain could help contribute to the restoration of biodiversity, deliver the ambitions of the 25 Year Environment Plan and help respond to the climate and ecological emergencies, if it operates and is assessed against a national plan to restore nature and ecosystems. We are concerned that newly created habitat, as part of developers' biodiversity gain requirements, could be destroyed after 30 years.

We support amendment 22 which would require habitats secured under biodiversity gain to be maintained in perpetuity, rather than the 30 years currently specified in the bill. It would also ensure that the habitat secured under biodiversity gain should be secured in its target condition.

If delivery of biodiversity gain is to contribute to the 25 Year Environment Plan commitment to a Nature Recovery Network, and to provide carbon sequestration which could support the net zero target, these areas must be secured and maintained for the long term. This will ensure that they can be enjoyed by future generations, secure nature's recovery for the long term and play a role in assisting nature to adapt to climate change.

NC21 and NC22 – habitats regulations

The government has proposed two new clauses **NC21** and **NC22** which would give the Secretary of State the power to amend the Habitats Regulations. The government [says](#) it needs this power because it wants the legislation to adequately support its ambitions for nature and free up technical expertise in Natural England from being distracted by what it regards as highly prescriptive legal processes. These “legal processes” include crucial safeguards in decisions concerning the protection of species and habitats, which should not be stripped away in the name of simplification.

We urge the government to remove any ambiguity from the wording of these clauses to ensure they provide for additional protections in line with the overarching ambition of the Environment Bill to improve the environment, without diluting important technical protection for individual sites and species provided by the Nature Directives. The current level and scope of environmental protection must not be weakened.

There has been no prior consultation or engagement with stakeholders on the scope or detail of these powers. Tabling amendments a few days before a Report stage debate when the government has had many months to engage technical experts and stakeholders is not commensurate with the transparent and listening approach that will be necessary to avoid any such power leading to unintended adverse consequences. It also fails to respect [commitments](#) under international law to provide effective public participation in the preparation of draft legislation.

We note that no impact assessment or supplementary delegated powers memorandum have been published. We urge the government to correct this procedural oversight and publish them immediately. These are important documents which are intended to explain the justification for the powers and what impact they might have. Without them, Parliament cannot properly evaluate the proposed amendments.

In the limited time available to consider the proposed powers, we have identified some areas which must be addressed if the government's commitment to avoid any weakening of environmental protections is to be delivered in practice.

The proposed new powers raise many questions. For example, is the entirety of the Habitats Regulations within scope or just those regulations that specifically refer to the Birds and Habitats Directives? Without clarity on these important issues, it is difficult to fully assess the amendments.

Coupling with international commitments

The government has said it wants to decouple UK legislation from the Birds and Habitats Directives. Instead, it proposes to focus solely on the Environment Bill framework which, because of its high level nature and in-built discretion, is open to different interpretation by future governments. In addition to safeguards to ensure that these powers will only be used to increase the scope and impact of existing protections, the government should ensure cohesion across domestic and international policy agendas and achievement of treaty goals through an explicit link to international biodiversity commitments.

The need for stronger safeguards

Both new clauses require the Secretary of State to “have regard to the particular importance of furthering the conservation and enhancement of biodiversity” when exercising these powers. While this sentiment is welcome, “have regard” duties have been much maligned and are regarded as weak, especially in relation to biodiversity. For example, the Lords Committee on the Natural Environment and Rural Communities Act 2006 found the requirement for public authorities to “have regard” for biodiversity weak, unenforceable and lacking clear meaning and [recommended](#) that the government should consider changes. The government has recognised this, taking on board the committee’s recommendations elsewhere in the bill.

The new clauses also stipulate that before exercising these powers the Secretary of State must be satisfied that they do not reduce the level of environmental protection provided by the Habitats Regulations. The determination of whether there would be any impact on the level of environmental protection is left solely to the discretion of the Secretary of State, with no requirement to consult experts or stakeholders. To reflect government ambition, these clauses should include a scaling up of protection and restoration requirements as [report](#) after [report](#) shows is needed. **The direction of travel for protection should be objectively guaranteed as being upward and not downward.**

Oversight from independent technical experts

The government has [said](#) that it will take a “measured approach” to reform and will consult with the Office for Environmental Protection (OEP) and conservation groups on any proposals it develops before any regulatory changes are made. While welcome, these consultation pledges are not specified in the new clauses. Subsection 9 of **NC21** and subsection 5 of **NC22** merely require the Secretary of State to consult with “such persons as the Secretary of State considers appropriate”. While the current Secretary of State may decide to consult with the OEP and conservation groups, future ministers may hold a different view. **The assurances provided by the Secretary of State therefore need to be explicitly written into the legislation to guarantee consultation will always include independent experts, including the requirement to consult with the OEP, Natural England and the JNCC.**

Amendment 46 – species conservation strategies

Clause 102 would provide a legal basis for Natural England to prepare Species Conservation Strategies (SCSs), in consultation with relevant local planning authorities and others.

