



Statement in relation to the revised biodiversity duty

December 2023



© OEP copyright 2023

This publication is licensed under the Open Government Licence v3.0. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence.

Any enquiries regarding this publication should be sent to us at:

The Office for Environmental Protection

Wildwood Offices

Wildwood Drive

Worcester

WR5 2QT

www.theoep.org.uk

03300 416 581

enquiries@oep.org.uk

Contents

About the OEP	4
The revised biodiversity duty	4
Our approach to this duty	4
A summary assessment of the actions we could take	5
Summary of our consideration where there is some or significant opportunity	5
Summary of our consideration where there is uncertain or no opportunity	6
Summary of how we have considered other actions we could take	7
The priority actions we will take	7

About the OEP

The Office for Environmental Protection (OEP) was established by the Environment Act 2021. We are a public body with powers to advise ministers and government departments and to hold them and other public authorities to account against their environmental responsibilities and the law. Our independence is protected in law.

Our work covers England and Northern Ireland, and UK-wide environmental matters where reserved to the UK Parliament.

Our mission is to protect and improve the environment by holding government and other public authorities to account.

The revised biodiversity duty

From 1 January 2023 a new duty came into force for all public authorities through revision to s.40 Natural Environment and Rural Communities Act 2006.

Like all public authorities, this requires us by 1 January 2024 to consider what action we can properly take to further the conservation and enhancement of biodiversity in England, and to do so at least every five years.

If there are new actions we can properly take, the duty requires us to decide the policies and specific objectives for taking appropriate action, and to then take appropriate action.

Government has prepared guidance for all public authorities on how to make this assessment, and meet this new duty.

This statement records how we implemented this revised duty.

Our approach to this duty

When considering the action we could take through our functions, we have sought to have regard to relevant nature recovery strategies, species conservation strategies and protected site strategies. These are strategies which must be developed by other public authorities and were introduced by the Environment Act 2021.

At the time of our assessment, we have been unable to identify any relevant strategies, which appear to remain under development. We have therefore considered available information which indicates generally the likely content and approach of such strategies, once adopted. This includes considering government policy statements, statutory guidance and public information on Natural England's protected site strategy pilots.

To consider the action we could take, we assessed each of our main functions and considered the extent to which there are any actions we could take under that function to further the conservation and enhancement of biodiversity in England.

We also considered government’s guidance [‘complying with the biodiversity duty’](#).

A summary assessment of the actions we could take

We set out below a summary of where we think there is some or significant opportunity to take action through our functions, and where we do not.

The greatest opportunity for us to take action is in:

- a. the priorities we choose for our corporate and business plans
- b. the specific analyses and recommendations we make in doing so within our functions
- c. the general approaches we take to the exercise of our functions

There is limited opportunity for us to take action in how we manage our operations.

Summary of our consideration where there is some or significant opportunity

Function	Opportunity
Duty to monitor progress in improving the natural environment and towards meeting certain targets	Monitoring underpins our ability to report on whether progress is being made in biodiversity conservation and enhancement and the degree to which government is on track to meet related targets. This monitoring may increase incentives for public authorities to conserve and enhance biodiversity.
Duty to report annually on progress in improving the natural environment in accordance with the environmental improvement plan and towards meeting related targets	Our progress reports provide an annual, independent assessment of whether government is making progress in (amongst other things) conserving and enhancing biodiversity, and whether it is on track to meet related targets. This allows Parliament and others to hold Government to account for that progress, thereby helping drive greater biodiversity conservation and enhancement than might otherwise occur. Each year we select one or more areas of the EIP to report on at greater depth. We have chosen to focus deeper scrutiny on the government’s biodiversity goals and targets for our 2022/23 report.
Duty to monitor the implementation of environmental law	By monitoring the implementation of relevant environmental laws, we can incentivise public authorities and others to more assiduously implement them, and in doing so improve biodiversity conservation and enhancement.

