

## Levelling Up & Regeneration Bill: Nature & climate points to raise Briefing for Lords second reading 17.01.23

This briefing is on behalf of environmental coalition [Wildlife and Countryside Link](#) (Link) and sets out how the Levelling Up and Regeneration Bill can be improved for nature and climate. It has been prepared ahead of the Bill's Lords second reading on 17 January 2023.

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### Points to raise at second reading

#### Part 6 (Environmental Outcomes Reports) requires significant additional scrutiny

The Environmental Outcomes Reports (EOR) regime proposed by Part 6 of the Bill could allow Ministers to weaken environmental assessment with limited scrutiny and be used to replace the Habitats Regulations Assessment (HRA), a key pillar of legal protection for the UK's most important nature sites.

The EOR regime is intended to replace Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA)<sup>1</sup>, the processes currently used in planning to assess the impacts of projects, plans and programmes on nature and climate. These systems of environmental assessment are used to direct development away from environmentally important sites, and to inform environmental mitigation and compensation measures for consented developments. By doing so, they make an important contribution to efforts to recover nature and to reach net zero.

It is therefore of concern that the Bill leaves much of the detail of the replacement EOR regime to secondary legislation. As raised by the Shadow Minister for Housing and Planning, Matthew Pennycook MP at Public Bill Committee in the Commons, Part 6 of the Bill: *"provides the Secretary of State with expansive powers allowing them to pass, by regulation, as yet unspecified, and potentially far-reaching, measures affecting the environment."*<sup>2</sup>

Deferring the detail of such a significant policy to regulations, which will be subject to a lesser degree of parliamentary scrutiny than the Bill itself, is highly problematic policy making, as has been highlighted by the Chairs of Parliament's Secondary Legislation Scrutiny Committee, Constitution Committee and Delegated Powers and Regulatory Reform Committee.<sup>3</sup> Concerns about this scrutiny deficit for consequential environmental changes within the Bill were raised at Public Bill Committee in the

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<sup>1</sup> See the explanatory notes for the Bill, on page 17 (para 5): <https://publications.parliament.uk/pa/bills/cbill/58-03/0006/en/220006en.pdf>

<sup>2</sup> [https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006\\_LevellingUp\\_1st27th\\_Compilation\\_20\\_10\\_2022.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf) p687

<sup>3</sup> See letter sent by the three Committee Chairs concerning increasing reliance on secondary legislation: <https://committees.parliament.uk/publications/2960/documents/28317/default/>

Commons, only for the responding Minister to suggest that public consultation could suffice for parliamentary debate.<sup>4</sup>

Part 6 of the Bill amounts to handing a blank cheque to Ministers, to enable them to change the systems that help limit development's impact on nature and climate with extremely limited scrutiny.

To address this, the following safeguards need to be built into the Bill:

**Detail on EOR scope:** The current drafting of Part 6 means that the detail of how the EOR regime will work, including which projects and plans it will apply to and what environmental outcomes will be set, will all be brought forward as secondary legislation. The lack of detail about EORs in primary legislation is such that, as highlighted by Friends of the Earth and the RSPB in their written evidence to the Public Bill Committee, there is no reference at all within Part 6 to climate. As the Friends of the Earth and the RSPB evidence states, this means that *"we (and Parliament) are left to hope that Government will, at some later stage, include the protection of the climate as an environmental outcome, and do so in a way that reflects the scale and urgency of the action needed."*<sup>5</sup>

The omission of the detail of the EOR regime from the face of the Bill has also been criticised by the Levelling Up, Housing and Communities Committee<sup>6</sup> and by the Office of Environmental Protection (OEP). The OEP have commented that *"without the detail, we are limited in the evidence that we can provide"* and in August 2022 asked the Government to provide further information on the scope of EOR.<sup>7</sup> This further information was not provided as the Bill progressed through the Commons. The Bill requires urgent amendment to put key EOR details in primary legislation, to provide assurances that the climate and other key environmental considerations (such as the need for developments to adhere to the mitigation hierarchy) will be included in the new regime, and to allow for scrutiny of these assurances.

**Super-affirmative procedure for EOR regulations:** The provision of key EOR regime detail within the Bill itself should be complemented by a further safeguard to allow parliamentarians to also properly scrutinise subsequent EOR regulations. The Bill currently only requires regulations arising from Part 6 to go through the affirmative procedure, which only gives Parliamentarians the chance to accept or reject a regulation. The last time regulations were successfully opposed through this process was in 1978. This scrutiny-light process is not appropriate for regulations which set a whole new system of environmental assessment for development, during a climate and ecological emergency.

