

## **LEVELLING UP AND REGENERATION ACT 2023**

### **OVER-ARCHING OBJECTIVE OF THE LEVELLING UP AND REGENERATION ACT**

1. An overarching objective of the LURA is to reduce geographic disparities across the UK through changes to existing local government, planning, and compulsory purchase legislation.
2. The Government has stated that the LURA will *'speed up the planning system, hold developers to account, cut bureaucracy, and encourage more councils to put in place plans to enable the building of new homes'*.<sup>1</sup>

### **ASPECTS OF THE LURA THAT RELATE SPECIFICALLY TO NATIONAL LANDSCAPES**

3. The Government has stated that *'the Act will ensure the homes we need are built where they are needed in urban areas rather than concreting over the countryside, which is why the Act will enhance our national network of beautiful, nature-rich protected landscapes that can be enjoyed right across the country'*.<sup>2</sup>
4. This proposed 'enhancement' of our network of protected landscapes is enacted through Section 245 (Protected Landscapes) of the LURA.<sup>3</sup> In this context, the phrase 'protected landscapes' refers to national parks, the Broads and national landscapes.<sup>4</sup> Section 245 came into force on 26 December 2023.
5. Firstly, Section 245 sets a statutory duty on relevant authorities<sup>5</sup> (in exercising or performing any functions in relation to, or so as to affect, land in protected landscapes in England) to seek to further the purpose designation of the area.<sup>6</sup> Section 245 also states that the Secretary of State may, by regulations, make provision about how a relevant authority is to comply with this duty, including provision about things that the authority may, must or must not do to comply with the duty.
6. Secondly, Section 245 of the LURA changes the statutory duty of conservation boards. At present it is the statutory duty of a conservation board to *have regard to*:<sup>7</sup>
  - (a) The purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.
  - (b) The purpose of increasing the understanding and enjoyment, by the public, of the special qualities of the area of outstanding natural beauty.

However, the LURA changes this from 'have regard to' to 'seek to further'. So, the statutory duty of conservation boards is now to *seek to further* the above purposes.
7. Thirdly, Section 245 of the LURA states that the Secretary of State may, by regulations, make provision:<sup>8</sup>
  - requiring protected landscape management plans to contribute to the meeting of any target set under Chapter 1 of Part 1 of the Environment Act 2021;
  - setting out how such a plan must contribute to the meeting of such targets;

<sup>1</sup> <https://www.gov.uk/government/news/new-laws-to-speed-up-planning-build-homes-and-level-up>

<sup>2</sup> <https://www.gov.uk/government/news/new-laws-to-speed-up-planning-build-homes-and-level-up>

<sup>3</sup> Section 245 of the Levelling-Up and Regeneration Act 2023 ([link](#))

<sup>4</sup> The LURA refers to Areas of Outstanding Natural Beauty (AONB) rather than National Landscapes, as AONB is still the legal designation.

<sup>5</sup> A list of 'relevant authorities' is provided in Defra's guidance on the 'duty of regard' ([link](#)). The obvious example is local authorities. However, relevant authorities also include: government departments and their executive agencies and related public bodies; regulators; statutory undertakers; parish councils; the Crown Estate; and ... Conservation Boards.

<sup>6</sup> With regards to national landscapes, the purpose of designation is to conserve and enhance the natural beauty of the area.

<sup>7</sup> Section 87 of the Countryside and Rights of Way Act 2000 ([link](#)).

<sup>8</sup> It is important to note that the duty is not dependent on the making of these provisions.

- setting out how a protected landscapes management plan must further the purposes of designation.
8. Fourthly, Section 245 of the LURA states that the Secretary of State may, by regulations, make provision:
    - requiring a relevant authority contribute to the preparation, implementation or review of a protected landscape management plan;
    - setting out how such a relevant authority may, or must, do so.
  9. All of these provisions involve amending the existing, relevant legislation that relates to protected landscapes. So, with regards, to national landscapes, this would be by means of amendments to Sections 85, 87, 90 and 91 of the Countryside and Rights of Way (CROW) Act 2000.

