



# A Rights of Nature Toolkit:

How to Protect Rivers in  
England and Wales

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Kings College London Legal Clinic

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**LONDON**

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## Acronyms

BHRRC	Business and Human Rights Resource Center
CBD	Convention on Biological Diversity
CSO	Combined Sewage Overflow
DCLG	Department for Communities and Local Government
Defra	Department for Environment, Food, and Rural Affairs
DETR	Department of the Environment, Transport, and the Regions
EA	Environment Agency
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIA	Environmental Impact Assessment
EIR	Environmental Information Regulations 2004
EPA	Environmental Protection Act 1990
EPRs	The Environmental Permitting (England and Wales) Regulations 2016
ESMS	Environmental and Social Management System
FOI	Freedom of Information
FOIA	Freedom of Information Act 2000
FTT(IR)	First-tier Tribunal (Information Rights)
HRA	Human Rights Act 1998
IACtHR	Inter-American Court of Human Rights
ICO	Information Commissioner's Office
IPU	Intensive Poultry Unit
IUCN	International Union of the Conservation of Nature
JNCC	Joint Nature Conservation Committee
JR	Judicial Review
LA	Local Authority
LLP	Limited Liability Partnership
MNE	Multinational Enterprise
NBSAP	National Biodiversity Strategy and Action Plan
NCP	National Contact Point (OECD Complaint)
NCVO	National Council for Voluntary Organisations
NE	Natural England
NGO	Non-Governmental Organisation
NRW	Natural Resources Wales
NWCU	National Wildlife Crime Unit
OECD	Organisation of Economic Cooperation and Development
OEP	Office for Environmental Protection
Ofwat	The Water Services Regulation Authority
PA	Public Authority
PCO	Protective Costs Order
RAM	Ramsar Advisory Mission

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RBMP	River Basin Management Plan
RoN	Rights of Nature
SAC	Special Area of Conservation
SCI	Site of Community Importance
SNCB	Statutory Nature Conservation Bodies
SPA	Special Protection Area
SSSI	Sites of Specific Scientific Interest
TCPA	Town and Country Planning Act 1990
UNEP	United Nations Environment Program
WCA	Wildlife and Countryside Act 1981
WFD	Water Framework Directive
WFD Regulations	Water Environment (Water Framework Directive) Regulations 2017



# 1. Introduction

This toolkit is a practical legal guide for protecting rivers and their natural surroundings from a Rights of Nature perspective in England and Wales. It is designed to be used by both lawyers and those with some legal background, including paralegals, student legal clinics, communities, and activists. It provides guidance on how and when to use existing laws, and methods, with a focus on the ecocentric, but also anthropocentric as needed, to protect rivers.

## What are Rights of Nature?

Rights of Nature (RoN) is the idea that nature possesses fundamental rights because of its intrinsic value. Rights of Nature as a legal framework aims to move towards a system where nature is valued and protected for its own sake and not simply for the value it provides to humans. RoN rejects a 'human-centric' (or anthropocentric) approach in which the law treats nature as property and conceptualises the world in terms of property rights. Rights of Nature as a concept is also an expression of moral (and spiritual) values; nature is intrinsically valuable and therefore has moral value, which leads to the acknowledgment of nature as a subject with legal rights. Rights of Nature is not just a concept, it is also enshrined in law in some countries and communities, such as Ecuador, where it has been part of the constitution since 2008. In Ecuador, the Constitutional Court to date has found that rights exist for forests, mangroves, beaches, and a wild monkey in captivity.

Around the world, a RoN movement is growing that seeks to establish legal personhood for rivers themselves (if this sounds odd to you, recall that ships and companies also have legal personhood and can bring claims in a court of law). Establishing legal personhood for rivers is one method of creating a stronger legal framework to protect rivers. In [a report](#) on the global Rights of Rivers movement, the authors note that some RoN are grounded in indigenous jurisprudence and treaty rights, while others are approached as an extension of human rights. In 2017, New Zealand's parliament granted legal personhood to the [Whanganui River](#), along with NZ\$1 million to establish a legal framework to support the Whanganui River and a NZ\$30 million fund to advance the river's health and restoration. The legislation came as a result of decades of fighting by the Māori people, the indigenous Polynesian people of New Zealand. In Colombia, the Constitutional Court found that the heavy pollution of the Atrato River violated the rights of the river itself, along with the 'biocultural rights' of the many [indigenous and Afro-American communities that depend upon it](#).

## The Right to a Healthy Environment

Of course, establishing legal personhood for rivers is just one step in transforming the legal system into one that can be used to protect and improve ecology. A separate but related legal concept is the right to a healthy environment (RtHE), which may also provide a legal avenue

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to protecting rivers in the future. Although it is mostly from a more anthropocentric perspective, it can be argued to include RoN. Dozens of countries have adopted the right to a healthy environment as a constitutional provision, and the UN declared 'access to a clean, healthy, and sustainable environment' to be a universal human right in a 2022 resolution. Although largely symbolic, the UN resolution is indicative of a changing landscape. In 2021, the Parliamentary Assembly of the Council of Europe (PACE) passed a resolution and published a recommendation proposing a new Protocol to the ECHR establishing the right to a healthy environment ([Balfour-Lynn & Willman 2022](#)).

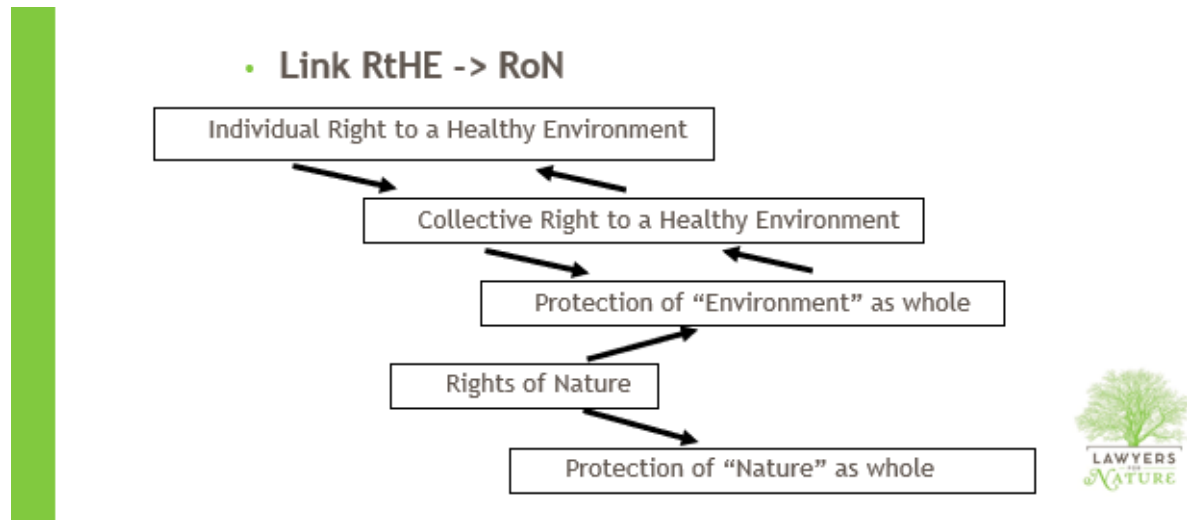
Meanwhile in Latin America, the Inter-American Court of Human Rights (IACtHR) has already recognized the RtHE in the context of indigenous people. A recent case concerning environmental damage from biodiversity loss and diminishing water resources illustrates how the RtHE can be used to protect river habitats: in *Lhaka Honhat v. Argentina* (2020), the IACtHR found that Argentina had breached the RtHE and right to water of indigenous people from environmental damage to their ancestral lands. Among other things, the IACtHR ordered Argentina to develop an emergency plan for water shortages and conduct a study on how to protect water sources. This case represents the first time the IACtHR recognised autonomous and directly justiciable rights to a healthy environment, food, and water in relation to indigenous people. The IACtHR acknowledged the spiritual connection of indigenous people with their territory as a legal basis. So far, the IACtHR has only found environmental damage to violate a human right in the context of indigenous people (see also *The Kichwa Indigenous People of Sarayaku v. Ecuador* (2012)), so it remains to be seen whether the RtHE as a justiciable human right (that is, a right that is able to be relied on in court) will be extended to non-indigenous citizens who could then use this right to hold governments to account for failing to protect the environment. While the RtHE has been extended to indigenous people in Latin America as a human right because of their traditional way of living and spiritual connection with the land, the RoN concept differs from the RtHE concept because RoN is centred on the biological interconnection of nature and all humans ([Tigre, 2021](#)).

The RtHE has helped activists protect nature through litigation in some national courts as well. In South Africa, the RtHE is contained in the Constitutional Bill of Rights, where it applies to all citizens and is justiciable. This provision has been relied on in public law cases challenging the government's failure to address severe air pollution, as well as successful appeals of planning permission for a coal power plant, a gas station, oil drilling, and a commercial development that would interfere with an aquifer. Meanwhile, a case brought by Greenpeace in Norway tried to rely on the RtHE to challenge the granting of oil drilling licences arguing, among other things, that the oil's contribution to climate change breached Norwegians' RtHE. However, the Supreme Court dismissed the claim, citing the fact that most of the emissions from the oil would take place abroad, and the fact that parliament had been involved in the decision-making process which led to the grant of licences. On a more hopeful note, young people in Colombia successfully argued that deforestation of the Amazon breached their RtHE, and the Supreme Court ordered the government to put a stop to deforestation of the Amazon as a result. So, as illustrated by the Colombian and South

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African cases, the RtHE may also provide a tool with which to protect rivers and surrounding habitats in countries where it is adopted as robust law and is justiciable (De Vilchez & Savaresi, 2021).

