

Levelling Up & Regeneration Bill: Nature Briefing

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. It has been prepared ahead of the Bill's Report Stage (Day Two) on 13 December.

Priority amendments we support

New clause 72: Super-affirmative procedure for EOR regulations

Tabled by Margaret Greenwood MP

The Environmental Outcomes Reports (EOR) regime proposed by Part 5 of the Bill is intended to replace Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA)¹, 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 nature-rich 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 Bill Committee, Part 5 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."*²

Deferring the detail of such a significant environmental policy to regulations, which will be subject to a lesser degree of parliamentary scrutiny than the Bill itself, is highly problematic policy making. In 2020, the Chairs of Parliament's Secondary Legislation Scrutiny Committee, Constitution Committee and Delegated Powers and Regulatory Reform Committee wrote a joint letter to the Cabinet Office to complain about this approach, highlighting that seeking broad delegated powers in lieu of policy detail *"enables the Government to truncate policy development, which is detrimental to good government as well as effective parliamentary scrutiny."*³ Such truncated policy making, and its associated problems, is now being undertaken for EORs. The suggestion from the Minister at Bill Committee that public consultation could suffice for parliamentary scrutiny of EOR detail is unacceptable.⁴

¹ 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>

² https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf p687

³ <https://committees.parliament.uk/publications/2960/documents/28317/default/>

⁴ https://publications.parliament.uk/pa/bills/cbill/58-03/0006/PBC006_LevellingUp_1st27th_Compilation_20_10_2022.pdf p688

Concerns about the powers Part 5 gives to the Secretary of State are exacerbated by the limited details that are on the face of the Bill regarding the shape of the EOR regime. Clause 129 states that existing environmental protections can be overridden by the new regime, to the extent whereby the Office for Environmental Protection (OEP) have warned in their written evidence to the Public Bill Committee that the Habitats Regulations, our premier nature protections, could “*in practice*” be replaced through the EOR regime. The OEP also describe the non-regression commitment in Part 5 as being “*relatively limited*” in ambition (see amendment 88 below which would address this).⁵ As highlighted by Friends of the Earth and the RSPB in their written evidence, “*there is no reference in part 5 of LURB to climate*”.⁶

Part 5 of the Bill looks set to give the Government considerable powers to weaken environmental protections with limited scrutiny, threatening nature’s recovery and net zero.

New clause 72⁷ would safeguard against this by requiring EOR regulations to be subject to the super-affirmative procedure, providing an additional 60-day period for parliamentarians to meaningfully shape the detail of the new system of environmental assessment. This will address the democratic deficit in Part 5 of the Bill and allow MPs and peers to meaningfully scrutinise EOR regulations to ensure they lift rather than lower environmental standards. We strongly support this essential amendment to ensure that the proposed EOR regime does not harm the environment.

Better Planning Coalition priority amendments

Link is a partner to the [Better Planning Coalition](#) (BPC), a group of 30 organisations working to deliver a planning system fit for people, nature and the climate.

New clause 72 is strongly backed by the BPC and forms one of three amendments the coalition sees as essential to improve the Levelling Up & Regeneration Bill. Link supports the other two BPC amendments, namely:

- **New clause 108 on Permitted Development Rights**, tabled by Rachael Maskell MP: This would require the Government to commission and publish an independent review of the environmental, heritage and other impacts of Permitted Development Rights.
- **New clause 110 on climate change**, tabled by Caroline Lucas MP: This would ensure that national planning policies, local plan-making and development decisions are all consistent with the ‘net zero’ target and carbon budgets set under the Climate Change Act.

⁵ <https://publications.parliament.uk/pa/cm5803/cmpublic/LevellingUpRegeneration/memo/LRB53.htm>

⁶ <https://bills.parliament.uk/publications/47703/documents/2238>

⁷ https://publications.parliament.uk/pa/bills/cbill/58-03/0169/amend/levelling_up_rep_rm_1212.pdf

Other amendments which we support

Amendment 63: Climate, green belt & heritage in EORs

Tabled by Margaret Greenwood MP

This amendment would also help to address the lack of environmental detail and ambition in Part 5 of the Bill.

