



The Environment Act: A short briefing (10th Nov 2021)

The purpose and benefits of the Act are to:

- Put the environment at the centre of policy making, making sure that Governments are held accountable for making progress on environmental issues.
- Introduce a framework for legally-binding environmental targets with a long-term improvement plan and establish a new, independent Office for Environmental Protection that will hold all public authorities to account on environmental law.
- Introduce measures to revolutionise how we recycle; enhance local powers to tackle sources of air pollution (and setting at least two legally binding targets on air quality for PM2.5); and secure long-term, resilient water supplies and wastewater services in a changing climate.
- Protect, restore and enhance nature and biodiversity, with thriving plants, wildlife and habitats.

The Act is nearly 300 pages long¹ so there is a lot in there. **Some main elements of the Bill are to:**

- Protect nature by mandating **Biodiversity Net Gain** in the planning system, ensuring new houses are not built at the expense of nature and delivering thriving natural spaces for communities.
- Improve the planning for nature's recovery through **Local Nature Recovery Strategies** and the creation of **Nature Recovery Networks** to join up nature sites and create wildlife-rich places.
- Give communities a greater say in the protection of local trees.
- Require the Government to publish a plan to reduce sewage discharges from storm overflows to our waterways by September 2022 and report progress to Parliament.

Timescale and progress

- After several delays, the Environment Bill received Royal Assent on 9th Nov 2021 meaning it becomes law as an Act.

Nature and Biodiversity (Part 6 of the Act):

Biodiversity Net Gain (BNG)

BNG is being introduced to the planning system with an aim to leave nature in a **measurably better state** than before the development in order to contribute to nature's recovery. After the mitigation hierarchy has been followed (including avoiding irreplaceable habitats for example), it aims to deliver improvements through habitat creation or enhancement on the development site, or if this is not possible, on an appropriate compensation site. Two years after the Bill is passed, it will be mandatory that most developments will need to achieve a minimum 10% BNG and this will be a material planning consideration. Details of exemptions are forthcoming. As 10%+ BNG will not always be possible to achieve on the development site, additional land will be required. Any BNG delivered is expected to be secured **for a minimum of 30 years**. Many Local Planning Authorities are already asking for demonstrable BNG based on NPPF policies (174d & 179) and local policies

¹ <https://bills.parliament.uk/bills/2593>

where they exist. The applicant may choose to deliver and manage BNG themselves, or through a third party. The Local Planning Authority will have to set up appropriate systems and procedures to deal with payments, legal agreements, reporting and monitoring in line with the secondary legislation – a consultation on which is expected in September. One delivery mechanism may be through **Conservation Covenants** which are covered in Part 7 of the Act.

Changes to the NERC Biodiversity Duty and reporting

There will be a number of changes to strengthen the existing NERC Biodiversity Duty which applies to all Public Authorities in England. The authorities will have a Duty to ‘enhance’ as well as ‘conserve’ biodiversity through the exercise of its functions and once every 5 years (starting within 1 year of passing of the Environment Bill) consider what action the authority can take to further the biodiversity objective. This may involve new or amended policies and specific objectives, plus taking actions for habitats and species with regard to any local nature recovery strategy and **Species Conservation Strategies**. There will be a requirement on authorities to publish ‘**biodiversity reports**’ summarising actions already taken, proposed actions and reporting on biodiversity gains².

Local Nature Recovery Strategies (LNRS)

There will be a statutory obligation for the creation of LNRSs, covering the entirety of England, but designed and delivered on a local level. The Secretary of State (Defra) will identify the ‘responsible authority’ for taking forward the LNRS and it is anticipated that this will be at a South Yorkshire level through the Mayoral Combined Authority (MCA). Work to set up the SY LNRS process is underway through the South Yorkshire Local Nature Partnership³ with the MCA. LNRS will combine habitat mapping (already commissioned at the SY level) and a statement of biodiversity priorities, identifying key areas of biodiversity value and opportunities to restore and enhance nature. LNRS will directly link to the delivery of BNG and tier two of the new Environment Land Management Scheme.

Species Conservation Strategies

Natural England may prepare and publish a strategy for improving the conservation status of any species of fauna or flora. A local planning authority and any prescribed authority must cooperate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the authority’s functions. Currently there is a local focus on changes to the approach used for Great Crested Newt conservation and District Level Licensing, which SRWT are heavily involved in.

Protected Site Strategies

Natural England may prepare and publish a strategy for protected sites (including European Sites and SSSIs) and consult with local planning authorities on managing the impact of plans, projects and other activities on the conservation and management of the site.

Tree Felling

Local Highways Authorities must now consult before felling street trees in most cases.

Related policies

- Net zero carbon policies, targets and commitments (National, Regional, Local).
- Tree planting/woodland cover policies, targets and commitments (National, Regional, Local).
- The Environment Bill will work in tandem with policies introduced in the Agriculture Act 2020, supported by measures such as the Environmental Land Management schemes.

² www.landmarkchambers.co.uk/wp-content/uploads/2020/06/Current-Issues-in-Environmental-Law-Part-4-Webinar-with-recording-link.pdf

³ www.wildsheffield.com/sylnp/