In the UK, there is currently no legal right to a healthy environment or comprehensive Rights of Nature law. As such, this toolkit was written from a RoN perspective to highlight ways to use existing law to protect rivers, in the hopes of inspiring and aiding environmentalists and promoting the RoN movement in this jurisdiction.



*A diagram representing how Rights of Nature fulfil obligations to secure the RtHE and protect nature as a whole.*

## How to use this Toolkit

This toolkit aims to give an overview of many different legal tools, to support readers without environmental law expertise to use the law to protect rivers. Water is one of the most regulated areas of environmental law, so fighting against water pollution is a way to target larger environmental issues. Many of the laws and methods discussed also apply in other environmental protection contexts. Some of the methods outlined, such as submitting an environmental information request, can be completed by those with no legal knowledge. However, legal claims will of course require legal advice. Every section of the toolkit is accompanied by a list of further resources at the end of the guide. While the focus is on England and Wales, international examples are included throughout. The sections which also apply internationally or Europe-wide include the sections on International Conventions and EU Directives, Soft Law Complaints, and the European Court of Human Rights.

It is our hope that this toolkit will empower activists and communities to navigate the complex legal regime covering rivers and use the existing legal remedies to improve and protect water, animals, and habitats through a Rights of Nature lens.

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This toolkit is produced as a guide to inspire action and not a definitive statement of the law. We welcome any comments and feedback to King's Human Rights and Environment Legal Clinic at [hre-kingslegalclinic@kcl.ac.uk](mailto:hre-kingslegalclinic@kcl.ac.uk). You can view the table of contents while reading in Microsoft Word by selecting 'View' > 'Navigation Pane' > Bullet Points Icon ('document map') or 'View' > 'Navigation'.

See the [Useful Resources](#) section for more on [Rights of Nature](#), [Rights of Rivers](#) and the [Right to a Healthy Environment](#).

## 2. Rights of Nature Legal Strategy and the Legal System

### 2. RIGHTS OF NATURE LEGAL STRATEGY AND THE LEGAL SYSTEM

#### LEGAL STRATEGY

##### Target

##### Methods, Priorities, and Expectations

##### Knowledge

##### Causes of Diffuse Water Pollution

##### Record your Steps

##### Develop a Network

##### Choosing a Litigant

##### Costs and Funding Options

#### A BRIEF OVERVIEW OF THE LEGAL TOOLS PRESENTED

##### Information Request

##### Complaint

##### Regulations and Prosecutions

##### Litigation and Judicial Review

##### Private Prosecutions

##### Civil Claims

##### Soft Law Complaints Mechanisms

##### Community Action

##### Conclusion

## Legal Strategy

This section suggests some factors to consider when developing a legal strategy with a Rights of Nature (RoN) focus. Costs are likely to be an important consideration. Some solutions are essentially cost-free or cost-neutral (such as complaints and extra-legal mechanisms), while litigation presents a risk of individuals or organisations being ordered to pay high costs if they lose. Your existing funds and ability to commit to fundraising through crowdfunding are relevant to deciding which methods you may pursue.

### Target

*Who is the main party that the legal action is targeting?*

Consider how your river has been affected. For example, consider whether there has been a loss of wildlife and reduction in biodiversity levels and then list the possible causes of the harm, such as sewage, agricultural run-off, discharge from a factory, plastic pollution. With these causes in mind, it is easier to work out which parties are responsible, and the remedies and courses of action available.

For example, if a community notices that untreated sewage disposal from a particular water company is polluting the river, they may consider asking the regulator to bring a civil sanction or prosecution. To bring a claim related to a company in England and Wales, the company you are targeting must be registered or based there. Limited companies, limited

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partnerships, and limited liability partnerships (LLPs) must be registered at Companies House. To find them search the Companies House website [here](#). Sole traders (meaning a person who is self-employed) and partnerships (an alternative small business structure) are not required to register at Companies House. If the offending party is a charity, such as a school or hospital, look on the Charity Commission for England and Wales [register](#).

If there are multiple companies that are potentially causing harm to the river, selecting which parties to target is a crucial step. Whilst bringing claims against smaller companies may be easier, attempting to hold larger companies to account may prove more successful in gaining media coverage and publicity. You might consider an Organisation for Economic Co-operation and Development (OECD) complaint as a soft law option against multinational corporations. If the company causing the pollution is a supplier, within the supply chain of a multinational company, or has a multinational company as its parent company, you can bring an OECD complaint against the multinational and ask it to take responsibility and put pressure on its subsidiary or supplier.

Alternatively, it may be possible to launch a judicial review or complaint against public authorities for failure to fulfil their statutory duties as a regulator (see the [Judicial Review Examples Section](#) for examples). The main regulator of water services for England and Wales is Ofwat, while the Environment Agency is responsible for most environmental civil sanctions and prosecutions. These public authorities often have statutory duties to monitor and regulate activities, and it may be possible to complain or apply for a judicial review if they are not fulfilled.

### Methods, Priorities, and Expectations

While this may seem like an obvious question, methods will depend on the desired outcome. Consider your goals, priorities, and expectations, and then consider which method to pursue. This toolkit discusses a range of methods that you may use to protect your rivers, including:

- Complaints
- Judicial (tribunal/court) remedies
- 'Soft law' remedies
- National lobbying and reform of law and policy
- Local campaigning and reform of law and policy

### Knowledge

Before starting a campaign or bringing a complaint, gather as much information about the situation as possible. Below is a brief outline of potential steps you can take (see the [information gathering](#) section for more).

Compile a timeline listing the change in circumstances and/or any important events that have occurred. Photos, videos, and witness statements can all support your case. Gather evidence

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about changes in water composition or species population from scientific reports about the site. Check what river basin management plan your river is part of, and what designations apply to the area (is water extracted for drinking water? Is it a protected habitats site and has there been a decline in a certain protected species?). Consider which local people, organisations or experts may have information. Go beyond the obvious and consider all those using the river: bird watchers, anglers, wild swimmers, an outdoor company, etc. These groups might also help strengthen your campaign. Consider contacting local universities to ask about ongoing or unpublished research projects and local journalists to discover past campaigns.

### *Causes of Diffuse Water Pollution*

No rivers in England and Wales have good chemical status, and just 16% have good ecological status. According to a Defra report, the main sources of water pollution are:

- Pollution from rural areas, largely originating from agriculture and rural land management affecting 40% of water bodies
- Pollution from wastewater affecting 36% of water bodies, largely related to the water industry, but occasionally also affected by the general public and urban areas. (see WASP's reports on sewage pollution here.)
- Pollution from towns, cities and transport affecting 18% of water bodies (read about urban stormwater run-off here.)
- Pollution from abandoned metal mines, affecting 3% of water bodies.

In addition to causing water pollution affecting 40% of water bodies, further reasons why agriculture presents a threat to rivers include:

- In terms of bacteria, one cow has the pollution potential of 50 people. There are roughly 900,000 cows in Devon and Cornwall.
- Just a few drops of pesticide can be detected 30km away in the river.
- Agriculture contributes 25% of the total phosphorus found in freshwater.
- Agriculture has the largest water footprint of any sector in England and Wales.
- 2.9 million tonnes of soil are lost from fields every year in England and Wales, in a process called 'surface run-off'. Excess fine sediment from this soil loss clogs up spawning redds where wild fish lay their eggs. Too much sediment can also destroy aquatic invertebrate populations. 77% of these fine sediments are derived from agriculture. In 2010, soil degradation in England and Wales cost an estimated £1.2 billion in repairs.

## Record your Steps

It is important to keep a record of any steps you take and any contact that you make with authorities. Keep a written and photo diary with a chronological record of the complaints you submit, the time taken to receive a response and any response deadlines. This helps to ensure you are working efficiently and provides evidence of the steps you have taken.

## Develop a Network

Develop a network by identifying relevant organisations. This will make it easier to gather information and file complaints. Try to connect with local campaigners and reach out to organisations who align with your motivations and priorities, such as your local river trust. If there are no organisations advocating for the specific cause you are interested in, consider creating one! The National Council for Voluntary Organisations (NCVO) has [guidance](#) on structure or look at the Charity Commission website.



*River Erme, Longtimber Woods, Ivybridge, Devon.*



## Choosing a Litigant

In a true RoN case, the river is the client, but since rivers don't have legal personhood in the UK, it is difficult to bring a case directly on behalf of a river. However, you could still frame the river as the focus of your campaign if you wish to promote the RoN philosophy. For example, if the campaign is about cleaning up the river and preventing further pollution, the river could be the focus of fundraising, raising awareness, and social media.

In traditional litigation, a client would typically approach a lawyer with an issue. Which litigant can bring a case will depend on the type of litigation and the facts. In a judicial review, an individual, River Trust, or other environmental charity may be the client. In a common law nuisance claim to address water pollution and dead fish, an angling society may have the best case to bring under fishing rights. In a Human Rights Act claim, only an affected individual can bring a case, no organisations. For example, a person whose home has been negatively impacted by sewage may have a Human Rights Act claim.

In your campaign, you may wish to highlight stories that the wider public can relate to and empathise with. For example, tell the story of the impact of pollution on water voles (an anthropocentric approach might look at wild swimmers). If an individual is bringing a judicial review alone or alongside an NGO, they may want to act as a spokesperson and share a story that the wider public can relate to.

