

## Environment Bill Report stage briefing: nature

September 2021

This briefing is on behalf of the environmental coalitions [Greener UK](#) and [Wildlife and Countryside Link](#), and focuses on the parts of the nature chapter that we believe would benefit most from amendment as well as providing some commentary on other amendments.

### Priority amendments we support

#### **Amendment 84A on the biodiversity metric (Lord Krebs)**

The biodiversity metric is the tool that will be used by developers, planners and local planning authorities to work out the current biodiversity value of a site, and how to enhance it or create alternative habitat to deliver the ten per cent uplift required by biodiversity gain. Its effectiveness will determine the success of the biodiversity gain policy.

Unfortunately, the current biodiversity metric includes several major weaknesses. It focuses entirely on habitats, giving no account to the presence or potential for rare species, and does not account for habitat connectivity. Certain habitats are significantly undervalued, such as scrubland and habitats that mature slowly. As a tool, it has been [described](#) by Professor of Biodiversity Kathy Willis as the “equivalent of giving a farmer a trowel to dig a whole field”.

**Amendment 84A** requires the metric to be updated in line with scientific understanding, and for its omissions on species, habitat connectivity and certain habitat types to be rectified. It also requires the metric to be updated in line with progress toward Environment Bill targets. If sufficient progress is not being made towards meeting those targets, the metric could be adjusted to ensure that it is delivering an appropriate contribution. It would be one of the few mechanisms to forge a link between the targets framework in Part 1 to a delivery mechanism.

**We welcome amendment 84A**, which would require the biodiversity metric to be progressively improved and help ensure that biodiversity gain is a success.

#### **Amendments 85 and 87: maintaining biodiversity gains for 125 years (Baroness Jones of Whitchurch)**

The case for maintaining habitat enhancements in the long term (at least 125 years) is a strong one. As recognised in the Environmental Audit Committee’s recent ‘Biodiversity in the UK: bloom or bust?’ [report](#), “nature recovery does not happen overnight and must be maintained and built upon for generations”. A fully functional and high quality habitat can take a lot longer than 30 years to achieve. Habitat restoration projects now often have end dates a [century or more away](#).

These points were strongly made at [Committee](#) stage, with Peers highlighting concerns that under the current drafting of Clause 96 and Schedule 14 habitats enhanced through biodiversity net gain or conservation covenants could be ploughed up or degraded after 30 years, destroying any ecological gains and carbon storage benefits.

**Government amendments 86, 88 and 89** seek to address these concerns, by creating a duty and power to allow the Secretary of State to review and potentially increase the minimum duration for the maintenance of enhanced habitats. While the acknowledgement of concern represented by these amendments is welcome, they only represent a commitment to review tomorrow what should be done today.

The government's reason for adopting this ultra-cautious approach, cited at Committee, is a concern that a period of maintenance of over 30 years could deter some landowners from offering their land for conservation. This potential deterrent effect is overstated. Land use timeframes of a century or more are extremely common, with most leaseholds running from 99 to 125 years. The government's own Woodland Carbon Code requires woodland sites created for carbon storage to persist for 100 years. As Baroness Parminter said at Committee "most developments are around for more than 100 years; how come biodiversity is not afforded the same level of perpetuity?"

If the government is serious about supporting biodiversity gain, it will put habitat enhancement timeframes on a par with other land uses. Merely opening the door to doing this at some distant future point is not sufficient, given the rate of nature's decline. **Amendments 85 and 87** are required to set the maintenance of habitat enhancement at a minimum of 125 years, and to give nature the time it needs to recover.

### **Amendments 91 and 93 on LNRs (Baroness Parminter and Lord Goldsmith)**

**Amendment 91** presents a key change to the bill, the case for which has been made throughout the bill's passage, for Local Nature Recovery Strategies (LNRs) to be given sufficient weight.

As currently drafted, Clause 98 fails to provide a legal requirement on public authorities to apply LNRs in critical day-to-day decisions that impact on nature, such as planning and spending. Without this requirement, many authorities – juggling many duties with limited resources – will struggle to apply LNRs in decision making.

The government's response, in the form of **amendment 93**, does not meaningfully address these concerns. It simply ensures that authorities will receive guidance on how to take LNRs into account. This perpetuates the approach the government has taken throughout, viewing LNRs as documents "to guide rather than compel action", as Lord Goldsmith [explained](#) at Committee.

This fails to appreciate the range of strategies that authorities have to apply. Facing this range of strategies, and a need to prioritise, guidance will always lose out to legal requirements. The government's categorisation of LNRs as guidance documents only is, in effect, an instruction to authorities to de-prioritise their application. This is the reason why, as highlighted at Committee, authorities have supported calls for the LNR duty to be strengthened to "act in accordance" rather than the much weaker "have regard" duty.