### THE DUTY ON RELEVANT AUTHORITIES TO SEEK TO FURTHER THE PURPOSE OF DESIGNATION

10. For national landscapes, the new duty to *seek to further* the purpose of conserving and enhancing the natural beauty replaces the duty to *have regard to* this purpose (commonly referred to as the 'duty of regard'), which was established in Section 85 of the CROW Act 2000.<sup>9</sup>
11. The duty of regard has been a cornerstone of helping to conserve and enhance the natural beauty of our national landscapes for the last 24 years.<sup>10</sup> However, it is a process-focussed duty rather than an outcome-focussed duty. So, as long as potential impacts on the purpose of designation have been taken into consideration, the duty has been met, irrespective of whether the decision, or action, ultimately taken conflicts with the purpose of designation.
12. The new duty to seek to further the purpose of designation seems to be a much more outcome-focussed duty and it is clearly intended to go further than the duty of regard (otherwise why change the statutory duty?). This more outcome-focussed and further-reaching approach is reflected in statutory advice that has been provided by Natural England to the Examining Authority for the Lower Thames Crossing Hearing in Kent. In their statutory advice, Natural England set out the following points:
  - (a) The duty to 'seek to further' is an active duty, not a passive one. Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (a national park, the Broads, or an AONB) can be furthered.
  - (b) The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose.
  - (c) The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate and proportionate to the type and scale of the development and its implications for the area and effectively secured. Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted.

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<sup>9</sup> Section 85 of the Countryside and Rights of Way Act 2000 ([link](#)).

<sup>10</sup> The duty of regard has also applied to national parks and the Broads through other legislation.

13. This advice was provided in a planning context. However, it is important to note that the duty applies to the exercising or performing of *any* functions, by relevant authorities, that relates to, or may affect, land in a protected landscape, not just to planning-related functions.
14. The phrase 'seek to' is an important part of this new duty. If the new duty had been to further the purpose of designation, then this could, in effect, have potentially ruled out decisions or actions that would have conflicted with the purpose of designation. By saying 'seek to' further the purpose of designation, the new duty does still provide some room for decisions to be made, or actions to be taken, that conflict with the purpose of designation. However, the over-arching aspiration, is now much more orientated towards securing positive outcomes in relation to the purpose of designation.
15. The new 'seek to further' duty is potentially a positive 'game-changer' in terms of how protected landscape considerations are taken into account by relevant authorities and in terms of the outcomes for protected landscape. However, the extent to which this is achieved will depend, to a large degree, on what is said in any: (i) secondary legislation which may be implemented and (ii) (interim) guidance that might be published by Defra.
16. It is currently anticipated that Defra's interim guidance will be published later this month. This is being drafted by the same people who wrote Natural England's statutory advice on this topic, so I am hopeful that the Defra guidance will set the same high bar. Full Defra guidance is anticipated at a later date.

#### **THE DUTY ON CONSERVATION BOARDS TO SEEK FURTHER THEIR PURPOSES**

17. In theory, the change in the statutory duty of conservation boards from 'have regard to' to 'seek to further' the two purposes of conservation boards has similar implications to those outlined above.
18. However, for conservation boards, these purposes are 'front and centre' of what they are all about and underpin everything that they do. In effect, conservation boards already seek to further their purposes rather than just having regard to them. As such, this particular change in the legislation is not likely to have any significant implications for conservation boards.
19. The Cotswolds National Landscape Board doesn't tend to refer to the 'have regard to' component of its statutory duty / purposes in any publications, on its website or when officers are speaking about the Board's duty / purposes. However, whenever we use the full wording, we will need to make sure that we use the 'seek to further' wording, rather than the 'have regard to' wording.

#### **MANAGEMENT PLANS – ENVIRONMENT ACT TARGETS**

20. The new provisions relating to Chapter 1 of the Environment Act<sup>11</sup> specifically relate to setting long-term targets for:
  - (a) the natural environment;
  - (b) people's enjoyment of the natural environment.
21. 'Priority areas in relation to the natural environment are:
  - (a) air quality;
  - (b) water;
  - (c) biodiversity;
  - (d) resource efficiency and waste reduction.
22. These would be targets for the place and all of its stakeholders rather than the protected landscape team. As stated in the paper for Item 11 (Management Plan), the Board's Nature Recovery Lead, Simon Smith, has been involved in a Defra stakeholder group helping to develop these targets and the outcomes framework that supports

<sup>11</sup> <https://www.legislation.gov.uk/ukpga/2021/30/section/1/enacted>

them. In combination with the strengthened duty, they have the potential to act as powerful drivers of resources towards the delivery of our management plans. Natural England are hopeful that the targets and outcomes framework will be published in the New Year, subject to agreement, by the Secretary of State.