## Costs and Funding Options

The UK courts operate on a loser-pays system, which means that the losing party will generally be responsible for the winning side's costs. While environmental judicial review (JR) is subject to costs capping under the Aarhus Convention, and it is possible to apply for costs capping in non-environmental JRs, there is no costs capping available for non-JR cases. Regulatory enforcement actions and criminal prosecutions represent no-cost options, but you may need legal action to convince the regulator to take action.

Many environmental cases are crowdfunded through websites such as [www.crowdjustice.com](http://www.crowdjustice.com). It may be cheaper to use a different platform, but established platforms may have an existing 'public' base. The success of crowdfunding will depend on whether you can attract the public's imagination and whether you have a wide network with resources to contribute. Successful crowdfunding is usually part of an effective broader campaign which communicates regularly with its community through social media.

See [Environmental JR Costs and Costs Capping](#) for more.

## A Brief Overview of the Legal Tools Presented

### Information Request

Once you have gathered all the information you can on the river, identify what more information you need to support your complaint or claim, and submit a request to the regulator for the specific information. For best results, ask for information relating to a specific geographical area or time period— requests that are too broad will be denied and asking for too much information can lead to delays or costs.

See [5. Gathering Information and Submitting an Information Request](#) for more.

### Complaint

In general, you'll want to use the lowest cost and simplest remedies first, which means alerting the regulator to the issues via a complaint. After obtaining the information you need, you can submit a complaint about any issue pertaining to sewage discharge, water pollution, water quality, habitat destruction, fertilizer or pesticide run-off, dead fish, or about a polluter. The complaint can be submitted to the regulator, usually the Environment Agency or Natural Resources Wales, and you can also reach out to your local authority. You can ask the regulator to investigate and prosecute the polluter. If not satisfied with their response to the issue, your complaint can be further appealed to the Parliamentary and Health Service Ombudsman.

See [6. Reporting and Complaints](#) for more.

### Regulations and Prosecutions

The [Action by the Regulators](#) section has an overview of the most relevant laws related to protecting river habitats. Nature protection laws are mostly enforced by the regulator, but individuals and NGOs can also enforce laws via judicial review by asking a judge to review the regulator's decisions. The Environment Agency can prosecute a water company for illegal sewage dumping and order it to pay for clean-up, and they also have enforcement actions they can take without bringing a full prosecution. So submitting a complaint to alert this agency can help trigger enforcement actions against a potential infringement.

See [4. Action by Regulators](#) for more.

### Private Prosecutions

Private prosecutions are possible in the UK, so this is an option if you have a strong criminal case and the regulator fails to prosecute, but there is a risk of costs if you lose.

## Litigation and Judicial Review

If the regulator still refuses to act to fix the situation, you can consider judicial remedies, but obviously litigation is expensive. There are solicitors' and barristers' fees, court fees, and expert witness fees. You'll need to pay your own costs and there is the risk of having to pay for the winning side's costs too if you lose. If you win, the losing side will have to pay your costs, but normally these are also capped in an environmental JR.

Judicial review is commonly used to hold public bodies to account. In a JR claim, you can ask a judge to order the regulator to act and enforce river and habitat protection laws. You can also judicially review a grant of planning permission for a factory, development, or factory farm that would negatively impact the river if it were built. With environmental JR, the costs you have to pay of the opponent are normally capped at £5,000 or £10,000 for individual and NGO claimants respectively and £35,000 for defendants (CPR r46.26), so if you lose you won't have to pay all the other side's costs, but you'll still have to pay your own.

Before bringing a water pollution claim, consider the following points:

For private litigation claims:

- Has the pollution had an impact on human health? If yes, then consider a nuisance claim or a claim under the Human Rights Act.
- Has it caused damage to the ecosystem leading to loss of earnings from fishing or farming? If yes, then consider a nuisance claim for damages.
- The importance of proving the cause of the damage: Can you prove the cause of the harm to the river? I.e. is it for sure that specific polluter's actions have had a significant impact on the river and caused dead fish or other environmental damage? What expert evidence is available, and how much will it cost to hire an expert witness?

For public, judicial review claims:

- Has the regulator failed to act upon their stipulated obligations?

Types of compensation available:

- In addition to seeking compensation, can you ask the court to require a clean-up operation to restore the environment to the way it was before the pollution?

See [7. Judicial Review](#) and [8. Civil and Human Rights Act Claims](#) for more.

## Civil Claims

It is possible to bring a nuisance claim for damages (compensation) to help clean up and restock a river, in the event significant water pollution has led to dead fish. However, this type of claim is only available to riparian owners (riverbank landowners) and those with fishing rights. For example, through common law fishing rights, a riparian owner can sue a farmer for damages for dumping slurry into a river that subsequently killed fish, even if it's not a European protected site. If you're not a riparian owner and do not have fishing rights, the options for civil claims are much more limited. In the event of rubbish or foul smells, you may also have a claim in statutory nuisance or public nuisance. If sewage flooding or foul smells are impacting your home and family life, you may have a Human Rights Act (HRA) claim, but you need to go through the available complaints and appeals processes before bringing an HRA claim.

See [8. Civil and Human Rights Act Claims](#) for more.



Cheryl Vacchini, *Faversham Creek, Kent.*

## Soft Law Complaints Mechanisms

If these claims are not possible due to costs or because a judge does not give permission for the claim to go forward, you could try using a soft law mechanism. You can submit a

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complaint about the issues against the state to the Bern Convention, or against a multi-national company to the OECD. For the Bern Convention, the complaint should be centred around protected species. These are two soft-law mechanisms that can put pressure on the state/company and can be used in combination with a wider campaign.

See [9. International Mechanisms: Soft Law Complaints](#) for more.

### Community Action

If your priority is to prevent future degradation, you can do this by participating in public consultations on River Basin Management Plans, planning applications, and pressing for updates to local planning policies. You'll probably want to object to any planning applications for new industrial farms in the area, as agriculture is responsible for 40% of diffuse water pollution. Raise your objections early on in the process and consider if you can challenge the decision immediately if planning permission is granted. You don't need standing to raise an objection to planning permission before it's been granted— anyone can raise an objection, regardless of where you live. If planning permission is granted, NGOs or individuals can bring a judicial review claim to challenge the decision. In order to bring a JR, the claimant must have sufficient interest. (See [7. Judicial Review](#))

In combination with the above, consider petitions, lobbying, community declarations, council motions, changing byelaws, and campaigning as part of a broad approach to promote rights of nature for your river. A community declaration may be symbolic, but it can draw attention to the issues affecting your river and promote a framework in which rivers are seen to have rights to flow and be ecologically healthy. All of the methods described above will be easier to undertake if you have a network, so engage with river protection non-profits, university legal clinics, and academics early on.

See [10. Political and Community Legal Action](#) for more.

See the [Useful Resources](#) section for more on [Protecting Rivers](#) and [Costs and Funding](#).

## 3. International Conventions and EU Directives

### **3. INTERNATIONAL CONVENTIONS AND EU DIRECTIVES**

#### KEY DIRECTIVES

*The Habitats Directive*

Habitats Directive Examples

*The Wild Birds Directive*

Birds Directive Example

#### KEY CONVENTIONS

*The Bern Convention*

*The Bonn Convention*

*The Convention on Biological Diversity*

*The Espoo Convention*

*The Ramsar Convention*

Ramsar Examples

This section outlines some of the **RoN** oriented legal provisions that may be applicable to your river. The conventions listed here are international treaties which countries have signed to form an agreement about how they will protect nature. While conventions are not directly enforceable, they provide the foundation for the laws protecting nature within a country. In England and Wales, conventions are not automatically incorporated as valid law. Instead, an Act of Parliament is needed. See the regulations section for the statutes that implement these conventions in England and Wales. This means that although the UK is party to certain conventions, it may not be bound by their obligations if there is no statutory instrument to rely on domestically. Some conventions establish a complaints or reporting mechanism that can be made use of by interested parties or affected individuals. The conventions listed here have been signed by dozens of countries, and therefore give an overview of international environmental law relating to rivers.

### Key Directives

Directives are legislation made at the European Union (EU) level, which are enforceable in the UK because they have been transposed into UK law via an Act of Parliament or statute. This section covers the Habitats Directive and the Wild Birds Directive, which both stem from the Bern Convention. The two directives were transposed into UK law under the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981. Post-Brexit, the amendments to Habitats and Wild Birds Directives can be found in the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Since the UK is no longer part of the EU, Parliament can change these laws at any time. As regulations, they are more susceptible to amendment or repeal than a statute.

## The Habitats Directive

The Habitats Directive ([Council Directive 92/43/EEC](#)) aims to ensure the conservation of rare, threatened or endemic animal and plant species, as well as their habitats. The Habitats Directive (along with the Birds Directive) established the Natura 2000 (or N2K) network, sites that have been selectively given higher protection to ensure the long-term survival of Europe's habitats. Importantly, the Habitats Directive makes use of the precautionary principle, requiring developers to carry out a habitats assessment before undertaking works that could negatively impact a Special Area of Conservation (SAC). Post Brexit, the UK's Natura sites have been transferred to the Emerald Network under the Bern Convention, an area also called 'National Sites'. These sites are also called Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). The species and habitat types that are protected by the Habitats Directive can be found in the annexes to the Directive:

- Annex II: Lists the Sites of Community Importance (or SCIs) which must be managed in accordance with the ecological needs of species.
- Annex IV: Emphasises the importance of a strict protection regime within the EU, both within and outside Natura 2000.