**Amendment 91** would give a green light for including nature in authority decision making and is an essential change to the bill. If complemented with sufficient resourcing, it will allow LNRs sufficient weight to fulfil their intended role, directing the locality-wide use of biodiversity gains from the planning system, Environmental Land Management systems and other sources, to build and maintain ecologically coherent networks of nature recovery sites.

## **Amendment 99: Habitats Regulations – limits on powers to amend (Lord Krebs)**

The Habitats Regulations 2017 form the first line of defence for our most precious habitats and species, providing a regime of strict protection for the UK's finest wildlife sites (SACs, SPAs and Ramsar sites) and for European Protected Species.

Clauses 108 and 109 of the bill, introduced without consultation in May 2021, grant new powers to the Secretary of State to amend the Habitats Regulations. The powers give the Secretary of State considerable freedom of manoeuvre, binding them only to “have regard” to the need to enhance biodiversity when making changes, and to satisfy only themselves that environmental protections have not been reduced.

These wide ranging new powers open the door to a potential weakening of protections, and the consequent enabling of developments that damage important wildlife sites.

**Amendment 99** would close that door by only allowing Habitats Regulations changes that would enhance compliance with international agreements (such as the Bonn Convention, the Bern Convention, the Ramsar Convention and the Convention on Biological Diversity) or contribute to the favourable conservation status of species or habitats, or favourable condition of protected sites. The amendment also strengthens the requirement to ensure that changes do not reduce environmental protections and involves technical experts (including the Office for Environmental Protection – OEP, Natural England and JNCC) in making that judgement.

These safeguards should be acceptable to the government. At Committee, Lord Goldsmith [assured](#) Peers that the new powers were being introduced simply to allow a possible future enhancement of the Habitats Regulations, if needed to better “improve the condition of our sites and contribute to our 2030 ambition”. **Amendment 99** would set these good intentions in law, allowing the possible improvement the government is interested in exploring, while precluding the weakening ministers are on the record as opposing.

The amendment would ensure that strict protections for species and sites would remain in place, while still allowing the Secretary of State to place additional measures on top of those protections, to help further meet the government’s welcome 2030 targets.

## **Amendment 106: forest risk commodities (Lord Randall of Uxbridge)**

In the 25 Year Environment Plan, the UK government articulated an ambitious set of goals and actions for the UK, including committing that “our consumption and impact on natural capital are sustainable, at home and overseas”. The Environment Bill should reflect this commitment but does not currently do so adequately.

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 called on the government to ensure that 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.

It recognised that the focus on forests and land conversion was a “first step only” and that “wider environmental and human rights impacts associated with commodity production and trade must also be addressed and the lessons extended to other food commodities and beyond, for example extraction/mining commodities”.

In 2020, the UK government [consulted](#) on whether it 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 a significant number of responses highlighting that relevant local laws may not be as strong as international or industry standards. Many respondents suggested the proposal should be expanded to cover all deforestation, apply to other natural ecosystems and take a more integrated approach to the impact of supply chains on the environment and human rights.

The government [amended](#) the bill in the Commons and Schedule 16 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 progressing either the GRI recommendations or the level of action demanded by the consultation. They must be strengthened to tackle the growing problems caused by deforestation and the conversion of other natural ecosystems and to drive action to significantly reduce our global footprint. [Recent research](#) undertaken by WWF finds that a due diligence system based on compliance with the law in the country of production is very difficult to comply with as per assessment in key jurisdictions. The government must therefore strengthen the proposed legislation to avoid the risk of introducing a system which may not only fail to achieve its goals but also turn out, in practice, to be unworkable.

The bill only addresses illegal deforestation, as it only restricts forest risk commodities that have been produced in contravention of relevant local laws. However, all deforestation – legal or illegal – has the same potential negative ecological, climate, human rights and sustainability impacts. In fact, while circumstances vary between producer countries and with spates of agricultural expansion, recent analysis indicates that [almost a third of global tropical deforestation](#) is considered ‘legal’ under local laws.

Laws can also change – what is illegal today may be legal tomorrow. The changes in Brazilian forest laws over the past decade, and the resulting legalisation of deforestation, provide [a telling example](#). Several further alarming legal reforms are currently [under consideration](#) by the Brazilian Government or being considered in Parliament. These put millions of hectares of forest and other critical ecosystems at risk, including 115 million hectares of currently protected indigenous territories and an additional 178 million hectares of ‘legal’ deforestation on private land. This would push the Amazon towards a dangerous tipping point and sow the seeds for long term social conflict. In this context, were the UK government to introduce a law which allows ‘legal’ deforestation, and rewards it with access to the UK market, this could effectively signal the UK’s endorsement of the Bolsonaro Government’s deliberate destruction of the Amazon.