### **MANAGEMENT PLANS – CONTRIBUTION OF RELEVANT AUTHORITIES**

23. Currently, the only relevant authorities that are referred to in legislation in relation to the preparation, implementation and review of management plans are conservation boards, Natural England and local authorities.
24. For example, in national landscapes that have a conservation board, it is the conservation board that is responsible for the production of the management plan. When proposing to publish, adopt or review the management plan, the conservation board is required to
  - give notice of the proposal to Natural England and to every local authority whose areas is wholly or partly comprised in the national landscape;
  - send a copy of the management plan, together with any proposed amendments, to Natural England and to the local authorities;
  - take into consideration any observations made by Natural England and / or the local authorities.
25. In national landscapes that don't have a conservation board, it is the responsibility of the relevant local authority to produce the management plan. The same consultation is required as outlined in the previous paragraph.
26. The Board tends to consult a wider range of relevant authorities (and other organisations) than is specified in the legislation during the production of the CNL management plans, including relevant public bodies and parish councils. The same approach probably applies to other national landscapes when they are producing their management plans. In addition, we seek the endorsement of the management plan by the local authorities, whereas in national landscapes that don't have a conservation board, the local authorities adopt the management plan.
27. Overall, the approach taken by the Board works well, particularly where there is extensive engagement with the local authorities to try and address any concerns that they may have about the wording in draft management plans. For example, it allows the Board a degree of independence in drafting aspirational / best practice policies whilst still ensuring that the policies are grounded enough for the local authorities to endorse the management plan.
28. The potential requirement for relevant authorities to contribute to the preparation, implementation and / or review of management plans could potentially be useful. For example, it could potentially result in positive engagement with relevant authorities that we don't, currently, tend to engage with extensively during the management plan process, such as statutory undertakers. It could also potentially mean that relevant authorities are more tied-in with implementing the management plans and any associated targets.
29. However, it would be important to ensure that the management plans remain aspirational and advocate best practice rather than being watered down by the overly binding involvement of relevant authorities.
30. It is not clear, at this stage, whether regulations relating to the involvement of relevant authorities in the management plan process are likely or what these regulations would specify. The CNL Board would hopefully be consulted on any relevant regulations as they are developed.

**NEXT STEPS**

31. The Board has already started to include Natural England's statutory advice on the new duty to seek to further the purpose of designation in its planning consultation responses.
32. Over the last couple of months, John Mills has liaised closely with the National Landscapes Association (NLA) and with colleagues at Natural England and Defra on this new legislation, particularly with regards to the new duty to seek to further the purpose of designation.
33. On the back of these discussions, John Mills is currently working two days per week for the NLA, primarily in relation to the new 'seek to further' duty. This will initially be for a three-month period. Whilst it won't be possible to backfill for such a short period, the NLA will be covering the costs of his time.
34. Outputs from this secondment are likely to include: (1) producing a survey and report with recommendations on how the new duty to further the purposes could be implemented in the National Landscapes, and (2) producing a report with recommendations on the implications of the new duty on the National Planning Policy Framework (NPPF) and other relevant planning policies.
35. This work will involve extensive liaison with lead officers and planning officers at national landscapes across England. It is also likely to involve liaison with a selection of local authorities (and potentially some other relevant authorities) across the national landscapes.
36. Ultimately, the intention is that these recommendations will feed into the development of the forthcoming regulations and Defra guidance and into future iterations of the NPPF. This, in turn, should help to ensure that the new 'seek to further' duty becomes a meaningful and substantive improvement on the previous duty of regard, delivering better outcomes for the natural beauty of our national landscapes.
37. Longer term, with regards to potential new regulations, even if work was to begin on these regulations within the next couple of months, it is unlikely that they would come into force until at least mid-2025. With a general election likely at some point in 2024, it may be even later before the regulations come into force. The exception to this is potentially any regulations relating to the Environment Act targets and the related outcomes framework, with these targets already being progressed.
38. However, it is important to reiterate that the new statutory duty to seek to further the purpose of designation, as well as the Board's new statutory duty, have already come into force, as of 26 December 2023.

FEBRUARY 2024