<p>Power to report on matters concerned with the implementation of environmental law</p>	<p>We can highlight where laws are and are not working well in practice, and can make recommendations for improvement. Governance structures exist for Parliament and others to hold Government to account for implementing such recommendations, and so help drive greater biodiversity conservation and enhancement.</p> <p>Opportunities for furthering biodiversity conservation and enhancement could therefore be a relevant in deciding which laws to produce environmental law reports on, and in deciding their content and recommendations.</p>
<p>Powers to investigate potential failures to comply with environmental law by public authorities and take steps under our enforcement functions</p>	<p>The prospect of our investigations and enforcement activity should reduce public authorities' non-compliance with relevant environmental laws and, where non-compliance does occur, may lead to this being addressed and the environmental consequences minimised or rectified.</p> <p>Opportunities for furthering biodiversity conservation and enhancement could therefore be relevant factors at all levels of investigatory and enforcement decision-making.</p>
<p>Duty to review the strategy and enforcement policy</p>	<p>We could consider whether changes should be made to these documents to better incorporate policies and specific objectives for conserving and enhancing biodiversity.</p>
<p>Power to do things appropriate for the purposes of, or in connection with, other functions</p>	<p>We may take such steps as are recommended by government's guidance, set out further below</p>

Summary of our consideration where there is uncertain or no opportunity

Category	Example functions
<p>Uncertain opportunity for specific option, because the function is responsive to the requests or circumstances of others</p>	<p>For example:</p> <ul style="list-style-type: none"> • Duty to advise Ministers on request • Power to handle complaints from members of the public • Power to intervene in a judicial or statutory review • Power to advise Ministers on proposed changes to environmental law

<p>No opportunity for specific action because the function enables us to exercise a function considered elsewhere, and the opportunity for specific action is considered within the exercise of that function</p>	<p>For example:</p> <ul style="list-style-type: none"> • Duty to act objectively, impartially and having regard to the need to act proportionately and transparently • Power to request assistance and information from other public authorities • Duty to keep information confidential
<p>No opportunity for specific action, because the function relates to the administration of the organisation</p>	<p>For example:</p> <ul style="list-style-type: none"> • Duty to keep proper accounts and records in relation to them, and prepare a statement of accounts for each financial year • Duty to prepare a delegation policy

Summary of how we have considered other actions we could take

Government's guidance encourages all public authorities to consider how they can manage land to improve biodiversity; to educate, advise and raise awareness of biodiversity and to review internal policies and processes.

We do not manage any land. Through our sustainability policy and action plan, we can consider how we can work with our landlords to promote and encourage them to make space for nature in the sites we occupy and how we can support biodiversity by reducing the pressures our operations create on the environment including by how we plan to reduce our carbon emissions, our consumption of water and other resources, and the waste we create.

We are committed to engaging our staff closely in how their direct contribution helps to deliver our strategy, plans and mission. This includes in the implementation of our sustainability strategy, and work programme which supports biodiversity. Our staff can volunteer for up to three days each year. This regularly includes in activities with partners to protect and improve the environment, including its biodiversity.

Our policy

Our Board has assessed this consideration, and decided to adopt a policy to **take biodiversity conservation and enhancement into account as part of all relevant strategic and operational decision-making.**

In deciding this policy, the Board recognised that the specific extent to which it is appropriate to take the outcomes intended by the biodiversity duty into account within

specific decisions will depend on the nature of the decision, and context. This policy allows procedures, templates, communications, guidance and training to be developed as appropriate for each decision under our Delegation Policy.

Our specific objectives

Our specific objectives to further the conservation and enhancement of biodiversity are to:

- ensure that biodiversity conservation and enhancement are effectively taken into account in our strategic and operational decision-making, as well as all other relevant duties under environmental law.
- scrutinise delivery of the steps governments in England and Northern Ireland intend to take to achieve, respectively, the 2030 and 2042 species abundance targets and the nearest Northern Ireland equivalent (once adopted), and to hold each government to account for delivering those steps and for ensuring that doing so can achieve the relevant target.

Our actions

The most significant opportunities for us to take action that may further the conservation and enhancement of biodiversity are in connection with:

- reviewing our strategy and enforcement policy
- develop and implement a programme of work through our functions to scrutinise the steps governments in England and Northern Ireland intend to take to meet their targets for biodiversity and hold them to account for doing so
- review our decision making templates, procedures and other supporting collateral to ensure that biodiversity conservation and enhancement are effectively taking into account as part of all relevant decisions
- provide guidance to our staff on the duty and these actions
- decide our sustainability policy and action plan