Currently clause 118 specifies that the Secretary of State should have regard to the Environmental Improvement Plan, currently 25 Year Plan for the Environment (2018), before setting regulations on the detail of the new EOR environmental assessment regime. This is a start but omits crucial climate and other environmental considerations, which should be central to any environmental assessment process.

The amendment would require the Secretary of State to have regard to climate, green belt and heritage considerations, as well as to the Environmental Improvement Plan, when setting out the detail of the EOR regime through regulations. This wider range of obligations will help ensure that the EOR system of environmental assessment delivers specific benefits for climate, heritage and nature.

Amendment 87, tabled by Lisa Nandy MP, would have similar effects as amendment 63 and is also supported by Link.

Amendment 88: Strengthening non-regression

Tabled by Lisa Nandy MP

As drafted, clause 122 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. As Wildlife & Countryside Link CEO Richard Benwell said to the Bill committee when giving evidence on 23.06.22: *"We must keep in place the rules that protect the particular, the peculiar and the exciting at the local level that matter [and are] important [to] people, and those local populations of species and habitats that are so important. Otherwise, we get into a runaway offsetting mentality where the assurance that things will be better overall can be taken to obscure a lot of harm to the natural environment at the local level."*⁸

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. Amendment 88 would guard against this by removing the "overall level" wording which opens the door to regression, instead requiring the Secretary of State to demonstrate that EOR regulations will not diminish any protections that apply at the time of the Act's passage into law. This would provide a tighter non regression test.

⁸ [https://hansard.parliament.uk/commons/2022-06-23/debates/38f2e87a-2fd1-46ac-8f20-674ef0d9bf8c/Levelling-UpAndRegenerationBill\(FourthSitting\)](https://hansard.parliament.uk/commons/2022-06-23/debates/38f2e87a-2fd1-46ac-8f20-674ef0d9bf8c/Levelling-UpAndRegenerationBill(FourthSitting))

Amendment 89 (Protecting the Habitats Regulations)

Tabled by Lisa Nandy MP

The Habitats Regulations are the first line of defence for our most precious and vulnerable habitats and species. They provide a very high level of protection, requiring applicants proposing a development affecting a Habitats Regulation site to first prove that mitigation is in place to avoid significant harm, or that there are imperative overriding public interest reasons to proceed and that compensatory measures are in place.

It is therefore concerning that clause 129 explicitly allows the EOR regime to supersede Habitats Regulations, by making provision for actions carried out under an EOR to satisfy Habitats Regulations requirements. This opens the door to strong Habitats Regulations protections being swapped out for weaker rules devised by the Secretary of State and imposed by regulations (with limited parliamentary scrutiny, as set out above). This concern has also been raised by the Office for Environmental Protection, whose 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."*⁹

Amendment 89 would clarify that EOR actions are additional to requirements arising from the Habitats Regulations, and that the former may not to be used to substitute for the latter. This amendment would help preserve the stringency of the Habitats Regulations, and the critical sites for nature they protect.

New clause 5: Ecological surveys prior to planning application

Tabled by Chris Grayling MP

This new clause would make ecological surveys mandatory in all planning applications. More ecological surveys will lead to more accurate and comprehensive ecological data, helping to ensure that environmentally damaging projects are flagged up from the outset. This will aid the planning decision process, inform the local planning authority and provide clarity for the developer. Improved baseline data will also enable more effective avoidance, mitigation and compensation measures, so that consented developments can ensure that these are incorporated in the early stages of the design to minimise impacts on biodiversity.

This new clause is strongly supported by Link, the People's Trust for Endangered Species and other environmental organisations as a practical step forward for nature's recovery.

New clauses 8, 9, 10 and 11: National Parks

Tabled by Sir Gary Streeter MP

National Parks 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, net zero and the commitment to protect 30% of land for nature by 2030.

