

The need for a nature duty in the Forestry Commission

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This briefing is on behalf of nature and animal welfare coalition Wildlife and Countryside Link ([Link](#)) and makes the case for updating the legal duty of the Forestry Commission and its agencies to meet legally binding nature targets.

Introduction: The legal remit of the Forestry Commission

The Forestry Commission (FC) was established by the Forestry Act (1919)¹ to promote the production and supply of timber after a record low level of forest cover remained after the first World War. Forestry Commission's legal duty applies to:

1. Forest Services who are responsible for advice, grants and regulation towards England's privately owned woods and trees and
2. Forestry England who manages the 258,000 ha of the Government-owned Public Forest Estate. They are the largest land manager in England and the estate includes some of England's most important and vulnerable habitats.

Only in 1985 was an Amendment added to Forestry Commission's legal duties under the Wildlife and Countryside Act to achieve a reasonable balance between the development of afforestation, the management of forests, the production and supply of timber and the conservation and enhancement of natural beauty, flora and fauna.² This addition was in response to widespread environmental damage from inappropriate afforestation of habitats such as peatlands, the scars of which are still present today. However, the "reasonable balance" between timber and conservation is not legally defined, making this amendment too weak to ensure that action is geared towards legally binding targets for nature recovery.

Wider legislation placing environmental duties on public bodies is also too weak and non-specific to result in actual contributions to nature recovery. The Natural Environment and Rural Communities Act 2006³ requires public bodies to have regard to conserving biodiversity when exercising their functions. A 2018 House of Lords Select Committee concluded the duty to be ineffective as it stands due to the weak wording and the lack of clear reporting

¹ <https://vlex.co.uk/vid/forestry-act-1919-808303297>

² <https://www.legislation.gov.uk/ukpga/1985/31>

³ <https://www.legislation.gov.uk/ukpga/2006/16/section/40>

requirements and enforcement measures.⁴ Changes in the Environment Act 2021 were positive, but still leave the duty too loosely defined and we are yet to see it make a difference.

Times have changed, Government policy goals have changed, and public values have changed. The legal duties of Forestry Commission should be brought into the 21st century to deliver the full range of modern societal objectives for woods and trees and to help deliver the targets set in the Environment Act 2021 and the Climate Change Act 2008. The Environment Act 2021 set a legally-binding target to halt the decline in species abundance by 2030, and then increase populations by at least 10% to exceed current levels by 2042.⁵

In the context of the public forest estate, this is particularly important now to ensure that future acquisitions, sales, leasing and development of the estate by Forestry England, as proposed in the Planning and Infrastructure Bill⁶, is aligned with the Government's aims for owning and managing public land, for example, the Environmental Improvement Plan. The public forest estate has long been identified as a vast reservoir of untapped potential for nature recovery, containing some of the largest areas of ancient woodland and former heaths, grasslands and other open habitats, which were converted to timber plantations long ago.⁷

The opportunity to build on welcome progress

Over time, Forestry Commission has endeavoured to incorporate preserving and restoring nature into their work. Presently Forest Services Mission Statement is to 'Protect and expand Britain's forests and woodlands and increase their value to society and the environment.' Forestry England has embedded nature into their work by developing a Biodiversity Action Plan 2022–26 for the public forest estate and made important progress in restoring some priority habitats on their land and reintroducing species into forests, such as the white-tailed eagle on the Isle of Wight. This progress to deliver wider policy aims and include nature in their strategies is arguably despite, not because of, their legal duties and functions.

An obvious example of how the legal duties of the Forestry Commission as a whole need to be brought up to date is in requirements of the expertise of the commissioners overseeing them. The Forestry Commissioners responsible for these agencies are appointed by Royal Warrant and may regulate their own procedure, under the provisions in the Forestry Act

⁴ <https://publications.parliament.uk/pa/ld201719/ldselect/ldnerc/99/99.pdf>

⁵ <https://www.gov.uk/government/news/new-legally-binding-environment-targets-set-out>

⁶ <https://publications.parliament.uk/pa/bills/cbill/59-01/0196/240196.pdf>

⁷ <https://www.gov.uk/government/publications/independent-panel-on-forestry-final-report>

1967.⁸ The Commissioners are legally only required to have expertise in timber and forestry, not in the range of other significant 21st century objectives the Government are expecting them to deliver such as biodiversity conservation and recovery, access provision and climate change mitigation.

The challenge is further exacerbated by conflicting agency remits between government bodies. Natural England is the Government body responsible for the natural environment overall and has a very different legal duty to the body responsible for delivering the same natural environment outcomes through woods and trees, Forest Services. Modernising Forestry Commission's legal duties would be a no cost way to create clearer alignment across Defra agencies towards shared and integrated legal and policy outcomes.

More examples of the issue

Forestry Services

Delivery of Defra's ancient woodland restoration targets: There is a target for Defra within the Keepers of time policy to bring the majority of ancient woodland damaged by plantation forestry (PAWS) into restoration by 2030.⁹ This is fundamental to wider Defra legal targets on nature recovery and habitat restoration. Most of the damaged ancient woodland is privately owned. Forest Services are the primary delivery body and need to support approximately 5,000ha into restoration each year to meet Defra's target. However, progress has been exceptionally slow. In 2022/23, Forestry Commission England supported only 1ha¹⁰ of privately owned PAWS restoration across England, rising only to 6ha in 2023/24.¹¹ This is arguably one of the worst performing environmental targets under DEFRA's responsibility.

