



## **One Parliament left before 2030: The role of the Environmental Rights Bill in meeting nature targets Wildlife & Countryside Briefing: May 2024**

### **Introduction**

The nature recovery targets set under the Environment Act 2021 provide a north star for environmental policy.<sup>1</sup> An urgent policy effort is needed to achieve these targets. The first of them, the target to halt the decline in species abundance, must be achieved by 2030. With six years remaining, this ecologically critical target will be won or lost in the Parliament elected in the 2024 General Election.

The Environmental Rights Bill, drafted by barristers at Matrix Chambers in 2023<sup>2</sup>, and proposed by a coalition of nature, climate and health organisations through the Nature 2030 campaign<sup>3</sup> and Restore Nature Now event<sup>4</sup>, would contribute to the timely achievement of the Environment Act targets. The Bill picks up and further strengthens a key Environment Act theme; placing environmental duties on decision-makers, to hasten target delivery. It also develops a further catalyst for nature recovery by delivering on the UK's international commitment to strengthen the rights for individuals and groups to defend and enhance the environment through the UK's legal system.

This combination of strengthened environmental duties on decision makers and the empowerment of public action to conserve green and blue spaces, if passed into law early in the next Parliament, would accelerate progress towards halting nature's decline by 2030. To help achieve Environment Act targets, along with delivering climate, health and human rights benefits for the public<sup>5</sup>, we urge political parties to champion an Environmental Rights Bill in the 2024 General Election and into the next Parliament.

### **Part 1 of the Bill: Strengthening environmental duties on decision-makers**

There is currently a lack of rigour across the environmental duties that apply to decision-makers in central and local government.

Thanks to the Environment Act, Government Ministers must now have 'due regard' to five environmental principles when making policy.<sup>6</sup> Whilst this is a positive requirement, it is focused only on central Government and, like other 'have due regard' duties, there is a risk that it is interpreted unambitiously,

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<sup>1</sup> <https://www.gov.uk/government/news/new-legally-binding-environment-targets-set-out>

<sup>2</sup> <https://wcl.org.uk/assets/uploads/0/The%20Environmental%20Rights%20Bill%20-%20June%202023.pdf>

<sup>3</sup> <https://www.wcl.org.uk/nature2030.asp>

<sup>4</sup> <https://www.restorenaturenow.com/>

<sup>5</sup> For more on these wider benefits, see this essay from Kierra Box of Friends of the Earth:

[https://wcl.org.uk/assets/uploads/img/files/2023\\_Nature2030EssayCollection.pdf](https://wcl.org.uk/assets/uploads/img/files/2023_Nature2030EssayCollection.pdf)

<sup>6</sup> <https://moderncivilservice.blog.gov.uk/2024/04/22/environmental-principles-putting-nature-at-the-heart-of-our-policy-making/>



in a way that does not meaningfully inform policy making. During the passage of the then Environment Bill, there was cross party support for strengthening the requirement from 'have due regard ' to a more directional duty, removing exclusions for finance and defence policy and applying the duty to all public bodies. These improvements were rejected by the Government.<sup>7</sup>

Under section 20 of the Environment Act, Ministers are also required to declare whether, in their view, a Bill contains environmental law and, if so, whether it would lower the current level of environmental protection.<sup>8</sup> Section 102 of the Act also updated and strengthened the biodiversity duty, requiring public authorities in England to consider what they can do to conserve and enhance biodiversity.<sup>9</sup>

This framework of duties, although considerably improved by the Environment Act, has not provided a sufficiently robust and comprehensive obligation on decision makers to avoid environmental harm wherever possible. A number of unnecessary and environmentally harmful policies, from suddenly imposing the Growth Duty previously applied to other public bodies to OFWAT, the water regulator<sup>10</sup> to legislating for new oil and gas licenses<sup>11</sup> have already been smoothly progressed by the Government, whilst claiming full compliance with environmental duties.

