

The Environment Bill: policy objectives for biodiversity and local nature recovery strategies



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Environment Bill

- **Part 6: Nature and Diversity**
 - Biodiversity gain in planning
 - Biodiversity objective and reporting
 - Local nature recovery strategies
 - Tree felling and planting
- **Part 7: Conservation Covenants**

Context

“Nature is in decline, much of England’s wildlife is deteriorating, and many ecosystems are degraded.”

Explanatory Notes, para. 44.

Biodiversity objective: existing legislation

A public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.

Section 40, Natural Environment and Rural Communities Act 2006

A weak duty

The requirement to “**have regard**” is contrasted with the requirement in section 66(1) to “**have special regard**” to the desirability of preserving a listed building or its setting: see *Howell v SSHCLG* [2014] EWHC 3627 (Admin) at [46] per Cranston J.

“To have regard to a matter means simply that that matter must be specifically considered, not that it must be given greater weight than other matters, certainly not that it is some sort of trump card. It does not impose a presumption in favour of particular result or a duty to achieve that result. In the circumstances of the case other matters may outweigh it in the balance of decision-making. On careful consideration the matter may be given little, if any, weight.”

”Special regard” = a requirement to give “considerable importance and weight”.

The proposed biodiversity objective

“The existing wording does not adequately reflect the ambition or language of the 25 Year Environment Plan. Shifting the focus of the duty to an active requirement to seek the further conservation and enhancement of nature should better align public authorities’ action on biodiversity with government’s ambition”.

Explanatory Notes, para. 46.

“Beefed up” section 40 of NERC Act 2006

- A “general duty to conserve **and enhance** biodiversity”
- The “general biodiversity objective” is “the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England”
- “A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.”
- “From time to time”: the first time must be completed within one year of the Environment Act coming into force, and then every five years.

After that consideration the authority must (unless it concludes there is no new action it can properly take)—

- (a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and
- (b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.

The requirements of (a) may be satisfied (to any extent) by revising any existing policies and specific objectives for taking action to further the general biodiversity objective.

The “determination” in (a) must happen “as soon as practicable” after the consideration.

“The action which may be taken by the authority to further the general biodiversity objective includes, in particular, action taken for the purpose of—
(a) conserving, restoring or otherwise enhancing a population of a particular species, and
(b) conserving, restoring or otherwise enhancing a particular type of habitat.”

In complying with these new duties, “*the authority must in particular have regard to any relevant **local nature recovery strategy***”.

Biodiversity Reports

- A requirement on local authorities (and any other designated authorities) to publish “*biodiversity reports*”.
- Summarise actions already taken to comply with new duties in relation to the biodiversity objective, and proposed actions, and report on biodiversity gains.
- First report must cover a period of no longer than three years, starting with the day on which the authority becomes subject to the reporting duty.
- Subsequent reports must cover a period of no longer than five years.
- Regulations may require reports to include specified quantitative data.

Local nature recovery strategies (“LNRS”)

Spatial plans enable the public, private and charity sectors to direct investment in nature to where it can best benefit the natural environment, and have an important role to play in delivering the government’s commitment to nature recovery. Although such plans do exist in some areas of England, they are often produced by a variety of bodies working at different spatial scales. Local Nature Recovery Strategies (LNRSs) will put spatial planning for nature on a statutory footing, and will support local action by consistently mapping important existing habitats and opportunities to create or restore habitat. For example, the biodiversity net gain consultation identified a need for local plans for nature to target biodiversity increases. Developed through a collaborative approach, LNRSs will also support the delivery of a Nature Recovery Network by acting as a key tool to help local partners better direct investment and action that improves, creates and conserves wildlife-rich habitat.

Explanatory Notes, para. 47

LNRS: the basics

- SoS to determine the areas to which LNRSs relate, but area of a local authority (other than a Country Council) may not be split between LNRSs.
- Compliance with general biodiversity objective requires regard to LNRS.
- Preparation by local authorities, Mayors of London and Combined Authorities, National Park authorities, the Broads Authority, Natural England.
- To be kept under review.
- Regulations may deal with timing of review, LNRSs involving multiple authorities, and consultation with members of the public.

LNRS: content

- A statement of biodiversity priorities for the area, including:
 - A description of the area and its biodiversity;
 - A description of biodiversity recovery/enhancement opportunities;
 - Biodiversity recovery/enhancement priorities.
- A local habitat map, including:
 - National conservation sites (SSSI, RAMSAR, MCZ, SPA, SAC);
 - Nature reserves;
 - Areas that are or could become “of particular importance for biodiversity”
 - Areas where biodiversity recovery/enhancement could make a particular contribution to other environmental benefits.

LNRS: SoS duty to provide information

Secretary of State must prepare and publish a “national habitat map for England” to assist authorities with their LNRSs, identifying:

- National conservation sites;
- Other areas that “in the opinion of the Secretary of State are of particular importance for biodiversity”.

Secretary of State to have a duty to inform responsible authority of any area:

- Which could be of greater importance for biodiversity;
- Where recovery/enhancement could make a contribution to other environmental benefits;
- Which could contribute to a national network of areas for recovery/enhancement.

Thank you for listening

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