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How the government is set to trash UK nature protections

The government has plans for a string of attacks on nature protection. Kierra Box explains why nature and communities will suffer from the government's proposed bonfire of regulations.

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Alongside the climate emergency that we see unfolding before our eyes – with flooding, heatwaves, droughts and wildfires across the globe – there's also [a nature emergency](#). Although it might generate fewer headlines, the destruction of nature is insidiously weakening the life-support systems we need to survive. We can no longer take for granted [the ecosystem services](#) that nature provides, such as fresh water, healthy soils and bountiful crops.

If we want future generations to survive and thrive, we need to restore nature and halt its continued destruction. This is the real-world context for the reckless and dangerous attacks on nature protections that ex-Prime Minister Liz Truss's government is currently pursuing.

Together, the Retained EU Law (Revocation and Reform) Bill and proposals for a Planning and Infrastructure Bill (PIB) to weaken planning protection could put paid to the chances of meeting legally-binding climate and nature targets, create uncertainty for vulnerable businesses, shatter the long-term sustainability of our economy and unleash environmental losses that could reduce quality of life for millions of people.

Coupled with a potential rowing back on support systems for agriculture and land, they also mark a radical departure from the manifesto commitment to “the most ambitious environmental programme on Earth”, under which the Conservative government was elected.

Undermining nature protections

There are 4 main aspects to these short-sighted and misconceived plans.

1. A bonfire of EU safeguards

Many of the UK's most important nature protections have their roots in decisions made via the EU. The decisions of EU courts have also helped communities in the UK uphold environmental protections. Friends of the Earth [campaigned against Brexit](#). We not only thought that pan-European decision making on environmental issues made sense given nature and pollution don't respect borders, but we were also fearful that hard-won nature safeguards might be abandoned. Brexit campaigners said this wouldn't happen, yet in September 2022 the government published a new law that'd make all EU laws defunct at the end of 2023 unless ministers explicitly choose to safeguard them.

Ministers want to have sole power over the choice of what laws to keep, change or delete – despite Brexit claims that parliament would decide – so the scope for proper parliamentary engagement with and scrutiny of changes is very limited. There's a very high chance that protections will fall through the gaps or that errors will be introduced.

2. Bulldozing planning rules

Developers and some politicians (particularly from the right) have long complained that planning rules that protect nature hold back economic growth and delay infrastructure projects. They also bemoan the role of local democracy in planning. Currently in the works is a PIB that'll accelerate the development of Nationally Significant Infrastructure Projects (NSIPs). Starting in England, the [Growth Plan](#) also threatens to sweep away planning rules in so-called Investment Zones (IZs), the number and size of which are unknown.

These measures build on changes proposed through the Levelling-up and Regeneration Bill, which looks to replace stringent but imperfect nature assessment rules with potentially less robust outcomes-based assessments. Such changes risk concreting the countryside, making it harder for people to access nature and more difficult to create a healthy environment for everyone.

3. Backtracking on changes to farming

Much of the farming in the UK is intensive, which is harmful to nature and pollutes our waterways. When Michael Gove was Secretary of State for the Department for Environment, Food and Rural Affairs (Defra), he promised to fundamentally change the way farming is subsidised, from payment according to the size of land towards payment for the “public goods” farming can provide (for example, improvements to soil quality, carbon capture and wildlife support).

Environmentalists and nature-friendly farmers alike welcomed the shift to this welcome revolution in approach. But within days of the Truss government being formed, rumours abounded that the approach was going to be scrapped. While Defra rapidly issued a statement denying the change, such rumours usually emerge for a reason. We're still concerned as the government continues to say it wants to prioritise food production, which is usually shorthand for short-term intensification at the cost of nature. The uncertainty caused by these rumours is damaging to farmers and won't give them confidence to plan for a more nature-friendly future.

4. Curtailing legal challenges

As well as seeking to undermine the democratic Local Plan process with the addition of National Development Management Policies (NDMPs) that take precedent over Local Plans, and seeking to weaken democratic input into planning decisions for NSIPs and IZs, the government also wants to reduce the ability of groups like Friends of the Earth to challenge bad decisions in the courts (for example, by sweeping away important EU case law). These changes are shocking from a government that proclaims internationally that it's standing up for the values of democracy and the rule of law.