The Environmental Rights Bill would build on the framework set in the Environment Act and address this deficiency. Clause 1 of the Environmental Rights Bill requires public authorities (including Ministers) to act in a way that is compatible with everyone's right to live in an environment adequate to human health and ecological well-being (known as the 'right to a healthy environment'). This clause, and relevant parts of clauses 6, 9 and 13 (see more below) go on to set out that acting in a manner compatible with the right to a healthy environment includes:

- Actively protecting and improving the state of the environment.
- Having due regard to rights to clean air, clean water, to biodiversity and to green spaces, to living soil and to a healthy climate (reflecting the wording used in other legislation including the Equality Act 2010).
- Acting to further the environmental rights of access to information, to meaningful public participation and to access to justice (see more below).
- Ensuring that relevant environmental standards, including those in the Environment Act 2021, are met in full.
- Having due regard to the environmental principles in the Environment Act.

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<sup>7</sup> For more on these rejected amendments, see this 2021 briefing from Greener UK and Link: <https://www.wcl.org.uk/docs/Environment%20Bill%20-%20Greener%20UK%20Link%20briefing%20-%20Committee%20Day%202%20-%20environmental%20principles.pdf>

<sup>8</sup> <https://publications.parliament.uk/pa/ld5802/ldselect/ldproced/182/18204.htm#:~:text=The%20purpose%20of%20section%2020,the%20environmental%20level%20of%20protection.>

<sup>9</sup> <https://www.gov.uk/guidance/complying-with-the-biodiversity-duty>

<sup>10</sup> [https://www.wcl.org.uk/docs/assets/uploads/April\\_24\\_Briefing\\_Draft\\_Economic\\_Growth\\_Regulatory\\_Functions\\_Amendment\\_Order\\_2024\\_accompanying\\_Statutory\\_Guidance.pdf](https://www.wcl.org.uk/docs/assets/uploads/April_24_Briefing_Draft_Economic_Growth_Regulatory_Functions_Amendment_Order_2024_accompanying_Statutory_Guidance.pdf)

<sup>11</sup> [https://www.wcl.org.uk/docs/assets/uploads/OPL\\_Bill\\_Lords\\_committee\\_Link\\_briefing.pdf](https://www.wcl.org.uk/docs/assets/uploads/OPL_Bill_Lords_committee_Link_briefing.pdf)



This enhancement will boost environmental duties from a passive 'consider along the way' to an active requirement to 'act in a particular way', significantly increasing the weight that environmental considerations are given in decision-making. It will also enumerate critical environmental considerations within that direction, reinforce positive measures in the Environment Act and extend the same duties across central and local government. It builds on the UN's 2022 vote<sup>12</sup> to recognise that everyone has a right to a healthy environment (now practically implemented in domestic legislation by an increasing number of UN members, but not yet by the UK), and on campaign proposals for a Clean Air (Human Rights) Bill, also known as 'Ella's Law'<sup>13</sup>, to place stricter requirements on those making decisions that could increase air pollution.

Ultimately of course, it is for democratically elected decision makers to decide their course of action, even if those decisions harm the environment. What would change as a result of the strengthened duties in the Environmental Rights Bill is that decision makers could no longer pursue harmful courses whilst claiming compliance with environmental duties, and if extenuating circumstances (such as a serious threat to public health or safety and where there is no alternative in order to protect human life, health and or the environment). led to the non-compliance, this would have to be made clear. The rigour of the enhanced duties would leave no room for false claims of compliance; there would be no fig leaf for destructive decisions. It would be very clear when decision makers had not acted in a way compatible with a right to a healthy environment – and why - they would then be exposed to the public opinion consequences.

Environmental duties would then function effectively to direct those seeking to do the right thing for the environment, and to ensure full exposure and accountability when decision makers opt to do the wrong thing. This will provide a dual incentive for improved environmental decision making, accelerating progress towards the achievement of the Environment Act targets.

## **Part 2 of the Bill: Empowering public action to conserve green and blue spaces**

The Environmental Rights Bill would also empower the public to do more to directly challenge failures by decision makers to uphold their environmental duties.