### *Habitats Directive Examples*

- Salmon fishing: In 2014, the Salmon & Trout Association (the forerunner of WildFish) submitted a complaint to the European Commission alleging that the UK had failed to comply with the Habitats Directive with respect to Atlantic salmon in 17 Scottish rivers (all of which are considered SACs and form the Natura 2000 network). The complaint can be found [here](#). The complaint led to direct contact between the Commission and the Scottish Government, with the Commission largely agreeing with the grounds of the complaint. As a result, Scottish Government made netting subject to a de facto ban brought in by the [Conservation of Salmon \(Scotland\) Regulations 2016](#). As a result, there is no more east coast of Scotland netting for wild salmon.
- Drinking water: In October 2023, in Italy, the Council of State (the highest court), ruled that the Lazio Region must act to safeguard Lake Vico, a protected Natura 2000 site and a drinking water site, from catastrophic pollution caused by intensive hazelnut farming and toxic fertilizer run-off in the area. ClientEarth and Lipu-BirdLife, who brought the claim, argued that the state was in breach of the Habitats Directive, the Drinking Water Directive, and the Nitrates Directive. At the time of writing, the Council of State definitively found the authorities to be in breach of the Drinking Water Directive. You can find out more in this [press release](#).

## The Wild Birds Directive

Whereas the Habitats Directive targets the protection of a wider group of species, the Birds Directive (Directive 2009/147/EC) aims to maintain and restore the population of all naturally occurring wild bird species in the EU. Given that wild birds frequently move across state borders, the Directive was designed to coordinate the European-wide effort to conserve birds by preventing habitat loss and degradation. The list of EU protected species can be found [here](#). The Birds Directive establishes a special group of Special Protection Areas (SPAs), which are designated by each respective member state. Annex 1 contains a list of species and sub-species that member states must protect within the SPAs. In the UK, there are a total of 284 SPAs, selected in accordance with set principles. Statutory Nature Conservation Bodies (SNCBs) are responsible for assessing and reporting on the condition of SPAs. In the UK, these authorities refer to Natural England and Natural Resources Wales. They hold an obligation to oversee the protection of SPAs by putting conservation measures in place and identifying when action needs to be taken.

### *Birds Directive Example*

In 2022, the Birds Directive was used by the Irish River Project to advocate for the conservation of hen harriers and merlins in the Blackwater River SAC area. The report is [here](#). For more examples of case law relating to the Habitats Directive and Birds Directive, visit the database [here](#).





Susannah Miller, *River Thames*.

## Key Conventions

Unlike directives, conventions are non-enforceable treaties. They are agreements between countries at an international level. Although some can be legally binding and give rise to obligations on the parties, most are target-based agreements and set standards for governments in drafting their own national legislation. Without complaints procedures, they are difficult to enforce. However, they can help in strengthening your argument and for campaign and lobbying purposes. The conventions listed below have all been ratified by the UK. Since these conventions have been signed by many countries internationally, this section also provides an overview of international environmental law.

### The Bern Convention

The Convention on the Conservation of European Wildlife and Natural Habitats, or The Bern Convention, aims to conserve wild flora and fauna in Europe, and has been signed by 50 countries and the EU. It places special emphasis on endangered, vulnerable, and migratory species. These obligations were implemented into UK law through the Wildlife and Countryside Act 1981, the Habitats Directive, and the Conservation of Habitats and Species Regulations 2017. See the Regulatory Approaches section for more on these laws. The Bern Convention also provides a complaints mechanism through which individuals and NGOs can

bring to light failures by member states to adequately protect species and Natura 2000 and Emerald Network sites, so this can be an indirect means of protecting a river via [RoN](#).

See [9. International Mechanisms: Soft Law Complaints](#) for more on how to file a [Bern Convention Complaint](#) and [Examples of Bern Convention Complaints](#).

## The Bonn Convention

[The Convention on the Conservation of Migratory Species of Wild Animals](#) (also known as the Convention on Migratory Species or Bonn Convention) is an international treaty which aims to conserve terrestrial, marine, and avian migratory species on a global scale. The international body responsible for its oversight is the United Nations Environment Program (UNEP). It functions as a framework convention, which means that by signing it, the UK is bound to general targets and broad commitments set out in the Convention. Within this framework, the UK has become a party to four legally binding agreements on the conservation of [European bats](#), [migratory waterbirds](#), [small cetaceans](#), and [albatrosses and petrels](#). There is no direct complaints mechanism, but Article V of the Convention encourages states to conduct reporting on each agreement. In the context of rivers, it may be worth consulting the UK national reports on the conservation of migratory waterbirds, which can be found [here](#). [Appendix 1](#) and [2](#) list the protected endangered and migratory species.

### Ratification and Implementation:

The UK implemented the Bonn Convention with the [Wildlife and Countryside Act 1981](#). This is supported by provisions in various other acts, including the Countryside and Rights of Way Act of 2000 (CRoW), the Natural Environment and Rural Communities Act 2006 (applicable to England and Wales), the Environment Act 2016 (in Wales), and the Nature Conservation Act of 2004 (in Scotland). More information about the application of the Bonn Convention in the UK can be found [here](#).

### Enforcement:

Although the Bonn Convention does not include a complaints or enforcement mechanism, there is a reporting mechanism, where states publish reports every time a Conference of Parties is held. These reports should describe the efforts that states have taken to carry out the Convention goals (such as placing satellite tags on species to monitor population, or funding projects to tackle river pollution). One course of action for a campaigner would be to write a shadow report in response to the national report published. NGOs use shadow reports as an opportunity to comment or respond to points raised and make recommendations towards better implementation of the Convention goals. For example, in response to the UNEP Freshwater Strategic Priorities document, your organisation can draft a response on how much the UK has worked toward these priorities within the context of UK rivers. Though there are no legal implications of shadow reports, they may be useful in strengthening your campaign. The Convention prioritises marine wildlife, so this is more likely to be relevant to river estuaries, or where river pollution is affecting marine life. Because UK rivers are home

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to several migratory animals, such as European eel, salmon, and twaite shad, it is worth checking the Convention Appendix for any species that may be relevant to your river.



Kingfisher, River Quaggy, Lewisham Station, South London.

### **The Convention on Biological Diversity**

The Convention on Biological Diversity (or CBD) is an international agreement which aims to establish a framework for the conservation and sustainable use of biological diversity. The preamble of this Convention highlights the ‘intrinsic value’ of biodiversity. Article 26 of CBD encourages parties to submit national reports on the implementation of the Convention. These contain progress on state efforts towards their targets. The conclusion of the 15th Conference of Parties to the UN Convention on Biological Diversity saw the adoption of the Kunming-Montreal Global Biodiversity Framework (GBF).

As a party to the CBD, the UK government, with the Department for Environment, Food, and Rural Affairs (Defra) is responsible for fulfilling the UK’s commitments. See the section on Wales for more on how the treaty has been implemented into Wales specifically (and can be

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used to protect nature). Country by country reports (including the UK) can be found on the CBD website, [here](#).

In the UK, the Joint Nature Conservation Committee (JNCC) advises on the development and implementation of CBD and nature conservation. The JNCC provides guidance to UK delegates who participate in CBD meetings, and typically, it is the JNCC staff members who attend CBD meetings as integral members of the UK delegation. In the UK, the implementation of CBD functions separately for England, Northern Ireland, Scotland, and Wales. To facilitate collaborative efforts in implementing the CBD throughout the UK, the four UK governments are guided by the mutually-agreed UK Post-2010 Biodiversity Framework, which supersedes earlier approaches under the UK Biodiversity Action Plan (1992–2012). The individual biodiversity strategies of these four UK governments, in conjunction with the UK Post-2010 Biodiversity Framework, come together to constitute the National Biodiversity Strategy and Action Plan (NBSAP) for the UK. [The Sixth National Report](#) contains information on freshwater habitat restoration. Currently there are no clear enforcement mechanisms through which the public can participate. The JNCC gathers their data internally and there is not much room for environmental groups and organisations to contribute to the reports. However, the information provided in the reports might still be useful.

### The Espoo Convention

The United Nations Economic Commission for Europe (UNECE) Convention on Environmental Impact Assessment in a Transboundary Context, also known as the Espoo Convention, sets out the obligations of states carrying out environmental impact assessments (EIAs) of certain activities that will affect neighbouring countries. While this convention is less relevant to the UK than to mainland Europe due to its transboundary element (as the UK is an island), it applies between Northern Ireland and the Republic of Ireland.

[Appendix 1](#) of the Convention lists the activities that are considered to have a significant adverse transboundary impact. These include the construction of large-diameter pipelines, waste disposal installations, large dams and reservoirs, waste-water treatment plants, and works for the transfer of water between river basins. This means that before a decision to authorise these activities is made, states must carry out a transboundary EIA in the early planning stages.

### Ratification and Implementation into UK law

The UK is a signatory of the Espoo Convention. The EU Directive 2011/92/EU, which implements the Espoo and Aarhus Conventions in the European Union (EU), is incorporated into UK law through the EIA Regulations and the European Union (Withdrawal) Act (2018 and 2020).

### Espoo Grievance Mechanism

Members of the public can submit a form to the Implementation Committee to complain about non-application. The UN Economic Commission for Europe (or UNECE) has a document with guidelines. More info can be found here.

### The Ramsar Convention

The Ramsar Convention is a global treaty with the objective of safeguarding and promoting the sustainable use of wetlands, including marshes, lakes, rivers, peatlands, and coastal areas. (Although it is a state mechanism, the example below shows how activists and NGOs may participate). The UK became a party to the Ramsar Convention in 1976 and designated its initial Ramsar sites during that year. The UK's ratification of the Ramsar Convention extends to its Overseas Territories and Crown Dependencies. The process of designating Ramsar sites in the UK usually involves prior notification of these areas as Sites of Special Scientific Interest (SSSIs). This notification grants them legal protection under various acts, such as the Wildlife & Countryside Act 1981, the Nature Conservation (Scotland) Act 2004, and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. The responsibility for ensuring that the UK fulfils its obligations under the Ramsar Convention lies with the Department of the Environment, Transport, and the Regions (DETR), which maintains communication with the Ramsar Bureau. The Joint Working Party (JWP) is responsible for implementing the UK's objectives as outlined in the Ramsar Strategic Plan.