**Amendment 106** seeks to introduce a requirement that a regulated person does not use forest risk commodities, or products derived from those commodities, in their UK commercial activities if they are derived from land that is deforested after the commencement of Schedule 16 or an earlier date set by regulation. It also provides for an exception for forest risk commodities produced by indigenous peoples or other communities with customary land use rights according to traditional farming practices.

## **Amendments 107 and 108: review clause (Lord Randall of Uxbridge)**

**We strongly support amendments 107 and 108 which would strengthen the review provision to ensure that the rights of indigenous peoples are considered, a consultation is held and the Secretary of State takes steps to eliminate forest risk commodities from UK commercial activities.**

We welcome Paragraph 17 of the Schedule which includes a requirement for the Secretary of State to review the effectiveness of the forest risk commodities framework every two years, and to lay before Parliament and publish a report of the conclusions.

However, there are no requirements regarding the quality, transparency or independence of this review. Nor is there a requirement to address any deficiencies or weaknesses identified by a review, or to make any needed improvements to the content, implementation or enforcement of the forest risk commodities framework.

Given the novelty of the due diligence framework and the fact that much of it will be set by secondary legislation, it is important that the review procedure ensures that, where deficiencies are identified, there are clear procedures which result in improvements to the framework.

This would help ensure that the measure is progressively improved over time. It would also enable the due diligence framework to be adjusted to address any deregulation or undermining of protections for forests in producer countries.

The Secretary of State should be required to consult with relevant stakeholders as part of the review, as the amendment proposes.

**We also welcome amendments 108A, 108B and 108C** tabled by Baroness Meacher. These seek to bring forward the timescale for the review, so it is conducted after one year and not two and would allow ministers, by regulation, to extend the due diligence scheme to cover legal as well as illegal deforestation, should this be deemed necessary.

## **Amendment 121: duty to produce a global footprint target timetable (Lord Randall of Uxbridge)**

The Environment Bill is silent on how the UK government intends to address our global footprint. It does not yet therefore deliver on the commitment in the 25 Year Environment Plan to ensure “our consumption and impact on natural capital are sustainable, at home and overseas”.

In its ‘Biodiversity in the UK: bloom or bust?’ [report](#) published on 30 June, the Environmental Audit Committee recommended that the government should set a target to reduce the UK’s global environmental footprint.

[New evidence from WWF](#) found that as a nation we need to reduce our global footprint by three quarters by 2030 if we are to live within our planetary means.

The report highlights that:

- Human impacts on the natural world are driven by over consumption, unsustainable extraction rates, and by the methods we use to produce material goods.

- The UK is a particularly large consumer of products with a major environmental impact.
- The report found that the UK needs to reduce its ecological footprint by 60 per cent, material footprint by 38 per cent, biomass footprint by 48 per cent, nitrogen footprint by 89 per cent, phosphorus footprint by 85 per cent and carbon footprint by 85 per cent.
- Significant reductions in the UK's footprint should not be interpreted as meaning that the UK's economy must shrink, or that the wellbeing of UK citizens must be reduced. With very few exceptions, the targets proposed are about doing things differently.

At Committee, Lord Goldsmith [helpfully clarified](#) that the Clause 1 power could be used to set a global footprint target. But the timescale for setting such a target remains unclear. Furthermore, the bill framework precludes the government from setting the 2030 global footprint target that scientific evidence demands, as long term targets set under the bill must be for at least 15 years, so a 2038 target appears to be the earliest possible.

**We therefore strongly support amendment 121 which would require the government to publish a timetable to set a global footprint target in regulations. It stipulates dates for setting the target in regulations and the deadline by which the target must be met.**

## Commentary on other amendments

### Amendments 92 and 102: agroforestry (Lord Teverson)

These helpful amendments would require authorities to have regard to agroforestry when fulfilling their general duty to conserve and enhance biodiversity and commit the Secretary of State to publishing an agroforestry strategy for England.

This would encourage the growth of agroforestry, which is currently practised on only three per cent of UK farmland. An increase in agroforestry would benefit nature, climate and farmers and is a win-win proposition for nature, climate and UK farming.

The practice sees more trees planted on farmland, often in the form of alleys of fruit bearing trees amongst arable crops. This provides additional crop for the farmer, as well as improving soil health, managing water flow and attracting pollinators to the benefit of the existing cereal crop. The trees themselves provide spaces for wildlife and help store carbon. Examples of agroforestry schemes in action can be found at [Whitehall Farm](#) in Cambridgeshire and at [Wakelyns Farm](#) in Suffolk.

