

Policy note: Apply a Green Duty to public bodies

Policy proposal:

To require all relevant public authorities to take proportionate steps to contribute to the achievement of Environment Act targets when exercising their functions. This 'Green Duty' will ensure that public bodies think about how their decisions can lead to cleaner and greener outcomes.

Rationale:

Over recent years, the strength of the public demand for more action to recover nature has become clear. YouGov polling commissioned by Link in May 2024 found that 71% of the public believe that the Government isn't doing enough to protect the environment for the next generation.¹

The most effective way in which the next Government can respond to these demands is by achieving the targets set under the Environment Act 2021, which provide a north star for nature recovery efforts². An urgent policy effort is needed to secure this achievement. The first of the targets, the target to halt the decline in species abundance, must be achieved by 2030. In order to stand any chance of success, the next Government must deploy all of the tools at its disposal, including decisions made by public bodies whose work has a bearing on environmental recovery.

Across the range of these public bodies, the environment tends to fare badly when priorities are set and decisions made. Many public bodies have outdated purposes which fail to speak to the scale of climate and nature crisis now facing the UK, which feed through to policy decisions which neglect to consider environmental costs and benefits. Forestry England continues to favour commercial considerations over growing and maintaining biodiverse woodland habitats. The Crown Estate does not properly factor in design measures to boost marine species when granting licenses for offshore wind. Network Rail does not remove the invasive non-native species finding footholds in railway banks in its ownership. The water regulator, Ofwat, struggles to properly hold water companies to account for river pollution, due to not having an environmental remit.

A Green Duty, requiring relevant public bodies to contribute to nature recovery, would address this governance gap for nature and bring Environment Act target delivery to life, across central and local Government. It would align public bodies behind the shared objective of recovering nature, maximising the odds of successfully achieving the target.

Background

The primary environmental duty on public bodies is the biodiversity duty. As updated by Section 102 of the Act, the duty requires public authorities in England to consider what they can do to conserve and enhance biodiversity.³

¹ <https://www.wcl.org.uk/politicians-not-doing-enough-to-protect-the-environment.asp>

² <https://www.gov.uk/government/news/new-legally-binding-environment-targets-set-out>

³ <https://www.gov.uk/guidance/complying-with-the-biodiversity-duty>

A slightly stronger duty is applied to central government. Thanks to the Environment Act, Government Ministers must now have 'due regard' to five environmental principles when making policy.⁴ 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 and to apply the duty to a wider range of public bodies. These improvements were rejected by the Government.⁵

The Government's rejection of these strengthening amendments was a missed opportunity for nature. The absence of a directional duty on all relevant public bodies, requiring active consideration how to maximise contributions to nature recovery, has led to sustained environmental under-delivery.

Freshwater provides an illustrative example. Ofwat's inability to hold polluting water companies to account has directly contributed to high levels of water pollution.⁶ The 2023 Lords Industry & Regulators Committee report on water regulation pinpointed the reason for the toothlessness; Ofwat's duties are too economic to allow it to hold those it regulates to high environmental standards.⁷ This echoed similar conclusion made by the Environmental Audit Committee's 2022 'Water quality in rivers' report⁸, which stated that:

"The value of biodiversity in rivers in England does not appear to have been priced adequately into the economic decisions made by companies and by regulatory agencies. If it is to meet the Environment Act's legally binding target to halt the decline in the abundance of species in England by 2030, the Government must make it clear, in strategic guidance to Ofwat and to National Highways, that from now on natural capital needs to be taken into account in all economic decision making."

Across the sweep of public bodies, a lack of clear direction is inhibiting collective progress towards meeting environmental targets. This was highlighted by the Office for Environmental Protection's 2024 review of the Environmental Improvement Plan⁹, which reported that:

"So far, government has not been clear enough about how its ambitions will be delivered— about all that is to be done in each goal area, and against each statutory target, when, and by whom. Delivery bodies, local government, businesses and the environment sector need to know in full, what part they must play. In our view, government must do more to set out for Parliament, the public and all those who must play a role in this how it intends to deliver its ambition."

Recommendations from parliamentarians and the OEP all point in the same direction – towards a directional duty to help achieve nature recovery, shared across public bodies. Support is also growing in the media, the iNews 'Save Britain's Rivers' Manifesto in June 2024, included proposals for a Green Duty to reduce freshwater pollution.¹⁰

⁴ <https://moderncivilservice.blog.gov.uk/2024/04/22/environmental-principles-putting-nature-at-the-heart-of-our-policy-making/>

⁵ 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>

⁶ https://wcl.org.uk/docs/assets/uploads/The_state_of_pollution_in_rivers_Briefing_note_Feb_2024_1.pdf

⁷ <https://committees.parliament.uk/publications/34458/documents/189872/default/>

⁸ <https://committees.parliament.uk/work/891/water-quality-in-rivers/publications/>

⁹ <https://www.theoep.org.uk/report/government-remains-largely-track-meet-its-environmental-ambitions-finds-oep-annual-progress>

¹⁰ <https://inews.co.uk/news/is-save-britains-rivers-2024-manifesto-in-full-3093612>

Policy solution

A directional duty to contribute to nature's recovery needs to be applied to all relevant public bodies. A new statutory 'Green Duty' would provide this by requiring public bodies to take all proportionate steps towards the achievement of Environment Act targets.¹¹ This would go further than the current biodiversity duty's requirement to consider nature in vague terms, replacing generalised aspiration with a clear injunction on a public body to do what it reasonably can within its means to contribute to nature recovery.