### Ramsar Advisory Mission

When the ecological character of a Ramsar Site is threatened, the Ramsar Advisory Mission (RAM) can serve as a valuable tool. The Ramsar Advisory Mission (RAM) is a technical assistance mechanism that allows a Contracting Party to seek expert guidance on addressing threats to the ecological character of a Ramsar Site and related wetland concerns. This process typically entails a site visit conducted by a team of experts, which is coordinated by the Ramsar Secretariat. During the visit, the experts evaluate the challenges, engage in discussions with stakeholders, and subsequently compile a report containing their findings and recommendations.

How does it work?

1. **Request for Mission:** The process begins when the national authority responsible for Ramsar Convention matters in the country concerned requests a Ramsar Advisory Mission.
2. **Mission Coordination:** Following the request, the Ramsar Secretariat collaborates with the national authority to organise a team of experts. The expert team conducts a site visit to assess the ecological challenges and associated wetland issues. Importantly, the team engages in consultations with local authorities and stakeholders, gathering valuable input and insights from those directly affected.
3. **Report and Recommendations:** After the site visit and consultations, the expert team compiles a comprehensive report. This report contains concrete and pragmatic

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recommendations aimed at addressing the identified threats to the Ramsar Site's ecological character.

In cases where a Ramsar Site possesses dual or multiple designations under other international agreements or conventions, such as the World Heritage Convention, the Convention on Migratory Species, or other international agreements like the Natura 2000 network or the Emerald Network, the Ramsar Secretariat aims to facilitate joint missions. This is particularly the case when other international agreements have established analogous procedures for handling matters related to the conservation and management of natural areas, such as the Reactive Monitoring Missions of the World Heritage Convention or the On-the-Spot Appraisal of the Bern Convention. NGOs can participate in the mission once it has been started by consulting with the members of the Ramsar Mission. You can also put pressure on the government to initiate a mission. Finally, it may also be worthwhile writing to the Ramsar Mission team to ask them to put pressure on the government to initiate a mission.

### *Ramsar Examples*

The Ramsar Advisory Mission took action on the Parc national des Virunga in the Democratic Republic of the Congo in 2014. In response to various threats, including oil exploration, illegal settlements, poaching, and resource exploitation, a joint RAM/World Heritage Mission was triggered. The mission resulted in recommendations, including the cancellation of oil exploration permits within the site's boundaries and measures to address illegal resource use by non-state armed groups. The government successfully implemented the first recommendation, leading to the cessation of oil operations in the area, while the second recommendation is being carried out by the UN Mission for the Stabilization of the Democratic Republic of the Congo. Various NGOs also played a role in advocating for the implementation of these recommendations. Further information about the use of RAM can be found [here](#).

For more on International Environmental Law, see the [International Conventions and EU Directives](#) section in the [Useful Resources](#) section.

## 4. Action by Regulators

### 4. ACTION BY REGULATORS

#### REGULATORY BODIES AND STATUTORY LIABILITY

*The Environment Agency*  
*Natural England*  
*Natural Resources Wales*  
*The Department for Environment, Food and Rural Affairs*  
*The Water Services Regulation Authority*  
*The Joint Nature Conservation Committee*  
*Local Planning Authorities*

#### CRIMINAL PROSECUTIONS AND ENFORCEMENT ACTIONS

*Administrative and Criminal Offences*

#### TACKLING WATER QUALITY

*Protections for Drinking Water*  
*Nitrate Vulnerable Zones*  
*Water Quality Monitoring*

#### PROTECTING HABITATS

*Sites of Specific Scientific Interest (SSSIs)*  
*SSSI Prosecution Example*

#### PLANNING LAW

*Habitats Assessment*  
*Licensing*

#### LAWS PROTECTING FISH

*Wildlife and Countryside Act 1981*  
*The Conservation of Habitats and Species Regulations 2017*

#### TACKLING SEWAGE AND DISCHARGE

*Salmon and Freshwater Fisheries Act 1975*  
*Civil Sanction Enforcement Undertaking Example*  
*Prosecutions for Water Pollution: Environmental Permitting Regulations*  
*Examples of Environmental Permitting Prosecutions*

#### NUISANCE OFFENCES

*Public Nuisance*  
*Public Nuisance Example*  
*Statutory Nuisance*  
*Statutory Nuisance Examples*  
*Severe River Pollution*

#### ENVIRONMENTAL DAMAGE REGULATIONS

#### FARMING RULES FOR WATER

*Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018*  
*Farming Rules for Water Prosecution Example*

#### REGULATORY APPROACHES TO ADDRESSING DIFFUSE WATER POLLUTION FROM AGRICULTURE

#### REPORT AN ENVIRONMENTAL INCIDENT OR CRIME

This section examines the regulatory bodies responsible for protecting rivers in England and Wales, and the existing laws that regulators may use to protect rivers and prosecute criminal and administrative offences which could be seen as violations of RoN. The purpose of this section is to a) give an overview of the laws relating to water pollution, habitats, and water quality in both the criminal and civil law, and b) to provide information for campaigners so that they can engage with regulators and press for action.

## Regulatory Bodies and Statutory Liability

It's useful to be aware of the numerous regulatory bodies responsible for the environmental health of rivers in the UK. They are tasked with implementing the laws, producing plans to protect the environment, and working with industries to balance economic and environmental considerations. They publish reports which can be used for gathering information, and you can also request further information. You might bring complaints to them or against them, and they can also be subject to judicial review proceedings and investigations by the OEP. These may be needed where they are not fulfilling their roles. However, do note that their position is often complicated by the overlapping and interlocking natures of their remits, coupled with their funding constraints, which can often be a significant factor in allowing problems to go unaddressed.

This section also contains an overview of the legal regimes affecting rivers, including laws on water pollution, sewage, fish, habitats, and wild animals. These regulations and laws are included to explain what powers public bodies have to protect rivers, including criminal and civil sanctions, as well as to help you evaluate if you have a case for judicial review. Some of the laws in this section also relate to planning law and decision-making. The main government departments that regulate aspects of rivers are the following:

**The Environment Agency (EA)** is the principal environmental regulator in England. The EA is responsible for regulating major industry and waste; air, land, and water quality; water resources; fisheries and navigations; conservation and ecology; and flooding.

**Natural England (NE)** is the principal nature conservation and wildlife regulator and adviser for England. They manage SSSIs, enter into land management agreements with farmers, and decide which sites should be designated as SSSIs. They also provide advice to other regulators on ecological matters, including to Defra.

**Natural Resources Wales (NRW)** is the principal environmental, nature conservation and wildlife regulator and adviser for Wales, undertaking the equivalent roles of the EA and NE.

**The Department for Environment, Food and Rural Affairs (Defra)** is the Governmental Department responsible for environmental protection, food production and standards, agriculture, fisheries, and rural communities. It provides political oversight of the EA, NE and Ofwat. In Wales, this function is performed by the Welsh Ministers. Defra and the Welsh Ministers often have equivalent powers to the regulatory bodies but tend to rely on the 'arm's length' bodies (including the EA) as the primary regulators.



**The Water Services Regulation Authority (Ofwat)** is a non-ministerial governmental body responsible for economic regulation of the privatised water and sewerage industry in England and Wales. Its duties include ensuring that water companies properly carry out their statutory functions, ensuring that water companies can properly finance their roles, secure long term resilience, and protect consumer interests by promoting effective competition. They are responsible for setting the rates which water companies can charge to consumers and approve water company budgets and spending plans. Ofwat has been criticised by many bodies, including WildFish and the Good Law Project, for failing to hold water companies accountable, not pushing for necessary investment, and for fining only one water company in 30 years for breaching sewage spill regulations.

**The Joint Nature Conservation Committee (JNCC)** is not a regulator but a public body. It advises the UK Government and devolved administrations on UK-wide and international nature conservation.

## Local Planning Authorities

The planning system regulates the development of land in England and Wales, controlling operational development and changes of use. This can be contrasted with environmental permitting which regulates activities. Many parts of England have three tiers of local government:

- county councils or mayoral authorities like the General London Authority (GLA)
- district, borough, or city councils
- parish or town councils

Local government is the planning authority for most applications, preparing Local Plans, determining planning applications and carrying out enforcement against unauthorised development.

District councils are responsible for most planning matters, other than transport and minerals and waste planning which are typically functions of the county council. In some areas of the country single tier authorities have responsibility for both district level and county level planning matters. In London, the Mayor also has powers to determine certain planning applications of potential strategic importance. In national parks, planning functions are reserved to the park authorities, although some delegate functions back to the districts within their area, such as in the South Downs.

Where they exist, parish and town councils play an important role in commenting on planning applications that affect their area, and often take a key role in objecting to certain kinds of developments. This may include developments that significantly affects rivers. For example, new house buildings on flood plains or buildings with storm overflow drainage running into the nearest watercourse. Where parish or town councils do not exist, representatives of the local community may apply to establish a neighbourhood forum to

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prepare a neighbourhood plan or order, for influence and to protect the river environment. Plans must be reviewed every five years. See the government's guide to the English planning system [here](#). See also [Planning Law](#) and [Environmental Judicial Review of Planning Decisions](#).



