



The Rt Hon Michael Gove MP

Secretary of State for Levelling Up, Housing and Communities

The Rt Hon Therese Coffey MP

Secretary of State for Environment, Food and Rural Affairs

30 August 2023

By email only

Amendments to the Levelling-up and Regeneration Bill

Dear Secretaries of State,

I write in connection with the proposed amendments to the Levelling-up and Regeneration Bill, tabled yesterday by Baroness Scott of Bybrook on behalf of the Government. Those proposals would change environmental law and this letter sets out OEP advice in that regard under s.30(2) Environment Act 2021.

The proposed changes would demonstrably reduce the level of environmental protection provided for in existing environmental law. They are a regression. Yet the Government has not adequately explained how, alongside such weakening of environmental law, new policy measures will ensure it still meets its objectives for water quality and protected site condition.

The amendments

The proposed amendments include making changes to the Conservation of Habitats and Species Regulations 2017 that would permit certain environmentally damaging activity to proceed without 'appropriate assessment' of certain nutrient impacts, thus risking substantial harm to protected wildlife sites. Planning authorities would also be required to disregard negative findings concerning such nutrient pollution in any appropriate assessments, and disregard representations from Natural England or others.

The proposed amendments would therefore remove legal controls on the addition of nutrient loads to sites that already suffer from these impacts. Legal certainty is replaced with policy interventions announced alongside the Bill amendments. These interventions do not unequivocally secure, for the long-term, the same level of environmental outcome as legal obligations in the Regulations do. They also introduce uncertainty and the risk of unintended consequences. It is unclear how such measures take account of the polluter pays and precautionary principles. These are internationally recognised principles which underpin the Regulations, and which are reflected in the Government's Environmental Principles Policy Statement.

The environmental issues

We recognise the need for housing and infrastructure in line with contributing to the achievement of sustainable development. We also acknowledge that practical challenges have arisen in certain catchments for progressing development whilst ensuring it does not exacerbate nutrient pollution (so-called 'nutrient neutrality').

However, it must be recognised, as I know the Government does, that nutrient pollution is a significant problem that requires urgent action. Many of England's most important protected wildlife sites are in a parlous state, with their condition well below where it needs to be. This is often due to nutrient pollution, and development can be a significant contributor to this. In seeking to address these problems, it is important that Government takes specialist advice, including from Natural England as its statutory nature conservation body.

The Government reviewed and revised its Environmental Improvement Plan (EIP) in January this year. The revised EIP explains that tackling nutrient pollution and improving the condition of protected wildlife sites are critical steps if the Government is to achieve its aim of significantly improving the natural environment by 2043 and if it is to meet legally-binding targets to do so. On the face of it, the proposed amendments to the Bill would undermine this.

We welcome the proposed requirement for water companies to upgrade sewage treatment works. We also recognise new policy announcements to help address nutrient pollution, such as the Nutrient Mitigation Scheme and farm grants for improved slurry storage. However, the proposed amendments do not add anything to these measures, while they risk undermining the Nutrient Mitigation Scheme and creating incoherence with existing protections enshrined in law.

The requirement for clarity

This Government has, rightly, emphasised on many occasions its commitment not to weaken legal protections for the environment. That commitment is reflected in recent correspondence with the OEP from Secretary of State Coffey. It is reflected on the face of the Bill itself - in Secretary of State Gove's statement to Parliament, under section 20 Environment Act 2021, that "*the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law*".

Baroness Scott's proposed amendments now run counter to these commitments. It is therefore important that the Government transparently sets out its position on upholding existing environmental protections. In our view, it is essential to clarify the section 20 statement made to Parliament in light of the Government's intention to weaken the Habitats Regulations. If necessary, Ministers should make a statement equivalent to that required by section 20(4) and confirm that they are no longer able to say that the Bill would not reduce the level of environmental protection provided for by any existing environmental law, but that the Government nevertheless wishes Parliament to proceed.

It is also important to explain in detail how, through the new policy intentions or otherwise, the Government intends to significantly improve the natural environment notwithstanding the weakening of environmental law now proposed. Whatever alternative measures are proposed, they will need to be consistent with trajectories and delivery pathways which provide assurance that coherent, credible plans are in place to deliver the Government's EIP goals and meet its legally-binding Environment Act targets.

Yours sincerely,



Dame Glenys Stacey

Chair, Office for Environmental Protection