Regulating invasive tree species: Invasive species are one of the top five drivers of biodiversity decline and cost the UK Government £4billion a year to manage.¹² Forestry Commission has a legal duty to promote afforestation and timber production, which conflicts with its policy responsibility to prevent introduction of invasive tree species. One example of this Forest Services has grant funded one of the most invasive tree species in Europe, called

⁸ <https://www.legislation.gov.uk/ukpga/1967/10/part/I> <https://www.legislation.gov.uk/ukpga/1967/10/part/I>

⁹ <https://www.gov.uk/government/publications/keepers-of-time-ancient-and-native-woodland-and-trees-policy-in-england/keepers-of-time-ancient-and-native-woodland-and-trees-policy-in-england>

¹⁰ <https://assets.publishing.service.gov.uk/media/6489c0bb5f7bb700127faa2f/Forestry-Commission-Key-Performance-Indicators-Report-2022-23.pdf>

¹¹ https://assets.publishing.service.gov.uk/media/6673e4a3d427ab249955cea7/Forestry-Commission-Key-Performance-Indicators-Report-2023-24_.pdf

¹² IPBES (2023). Summary for Policymakers of the Thematic Assessment Report on Invasive Alien Species and their Control of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. <https://doi.org/10.5281/zenodo.7430692>

false acacia¹³, via their England Woodland Creation Offer.¹⁴ It could be expensive for the Government to then fund other private landowners to manage and remove the same invasive tree species in the future.

Forestry England

Development of the Public Forest Estate: Forestry England has supported development on the Government priority habitats it manages on multiple occasions. This contrasts with Defra and Government planning policy. For example, in [Hamsterley Forest holiday park](#), Forestry England supported the development of an ancient woodland with a Go Ape facility to generate income. Forestry England's response to Woodland Trust's objection was:

"We acknowledge the objection from The Woodland Trust. However, the area which Go Ape partially uses is non-native species, with no ancient woodland value," a spokesperson said."

The site in question was an ancient woodland site that has been replanted with non-native trees, known as a Plantation on ancient woodland site (PAWS). PAWS can be restored through restoration work back to a thriving ancient woodland. This is an example of FE taking a subjective assessment on the value of this habitat that is in direct contradiction to Government's policy position. PAWS and ancient semi natural woodland (ASNW) are both types of ancient woodland and The National Planning Policy Framework gives them equal protection. They are also both considered equally important to protect and restore in Government's Keepers of Time policy. Woodland Trust also has an open objection to another Go Ape development on Forestry England land, which is on a PAWS in the Durham area.

Mismanagement of Protected Landscapes (National Parks and National Landscapes):

The Public Forest Estate owns 6% of the land in National Parks, including significant land holdings in some of the Parks, such as, 47% of the New Forest and over 15% of Northumberland. Management of the forestry estate in these areas has at times been at odds with the objective of the relevant National Park Management Plan, for example, planting on deep peat in Northumberland which has adverse impacts on a vulnerable habitat and releases stored carbon.

The time to update the legal remit of the Forestry Commission is now

¹³ https://www.nonnativespecies.org/assets/Uploads/ID_Robinia_pseudoacacia_False_Acacia-1.pdf

¹⁴ https://assets.publishing.service.gov.uk/media/636ce2dde90e076193991020/FC_Case_Study_Blenheim_Fin_al.pdf

The Planning and Infrastructure Bill includes a clause to allow the leasing of the public forest estate for renewable energy. Link would be supportive of this policy if it were strengthened by a clear requirement that the renewable infrastructure must not harm protected species or Important, high nature value habitats, such as waxcap grasslands, and irreplaceable habitats.

As it stands, the legal purpose of Forestry England is not strong enough to ensure development does not contradict existing nature restoration targets. Many species of plant and animal are already under pressure from climate change and other threats, such as land use change, and outright replacing important woodland species and habitats for renewable energy projects is not a viable option. With an updated legal duty to conserve and restore nature, Forestry England could guide development of renewable energy in the public forest estate and guarantee the protection of important habitats and species.

The public passion for the public forest estate and its protection is extremely high. Government should bring the legal remit of Forestry England up to date with scientific understanding of the climate and ecological emergency and with the urgent, specific targets set under the Climate Change Act 2008 and the Environment Act 2021.

The updated legal remit should include a requirement for Forestry England to manage all of the forestry estate in Protected Landscapes with the primary purpose of nature recovery, and in addition, all their activities in these areas should be aligned with the statutory purposes of Protected Landscapes.

In addition, an updated legal remit for Forest Services would ensure their grants, advice and regulation delivery are fully aligned with DEFRA's priorities for woods and trees, which are broader than only timber production. This could include net zero, nature recovery, providing high quality access and expansion of trees outside woods such as agroforestry and urban tree planting with support for community engagement.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 86 organisations to campaign for nature, climate, animal welfare and a healthy environment for everyone. Wildlife and Countryside Link is a registered charity number 1107460 and a company limited by guarantee registered in England and Wales number 3889519.

For questions or further information please contact:

Lisa Manning, Policy Officer, Wildlife and Countryside Link E: Lisa@wcl.org.uk

Wildlife & Countryside Link, Vox Studios, 1 – 45 Durham Street, Vauxhall, London, SE11 5JH
www.wcl.org.uk

The following organisations have inputted into this briefing and supported an updated legal duty of the Forestry Commission and its agencies to meet legally binding nature targets:

Woodland Trust
Campaign for National Parks
Plantlife
RSPB
Trees for Cities
Bat Conservation Trust
Friends of the Earth
Amphibian and Reptile Conservation
The Wildlife Trust
Rewilding Britain
Peoples Trust for Protected Species