Damaging impacts of weakening environmental laws

Laws that protect the bedrock of our environment – air and water quality, soil health, wildlife and heritage – mustn't be weakened. Doing so could hasten the torrent of pollution that blights our rivers and streams and increase the damaging presence of pesticides across a range of habitats. It could lead to the loss of green spaces and heritage assets that are precious to communities and important for people's mental and physical health and wellbeing. It could further pollute the air we breathe, with consequences for public health and costs to the NHS. And the consequences for wildlife could mean that species and habitats are lost.

Despite claims by the then Environment Secretary Ranil Jayawardena MP on BBC Radio 4's "Any Questions?" programme that his government is the greenest ever, and despite having made big commitments in its 25 Year Environment Plan and Environment Act, it's suddenly looking like this government could be the most environmentally destructive government ever.

Read on to find out how the government's proposed changes to various legislation and policy areas would make it ever easier to trash nature laws and ever harder to uphold our rights to a healthy environment.

Retained EU Law (Revocation and Reform) Bill

On EU exit day, all EU law that applied to the UK was categorised as "retained EU law" (REUL), including regulations and decisions that previously sat at an EU level and UK laws that were passed to implement EU requirements. Decisions made by EU courts continued to guide the operation of UK courts at all but the highest level. Safeguards were put in place to ensure these laws couldn't be

changed without proper parliamentary oversight and public consultation. However, the government is keen to show some "Brexit benefit" through deregulation and to make some visible policy moves away from the EU.

Cumulative threat to protections and access to justice

Earlier this year, the government passed the Judicial Review and Courts Act, which limited available remedies in Judicial Review claims. The now defunct (but likely to reappear in a new guise) Bill of Rights Bill looked to move the UK's legal systems away from European Convention on Human Rights (ECHR) case law. [The REUL Bill](#) allows further deviation from case law, while also introducing the potential for massive legislative change. Together, these moves create potential for re-litigation, legal uncertainty for campaigners hoping to build on previous victories and a substantial barrier to upholding protections for people and nature in the future.

Key REUL bill threats

- It sets a "sunset" date of 31 December 2023 for everything defined as retained EU law. By this date, each part of government must've decided if each law in its purview should be kept as it is, changed in some way or scrapped. If a law is overlooked, it'll be automatically scrapped. This could leave holes in our nature laws that aren't noticed until it's too late.
- It gives government a very broad power to change retained EU law. This includes options to "update", "reduce burdens" and even to "revoke [...] and make such alternative provision as [...] appropriate". While some scrutiny mechanisms are outlined, it'll be very easy for this government, and future governments, to entirely rewrite or undermine protections for people and nature with only limited debate.
- It allows the courts to depart further from EU case law and abolishes the remaining general principles of EU law. This'll increase legal uncertainty and make it harder for communities to fight for environmental justice.
- Defra is already underfunded and overstretched. This is going to be a huge amount of work for Defra, which has [already identified 570 laws](#) to review and isn't sure what proportion of the final list that'll be. It'll have knock-on effects as funding, capacity and focus are switched from other priorities. Depending on the level of replacement/revocation planned, we may see a glut of new, lower-quality regulations following this cut-off.

We've written previously about [EU nature protections](#) and [how Brexit threatened them](#) – most of these issues are equally relevant now. For example, there are a number of EU-rooted laws relevant to fracking (ie water quality, protected natural sites etc), the removal of which would cause great concern to those opposing this destructive industry.

Planning and Infrastructure

Weakening Environmental Impact Assessment (EIA)

Although civil society and local authorities want to see much stronger alignment of planning policies and decisions with climate and nature restoration targets, the Levelling-up and Regeneration Bill

(LURB) currently making its way through parliament will do nothing to achieve this.

The LURB would weaken proper scrutiny by enabling the government to replace the rules for EIA with a system based on Environmental Outcomes Reports (EOR). There's no guarantee that this'd maintain even an existing level of assessment of direct, indirect or cumulative impacts on biodiversity and climate from specific types of major development.

Overriding community decision making and the threat to public participation

The LURB also includes measures that could see new NDMPs (for which no detail is yet available) override those within Local Plans drawn up by local authorities in consultation with their communities.?

