

**PLANNING TO IMPROVE THE ENVIRONMENT:
THE ENVIRONMENT BILL**

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Introduction

One key feature of the [Environment Bill](#) is its emphasis on improving (rather than simply conserving) the natural environment. This is an important change for planning practitioners to note.

This article considers:

1. The amendments to s.40 of the Natural Environment and Rural Communities Act 2006;
2. Local nature recovery strategies; and
3. The biodiversity gain objective and its application to nationally significant infrastructure projects.

The Bill originated in 2018. However, it has been making swift progress since its re-introduction in the new Parliamentary session and is expected to receive royal assent in Autumn 2021.

Background

The Environment Bill serves to fill the 'environmental governance gap' left as a result of the UK leaving the EU. Therefore, it facilitates the setting of long-term environmental targets and oversight of their progress.

Targets would be set by secondary legislation, expected in 2022. Ambitious targets are likely to be welcomed, although other articles have highlighted concerns that the environmental principles are weaker under the Bill than under EU law.

The Bill also draws on the aim of the previous Government's [25 Year Plan to Improve the Environment](#) (launched in January 2018) to embed an 'environmental net gain' principle in the planning system.

s.40 of the Natural Environment and Rural Communities Act 2006

Part 6 of the Bill proposes to amend the existing statutory duty of LPAs to 'have regard' to the purpose of conserving biodiversity under s.40 of the 2006 Act.

The new wording would be strengthened. Amongst other things, an LPA would be required to:

- Consider what action it can take to further the 'general biodiversity objective', i.e. the conservation *and enhancement* of biodiversity in England.
- In doing so, consider any relevant *local nature recovery strategy*.
- Determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective.
- *Take such action as it considers appropriate*, in light of those policies and objectives, to further that objective.

A new s.40A of the 2006 Act would also require relevant authorities to produce biodiversity reports summarising the action taken.

Local nature recovery strategies

Part 6 of the Bill proposes to require each responsible authority (in most cases the local authority) to prepare a local nature recovery strategy (LNRS).

The LNRS must include a description of opportunities, priorities and proposals for recovering or enhancing biodiversity.

Further details about the procedure to be followed may be provided for in regulations.

Biodiversity gain objective

Part 6 of the Bill proposes to insert a new section 90A and schedule 7A into the Town and Country Planning Act 1990, making most grants of planning permission in England subject to a condition to secure that the biodiversity gain objective is met.

This would apply to most developments under the 1990 Act. There are currently exceptions for development orders, urgent Crown developments and other developments to be specified by the Secretary of State. However, the Government has [published](#) an amendment that would extend the biodiversity gain objective to development consent orders for nationally significant infrastructure projects.

The biodiversity gain objective would be met where there is at least a 10% increase in biodiversity after development. The Secretary of State would set the metric for measuring biodiversity values and so there is flexibility, allowing it to be revised from time to time. The existing Defra biodiversity metric is published [here](#).

LPAs would be required to summarise the action they have taken under schedule 7A and make plans for the next 5 years in their biodiversity reports produced pursuant to s.40A of the 2006 Act.

Comment

These provisions seek to put spatial planning for nature on a statutory footing and so reflect the ever-growing emphasis on the environment. They would considerably strengthen the existing duty of LPAs under the 2006 Act and give added statutory status to existing policy provisions, such as:

- The NPPF (¶170(d)) statement that planning policies and decisions should provide net gains for biodiversity; and
- The London Plan policy G6 statement that development proposals should aim to secure net biodiversity gain.

For local authorities, the LNRS is likely to become an important document, informing the consideration of planning applications under the 1990 Act and beyond. For example, it

is likely to be considered when preparing a local impact report under s.60 of the Planning Act 2008 for an application for a development consent order for a nationally significant infrastructure project. There are likely to be familiar concerns about the resource implications of the additional obligations and meeting related legal challenges from developers and environmentalists.

For developers, these represent new and different hurdles to overcome and another potential means of challenge. The biodiversity gain objective could be difficult to meet on greenfield sites and appear difficult to reconcile with the Government's other stated aim to streamline the planning system. The Secretary of State's power to prescribe exceptions to the condition to meet the biodiversity gain objective may prove an important caveat. For example, it is possible that exceptions could be made on grounds of viability.

For environmentalists, views are likely to remain that the above does not go far enough, particularly in light of the concerning [State of Nature reports](#), as there is sufficient flexibility and 'wiggle room' to allow targets to be missed in certain developments. A proposed opposition amendment has been [published](#) that would require the Secretary of State to set a target to *halt and begin to reverse* the decline in the state of nature in England by 2030.

Overall, it is clear that the decisions to be made in the Bill's final stages will have a large and long-lasting impact on the scope and ambition of the Bill.

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