Regulations made under Part 6 of the Bill should instead be subject to the super-affirmative procedure.<sup>8</sup> This would provide an additional 60-day period for parliamentarians to meaningfully shape the detail of the new system of environmental assessment, and to work with Ministers on content changes to ensure the regulations lift rather than lower environmental standards.

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<sup>4</sup> [https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006\\_LevellingUp\\_1st27th\\_Compilation\\_20\\_10\\_2022.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf) p688

<sup>5</sup> <https://bills.parliament.uk/publications/47703/documents/2238>

<sup>6</sup> <https://committees.parliament.uk/publications/28460/documents/171233/default/>

<sup>7</sup> <https://publications.parliament.uk/pa/cm5803/cmpublic/LevellingUpRegeneration/memo/LRB53.htm>

<sup>8</sup> <https://erskinemay.parliament.uk/section/5626/the-superaffirmative-procedure/>

In addition to these amendments to deliver increased parliamentary scrutiny for nature and climate, Part 6 of the Bill would also benefit from:

- Clarification on the interaction between Habitats Regulations and the EOR regime. The current drafting of clause 149 would appear to allow for the EOR regime to supersede the Habitats Regulations requirements which protect our most precious nature sites, by making provision for actions carried out under an EOR to satisfy Habitats Regulations requirements. This opens the door to strong Habitats Regulations requirements being swapped out for weaker EOR actions. This concern has been raised by the Office for Environmental Protection, whose Commons committee stage evidence stated: *“On our reading, the Bill does provide for HRA to be replaced for ‘relevant consents’ and ‘relevant plans’ by the EOR process.”*<sup>9</sup> This should be addressed by amendment of clause 149 to prevent any EOR replacement of Habitats Regulations requirements.
- Strengthening of the non-regression clause. As drafted, clause 142 fails to provide a robust safeguard against EOR regulations being used to weaken environmental protections. The clause gives the Secretary of State the power to sidestep existing protections when making regulations, as long they are satisfied that the *“overall level of environmental protection”* will not be less than before. The lack of specificity in this phrase has the potential to cover a range of harms. There is a risk that claimed contributions to broad environmental protection outcomes at an ‘overall level’ could be used to license specific environmental harms on the ground. Clause 142 needs to be amended to remove the phrase *“overall level”* and to provide a stricter non-regression test.

## **Part 7 (Nutrient Pollution Standards) requires additional provisions to enhance compliance & prioritise nature-based solutions**

Part 7 of the Bill marks a welcome start towards addressing the problem of nutrient pollution, where runoff and wastewater from new development, in addition to agricultural pollution, contributes to the leaking of nitrates and phosphorus into our rivers, lakes, streams and seas. As a result of this pollution, UK freshwater habitats have consistently failed tests of good ecological condition.<sup>10</sup>

By putting a duty on water companies to upgrade treatment works to meet new nutrient pollution standards in the worst affected freshwater habitats, Part 7 will help to address one of the reasons why our waterbodies are in such poor health.

However, as currently drafted these clauses fail to include sufficiently robust measures to ensure that water companies deliver the upgrades to the required extent, by the set deadline of 2030. Apart from ascribing unspecified enforcement duties to the Environment Agency (clause 153, 96H), Part 7 fails to establish a clear compliance framework. This should be addressed by:

**Requiring water companies to publish and deliver compliance and investment plans:** Clause 153 should be amended to require companies to publish a compliance and investment plan at the start of

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<sup>9</sup> <https://publications.parliament.uk/pa/cm5803/cmpublic/LevellingUpRegeneration/memo/LRB53.htm>

<sup>10</sup> <https://www.rspb.org.uk/globalassets/downloads/our-work/troubled-waters-report>

the upgrade process, setting out exactly what measures they will take at and around each treatment works to achieve the nutrient pollution standard. These plans should be approved by Ofwat before companies can progress further, with progress on delivery being annually reported by water companies to Ofwat, the Environment Agency and the local planning authority. Those bodies should also be empowered to issue significant sanctions should progress not be made.

This would provide a robust compliance process, with checks and regular monitoring, to help ensure the required upgrades are delivered by 2030. Compliance and investment plans would also enable wider benefits to be delivered for the environment, through:

**Prioritising nature-based solutions:** Water companies should be required set out how they will reduce nutrient pollution using catchment-based approaches and nature-based solutions, wherever these options are possible. Catchment-based approaches<sup>11</sup> and nature-based solutions<sup>12</sup> offer greater benefits for biodiversity and carry a lesser carbon cost than traditional concrete-based engineering.<sup>13</sup> By requiring water companies to set out how they will deploy catchment-based approaches and nature-based solutions in compliance and investment plans, nutrient pollution reduction measures can be delivered to a high ambition for nature and climate.