Unless the new prime minister chooses to change course, the announcements in the government's Growth Plan amount to a bigger threat to the existing opportunities for public participation in the planning system and to crucial environmental protections, comprising a direct attack on the Habitats Regulations. Both the proposals to deliver major infrastructure (via a new PIB) and to set up new IZs refer to "burdensome" planning rules and have specific mention of the Habitats Regulations. Reform to the current system of planning for NSIPs would accelerate Development Consent Order (DCO) timeframes, meaning more road schemes and oil and gas infrastructure being delivered at a quicker pace.



Dumper truck moving a load of soil on the site of a new housing development. iStock

One positive outcome would be that barriers to onshore wind would also be removed, although there's no detail on how this'd be implemented. Although there are already some limitations to public participation under the NSIP/DCO regime, the government's most recent proposals threaten to "reduce bureaucracy in the consultation process", seemingly without any evidence that public participation is slowing down nationally significant forms of development.?

The geographical scope of the proposed IZs, and how much they overlap with sites already allocated for commercial and housing development, is as yet unclear. However, as with major infrastructure, the proposal in the Growth Plan is all about deregulation and removing burdens, including EU regulations. Although the government is "in discussion" with 38 higher-tier local authorities about potential IZs, it's unclear whether it's consulted the local authorities (eg district councils) that'd be set to lose planning controls and community participation mechanisms in these areas. It seems inevitable that there'd be conflict between locally developed policies to protect nature and cut carbon emissions and an IZ where most existing planning controls wouldn't apply.?

The Habitats Regulations and EIA regimes – though far from perfect – have been fundamental in protecting nature sites and ensuring proper consideration of the environmental impacts of proposed development. There's no evidence that they're a barrier to good-quality development.?

Reforming the Nationally Significant Infrastructure Projects regime

The PIB, as announced in the former Chancellor's mini-budget, and the Growth Plan, issued in September 2022, are set to deliver reform to the NSIP regime. Mr Kwarteng stated the government would "bring forward a new bill to unpick the complex patchwork of planning restrictions and EU-derived laws that constrain our growth".

Separate to the established town and country planning regime (which grants permission for housing as well as commercial and smaller-scale renewables, among other things), the NSIP regime facilitates the granting of DCOs for major pieces of infrastructure such as power stations, motorways, wastewater treatment works and airport runways.

The PIB aims to "speed up" the NSIP/DCO system, which, much like the wider planning system, is now regarded by the government as "too slow and fragmented", with delays cited in part due to a "complex patchwork of environmental and regulatory rules, some of which are retained EU law". This in turn is said to "undermine investor confidence". While this approach to speeding up consenting times is partly in line with the Climate Change Committee's (CCC) recommendations, especially for offshore wind (see page 254 in its 2022 "[Progress in reducing emissions](#)" report to parliament), the means by which the government is currently going about this is worrying (for example, the attack on Habitats Regulations, EIA, Strategic Environmental Assessment and the streamlining of public consultation).

EIA and Appropriate Assessment (AA)

Having to formulate and submit either an AA (also known as a Habitats Regulations Assessment) and/or an Environmental Statement – usually backed up by a suite of expert ecological, landscape, hydrogeological, highways, archaeological and other specialist reports – alongside a planning application can perhaps be described as "burdensome". However, the [government's further suggestion](#) that they "create paperwork and stall development but do not necessarily protect the environment" is simply untrue. The reality is that both EIA and AA processes are tangible elements of transcribed EU legislation that protect threatened and rare flora, fauna and geological features – as well as unprotected features – against dirty, polluting and potentially impactful developments that might otherwise have unacceptable impacts on them.



Aerial view of housing estate under construction, Bridgwater Somerset iStock

The government's alternative proposal is to instead focus on environmental outcomes. It remains unclear whether large NSIP applications would still need to evaluate their potential for having a significant effect on land, sea, water, air and even climate through their location or type/characteristics of impact, as well as in combination with other similar developments (as per existing [NSIP EIA regulations](#)). This additional concern could well fall under the banner of "minimising the burden of environmental assessments" within the Growth Plan. ?

Of course, while it takes time to gather evidence to support both AA and EIA submissions, how else will developers and/or decision makers gauge the true impacts of development on protected nature sites and species and the wider environment if such robust requirements are ditched? ?