*River Thames, Greenwich.*

## Criminal Prosecutions and Enforcement Actions

This section examines the laws that may be used to prosecute criminal and administrative offences which are violations of **RoN**. Since criminal cases are brought primarily by the Crown Prosecution Service, there are no legal costs for affected individuals. So gathering strong evidence to support a prosecution could potentially be a good use of resources. Investigations are conducted by NE generally for SSSIs, and by the EA for water pollution throughout England, including within SSSIs and freshwater fisheries. NRW and the Welsh Government are responsible for investigations in Wales. The police are the lead agency responsible for investigating most offences relating to protected species. Wildlife crime in the UK is investigated by the police National Wildlife Crime Unit (NWCU). There is also the possibility of bringing private prosecutions in the UK.

Unfortunately, due to lack of resources, the Environment Agency brings fewer prosecutions today than it has in the past. To combat this, it is possible to complain about or threaten a judicial review of a failure to prosecute, which might trigger action. Generally, however, there is a wide discretion for the regulator to decide whether or not to prosecute in a particular case.

## Administrative and Criminal Offences

One way of protecting your river is to make a complaint to the regulator and ask them to prosecute. There are two types of offences, which can be characterised as 1) regulatory or administrative offences, and 2) criminal offences. Normally, criminal prosecutions are brought as a last resort. These offences cover chemicals, environmental damage, environmental permitting, fisheries, flooding, reservoirs, water quality, and water resources. Some offences impose strict liability, which means that there is no need to prove that the polluter had an intention (*'mens rea'*) to commit the act while others require proof that there was some kind of an intention to commit the act (*'fault-based liability'*). Unauthorised or illegal discharges to water can be prosecuted under the Environmental Protection Act 1990 (s33) and Environmental Permitting (England and Wales) Regulations 2010 (regs 12 and 38).

## Tackling Water Quality

The water environment in the UK is directly managed through river basin districts. There are 10 River Basins in England. An interactive map of River Basins can be found on the government website [here](#). The EA is responsible for preparing [river basin management plans](#) (RBMPs). The data is organised around a catchment hierarchy, where the larger units contain one or many of the smaller units. This runs largest to smallest as follows: River Basin District → Management Catchment → Operational catchment → Water body. The River Basin districts include not only rivers but also ground water, along with canals, lakes, and ponds. The authorities are responsible for water quality monitoring. See also [Public Consultations on River Basin Management Plans](#) (Ch 10.) There are also a few Zones and areas that the regulatory bodies are responsible for maintaining through working with water companies, farmers, and land managers. These include:

- Drinking Water Safeguard Zones (both groundwater and surface water)
- Nitrate Vulnerable Zones (55% of land in England)
- Nutrient sensitive areas (Urban Waste Water Treatment Regulations 1994)

## Water Quality Monitoring

Water quality is generally governed by the WFD Regulations. The water quality of surface water bodies is measured according to ecological and chemical status. Chemical status is classified as good or fail. Ecological status is measured according to the water body's biological and habitat condition status. The ecological status of surface water bodies can be

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classified as high, good, moderate, poor, or bad. Water bodies are assessed over a six-year cycle. (Before Brexit, comprehensive assessments were required annually.) The next comprehensive assessment is scheduled for 2025.

According to statistics published by the JNCC, in 2022, 36% of surface water bodies in the UK (including rivers, canals, lakes, estuaries, and coastal waters) were assessed under the Water Framework Directive (WFD) as being of 'high' or 'good' status. For rivers alone, the numbers are different. In 2020, the most recent year for which data is available, only 16% of rivers in England had good status. In Wales, 44% had good status. According to the most recent data available on the Environment Agency's website, as of 2019, all rivers in England were classified as failing chemical status. As an indication of the low water quality of water bodies in the UK, the government recently moved back its target date to achieve 'good' ecological status for rivers from 2027 to 2063.

Using the RPB interactive map, you can identify rivers with poor or bad ecological and chemical status. Every water body on the map can be clicked on, which takes you to a page with more information about the latest data on that water body.

### Water Quality Monitoring

- Rivers are measured by ecological and chemical standards
- Classified as high, good, moderate, poor, or bad

### Causes of less-than-high water quality

- Agriculture
- Industry
- Urban and transport runoff
- Water industry (sewage spills) (Check hours of sewage spills in the area)
- Mining and quarrying

## Protections for Drinking Water

This section relates to Drinking Water Protected Areas (Surface Water) under the Water Environment (Water Framework Directive) Regulations 2017 ('WFD Regulations'). Given that there are stronger protections for rivers (and other water bodies) where drinking water is extracted, it is worth checking to see if this section applies to your river.

Under the WFD Regulations, Drinking Water Protected Areas (Surface Water) are defined as locations (including rivers) where raw water is abstracted for human consumption. They must either 1) provide more than 10m<sup>3</sup> per day on average, 2) serve more than 50 persons, or 3) be intended for such future use. Drinking Water Protected Areas are based on the water body areas (under each River Basin Management Plan) where the extraction is located. Water sources used for drinking supplies need to be protected to ensure they are not polluted and to avoid / minimise the need for additional purification treatment which can be costly and resource intensive. The Drinking Water Inspectorate (DWI) is the regulatory body responsible for oversight of water companies and drinking water. Water companies and the

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Environment Agency identify Drinking Water Protected Areas that are 'at risk' of deterioration from certain substances which could affect treatment, and non-statutory Safeguard Zones are established. Within these zones, the EA works with the water companies to plan and implement targeted measures to address the identified risks.

It was recently reported that the Government is not testing drinking water for PFAS, which studies have linked to numerous health issues. You can read Defra's response [here](#), but the issue of 'forever chemicals' in water is an area which could potentially lead to complaints against, or judicial review of the regulatory bodies. See an example of a breach of the Drinking Water Directive in Italy in the [Habitats Directive Examples](#).

To find out if your river forms part of a Drinking Water Protected Area, and so has stronger protections from pollution, check the RBMP interactive map [here](#) (use the filtering functions and search by postcode). You can also go to [data.gov.uk](https://data.gov.uk) and search '[Drinking Water Protected Area](#)' and '[Drinking Water Safeguard Zones](#)' to see maps of the protected areas in England, Wales, and Northern Ireland.

### **Protecting Rivers from Agriculture: Nitrate Vulnerable Zones**

If your river is within a Nitrate Vulnerable Zones (NVZs), you could ask the regulator to carry out an inspection. NVZs are areas designated as being at risk from agricultural nitrate pollution. They include about 55% of land in England. If land is in an NVZ, farmers must follow specific rules when they 1) use nitrogen fertiliser and/or 2) store organic manure.

You can complain to the regulators if you think farmers in the area are not following the rules. You can also request information from them on how frequently they are carrying out inspections in your area. See also the [Farming Rules for Water](#) section below.



Faridvisuals River Avon, Bristol.

## Protecting Habitats

The UK has several designations and protected areas, many of which overlap. If you are concerned about a specific river ecosystem, first find out what designations apply to the area. Some types of protections give rise to stronger laws than others. For example, Areas of Outstanding Natural Beauty (AONB) are protected for their ecology but are not ecological designations. As such, their targets (as set out in their management plans) are more likely to be directed at landscape and beauty than specific environmental criteria. By contrast, Sites of Scientific Interest are recognised to be nationally important for their ecological features and NE sets out assessments of their ecological status. The most important sites (internationally important) are protected under the Conservation of Habitats and Species Regulations 2017 and known as ‘European Sites’ or ‘National Sites’. They will all also be Sites of Special Scientific Interest (SSSIs).

There are two kinds of SSSIs:

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- Special Areas of Conservation (SAC) are sites which were originally designated under the Habitats Directive for their flora or fauna;
- Special Protection Areas (SPA) are sites designate under the Wild Birds Directive for their bird species.

Following Brexit, the Habitats Directive and Birds Directive no longer directly apply in UK law. However, SACs and SPAs are both covered under the Emerald Network, created by the Bern Convention, of which the UK remains a signatory. Additionally, as a matter of policy, 'Ramsar Sites', which are protected Wetlands under the Ramsar Convention, are treated the same way as SACs and SPAs. Lastly, European Sites are protected under the Conservation of Habitats Regulations which gives rise to the precautionary principle, discussed further below in the Habitats Regulations section. In reality, many of these sites are in a poor condition.

See 3. International Conventions and EU Directives for more on The Habitats Directive and The Wild Birds Directive.

### Sites of Specific Scientific Interest (SSSIs)

Sites of Specific Scientific Interest (SSSIs) are legally protected areas which have been designated as an SSSI due to the flora or fauna present, its geological make-up, or the physiography of the area. Natural England (NE) or Natural Resources Wales (NRW) designate and monitor these sites, which may be privately or publicly owned. Sections of 44 rivers in England (2500 km) are legally protected as SSSIs, as they are the best remaining examples of different river types and associated habitats and species. As explained above, SSSIs are also designated as one of the following:

- Special Area of Conservation (SAC).
- Special Protection Area (SPA)
- Ramsar Site (protected wetlands area)

### SSSI Enforcement

Natural England and NRW have various powers of protection and enforcement where breach of an SSSI notification occurs, which have been considerably strengthened by amendments to the WCA 1981 under the Countryside and Rights of Way Act 2000. If you are concerned about pollution, dead fish, someone cutting down trees, or dredging of your river, and it's in an SSSI designated area, you can complain to the regulators (NE, EA, NRW, Defra), who can take enforcement actions to stop the damage. You could then complain or consider threatening a judicial review if they fail to act.