To return to freshwater as example, this requirement to take all proportionate steps would give Ofwat the mandate it needs to implement the most robust possible sanctions on polluting water companies, such as preventing polluting companies from paying dividends to shareholders.¹² It would also ensure that Ofwat makes future regulatory decisions on the basis of what would deliver the best environmental outcomes, enabling greater delivery of low carbon, multi-benefit nature-based solutions.¹³

A broad precedent for the Green Duty can be found in the Public Sector Equality Duty, established by section 149 of the Equality Act 2010.¹⁴ This duty requires all public bodies to have due regard to equality considerations when exercising their functions. A 2016 House of Lords select committee review of the duty recommended that the 'due regard' phrasing be updated to 'take all proportionate steps', to enable a more deliberative, reflexive and action-led approach to equality considerations.¹⁵ Whilst the Public Sector Equality Duty covers over 200 bodies (as set out in Schedule 19 of the Equality Act¹⁶), the Green Duty could be applied initially to all Government Departments, all local authorities and the following agencies and public bodies:

Forestry Commission
Rural Payments Agency
Environment Agency
Joint Nature Conservation Committee
Marine Management Organisation
Natural England
Office for Environmental Protection
Broads Authority
Dartmoor National Park Authority
Exmoor National Park Authority
Lake District National Park Authority
National Forest Company
New Forest National Park Authority

¹¹ This could be legislated for as follows: *A public authority, if listed in schedule 1, must, in the exercise of its functions, take such steps as are necessary and proportionate for the achievement of targets set under sections 1-3 of the Environment Act 2021*

¹² <https://www.theguardian.com/business/2023/may/25/water-firm-to-pay-shareholders-300m-despite-anger-over-leaks-and-pollution>

¹³ https://www.wcl.org.uk/docs/WCL_Briefing_Nature_Based_Solutions_Water_December_2023.pdf

¹⁴ <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

¹⁵ <https://publications.parliament.uk/pa/ld201516/ldselect/lddeqact/117/11711.htm>

¹⁶ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/19>

North York Moors National Park Authority
Northumberland National Park Authority
Peak District National Park Authority
South Downs National Park Authority
Yorkshire Dales National Park Authority
The Water Services Regulation Authority (Ofwat)
Ofgem
Coal Authority
Committee on Climate Change
Great British Nuclear
North Sea Transition Authority
Nuclear Decommissioning Authority
National Highways
Network Rail
UK Infrastructure Bank
The Crown Estate

As with the Public Sector Equality Duty, and other similar duties, each public body would be required to maintain a public record of how they have adhered to the Green Duty in decision making. This transparency would enable consequences in cases of sustained or significant non-compliance, ranging from negative press coverage to judicial review cases against the non-compliant public body brought by individuals and groups. The Office for Environmental Protection (OEP) could also be given enforcement powers in cases of serious compliance breaches, allowing them to take fast-tracked actions through the courts.

The new Green Duty would elicit new contributions to meeting Environment Act targets from across central and local government. The Forestry Commission would be required give greater weight to habitat recovery in the woodlands they manage, balancing out the historic focus on commercial timber. The Rural Payments Agency would have an environmental remit to match the objectives of Environmental Land Management schemes. National Highways would be required to boost biodiversity on the land they own. With 8% of land in England in public ownership, a unified and directional public sector duty could unlock the nature recovery potential of thousands of hectares, from road verges to city parks to county farms.¹⁷

The benefits of translating the legally binding targets set in the Environment Act into day-to-day operational decision-making across the public sector would go beyond the environmental. Healthier wild spaces and more nature positive decision making will mean better access to nature for communities, with associated health benefits.¹⁸ The last sustained effort to increase nature recovery on public land, a Public Forest Estate programme undertaken by the Labour Governments of 1997 to 2010 achieved a 30% increase in the number of people living close to and being able to access woodland.¹⁹

¹⁷ <https://www.theguardian.com/money/2019/apr/17/who-owns-england-thousand-secret-landowners-author>

¹⁸ <https://www.wcl.org.uk/docs/Improving%20public%20access%20to%20nature%20-%20Link%20briefing%20-%2002.05.2023.pdf>

¹⁹ <https://commonslibrary.parliament.uk/research-briefings/sn05734/> See p5

Costs

A Green Duty could be legislated for without significant additional cost to the public purse.

Upfront costs to the central Government would be minimal, being confined to the administrative burden of legislating and some support for the sponsoring Department to oversee implementation of the Green Duty.

Public bodies would face some compliance costs, with staff time being required to embed the duty in decision making process and to maintain a record of this. The costs of this are likely to be limited. A 2013 review of the Public Sector Equality Duty found '*little evidence*' that it had significantly increased costs for public bodies in comparison with previous duties.²⁰

Overall, the Green Duty would provide a cost-effective means to bolster habitat recovery on publicly owned land, and across public body decision making, bringing the weight of the public sector to bear to help achieve Environment Act targets.

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²⁰https://assets.publishing.service.gov.uk/media/5a7c3768e5274a1f5cc76931/Review_of_the_Public_Sector_Equality_Duty_by_the_Independent_Steering_Group.pdf