Democracy and DCOs

The government has also signalled possible changes to democratic elements of the DCO regime. The DCO system already distances itself from being directly accountable to communities and local councils with the ultimate decision made by the relevant Secretary of State, but the PIB's proposals to "reduce the bureaucracy" of consultation requirements while making them "more proportionate" are still questionable in principle – especially in the absence of any real detail. ?Until we know more about which bureaucratic elements of the democratic process are to be amended, or what "proportionate" means, it's difficult to foresee what impact any changes will have on the rights of communities to input in a meaningful way into the DCO process. ?

Separate to the above, the Growth Plan also mentions other specific DCO system reforms that aim to ensure energy infrastructure – including renewables – "gets built more quickly". These include

increasing flexibility to make minor material changes to a DCO once it's been issued; prioritising the delivery of National Policy Statements for energy, water resources and national networks, and of a cross-government action plan for reform of the NSIP planning system; and reforms to accelerate building roads (albeit by tinkering with existing Highways Act legislation).

Worryingly for those concerned about legal interventions over poor policy making, the government is also considering options for changing the Judicial Review system to avoid claims that cause unnecessary delays to delivery.

Encouragingly, there's an onshore wind win, including "sector-specific changes to accelerate infrastructure delivery, including: bringing onshore wind planning policy in line with other infrastructure to allow it to be deployed more easily in England".



Wind turbines in silhouette on horizon, blue sky above Unsplash

Investment Zones?

More incidentally linked to the newly announced PIB are new IZs, which aim to liberalise planning controls, as well as provide other tax and investment incentives within specific geographical designations to drive and deliver growth and unlock housing. The Growth Plan states IZs will also:?

- Disapply legacy EU red tape/burdensome EU requirements for existing applications.
- Streamline and accelerate housing and jobs and good-quality development.
- Remove or reduce lengthy consultations with statutory consultees.

- Relax consideration of key national and local policies (yet unknown); although government suggests national green belt, flood risk and heritage policy considerations will be maintained.

While geographically-specific Local Development Orders (LDOs) and masterplan areas already exist (where certain planning rules are already relaxed and specific proposals assume a form of permitted development, subject to pre-set conditions and design codes), the IZ proposals seem to wildly ramp up that ambition. For instance, existing LDOs can't disapply EU requirements such as EIA and AA, and as far as we're aware, further legislation would be required for such EU "red tape" to be disapplied in IZs.

Despite the evident gulf between the government's ambition for and the reality of IZs, it's recently sought tenders and entered discussions with 38 mayoral combined/upper-tier planning authority areas, preferably where existing masterplan/LDO areas are in place, to try and bring these proposals about. However, there's no reference to any wider consultation with local planning authorities, and there's a mismatch between some of the authorities listed and those that'll have planning powers, eg district councils and London boroughs. ?Some of these same local authorities are also developing progressive Local Plan policies to cut climate emissions and restore nature in their areas, and could see their policy efforts swept aside if IZs are awarded in their areas.? It's worth pointing out that some councils have already stated they don't want IZs in their area for these very reasons.

Environmental Land Management Scheme

In late September 2022 Defra rushed to quash news stories that its new Environmental Land Management Scheme (ELMS) farming policy to replace the EU Common Agricultural Policy (CAP) was being halted. But the forces ranged against ELMS can't be discounted, and Defra could be overruled.

The review that's underway may concede to these anti-ELMS interests, which are using the nexus of Putin's war, food and energy security fears and the cost-of-living crisis as excuses to revert to their preferred policies, including even more intensive use of land to secure food production in the UK. These interests have never been in favour of changing subsidies to support nature, action to reduce the use of pesticides or meeting standards such as the Water Framework Directive.

CAP and ELMS

Despite its green and funding flaws, UK farmers and landowners came to depend on CAP for the taxpayer funds they received. Because payments were linked to the amount of land farmed and the volume of food and crop production, CAP favoured farms with large amounts of land under intensive production, even though this is a leading driver of species and habitat decline.