### Amendment 94: local authority powers to further the general biodiversity objective (Lord Oates)

**Amendment 94** would give local authorities the power to intervene, outside of the planning process, when the biodiversity of a site is threatened by the site owner.

Discussion at Committee [clarified](#) that the power would apply only to individual sites, and that no such power to intervene for nature outside of planning currently exists. Lord Oates highlighted the case of Seething Wells in Kingston-Upon-Thames, where disused metropolitan open land in private ownership became a haven for birds, bats and grass snakes, until the owners intervened after decades of dereliction to clear the site of vegetation. This action did not require planning permission and there was no mechanism available to the local authority to stop this destruction.

**Amendment 94** would help prevent further nature-rich privately owned sites like Seething Wells from being lost. Local authorities would be empowered to issue a biodiversity contravention notice to give them access to a site where serious biodiversity destruction is suspected, to assess the situation.

The amendment would grant a further power to seek a court injunction to stop biodiversity destruction on sites covered by a Local Nature Recovery Strategy. This would provide a means for local authorities to stop destruction on the most important sites for nature, while giving the courts final responsibility for weighing up nature concerns alongside any other relevant factors, such as ownership rights.

**These targeted and proportionate new local authority powers would secure vital protection for nature-rich sites in private ownership and should be supported.**

### **Amendment 100: ancient woodland protection (Baroness Young of Old Scone)**

**We warmly welcome amendment 100** which aims to strengthen protection for ancient woodland in England. Ancient woodland is an irreplaceable habitat with a range of environmental, health and climate benefits, ranging from vital carbon storage and sequestration to providing accessible green space for mental and physical wellbeing. Covering now only 2.8 per cent of England's total land area, ancient woodland is under repeated threats from developers and infrastructure projects. This amendment aims to provide some additional protection for the more than 800 ancient woodlands that are currently threatened.

### **Amendment 101: duty to prepare a Tree Strategy for England (Baroness Jones of Whitchurch)**

We welcome **amendment 101** which would require the government to prepare a tree strategy for England requiring clear targets. This provides an opportunity for the government to provide more clarity on woodland expansion, protection and restoration initiatives. It would also ensure the long term future of these initiatives, further to the England Trees Action Plan which only includes short term funding for implementation.

Targets required by the strategy around new native woodland creation, and woodland creation by natural regeneration, would be particularly helpful in ensuring a 'right tree, right place' approach is followed. It would also be helpful if the government could provide an update on progress on the nature strategy, to which it has committed but has yet to publish, and how this relates to the forthcoming Green Paper on nature.

### **Amendment 104: duty on a biosecurity standard (Lord Harries of Pentregarth)**

We welcome **amendment 104** which would commit the government to a unified standard that promotes the use of trees grown in this country. This is important to prevent the potential importing of tree diseases, with subsequent tree losses which could thwart the government's tree planting targets and damage efforts to tackle the climate and nature crises.

It also seeks to address concerns that the UK does not have sufficient growing capacity by encouraging the government, in coordination with industry and other relevant parties, to promote the establishment and expansion of new and existing nurseries to address supply issues. This would contribute to the government's ambition to create new green jobs and close the skills gap that currently exists in this field.

### **Amendment 105: expiry (Earl of Caithness)**

Key sections of Part 6 of the bill and its attendant schedules require the making of regulations to implement many of their provisions, including for biodiversity net gain, Local Nature Recovery Strategies and amendments to the Habitats Regulations. Factoring in the potential delay to commencement as this Part relies on the Secretary of State laying regulations to bring it into force, there is a likelihood that some statutory instruments will not be laid until several months or even years after its enactment. **Amendment 105** proposes that these provisions expire within five years of the passing of the bill, subject to a review of their effectiveness to justify their continued inclusion. In our view this would be both impractical and overly onerous.

It is also unclear what additional benefit **amendment 105** would bring as there are regular opportunities for parliamentary scrutiny of the effectiveness of biodiversity provisions introduced by the bill. Since several of these delegated powers allow for the affirmative procedure, Parliament will have the opportunity to debate the statutory instruments before they take effect. More broadly, the Secretary of State will be required to provide annual reports to Parliament on progress with implementation of the Environmental Improvement Plan (EIP), taking account of environmental monitoring data and progress towards meeting targets. In addition, EIPs will be subject to five yearly reviews, where the Secretary of State must consider whether further or different steps are needed and a report made to Parliament setting out why the EIP has been revised, or not, depending on the conclusion of the review.