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

The Glover Review of Protected Landscapes (2019)¹⁰ highlighted these issues and put forward a package of recommendations to address them, a number of which were accepted by the Government in their response to the review (January 2022).¹¹

These key changes and related reforms would be delivered into law by:

New clause 8, statutory purposes: This clause would deliver proposal 1 in the Glover Review, to give National Parks a renewed mission to recover biodiversity and nature through amendment of their statutory purposes. The Government's response to the Review stated that *"we agree with Proposal 1 that the current statutory purpose to 'conserve and enhance' is not strong enough...We will therefore strengthen this purpose, making it clear that we need to actively recover nature in these areas, rather than simply conserve what remains."* The clause also delivers part of Glover Review proposal 7, which proposed a stronger mission to connect all people with our national landscapes.

New clause 9, duties on public bodies: This clause would deliver two key elements of proposal 3 in the Glover Review, to give National Park authorities a new duty to help tackle climate change, and to require all public bodies to further National Park purposes in their own work. The Government response to the Review said that National Park Management Plans should contain *"ambitious goals to increase carbon sequestration' and 'set out their local response to climate adaptation"*. New clause 9 would deliver this.

New clause 10, Management Plans: This clause would deliver other key elements of proposal 3 in the Glover Review, that strengthened Management Plans should set clear priorities and actions for nature's recovery and climate in National Parks, and that legislation should give public bodies a responsibility to help prepare and implement Management Plans. The Government response to the Review accepted proposal 3 and stated an intention to *"align local management plans with relevant national policies and targets such as the goals of the 25 Year Environment Plan and net zero"*. It has also committed to amending the legislation so that it is *"clearer with regards to the role of public bodies in preparing and implementing management plans"*. New clause 10 would deliver both of these elements.

New clause 11, National Park Authority board membership: This clause would address Glover's ambition to increase skills and diversity on National Park Authority boards. The Government's response to Glover committed to measures to ensure boards *"have more flexibility to balance diversity and expertise"* and proposes *"a more merit-based approach"*. The new clause would deliver these reforms in Board membership, allowing more specialists to serve and contribute their expertise to delivering National Park purposes.

¹⁰ <https://www.gov.uk/government/publications/designated-landscapes-national-parks-and-aonbs-2018-review>

¹¹ <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>

Link, the Campaign for National Parks and over 45 other environmental and protected landscape groups strongly support these new clauses¹², and hope that this opportunity to support National Parks and other protected landscapes to flourish can be seized.¹³

Should the new clauses be accepted by the Government, further new clauses would be required to deliver the same reforms for the Broads Authority, which has parity status to National Park authorities, and to carry forward equivalent changes for Areas of Outstanding Natural Beauty (AONB), which were also covered by the Glover Review.

New clause 13: Duty of regard to the right to nature

Tabled by Caroline Lucas MP

One in three people in England cannot access nature within a 15-minute walk of their home.¹⁴ 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.¹⁵

For levelling up to be successful, these environmental disparities must be rectified, so that more communities can enjoy the health and wellbeing benefits that access to high quality nature-rich spaces provide.¹⁶ This is the main ask of Link's Nature for Everyone campaign, backed by over 80 nature, health and community organisations.¹⁷

The new clause would provide more equitable access to nature by establishing a 'right to nature', recognising that everyone has a right to a clean, healthy and sustainable environment. It would set a duty on public authorities to have regard to that right in decision-making, helping to secure the stronger requirements and funding needed to help local authorities bring green and blue spaces into our most nature-deprived communities. This new clause is strongly supported by Link as a way to help more people access nature and enjoy the life-changing benefits this access provides.¹⁸

¹² See joint December 2022 letter to the PM here: <https://www.cnp.org.uk/news/our-call-pm-now-time-leave-lasting-legacy-nature>.

