

# Biodiversity post Brexit

**Robert Walton**

- January 2018:
- Government publishes its 25 year environment plan



- Leaving the EU is “a once-in-a-generation chance to change our approach to managing our land so that we secure and enhance the benefits of the environment far into the future”

- Leaving the EU presents a unique opportunity to set in motion the behavioural and institutional changes necessary to build sustainable, enduring growth as well as an improvement in our wellbeing. Critical to delivering the outcomes we want to see is an effective governance structure underpinned by environmental principles – on which we will consult early in 2018. We will develop a set of metrics to assess progress towards our 25 year goals.

- Key dilemma – how to build 300,000 houses a year and pursue a meaningful industrial strategy and yet have “the environment at the heart of planning”.

- Environmental protections already enshrined in national planning policy will be maintained and strengthened.

## Overarching aims ...

- **New development will happen in the right places**, delivering maximum economic benefit while taking into account the need to avoid environmental damage. We will protect ancient woodlands and grasslands, high flood risk areas and our best agricultural land.
- **High environmental standards for all new builds**. New homes will be built in a way that reduces demands for water, energy and material resources, improves flood resilience, minimises overheating and encourages walking and cycling. Resilient buildings and infrastructure will more readily adapt to a changing climate.
- **Enhancement of the Green Belt** to make this land 'breathing space' for our urban populations to enjoy, and our diverse wildlife to flourish, while delivering the homes this country needs.

## Build eco-friendly and beautiful ...

Positive environmental outcomes can help reduce local opposition to development, shorten the planning process, cut operating costs for infrastructure and increase the desirability of new homes.



## Actions we will take ...

Making sure that existing requirements for net gain for biodiversity in national planning policy are strengthened, including consulting on whether they should be mandated alongside any exemptions that may be necessary

# Chapter 1 – using and managing land sustainably

- Sets out the aim to “embed an ‘environmental net gain’ principle for development, including housing and infrastructure
- Consult on making it mandatory for planning authorities to ensure environmental net gains across their areas strengthening the existing requirement that the planning system should provide biodiversity net gains “where possible”
- Want to expand the net gain approaches used for biodiversity to include “wider nature capital benefits” e.g. flood protection, recreation and improved water and air quality

## House of Lords select committee

- established in June 2017 to review the NERC Act 2006
- published a report on 22<sup>nd</sup> March 2018: “The countryside at a crossroads: Is the Natural Environment and Rural Communities Act 2006 still fit for purpose?”

## House of Lords select committee

- No detailed analysis of the impacts of Brexit on rural and environmental policy but highlight a key concern as to the loss of EU structures for enforcing compliance with environmental law principles (paras 55-57); and existing reporting requirements (para 72-73) even if the letter of existing Directives is transposed into domestic law

## Governance gap:

- Previously, the Government had suggested that Parliamentary scrutiny and the judicial review function would provide sufficient mechanisms for civil society to challenge the application of environmental legislation post-Brexit. This view was offered to us when we heard from Defra officials in July 2017. Witnesses, however, argued that this assessment was flawed; we were told that “this misunderstands both the breadth of functions currently performed by the EU institutions and the limitations of judicial review”.

- Accordingly, we were repeatedly told that the accountability functions of EU institutions needed to be replicated through new UK institutions, in order to avoid a “governance gap”.

## Net gain

- Welcomed NPPF consultation draft:
- “On 6 March 2018 the Government published a revised draft of the NPPF for consultation. The draft includes a new stipulation that local plans should “identify and pursue opportunities for securing measurable net gains for biodiversity”. If adopted, this would be the first time that local authorities have been required to make specific provision for biodiversity net gain in local plans”.
- See now NPPF 8, 32, 170

## Principles and governance consultation

- DEFRA's consultation on *Environmental Principles and Governance after the United Kingdom leaves the European Union*
- 10 May – 2<sup>nd</sup> August
- Key point 1: New environmental watchdog
- Key point 2: New policy statement



# EU Withdrawal Act 2018

- Royal Assent 26<sup>th</sup> June 2018
- Section 16 (“Maintenance of Environmental Principles”) provides that within 6 months of Royal Assent the Secretary of State must publish a draft bill consisting of...

## Section 16:

- (a) a set of environmental principles,
- (b) a duty on the Secretary of State to publish a statement of policy in relation to the application and interpretation of those principles in connection with the making and development of policies by Ministers of the Crown,
- (c) a duty which ensures that Ministers of the Crown must have regard, in circumstances provided for by or under the Bill, to the statement mentioned in paragraph (b)
- (d) provisions for the establishment of a public authority with functions for taking, in circumstances provided for by or under the Bill, proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with environmental law (as it is defined in the Bill), and
- (e) such other provisions as the Secretary of State considers appropriate.

## Environmental Principles:

- The set of environmental principles ... must (however worded) consist of—
  - (a) the precautionary principle so far as relating to the environment,
  - (b) the principle of preventative action to avert environmental damage,
  - (c) the principle that environmental damage should as a priority be rectified at source,
  - (d) the polluter pays principle,
  - (e) the principle of sustainable development,
  - (f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
  - (g) public access to environmental information,
  - (h) public participation in environmental decision-making, and
  - (i) access to justice in relation to environmental matters.

## Watch this space

- DEFRA is working on publishing a response to the consultation and a draft Bill before the 26<sup>th</sup> December deadline set out in the Withdrawal Act.