### *SSSI Prosecution Example*

In 2013, an East Sussex hotelier was fined £45,000 with £90,000 costs for damaging an ancient coastal SSSI on the Pevensy Levels by planting non-native trees and illegally erecting temporary structures, including cabins. Read more in an article, [here](#).

## Planning Law

### Habitats Assessment

Natural England must be consulted if a development takes place near an SSSI. In certain cases, developers are required to undertake environmental impact assessments and assessments required under the Habitats Regulations as part of their planning application. For example, Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) require habitats assessments under the Habitats Regulations. A local resident could potentially challenge a grant of planning permission (by judicial review) if the habitats assessments and environmental impact assessments are not satisfactory (for example, if you believe they are missing something important). The Habitats Regulations introduce the precautionary principle into the planning law system because the assessment must show that the development is not likely to have a significant effect. In the context of a river, one can argue that areas further upstream from an SAC are ecologically important to the SAC itself; for example, for the protection of protected fish.

### Licensing

Additionally, animals protected under the WCA and Habitats Regulations give rise to a licensing system. For example, in a planning context, a developer must obtain a licence before carrying out works which could disturb species protected under either the WCA or Habitats Regulations. The way this works is that an ecologist should survey the area at certain times of the year, appropriate to the species, to find out if any protected species are present. This commonly includes bats, dormice, and great crested newts. Ecologists also have to submit their findings to the local government, and any person can request copies of the findings of previous surveys (for a fee). If protected species are found on site, the developer must request a licence specific to that species before proceeding, which will allow them to carry out works without risk of being prosecuted.

See also [Environmental Judicial Review of Planning Decisions](#).

## Laws protecting fish

The table below identifies which rare fish are afforded protection under which laws. The most important laws are the WCA and Habitats Regulations, which both allow for criminal prosecutions. Note for example that common sturgeon are critically endangered and afforded protection under the WCA, the Habitats Regulations, and the Bern Convention. You can



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make a complaint to the EA about failure to protect the habitats of any of these fish. As explained above, the Habitats Regulations (note: the table below refers to the previous version of the Act from 1994) require a habitats assessment before granting planning permission in or around an SSSI, but it is also possible to argue that an area further upstream is ecologically connected to the SSSI, which will be important in the context of fish. You could also bring a complaint about failure to protect the habitats of any of the fish listed under the Bern Convention, see [Bern Convention Complaint](#).

English Name	Latin Name	W&C Act	UK BAP	HD Annex	Cons Regs Schedule	Bern Conv Appendix	Bonn Conv Appendix	CITES	IUCN 2015
River Lamprey	<i>Lampetra fluviatilis</i>		Y	II V	3	III			LC
Brook lamprey	<i>Lampetra planner Bloch</i>			II		III			LC
Sea lamprey	<i>Petromyzon marinus</i>		Y	II		III			LC
Common sturgeon	<i>Acipenser sturio</i> L.	Sch. 5	Y	II, IV	2	III	I, II	I	CR
European eel	<i>Anguilla anguilla</i> L.		Y				II	II	CR
Allis shad	<i>Alosa alosa</i> L.	Sch. 5	Y	II, V	3	III			LC
Twaite shad	<i>Alosa fallax Lacepede</i>	Sch. 5	Y	II, V	3	III			LC
Barbel	<i>Barbus barbus</i> L.			V	3				LC
Spined loach	<i>Cobitis taenia</i> L.		Y	II		III			LC
Smelt	<i>Osperus eperlanus</i> L.		Y						LC
Vendace	<i>Coregonus albula</i> L.	Sch. 5	Y	V	3	III			LC
Whitefish	<i>Coregonus lavaretus</i> L.	Sch. 5	Y	V	3	III			VU
Atlantic salmon	<i>Salmo salar</i> L.		Y	II, V	3	III			LC
Trout	<i>Salmo trutta</i> L.		Y						LC
Arctic charr	<i>Salvelinus alpinus</i> L.		Y						LC
European grayling	<i>Thymallus thymallus</i> L.			V	3	III			LC
Bullhead	<i>Cottus gobio</i> L.			II					LC

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### Notes on Table 2

<b>Legislation</b>	<b>Relevant schedules and appendices as listed in Table 2</b>
<b>Wildlife and Countryside Act 1981 (as amended)</b>	<i>Schedule 5 – animals other than birds) that are protected</i>
<b>UK BAP</b>	<i>UK BAP priority fish species list</i>
<b>EC Habitats Directive</b>	<i>Annex II - designation as qualifying feature within SACs for the species listed. Annex IV – special protection for the species listed. Annex V – exploitation may be subject to management.</i>
<b>The Conservation Natural Habitats etc. Regulations 1994</b>	<i>Schedule 2 – European Protected Species in Great Britain Schedule 3 – animals that may not be taken in certain ways</i>
<b>Bern Convention (Convention on the Conservation of European Wildlife and Natural Habitats)</b>	<i>Appendix III – regulation of the exploitation of species listed.</i>
<b>Bonn Convention (The Convention on Migratory Species)</b>	<i>Appendix I - migratory species that are endangered. Appendix II - migratory species that require international agreements for their conservation and management.</i>
<b>CITES (Convention on International Trade in Endangered Species)</b>	<i>Appendix I - trade only in exceptional circumstances. Appendix II - trade subject to licensing.</i>
<b>Global IUCN Red List</b>	<i>CR - Critically endangered, VU - Vulnerable, LC - Least Concern, EX - Extinct.</i>

The above table and notes are adapted from a [chapter](#) published by the JNCC.

## Wildlife and Countryside Act 1981

Many plants, birds, fish, and mammals are protected by the Wildlife and Countryside Act 1981 (WCA). The Act creates criminal offences related to destroying, damaging, selling, or killing wild birds, mammals, fish, animals, and plants. There are a range of offences to protect birds from having their eggs taken, nests disturbed, being kept in cages, or sold. There are defences and exceptions to the various offences which allow one to avoid conviction, and it is also possible to obtain a licence, which means you cannot be convicted. You obtain a licence by applying to NE or NRW. If there is a suggestion that a certain species covered by the WCA or the Habitats Regulations is present in the area, a developer should apply for a licence before carrying out any work. For example, if there is a presence of freshwater mussels in the area, a developer will need to obtain a licence because they are protected by the WCA. A map of current data for areas with freshwater mussels can be found on the National Biodiversity Network (NBN) Atlas on the [National Biodiversity Network Trust](#) website. Even if a species is not listed as being at a location on the NBN atlas, an ecological survey may still be carried out for verification. Most allegations of offences against amphibians and reptiles involve land clearances in preparation for or during construction. Even where works on land require planning permission, legislation and planning procedures do not always result in the submission of ecological surveys.

## The Conservation of Habitats and Species Regulations 2017

The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) implement the EU Habitats Directive and Wild Birds Directive in UK law and provides protection for species which are declining throughout Europe. The Habitats Regulations provide for criminal offences (which can be prosecuted), specifically for Europe-wide protected species of plants and animals. All animals and plants protected by the Habitats Regulations are also protected under the WCA. For European protected species, the Habitats Regulations are the main legal regime.

It is an offence to deliberately capture, injure, kill, or disturb a wild animal of a European protected species or to deliberately take the eggs of such an animal (reg 43). It is also an offence to damage or destroy the breeding site or resting place of such an animal, whether deliberate or not. The fact that this last offence under the Habitats Regulations does not require proof that it was done deliberately reflects the importance attached to the breeding sites in the life cycle of such animals. If convicted, an individual may receive a fine, an imprisonment term of up to six months, or both. There are defences and exceptions to the offences which allow one to avoid conviction, and it is also possible to obtain a licence which protects you from conviction.

The Habitats Regulations can also be enforced when challenging planning permission or judicially reviewing the regulator's failure to act. The Habitats Regulations provide that a habitats assessment must be made before granting planning permission to a development (reg 63) at a protected site (SAC or SPA). This is important because it introduces the precautionary principle. The developer must show that they will not negatively impact the species and habitats at the protected site, or they will not be granted planning permission (unless there is an overriding public interest, such as a major infrastructure project).

The species that are protected under the Habitats Regulations and that are most likely to be vulnerable (in the context of rivers) include:

### Schedule 2 – European protected species of animals

- Great crested newt
- Green turtle
- Hawksbill turtle
- Kemp's ridley turtle
- Leatherback turtle
- Loggerhead turtle
- Natterjack toad
- Common otter
- Beaver



Great crested newt – [Derek Parker](#)

**Schedule 4 – Animals which may not be captured or killed in certain ways**

- Barbel
- Grayling
- River lamprey
- Atlantic salmon
- Allis shad
- Twait shad
- Vendace
- Whitefish



Barbell – Paul Korecky

**Schedule 5 – European protected species of plants**

- Creeping marshwort
- Fen orchid
- Floating-leaved plantain
- Killarney fern
- Shore dock
- Slender naiad



Floating leaved plantain – Hugues Tinguy

## Tackling Sewage and Discharge

### Salmon and Freshwater Fisheries Act 1975

In the event of discharge from sewage, slurry, or other effluent that leads to the death of fish, the EA can bring a prosecution under the Salmon and Freshwater Fisheries Act 1975 (SAFFA), leading to a fine or imprisonment. Under the Act, it is an offence to:

- wilfully disturb spawn, spawning fish, or spawning areas (s2(4))
- discharge matter or effluent that is poisonous or injurious to fish, spawn, spawning areas, or food of fish (s4(1)).
- use any explosive, poisonous or noxious substance, or any electrical device with the intent to take or destroy fish (s5(1)).



Atlantic Salmon – [Eric Kilby](#)

SAFFA also aims to prevent the spread of disease by requiring people to obtain consent before restocking a water body and introducing new fish. For example, a man was prosecuted under SAFFA for trying to restock a pond with fish from Belgium, which turned out to be full of parasites.