¹³ See blog from Sir Gary Streeter making the case for the new clauses here: <https://www.cen.uk.com/our-blog-list/2022/12/9/sir-gary-streeter-mp-restoring-our-national-parks> These new clauses have also been supported by the author of the Glover Review, Julian Glover: https://twitter.com/julian_glover/status/1601194112056975360

¹⁴ <https://naturalengland.blog.gov.uk/2021/12/07/how-natural-englands-green-infrastructure-framework-can-help-create-better-places-to-live/>

¹⁵ <https://www.groundwork.org.uk/news-report-finds-severe-inequalities-in-access-to-parks-and-greenspaces-in-communities-across-the-uk/>

¹⁶ <https://www.mentalhealth.org.uk/our-work/research/nature-how-connecting-nature-benefits-our-mental-health>

¹⁷ <https://www.wcl.org.uk/nature-for-everyone.asp>

¹⁸ See coverage of the amendment in the Independent on 03.12.22 here: https://inews.co.uk/inews-lifestyle/wellbeing/cost-living-five-million-cancelling-gym-memberships-health-fitness-crisis-2005079?ito=twitter_share_article-top

New clauses 85 & 86: Wildbelt

Tabled by David Simmonds MP

These new clauses would create a new planning designation to support land for nature's recovery – 'Wildbelt' status. This designation, first proposed by the Wildlife Trusts¹⁹, would enable land that is being restored or has the potential for habitat restoration to be protected for nature's recovery. Wildbelt sites would be identified by Local Nature Recovery Strategies (legislated for by the Environment Act) and recognised in Local Plans. They would be protected through the planning system by a presumption against land use change that would hinder the recovery of nature on these sites. Existing sustainable land uses, such as nature friendly farming or habitat restoration for carbon offsetting, could continue on these sites.

This new designation would secure more sites for wild animal and plant species to recover in and allow Wildbelt designations to connect up other sites that are important for the natural world, creating lifelines for nature across the country. Link strongly support these two new clauses, which would help to deliver on the Environment Act target to halt the decline in species abundance by 2030.²⁰

New clause 89: Peat extraction

Tabled by Sally-Ann Hart MP

Peatlands are the UK's biggest carbon sink, storing around 3.2 billion tonnes of carbon. However, due to its poor condition, much of the UK's 2.6 million hectares (ha) of UK peatland is no longer actively capturing carbon, and indeed is emitting it. Peat extraction for horticulture is one of the causes of this environmental degradation. Recent data compiled by the Wildlife Trusts shows that 900,000 cubic metres of peat were extracted from UK soils for use in UK horticulture in 2020.²¹

The Government is acting to address this environmental degradation, through a weclome ban on the use of peat in amateur gardening in 2024.²² New clause 89 would help deliver the implementation of the ban, through removing a duty on Mineral Planning Authorities to compensate peat extractors for impacts from the ban

New clause 105: Nature restoration duty

Tabled by Rachael Maskell MP

This new clause would address a significant omission in the Bill, by placing a duty on relevant Ministers to identify and maintain a network of sites for nature restoration, to deliver on the promise to protect at least 30% of England's land for nature by 2030 (part of the 30x30 commitment).²³ This commitment was made by the Government in 2020, but two years on only 3.22% of England's land is effectively

¹⁹ <https://www.wildlifetrusts.org/blog/sue-young/planning-changes-england-needs-wildbelt-protect-land-recovery>

²⁰ <https://www.gov.uk/government/news/world-leading-environment-act-becomes-law>

²¹ <https://www.wildlifetrusts.org/news/devastating-using-peat-uk-horticulture>

²² <https://www.gov.uk/government/news/sale-of-horticultural-peat-to-be-banned-in-move-to-protect-englands-precious-peatlands>

²³ <https://www.gov.uk/government/news/pm-commits-to-protect-30-of-uk-land-in-boost-for-biodiversity>

protected for nature.²⁴ It is clear that legislative changes to the planning system are required in order for the commitment to be delivered, which can be delivered through the Levelling Up and Regeneration Bill.