The government has [said](#) that these strategies would support and encourage the design and delivery of strategic approaches for the protection of both species and habitats, particularly in locations where this can also help resolve planning issues. By undertaking surveying, planning and zoning and developing measures to mitigate or compensate for any impact on the species up front and across a wide area, local populations can be secured while reducing the need for reactive, site-based assessments.

District Level Licensing (DLL) for great crested newts (GCN) is an example of a strategic approach to facilitating development where protected species are involved. Defra has stated that it wants to encourage DLL for GCN, and future schemes for other species as they are developed, to become the default option for managing the impact of development on protected species where the upfront surveying and mapping shows it is appropriate.

Although Defra has [stated](#) that a Species Conservation Strategy “is a new mechanism to safeguard the future of particular species at greatest risk”, the details of the proposal suggest that the primary driver for the SCSs is to streamline process for development.

The practical result is likely to be that local populations of protected and vulnerable species can be destroyed (for example by development) in return for the creation of habitat or other measures intended to support wider populations of that species.

These approaches could lead to positive conservation results for some species if rigorous and well monitored, but they bring a high degree of risk that habitat on which species rely for survival is lost, and that vital protection for species is loosened to make way for development, with offsets that do not deliver real results.

While SCSs could in theory play an important role in conservation, we are concerned by the overt focus on development in the explanatory narrative, and the stated ambition to seek approaches similar in principle to the DLL approach currently applied to GCN as “a default option for managing the impact of development on protected species”.

True conservation strategies should address a much wider range of issues and include proactive conservation measures.

There may be some other species for which inclusion of strategic licensing approaches, as part of a wider conservation strategy, is appropriate, but this must be considered on a species-by-species basis and must learn lessons from DLL for GCN. DLL schemes for GCN are not comprehensive conservation strategies, but mechanisms designed solely to address the interface between newts and development in areas to which the schemes are applied.

While there may be strategic measures that can be taken to further the conservation and recovery of protected species and to simplify the requirements for developers, the latter should not be the driver for these. They should complement species’ wider conservation needs, ensure adequate assessments of outcomes and effective governance.

We support amendment 46 which would ensure that these strategies contribute to nature recovery, and that all measures set out within SCSs will be designed to contribute to the enhancement of the conservation of the species which they concern.

The amendment would also ensure that any future consideration of strategic licensing systems was only considered as part of a wider conservation strategy for those species and should only be progressed where a thorough assessment of the conservation status of a species, its needs and amenability to strategic approaches has confirmed that this is appropriate. The amendment would also ensure that all provisions within SCSs were underpinned by the mitigation hierarchy – with avoidance being the primary aim, and only if this is not possible, moving to the mitigate and/or compensate phase.

NC25 – Duty to prepare a tree strategy for England

We welcome **NC25** which would require the government to prepare a tree strategy for England. This provides a welcome opportunity for the government to provide more detail on woodland expansion, protection and restoration initiatives, further to the recently published England [Trees Action Plan](#). It would also be helpful if the government could provide an update on progress on the other natural environment strategies to which it has committed but which are yet to be published, for example on nature.

Amendments 26, 27, 36, 37 and 38 – use of forest risk commodities in commercial activity

Since the bill was introduced to Parliament, the government has undertaken a consultation on whether the UK government should introduce a new law designed to prevent forests and other important natural areas from being converted illegally to agricultural land. The consultation revealed strong public support for action.

Ninety per cent of respondents stressed that the proposal could go further, with significant numbers of responses highlighting that relevant local laws may not be as strong as international or industry standards and that the proposal should be expanded to other ecosystems and take an integrated approach to the impact of supply chains on the environment and human rights more widely.

The Global Resource Initiative (GRI) Taskforce recommended in March 2020 that the government should urgently introduce a mandatory due diligence obligation on companies that place commodities and derived products that contribute to deforestation (whether legal or illegal under local laws) on the UK market. The GRI also called on the government to take action to ensure similar principles are applied to the finance industry.

The GRI also recommended that since not all businesses have begun to commit to and implement sustainable supply chains, a legally binding target to end deforestation in UK supply chains would provide the necessary signal for a shift in industry behaviour.

Schedule 16 of the bill now includes a new prohibition on the use of certain commodities associated with illegal deforestation and requirements for large companies to undertake due diligence and reporting. However, the provisions do not go far enough in taking on the GRI recommendations or the level of action demanded by the consultation.

Due diligence legislation is only part of the comprehensive approach that will be needed to deliver deforestation free supply chains. A mandatory due diligence framework should formalise and obligate responsible practices throughout UK market related supply chains and finance, to ensure comprehensive accountability and help prevent deforestation and other global environmental damage.