The introduction of low- and high-tier Environmental Stewardship (ES) allowed CAP to reward farmers and landowners for some environmental actions, but ES was always a minor part (15%) of the overall package. Attempts to allow farmers to be rewarded even more for nature-friendly actions

were blocked by the National Farmers' Union.

Government designed ELMS – its post-Brexit replacement of CAP – in recognition of CAP's severe flaws and the need for the UK, which is 70% farmland, to see subsidies to farmers and landowners doing much more than the marginal ES schemes under CAP.

ELMS means a switch to a system that, for the first time, focuses on how farmers and landowners play a full role in helping to reverse the poor state of nature in the UK – which has been driven largely by intensive practices denuding soil and water quality and hastening the decline of diverse habitats and species, even when these are fundamental to healthy farming and land management.

Switching to a new system is bound to cause uncertainty, and the mess over previous delays in payments to farmers lingers in the mind. But the overall direction from direct payment for production to "public money for public goods" such as cleaner rivers and more and better nature, as well as better farmland conditions, is a good move – for farmers to play their part, for environmental gains and for better use of public funds.

Making more of the money should also result in fewer extra funds being needed for remedial action such as water clean-up. That's why for some time we've proposed that recipients who do the right thing deserve much more financial support.

ELMS isn't a policy in isolation – how it works will directly relate to and have a bearing on other aims such as the Habitats Regulations (see below), and to government policies including on nature's recovery, on the Sustainable Farming Incentive (SFI) and on post-Brexit regulations on pesticides and chemicals.

Habitats Regulations

Nature in the UK is in trouble. Three out of 5 wild species are in long-term decline. Yet the UK government still wants to scrap our most vital nature laws – the Habitats Regulations.



Close up of red squirrel leaning against tree trunk Unsplash

The Birds and Habitats Directives are **the** most critical legal backstop for the most important wildlife, natural habitats and landscapes. Ironically, the UK championed the nature laws as a member of the EU. And during and since the 2016 Brexit referendum, voters were told that the UK leaving the EU would see it match or better EU standards.

A third attempt to scrap nature protection laws

The government has rightly set legal targets in the Environment Act 2021 to reverse the decline of wild species by 2030 – just a few years away. But it has form in trying to scrap the nature laws. Despite originally championing them, everything changed after 2010. The latest move to ditch them is the UK's third attempt in a decade to scupper these nature protections.

First, George Osborne claimed the nature laws block economic progress, but a review by the government itself (Defra) found his claim was unfounded. In response to the UK government's second attempt a few years later, over 100,000 people from across the UK responded to a review of the laws by saying that the only problem with them was the government failing to observe and implement them properly.

Crucially, the government has failed to show how it'd replace the nature laws with something that's truly better, whether in bureaucratic terms or for habitat, species and landscape protection and

recovery. Meddling with the laws seems to be a case of returning to unfinished business to satisfy some narrow, vested interests. But by doing so the government is wasting time if it really wants to get on track to hit its own targets, targets which it's recognised are needed to restore nature in the UK.

Why would a government that says it's serious about being the first to leave our environment in better condition within a generation, waste time scrapping the most important legal backstop it has at its disposal to make that pledge come true?

England only but with UK consequences

Lastly, because nature and environment issues are devolved in the UK, this threat to nature would only apply in England. Even so, weakening the nature laws in England alone will still harm nature UK-wide, if only because many species migrate. The UK's post-Brexit commitments to international nature depend on retaining the Habitats Regulations, eg the Ramsar Convention on Wetlands and the Bern Convention's "Emerald" habitats, which replace EU Natura 2000 sites.

If the nature laws are weakened or scrapped in England, the entire UK's claimed reputation to lead the world on protecting and restoring nature will be undermined.

A challenge to the government

An unprecedented group of environmental organisations, including Friends of the Earth, has come together to challenge the government over this attack on nature.

We say that, while reasonable and positive reform can be achieved, it must be based on careful consideration, and grounded in evidence and consultation. Support for existing UK environmental standards and protections is resolutely high in constituencies up and down the country, so any changes must be based on clear proposals for change and evidence of what they'll deliver. It'd be utterly self-defeating to set world-leading targets for nature while sweeping away the regulations needed to achieve them.



Windswept tree and standing stone, rolling fells in background near East Woodburn, Northumberland Joanna Watson/Friends of the Earth