Another layer of scrutiny is provided by the OEP which is expressly tasked with monitoring progress under the EIP and towards meeting targets and may make recommendations on how progress could be improved. The government will have to respond to the OEP's reports which must be laid before Parliament. There are thus ample opportunities for the government to reassess the effectiveness of these provisions and, if necessary, propose changes to the regulations, without the addition of a further layer of process.

### **Amendment 112: conservation covenants (Earl of Devon)**

**We support this sensible amendment** which would require that where a Responsible Body is not a public body or a charity, all its main activities should relate to conservation.

### **Amendment 117: land use framework for England (Baroness Young of Old Scone)**

The framework proposed by **amendment 117** would help inform policy decisions on how we use our most fixed natural asset – England's land.

That land is subject to a wide range of competing usage demands, including food production, housing provision and nature restoration. Different strategies and plans cover these different land uses; documents that have varying degrees of weight and often do not relate directly to each other.

A land use framework could ensure a degree of interoperability, aligning different land use documents behind central objectives. Crucially, those objectives would include the meeting of Climate Change Act targets and targets to halt the decline of biodiversity, including the new species abundance target. A failure to meet these targets will detrimentally affect all land uses.



The proposed framework would create a mechanism for information to be shared to inform decision making and provide prioritisation guidance to decision makers. All land uses would benefit from such a holistic approach, and we hope that the amendment can be accepted by the government.

### **Amendment 118: National Food Strategy (Baroness Boycott)**

This **sensible amendment** provides a useful opportunity for the government to clarify the timing of its response to the independent National Food Strategy. The government has promised to respond formally with a White Paper within six months, but experience shows that timescales for government policy responses often slip.

The government should therefore use this opportunity to recommit to this timescale and clarify its plans to undertake policy consultation before the publication of the White Paper.

### **Amendment 123: reduction of lead poisoning from shot (Lord Browne of Ladyton)**

At Committee there was broad consensus, including from both conservation and shooting perspectives, on the need to swiftly end the use of lead ammunition to kill wild animals.

Peers raised concerns that the government's preferred approach, an examination of the case for banning lead ammunition through the UK REACH system, was an uncertain approach that would take too long to deliver. There is overwhelming evidence of avoidable harm caused to animal and human health from the 6,000 tonnes of lead shot released into the UK environment each year.

Responding for the government, Lord Goldsmith [said](#) that "If it is possible to move more quickly, given that we know that the science is pretty clear and that alternatives exist, I would certainly be open to pursuing those opportunities".

**Amendment 123** provides just such an opportunity for the government to act in a swifter and more decisive fashion than proceeding through the REACH process. Amending the Wildlife and Countryside Act 1981 to prohibit the use of lead ammunition for the killing or taking of wild animals, with an effective date of 1 January 2023, would put a firm end date on the use of lead ammunition in hunting. It would also provide a proportionate period of transition for lead ammunition users.

The amendment would ensure that action is taken to prevent avoidable animal and human ill health arising from the use of lead ammunition, in a timeframe commensurate with the scale of the problem.

### **Amendment 126: ecocide (Baroness Bennett of Manor Castle)**

In June 2021 the Independent Expert Panel for the Legal Definition of Ecocide defined ecocide as acts committed with knowledge that there is a likelihood of resulting severe, widespread or long term damage to the environment. The Panel proposed that crimes meeting this description be added to the Rome Statute of the International Criminal Court.

**Amendment 126** would require the UK government to work towards securing recognition of ecocide as a crime, and to place a new tool in the hands of those working to save the environment around the world.

At Committee, Lord Goldsmith [expressed](#) considerable sympathy for the proposal but suggested that it would be impractical for the UK to work to add ecocide to the statute without prior reform of the International Criminal Court. Given the growing support of other governments, and the European Union, for ecocide becoming a crime, we encourage the government to reconsider its position and support the principle of **amendment 126** in the interests of high ambition, and of UK environmental leadership.

### **Amendment 126A: right of access to land (Baroness Bennett of Manor Castle)**

The lockdowns of the past year have demonstrated the importance of access to green space to people's health and wellbeing. [Research](#) published by the Mental Health Foundation has found that 75 per cent of people feel that the government should now encourage people to do more to connect with nature. This amendment provides an opportunity to act on this new desire for greater connection with nature, and to unlock the mental and physical health benefits increased access would provide. The model for access proposed by the amendment builds on the Land Reform (Scotland) Act 2003, which established statutory rights of access for recreation, on the condition that those rights are exercised in a responsible manner. These rights have been responsibly exercised in Scotland for nearly twenty years and their extension to England would provide a timely boost to public health.

#### **For more information, please contact:**

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