We support amendments 26 and 27 which would strengthen these new provisions by ensuring the due diligence requirements cover the finance sector and by providing stronger protection for local communities and indigenous peoples. **We also support amendments 36 to 38** which would strengthen the enforcement of these provisions.

As the government has its sights set on a world leading new law, its ambition should be strengthened by improvements to both the scope and procedural requirements of the forest risk commodities provisions.

NC24 – prohibition of burning of peat in upland areas

Rotational heather burning is a practice whereby the vegetation on top of upland peatland is set alight at regular intervals, to create better conditions for the rearing of grouse. Upland peat habitats are a significant carbon store and burning heather and grass within them releases carbon. Natural England has calculated that around 260,000 tonnes of CO₂ are released every year from rotational burning on peat in England. Rotational burning also reduces the biodiversity value of upland peat habitats, drying them out from their natural wet state.

Earlier this year the government introduced Heather and Grass Burning Regulations to restrict the practice of rotational burning on upland peatland. However, the regulation covers only upland peatland sites that are designated as Site of Special Scientific Interest and in a Special Area of Conservation or a Special Protection Area, with exemptions applying even to these sites. This means that at most only 40 per cent of upland peatland habitats are currently protected from burning.

We support NC24, which would prohibit burning across all upland peat habitats, aligning environmental policy with the scientific consensus that burning emits unnecessary carbon and harms biodiversity.

NC4 – protection for hedgehogs

NC4 would extend the protections afforded to hedgehogs, making it an offence to intentionally or recklessly damage or destroy any place hedgehogs use for shelter or protection.

Currently hedgehogs are only protected under Schedule 6 of the Wildlife & Countryside Act 1981, which prohibits killing by listed methods. Hedgehogs are also listed as a species of “principal importance” under the Natural Environment and Rural Communities Act 2006, which confers upon authorities a duty to protect them. Neither of these current protections explicitly prohibit the intentional or reckless destruction of hedgehog habitats.

Action to address the destruction and fragmentation of hedgehog habitats is both necessary and feasible. Hedgehog numbers have [fallen by 50 per cent](#) over the past two decades, with habitat loss from development cited in the 2018 ‘State of Britain’s Hedgehogs’ [report](#) as a key contributing factor in this decline. In 2020 hedgehogs were added to the International Union for the Conservation of Nature’s [Red List](#) for British Mammals, classifying them as being “vulnerable to extinction”.

We support NC4 as a measure that will tackle a key driver of falling hedgehog numbers, without imposing a disproportionate burden on business. Measures to protect hedgehogs enjoy strong public support – a [petition](#) calling for hedgehogs to be added to Schedule 5 attracted over 50,000 signatures in 2018. The bill represents an excellent opportunity to put this necessary, practical and popular measure into law.

NC16 – protection of biodiversity

Net zero and biodiversity protection must be both important considerations in and outcomes of the planning process. We welcome the intention behind **NC16**, although we think this would be better suited to the Planning Bill and we encourage the government to consider how this might be taken forward in that context.

Amendments we do not support

NC2 – assessment of plans

NC2 would drastically dilute the processes we currently have in place to safeguard European protected sites, including Special Areas of Conservation and Special Protection Areas. The clause would amend the Conservation of Habitats and Species Regulations 2017 to end the specific duties it contains, including the requirement for authorities to assess the potential impacts of a plan or project likely to affect a European protected site.

NC2 would also end the duty to only give permission for a plan or project after ascertainment that it would not have an adverse impact on the European protected site.

These duties would be replaced by giving authorities the option to carry out an assessment of a plan or project likely to affect a European protected site, with any assessment being an optional rather than required element in decisions.

The ending of legal requirements to assess and take into account potential effects on European protected sites would not only represent a major change to our planning system but would also be in noncompliance with international law. It would also be a regression of current environmental requirements, which the government has pledged to avoid, and undermine the recent government commitment to effectively manage 30 per cent of land for nature by 2030. The duties have been in place since the EU Habitats Directive 1992 formally established the requirements for a protected sites network. The removal of these duties would expose the network to damaging decisions, opening large swathes of precious, and in many cases irreplaceable, habitat to development. Special Areas of Conservation alone protect [0.6 million hectares](#) in England. The status and security of these important areas and other protected spaces (including Special Protection Areas and Ramsar designations) would all be significantly weakened by the new clause.

With [41 per cent of UK species in decline](#), England needs further protections for crucial species and habitats, not a weakening of the few protections currently in place. **We strongly oppose NC2, as it would critically jeopardise protections currently afforded to nature in recognised special places, make the 30x30 pledge impossible to achieve and undermine the conservation aims of this bill.**

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