## **The Bill is currently a missed opportunity to recover nature by 2030**

Throughout Commons stages Link worked with MPs to set out how the Bill could be appropriately extended to deliver measures that would help to recover nature by 2030, in line with Environment Act targets<sup>14</sup> and UN Biodiversity (COP15) promises.<sup>15</sup>

The Bill is currently the only legislation concerning the planning system and development before Parliament. With every year counting towards whether or not we will meet 2030 nature commitments, and development a key factor affecting biodiversity, amendment of the Bill to ensure that the planning system works better for nature is an essential step towards delivery of the Government's own targets.

It is disappointing that Ministers have not yet seized these opportunities and made the critical changes required to align the Bill with the Government's environmental promises, and to render it capable of contributing positively to nature's recovery by 2030. We would be very grateful if environmentally minded members of the Lords could highlight how new clauses need to be included in the Bill to:

**Implement key recommendations from the Glover Review of Protected Landscapes:** National Parks and Areas of Outstanding Natural Beauty (AONBs) provide many benefits for nature, climate, heritage and culture. However, they are underpinned by an outdated legislative framework, which prevents them realising their full potential for people, nature's recovery and net zero. The scale of the problem for nature in protected landscapes is illustrated by 2020 figures from Friends of the Earth, which reveal that

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<sup>11</sup> <https://catchmentbasedapproach.org/about/>

<sup>12</sup> <https://www.britishecologicalsociety.org/policy/nature-based-solutions/read-the-report/>

<sup>13</sup> See for example <https://www.ciwem.org/news/suds-on-every-street>

<sup>14</sup> <https://www.gov.uk/government/news/landmark-environment-bill-strengthened-to-halt-biodiversity-loss-by-2030>

<sup>15</sup> <https://www.gov.uk/government/news/new-deal-to-protect-nature-agreed-at-cop15>

a much lower percentage of habitat in Sites of Special Scientific Interest (SSSIs) are in favourable condition in our national parks (26%) than in England as a whole (39%).<sup>16</sup>

The Glover Review of Protected Landscapes (2019)<sup>17</sup> highlighted these issues and put forward a package of recommendations to help protected landscapes deliver more for nature, climate and people. A number of the key recommendations were accepted by the Government in their response to the review (January 2022).<sup>18</sup>

At COP15 negotiations in December, the Government agreed to the Global Biodiversity Framework commitment to protect 30% of land and sea for nature by 2030. Reform of designated landscapes is a critical part of reaching that goal. Currently, we estimate that less than 4% of England is properly protected for nature.<sup>19</sup> By implementing key Glover recommendations, including updating the purposes, powers and duties of designated landscapes to include nature's recovery, the Government could make a substantial contribution to 30x30 and get back on track to meeting the 2030 target.

At Commons report stage a cross-party group of MPs, with the enthusiastic backing of Link, Campaign for National Parks and over 45 protected landscape groups<sup>20</sup>, supported new clauses proposed by Sir Gary Streeter MP<sup>21</sup> which would have delivered key Glover recommendations into law, including giving National Park and AONB authorities new purposes and powers to enhance biodiversity and contribute to net zero. This significant opportunity to deliver the Government's own promises, to uphold COP15 commitments and to revitalise protected landscapes for nature, climate and people was not taken up.<sup>22</sup> We hope that this can be reconsidered in the Lords.

**Give greater weight to Local Nature Recovery Strategies:** The Environment Act 2021 created Local Nature Recovery Strategies (LNRSs). These documents comprise a statement of biodiversity priorities for a local area, accompanied by a habitat map identifying spaces within the area that could contribute towards enhanced biodiversity. LNRSs have the potential to drive forward nature's recovery on the ground, enabling local knowledge and expertise to deliver habitat restoration.

However, the duty to apply LNRSs in crucial decisions such as planning is currently weak, blunting their effectiveness. The Government rejected amendments, tabled by members of the House of Lords during the passage of the Environment Act<sup>23</sup>, which would have required local authorities to take close account of LNRSs land identifications when making planning decisions. The Levelling Up and Regeneration Bill provides an opportunity to revisit this issue. By amending the Bill to add each LNRS into the development plan of the local planning authority through, peers can ensure that recommendations to recover nature carry greater planning weight. This will ensure that LNRSs do not

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<sup>16</sup> <https://policy.friendsoftheearth.uk/insight/missing-action-natural-climate-solutions-englands-national-parks>