It would achieve this by fully incorporating environmental rights granted under the UNECE Aarhus Convention into UK law. The Convention, a multilateral environmental agreement conferring environmental rights, was ratified by the UK (and the EU) in 2005. Some provisions of the Convention were transposed into EU Directives, but key provisions (notably those covering access to environmental justice) were never transposed into EU or UK law. UK compliance with Aarhus has been patchy since the start and has been undermined over recent years.<sup>14</sup> Because it is an international Convention, it is not possible for individuals, community groups or NGOs to enforce Aarhus rights in UK courts. In 2022, the UK Government itself recognised that it is not compliant with the Convention when it comes to the

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<sup>12</sup> <https://news.un.org/en/story/2022/07/1123482>

<sup>13</sup> <https://www.ellaroberta.org/campaigns/ellas-law>

<sup>14</sup> <https://www.wcl.org.uk/concerted-action-needed-on-environmental-rights.asp>





prohibitively high costs involved in pursuing legal actions on environmental matters. Promised actions to remedy this have not materialised.

Part 2 of the Bill would transform the Aarhus rights UK citizens have technically had since 2005 from the margins of societal understanding and legal practice into core human rights, enshrined in UK law.<sup>15</sup> Clauses 6, 9 and 13 within Part 2 would consolidate the three Aarhus rights into UK law in a comprehensive and consistent manner, establishing:

- **The right to know:** Providing access to information by allowing members of the public to request that authorities, including private companies undertaking functions of a public nature, make environmental information available within reasonable timeframes. A further provision would also require the Government to publish regular reports on the state of the environment across the UK.
- **The right to engage:** Providing public participation by strengthening the public's opportunities to enjoy early and effective participation in decision making affecting the environment. This would include allowing third parties (which could include affected communities) a right to appeal planning decisions on environmental grounds.
- **The right to challenge:** Providing access to justice by protecting the right for citizens and communities to challenge the procedural and substantive legality of environmentally damaging decisions through the courts. This would include measures to ensure that people seeking to access the courts can do so in a fair, equitable and timely manner and improve the current costs capping measures.

Practical examples of how people could use these strengthened Aarhus rights, along with the wider right to a healthy environment created by Part 1 of the Bill, to conserve natural spaces can be found in the below hypothetical case study:

- A group of local residents, swimmers and anglers come together over concern about pollution in a local river.<sup>16</sup> Using the **right to know**, the campaigners request and obtain information from a water company (as a private company undertaking a public function) discharging sewage into the river about the extent, timing and reason for the discharges.
- Using the information, the campaign group successfully pressures Ofwat to review the conditions of the water and sewage license under which the water company operates. Under the **right to engage**, the group would be given the chance to actively input into the review.
- If Ofwat decided not to change the conditions of the water and sewage license, the group could consider taking action against Ofwat on the grounds that it failed to act in a way **compatible with the right to a healthy environment**. Under the **right to challenge** the

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<sup>15</sup> For more on how the Bill would ensure Aarhus compliance, see blog from key proponents and drafters of the Bill, including Carol Day of Leigh Day Solicitors: <https://www.wcl.org.uk/the-case-for-an-environmental-rights-bill.asp>

<sup>16</sup> An increasing number of such groups are forming, as a result of the ongoing sewage scandal, see: <https://www.ukrivers.net/network.html>



group's legal costs for undertaking the challenge would be definitively capped from the start, making this course of action more feasible for a community group.

- The group proceeds with a legal challenge and provides clear evidence that the information obtained from the water company showed unnecessary environmental harm being caused by sewage discharges into the river, which Ofwat did not then take into full account during the review, despite the group providing it under the right to engage, thereby also breaching their duty to act in a way compatible with the right to a healthy environment . Ofwat is directed to repeat the review, which leads to changes in the condition license and the sewage discharges into the river cease. The group is able to recover the legal costs of challenging Ofwat's failure in full.

At every stage in the process, the Aarhus Rights enshrined into UK law by the Environmental Rights Bill would put the residents' group on a more even footing with the large water company and regulator whose decisions had led to harm being caused to the river. In a David & Goliath battle, environmental rights can put a sling into the hand of the environmental defender, evening up the odds.

#### Protecting environmental defenders

Far from empowering members of the public seeking to defend the environment, the UK Government has significantly restricted their activities in recent years.

