

The Biodiversity Duty: Implications for Local Authorities

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Ecologist
at ELDC
May 2024

Conservation
Research
- 20 yrs -
Farming
systems

Birds
Birds
Birds



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Little
knowledge of
planning
system

PhD in West
Indies
-
Still farming
systems

A bit about
myself

From
Manitoba,
Canada

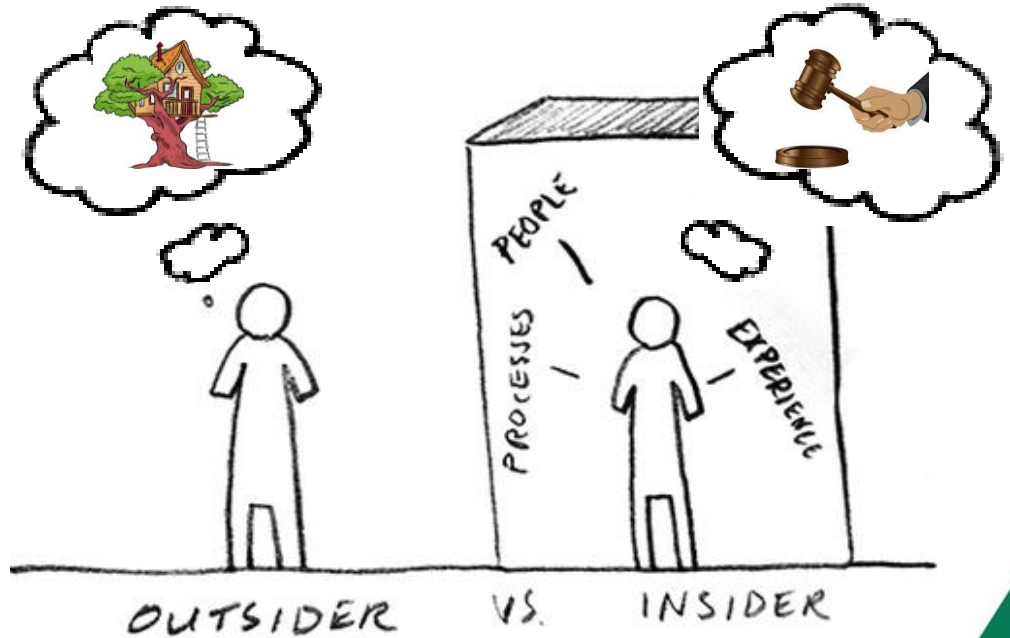
(looks alot like)
(Lincolnshire!)

Like dogs
and cats
but own
neither...



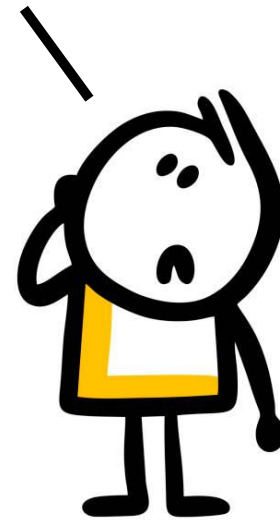
Preamble and Disclaimers

An ethic approach: The Biodiversity Duty Opportunity or Burden?



Preamble and Disclaimers

A presentation
on the biodiversity
duty?



Sure...



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Preamble and Disclaimers



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The Biodiversity Duty Opportunity or Burden?

Preamble
and
Disclaimers



Presentation Overview



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- Outline of the Biodiversity Duty
- Relevant Legislation
- Suggested actions to comply as per UK gov guidance.
- Opportunities and Pitfalls
- Final Thoughts

Biodiversity Duty Summary



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- Environment Act 2021
 - creates a legal framework to protect and enhance the natural environment.
- 25-year Environment Improvement Plan 2023
 - “apex goal” of halting the decline in UK biodiversity.
- LPAs must consider what actions they can take to conserve and enhance biodiversity.
- LPAs must periodically review these actions and publish biodiversity reports

Legislation Relevant to the Biodiversity Duty



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(The culprits)



Natural Environment
and Rural
Communities Act
2006

CHAPTER 16

Environment Act 2021

CHAPTER 30

Natural Env't and Rural Communities Act 2006



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PART 3

WILDLIFE ETC.