<sup>17</sup> <https://www.gov.uk/government/publications/designated-landscapes-national-parks-and-aonbs-2018-review>

<sup>18</sup> <https://www.gov.uk/government/publications/landscapes-review-national-parks-and-aonbs-government-response/landscapes-review-national-parks-and-aonbs-government-response#chapter-1-a-more-coherent-national-network>

<sup>19</sup> [https://www.wcl.org.uk/docs/WCL\\_2022\\_Progress\\_Report\\_on\\_30x30\\_in\\_England.pdf](https://www.wcl.org.uk/docs/WCL_2022_Progress_Report_on_30x30_in_England.pdf)

<sup>20</sup> <https://www.wcl.org.uk/docs/Letter%20to%20PM%20-%20Glover%20&%20COP15%20-%202007.12.22.pdf>

<sup>21</sup> <https://www.cen.uk.com/our-blog-list/2022/12/9/sir-gary-streeter-mp-restoring-our-national-parks>

<sup>22</sup> <https://www.cnp.org.uk/news/national-park-amendments-missed-opportunity>

<sup>23</sup> [https://www.wcl.org.uk/docs/assets/uploads/LNRS\\_Amendment\\_to\\_Environment\\_Bill\\_Link\\_briefing\\_May\\_2021.pdf](https://www.wcl.org.uk/docs/assets/uploads/LNRS_Amendment_to_Environment_Bill_Link_briefing_May_2021.pdf)

become weak 'documents on a shelf', wasting considerable time and effort in their development. Instead, they will inform strategic and day-to-day planning decisions at the local level, reduce planning delays and uncertainty, and contribute to nature's recovery.

**Increase access to nature and address health inequalities:** There is currently no levelling up mission for access to a healthy environment. This is a major omission; environmental inequality is a cause mental and physical ill-health that ought to be addressed as part of the levelling up agenda.

One in three people in England cannot access nature within a 15-minute walk of their home.<sup>24</sup> It is the most disadvantaged communities that have the least access, with people on low incomes nearly twice as likely to live in a neighbourhood without nature-rich spaces as those earning above the average income.<sup>25</sup> These environmental disparities feed through into health inequalities, as people are locked out of the health and wellbeing benefits that access to high quality nature-rich spaces provides.<sup>26</sup>

Link worked with MPs during the Commons stages of the Bill to highlight the current omission of access to nature, and wider health measures, from the levelling up agenda.<sup>27</sup> We hope that members of the House of Lords will make the case for a requirement for a levelling up mission for access to a healthy environment, empowering authorities to do more to increase access to nature and to take further steps to reduce health inequalities, including creating new walking and cycling opportunities.<sup>28</sup>

#### **Amendments at Lords committee stage**

Link is working with a number of peers on amendments for Lords committee stage, expected to begin this month, which would deliver the changes to the Bill recommended above. We are also working on further detailed changes to improve the Bill, including a new clause to create a Wild Belt nature designation and amendments to maintain site specific obligations for developers required to fund biodiversity mitigation measures.

Link is a partner to the [Better Planning Coalition](#) (BPC), a group of 32 organisations working to deliver a planning system fit for people, nature and the climate, and will also be supporting a range of BPC amendments. This will include a new clause to require national planning policies, local plan-making and development decisions to be consistent with the net zero target and carbon budgets set under the Climate Change Act.

If you are interested in developing and taking forward amendments to improve the environmental aspects of the Bill at committee stage, do get in touch with Link on the below details.

<sup>24</sup> <https://naturallengland.blog.gov.uk/2021/12/07/how-natural-englands-green-infrastructure-framework-can-help-create-better-places-to-live/>

<sup>25</sup> <https://www.groundwork.org.uk/news-report-finds-severe-inequalities-in-access-to-parks-and-greenspaces-in-communities-across-the-uk/>

<sup>26</sup> <https://www.mentalhealth.org.uk/our-work/research/nature-how-connecting-nature-benefits-our-mental-health>

<sup>27</sup> <https://www.wcl.org.uk/legal-right-to-nature-vital-to-public-health.asp>

<sup>28</sup> See second reading briefing from Cycling UK, Sustrans, Ramblers & others: [https://www.cyclinguk.org/sites/default/files/document/2023/01/2301\\_rgwaca\\_lords\\_lurb-2nd-reading\\_brffinal.pdf](https://www.cyclinguk.org/sites/default/files/document/2023/01/2301_rgwaca_lords_lurb-2nd-reading_brffinal.pdf)

[Wildlife and Countryside Link](#) (Link) is the largest nature coalition in England, bringing together 68 organisations to use their joint voice for the protection of the natural world.

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