The new clause would require Ministers to identify and maintain a network of sites for nature, including all irreplaceable habitats and sites of special scientific interest for biodiversity, and sets out the conditions sites in the network must meet. The clause requires the network to cover at least 30% of England by 2030. This would ensure that that the land element of the 30x30 commitment is met, by a combination of improving the condition of currently protected sites and bringing new sites into protection for nature. As well as meeting 30x30, the network would contribute to the Environment Act target to halt the decline in the abundance of species by 2030 by providing new habitats for those species and would benefit communities in need of more nature-rich spaces.

Comments on other amendments

Government new clauses 77 and 78: Nutrient pollution standards & related amendments to Habitats Regulations

Urban 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. An excess of these nutrients causes “eutrophication”—algal blooms which starve a river of oxygen, killing wildlife. As a result of this pollution, UK rivers, streams and coastal habitats have consistently failed tests of good ecological condition.²⁵

As such, the intention behind Government’s new clause 77 is welcome. The amendment marks a start at addressing the problem of nutrient pollution, in part through a duty on water companies to upgrade treatment works in nutrient sensitive catchments by 2030. This early date for improvement, aligning with the Environment Act target to halt the decline in species abundance by 2030, is welcome.

However, as it stands new clause 77 would only partially resolve the issue. The exemption of works serving a population equivalent of less than 2000 risks omitting sensitive upstream river sites such as chalkstreams, small tributaries and headwaters from the scope of the improvements, despite their importance for biodiversity. Crucially, the new clause does not take a catchment-based approach, and as such does not address the agricultural sources of nutrient pollution, a major contributor to the problem. Any solution to nutrient pollution that only targets half of the cause will not succeed in resolving it.

We also suggest that new clause 77 could be improved by:

²⁴ https://www.wcl.org.uk/assets/uploads/img/files/WCL_2022_Progress_Report_on_30x30_in_England.pdf

²⁵ <https://www.rspb.org.uk/globalassets/downloads/our-work/troubled-waters-report>

- Encouraging the use of Nature-based Solutions to deliver the upgrades to treatment works where possible. Nature-based Solutions offer greater benefits for biodiversity and climate compared to traditional concrete-based engineering.²⁶
- Strengthening the role of Natural England, the Environment Agency and the Joint Nature Conservation Committee in giving advice on and monitoring the upgrade process, to ensure that water companies deliver the upgrades to a high ambition for nature and climate. Rather than the current 'may' wording in the amendment, the Secretary of State 'must' take advice from these bodies when designating sensitive catchment areas.
- Requiring companies to publish a compliance and investment plan before any applications are approved, setting out how they will reach the technical standard, including catchment solutions. These plans should be approved by Ofwat before companies can progress further.

New clause 78 would amend the Habitats Regulations to make clear that competent authorities should treat the upgrades required by new clause 77 as certain from 2030, for the purposes of a Habitats Regulation Assessment (required as part of the planning system when a development could affect a site protected by the Habitats Regulations). This will smooth the path to consent and means that developments could be consented and contributing to nutrient pollution in protected sites from 2023, while upgrades will not be delivered until 2030. While we recognise this is a pragmatic solution to unlock development and start tackling nutrient pollution, the 2030 assumption is risky given the current inadequacy of monitoring and enforcement in the water industry.

The Government has acknowledged this risk and included a provision to disapply this assumption if there is evidence that the upgrades are not on track. Rather than passively assuming that the 2030 deadline will be met, the risk could be better mitigated through requiring a robust compliance process and checks and regular monitoring to proactively demonstrate that upgrades are on track. This would ensure that no developments are consented in an area unless there is positive evidence that the 2030 deadline for improvements will be met.

[Wildlife and Countryside Link](#) (Link) is the largest nature coalition in England, bringing together 67 organisations to use their joint voice for the protection of the natural world.

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²⁶ <https://www.ciwem.org/news/suds-on-every-street>