Biodiversity

- 40 Duty to conserve biodiversity
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- 42 Biodiversity lists and action (Wales)

Pesticides harmful to wildlife

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- 44 Enforcement powers in connection with pesticides
- 45 Codes of practice
- 46 Interpretation

Protection of birds

- 47 Protection for nests of certain birds which re-use their nests
- 48 Birds released into the wild as part of re-population programme
- 49 Registration etc. of certain captive birds

Invasive non-native species

- 50 Sale etc. of invasive non-native species
- 51 Codes of practice in connection with invasive non-native species

Enforcement etc. of provisions relating to wildlife

- 52 Enforcement powers in connection with wildlife
- 53 Wildlife offences: time limits for proceedings
- 54 Application of Part 1 of 1981 Act to Crown

Natural Env't and Rural Communities Act 2006



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Biodiversity

40 Duty to conserve biodiversity

- (1) Every public authority must, in exercising its functions **have regard**, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.
- (2) In complying with subsection (1), a Minister of the Crown, government department or the National Assembly for Wales must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- (3) **Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.**
- (4) “Public authority” means any of the following—
 - (a) a Minister of the Crown;
 - (b) the National Assembly for Wales;
 - (c) a public body (including a government department, a local authority and a local planning authority);

Environment Act 2021



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PART 1

ENVIRONMENTAL GOVERNANCE

CHAPTER 1

IMPROVING THE NATURAL ENVIRONMENT

Environmental targets

Environmental improvement plans

Environmental monitoring

CHAPTER 2

THE OFFICE FOR ENVIRONMENTAL PROTECTION

The OEP's scrutiny and advice functions

The OEP's enforcement functions

Environment Act 2021



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PART 6

NATURE AND BIODIVERSITY

Biodiversity gain in planning

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- 99 Biodiversity gain in nationally significant infrastructure projects
- 100 Biodiversity gain site register
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Biodiversity objective and reporting

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Local nature recovery strategies

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- 105 Preparation of local nature recovery strategies
- 106 Content of local nature recovery strategies
- 107 Information to be provided by the Secretary of State
- 108 Interpretation

Conservation

- 109 Species conservation strategies
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- 111 Wildlife conservation: licences

Habitats Regulations

- 112 Habitats Regulations: power to amend general duties
- 113 Habitats Regulations: power to amend Part 6

Tree felling and planting

- 114 Controlling the felling of trees in England

NERC 2006 – Amended general biodiversity duty

Biodiversity



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40 Duty to conserve biodiversity

- (1) Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving *and enhancing* biodiversity.
- (2) In complying with subsection (1), a Minister of the Crown, government department or the National Assembly for Wales must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- (3) *The action which may be taken by the authority to further the general biodiversity objective includes, in particular, action taken for the purpose of –*
- (4)
 - (a) *conserving, restoring or otherwise enhancing a population of a particular species, and*
 - (b) *conserving, restoring, or otherwise enhancing a particular type of habitat.*

Environment Act 2021 – evaluate policy/practices

(3) For subsections (A1) and (1) substitute –

“(A1) For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.

(1) A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.

(1A) After that consideration the authority must (unless it concludes there is no new action it can properly take) –

(a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and

(b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.

Environment Act – duty tied to LNRS and guidance



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- “(2A) In complying with subsections (1) and (1A) the authority must in particular have regard to –
- (a) any relevant local nature recovery strategy, and
 - (b) any relevant species conservation strategy or protected site strategy prepared by Natural England.
- (2B) The Secretary of State must issue guidance to local planning authorities as to how they are to comply with their duty under subsection (2A)(a) when complying with subsections (1) and (1A) in their capacity as such authorities.

Environment Act 2021 – review of actions



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- (1C) The first consideration required by subsection (1) must be completed by the authority within the period of one year beginning with the day on which section 102 of the Environment Act 2021 comes into force.
- (1D) Any subsequent consideration required by subsection (1) must be completed no more than five years after the completion of the authority's previous consideration.



Completed:
January 1, 2024



Minimum:
Every 5 yrs

Environment Act 2021 – Reporting of actions



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103 Biodiversity reports

- (2) A public authority to which this section applies (“the authority”) must publish biodiversity reports in accordance with this section.
- (3) A biodiversity report so published must contain—
 - (a) a summary of the action which the authority has taken over the period covered by the report for the purpose of complying with its duties under section 40(1) and (1A),
 - (b) a summary of the authority’s plans for complying with those duties over the period of five years following the period covered by the report,
 - (c) any quantitative data required to be included in the report by regulations under subsection (8)(b), and
 - (d) any other information that the authority considers it appropriate to include in the report.