The Police, Crime, Sentencing and Courts Act 2022 (PCSCA 2022) and the Public Order Act 2023 (POA 2023) have made protest difficult for environmentalists, with the PCSCA 2022 introducing a penalty of up to 10 years imprisonment for the criminal offence of public nuisance.<sup>17</sup> The POA 2023 makes a number of peaceful protest activities illegal and provided the basis for the six-month imprisonment of a peaceful climate protester who took part in a slow march on a public road for 30 minutes in December 2023.<sup>18</sup>

The repressive climate set from Westminster has created a wider hostile environment, with newspapers vilifying individual campaigners and judges forbidding environmental defenders from explaining to the jury their motivation for participating in protests.<sup>19</sup>

These trends led to the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, Michel Forst, publishing a scathing End of UK Mission Statement in January 2024.<sup>20</sup> In the statement, Mr Forst said that he was *"seriously concerned by these regressive new laws"* and called for urgent measures to *"ensure that members of the public in the UK seeking to protect the environment are not subject to persecution, penalization or harassment for doing so."*

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<sup>17</sup> <https://www.legislation.gov.uk/ukpga/2022/32/section/78/enacted>

<sup>18</sup> <https://www.theguardian.com/environment/2023/dec/15/just-stop-oil-activist-is-first-to-be-jailed-under-new-uk-protest-law>

<sup>19</sup> <https://www.wcl.org.uk/protest-free-speech-and-environmental-defenders.asp>

<sup>20</sup> [https://unece.org/sites/default/files/2024-01/Aarhus\\_SR\\_Env\\_Defenders\\_statement\\_following\\_visit\\_to\\_UK\\_10-12\\_Jan\\_2024.pdf](https://unece.org/sites/default/files/2024-01/Aarhus_SR_Env_Defenders_statement_following_visit_to_UK_10-12_Jan_2024.pdf)



In addition to establishing a right to a healthy environment and putting Aarhus rights on a firm footing, the Environmental Rights Bill also includes measures to ameliorate the impact of these new restrictions.

Clause five of the Bill would establish that actions taken as an environmental defender would qualify as a 'protected act', giving the perpetrator protection from harassment as a result of their action. This protection, modelled on the protected characteristics framework successfully established by the Equality Act 2010, would mean that people could not have their freedom of speech, movement or association restricted just for taking part in a peaceful environmental protest. The protection would not apply in cases where the protest caused injury or harm to others or damage to property.

By giving environmental campaigners rights to access information, engage in decision making and take affordable legal action, as well as protecting the right to protest against recent violations, the Environmental Rights Bill would give more people more options to take action to protect cherished green and blue spaces. People power could then play a greater role in achieving the nature protection and restoration targets set under the Environment Act.

### **The overall impact of the Bill**

New legislation is not a silver bullet for nature recovery. To meet the crucial targets set under the Environment Act, an ambitious package of public and private sector funding and the bolstering of nature designations on land and at sea is needed, along with other interventions.

The Environmental Rights Bill would form an effective part of this wider nature recovery package. Its environmental duties would build on work started in the Environment Act to provide direction across central and local Government towards nature-friendly decision-making. The rigour of these new duties would make it more difficult for authorities to 'greenwash' decisions which conflict with everyone's right to a healthy environment. The strengthening of everyone's environmental rights, through the Bill's formal recognition of a legal right to a healthy environment, the transposition of the Aarhus rights to know, engage and challenge into UK law, and the protection of the right to peacefully protest, will better equip people to act to protect local green and blue spaces. This strengthening responds both to the increasing appetite from communities to act to prevent pollution in local rivers, and growing concern from civic society about recent restrictions to the right to protest.

By giving more weight to nature in decision making, and more support to members of the public campaigning to protect it, the Environmental Rights Bill can smooth the path to achieving the Environment Act targets, as well as boosting climate action, addressing the public health threat from environmental pollution and reinforcing the human rights of UK citizens. In this General Election year, political commitments to an Environmental Rights Bill can point the way to a better future.





Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 83 organisations to use their joint voice for the protection of the natural world.

This briefing is also supported by Campaign for National Parks and The Open Spaces Society.

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