Environment Act 2021 – Reporting BNG



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103 Biodiversity reports

- (4) If the authority is a local planning authority, its biodiversity report must also contain –
- (a) a summary of the action taken by the authority in carrying out its functions under Schedule 7A to the Town and Country Planning Act 1990 (biodiversity gain as condition of planning permission) over the period covered by the report,
 - (b) information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period, and
 - (c) a summary of the authority's plans for carrying out those functions over the five year period following the period covered by the report.
- (5) A biodiversity report –
- (a) must specify the period covered by the report, and
 - (b) must be published within the period of 12 weeks following the last day of that period.

Environment Act 2021 – Office of Env'tl. Protection

The OEP's enforcement functions

31 Failure of public authorities to comply with environmental law

- (1) Sections 32 to 41 make provision about functions of the OEP in relation to failures by public authorities to comply with environmental law.
- (2) For the purposes of those sections, a reference to a public authority failing to comply with environmental law means the following conduct by that authority –
 - (a) unlawfully failing to take proper account of environmental law when exercising its functions;
 - (b) unlawfully exercising, or failing to exercise, any function it has under environmental law.
- (3) In this Part “public authority” means a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons –

UK.GOV Guidance on LPA Actions to take - Environmental Improvement Plan 2023 -



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1. Fulfil statutory obligations to protect and enhance biodiversity within the development process (e.g., BNG, statutory sites, species/habitats of principal importance, etc.).
2. Seek ways to link authority functions with LNRS, species conservation strategies, and protected site strategies.
3. Link biodiversity considerations with other environmental programmes such as waste management, energy conservation, and climate change adaptation (e.g., flood resilience, food system resilience, etc).

UK.GOV Guidance on LPA Actions to take - Environmental Improvement Plan 2023 -



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4. Promote and implement biodiversity supporting land management and collaborate with other organizations to achieve this. Protect and enhance biodiversity on authority managed land and buildings.
5. Review internal policies and process for staff and facilities, e.g., transport, waste and recycling, water efficiency, lighting and energy use, procurement decisions.
6. Help develop and implement management plans for national parks or AONBs, and make improvements to nature in these areas.
7. Foster access to biodiversity in the delivery of public services such as social care, community development, health and recreation, transport programs.

UK.GOV Guidance on LPA Actions to take - Environmental Improvement Plan 2023 -



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8. Promote biodiversity conservation and access to nature within schools and community projects and raise awareness of biodiversity conservation to the public.
9. Evaluate conflicts and synergies between biodiversity conservation and enhancement with other strategic goals (e.g., economic development, increased housing, energy infrastructure development, etc.).
10. Incorporate biodiversity conservation and its benefits into relevant strategies and policy (e.g., Corporate strategies, asset management plans, economic development plans, local plans, etc.).

UK.GOV Guidance on LPA Actions to take - Reporting Requirements-



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1. Summary of actions taken to comply with the biodiversity duty
2. How the LPA plans to comply with the biodiversity duty over the next reporting period.
3. Summary of actions carried out to meet BNG obligations.
4. Quantitative data on net gains in biodiversity resulting from BNG plans approved by the LPA.
5. A summary of how the LPA plans to meet biodiversity duty and BNG in the next reporting period.

Hitting the Road – Opportunities and Problems



Opportunities

Legal obligations provide sharper stick to motivate authorities to adapt planning policy and internal processes.

Hitting the Road – Opportunities and Problems



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Reporting requirements produce more transparency for the public and advocacy groups to hold developers and local planning decisions to account.

Hitting the Road – Opportunities and Problems



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Attempts to tie strands of work together to influence biodiversity outcomes at local, national, (and global) scales.
e.g., BNG, LNRs, protected sites/species, local plans, waste mgmt., estate mgmt., flood and climate adaptation, procurement, etc.

Hitting the Road – Opportunities and Problems



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Imbedding conservation principles into local policy shifts focus/culture towards meeting the needs of future generations relative to immediate economic concerns.

Hitting the Road – Opportunities and Pitfalls



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Pitfalls

Lack of “musts” in legislation undermine the duty, potentially slowing progress until courts send clear signals about how Act is interpreted.

Hitting the Road – Opportunities and Pitfalls



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Lack of capacity impedes progress even if strong motivation/desire is there to enact change. Resources for monitoring and enforcement?

Hitting the Road – Opportunities and Pitfalls



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Hitting the Road – Opportunities and Pitfalls



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Hard to over-estimate institutional inertia. Small climate/environment/ecology teams relative to size of councils.

Who’s duty is it to ensure compliance with the duty internally?

– Corporate level decision making through to individual employee choices

Hitting the Road – Opportunities and Pitfalls



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70% of UK land is agricultural and largely outside the influence of LPAs

The Biodiversity Duty Opportunity or Burden?

Final
Thoughts