### *Civil Sanction Enforcement Undertaking Example*

The Environment Agency accepted an enforcement undertaking from a Water Company following a major pollution incident which resulted in many dead eels, fish, and invertebrates along the River Twyn. An enforcement undertaking is where a company offers to make payments and improvements instead of being prosecuted and fined. This is a legal tool that can be used by the EA under SAFFA. Wessex Water offered to make the following payments and improvements:

- make improvements to its sewers in the area by installing and improving telemetry
- pay £15,000 to the Sustainable Eels Group, to put eels back into the affected River Trym and Bristol rivers
- pay £10,000 to the Bristol Avon Rivers Trust (BART) for work in the catchment
- pay £500 compensation to Henbury Golf Club for the impact to its business.
- and payment of the Environment Agency's costs.

## Prosecutions for Water Pollution: Environmental Permitting Regulations

Most prosecutions of river pollution are pursued under the Environmental Permitting (England and Wales) Regulations (2016) (EPR). An example is the discharge of sewage or other pollutants without a permit or in breach of the terms of a permit. The EPRs regulate a wide range of water discharge activities, including sewage, accidental spillage of chemicals, and discharge from industrial processes. Environmental discharge permits regulate individual points of discharge; they do not cover fertiliser or urban run-off, which are sources of diffuse water pollution. Water discharge permits are granted by the EA and NRW, but even after granting a permit, the EA and NRW maintain the ability to enforce or control the permit, including to require clean-up operations.

It is an offence to operate a regulated facility, or cause or knowingly permit a water discharge activity or groundwater activity without a permit. Water discharge activities include the discharge of poisonous, noxious, or polluting matter, waste matter, trade, or sewage effluent. To 'cause' or 'knowingly permit' are two separate offences. Causing pollution is a strict liability offence: it does not matter if there was no negligence on the defendant's part; the defendant is still guilty if they have caused discharge (*Alphacell Ltd v Woodward* [1972] A.C. 824). (Note that most of the case law regarding the discharge offence was decided under older legislation, the Water Resources Act 1991 s.85, which contained a similar offence).

The water pollution offence also applies to a lack of maintenance. For example, operating a sewerage system that was insufficiently maintained can be a cause of water pollution (*Attorney-General's Reference (No 1 of 1994)*). A person operating an authorised water discharge activity may be liable for a fine or imprisonment not exceeding 12 months.

Where the state does not prosecute, individuals can undertake a private prosecution in England and Wales. These are relatively rare, primarily because of costs.

### *Examples of Environmental Permitting Prosecutions*

- **A prosecution of a Water Company for sewage overflow killing thousands of fish:** Thames Water was fined £3.33m after pleading guilty to breaching the EPRs by releasing millions of litres of raw sewage into two rivers near Gatwick, leading to thousands of dead fish. Prosecutions of Thames Water by the EA for pollution incidents led to fines of £35.7m between 2017 and 2023. (See this [article](#).) Between 2018 and 2022, the EA prosecuted four water companies, Southern Water, Severn Trent, Anglian Water and Yorkshire Water, in a total of seven cases concerning breaches of 'storm overflow' permits, with total fines just over £94m.
- **A private prosecution for diesel pollution in a chalk river:** Fish Legal recently began a private prosecution against Southern Water, after the EA failed to protect the River Test in Hampshire from diesel pollution for several years. The River

Test is a rare chalk stream habitat, one of only around 200 such rivers in the world. It is a Site of Special Scientific Interest (SSSI) home to wild Atlantic salmon, otters, water voles, brook lamprey and bullhead, but less than 18% of it is in 'favourable' condition. The focus of the criminal case is the section between Romsey and the estuary, which is currently classified as 'unfavourable' due to polluting discharges. The charges relate to pollution entering the Test from a Southern Water outfall at Nursling Industrial Estate near Southampton, not from sewage.

- **A prosecution for negligent spreading of anaerobic digestate on a farm leading to huge fish kill:** The EA prosecuted a North Devon company that caused a pollution incident leading to a devastating fish kill on the River Mole near South Molton. The company was fined £2,000 and ordered to pay £9,836 in costs. An employee negligently spread digestate on a field when rain was forecast, and the digestate washed into the river, killing approximately 15,600 fish. The company and employee pleaded guilty to causing the discharge.

## Nuisance Offences

### Public Nuisance

Public Nuisance can be a tort, but is primarily a criminal offence, and the Attorney General may bring a claim on behalf of the affected class of people. This applies to people who suffer 'particular damage' over and above the damage sustained by the public generally. The common law offence of public nuisance was abolished by the Police Crime and Sentencing Act 2022 (s78(6)). The Police Crime and Sentencing Act 2022 created a statutory offence of public nuisance. In accordance with the act, a person commits an offence if they create a risk of, or cause, serious annoyance, serious inconvenience, or serious loss of amenity. A person also commits an offence if they obstruct the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large. In terms of rivers, if there is significant pollution or silting in a river and connected habitat area that is a nuisance to a class of people, a public nuisance claim may be possible. For more on common law nuisance, see the Civil Claims section.

### Public Nuisance Example

**Silting of a river:** In *Tate & Lyle Food and Distribution Ltd v GLC (1983)*, ferry terminals built by the defendants in the River Thames caused excessive silting, which disrupted the claimant's business by obstructing access to their jetty. This example falls under the old common law public nuisance. As a result, the claimants had to pay for dredging operations in order to keep using the river. Since the claimants had no private property rights in the

riverbed, and the jetty itself was unaffected, their claim in private nuisance failed. However, the House of Lords (which was replaced by the UK Supreme Court in 2009) held that their public right to use the river had been damaged, and their claim in public nuisance was successful. The costs incurred by the claimants for the dredging operation were recoverable because they constituted particular damage over and above the ordinary inconvenience suffered by the public at large.

## Statutory Nuisance

There is a fairly simple process for bringing a public or private prosecution for statutory nuisance, meaning activities which detract from another's enjoyment of their property or cause a risk to public health as described by S79 of the Environmental Protection Act 1990 (EPA). In relation to water bodies, smells coming from a sewage treatment centre and rubbish on a beach have both been found to be a nuisance. We are unaware of any statutory nuisance claims regarding river pollution, but this could be a good area for a test case. A large amount of rubbish on a public area riverbank might amount to a nuisance under the statutory regime, especially if it includes items harmful to human health. In this scenario, wild swimming as a pastime in the UK might present an opportunity to make a complaint. Since most rivers in England and Wales are not in good ecological or chemical condition, it is not uncommon for wild swimmers to become ill. Potentially, a wild swimmer who becomes ill directly because of this pollution could complain to the local council and request that they take action against the polluters of the river (sewage, factories, farms, industry) with an abatement notice. The following are defined as statutory nuisances and may be relevant to your case (EPA s79(1)):

- Any dust, steam, smell, or other effluvia arising on industrial, trade, or business premises and being prejudicial to health or a nuisance. (d)
- any accumulation or deposit that is prejudicial to health or nuisance. (e)
- any other matter declared by any enactment to be a statutory nuisance. (h)
- The Public Health Act established that a nuisance also includes: any pool, pond, ditch, gutter, or watercourse which is so foul or in a state that is prejudicial to health or a nuisance (s259(1)(a)).

Note that (d) only applies to premises, which includes sewage treatment works. However, smells from other polluting industries might be possible to challenge in order to protect rivers from diffuse water pollution.

### How:

A statutory nuisance claim may be made by a council or the person affected by the statutory nuisance. There are two options for taking action:



### **Step 1 – Ask the council to investigate and prosecute**

Complaints can be made to the Environmental Health Department of your local council with as much evidence as possible of the statutory nuisance, such as medical reports of impact on health, photos, maps, diagrams, a diary, and any expert evidence. Once the complaint has been submitted, the council has a duty to investigate a nuisance complaint. They may then decide whether a nuisance exists; in the instance that it does, the local authority may serve an abatement notice to those causing the nuisance. An abatement notice will then require the nuisance and any further reoccurrence to be stopped, and it may also require any steps necessary to achieve this. For example, a notice may require a business to stop a certain polluting activity, as well as requiring any previous pollution to be removed.

However, please note that in practice, local authorities may not act quickly or at all. You could make a formal complaint via the Council's Complaints process, and from there complain to the Local Government Ombudsman or possibly send a pre-action protocol letter threatening to bring a JR. You could also complain to your local councillor re the lack of action. You can also challenge the Ombudsman's decision by judicial review.

### **Step 2 – Bring a private prosecution**

If there is considerable evidence of a statutory nuisance you could consider bringing a prosecution yourself. A private prosecution is commenced in the same way as a public prosecution, by laying a charge sheet referred to as an 'information' in a Magistrates' Court (EPA, s82). This may be appropriate if the local authority has not pursued your nuisance complaint, or if the LA are the party causing the nuisance. In practice, however, this is rarely done, in part because if the prosecution fails you are liable for the costs of the opponent.

The process is to first serve written notice to the person responsible for causing the nuisance, stating your intention to bring statutory nuisance proceedings. The complainant must give the responsible party at least 21 days' notice. If this does not resolve matters, you may notify the Magistrates' Court who can issue a summons to the responsible party. There will then be a hearing in which you must demonstrate proof of the statutory nuisance beyond reasonable doubt. You need to provide clear evidence of the statutory nuisance, showing how it was caused and that there is harm to health. You might file statements and reports and call environmental or medical experts as witnesses. If successfully proven, the magistrate will make an abatement notice. They may also impose a fine, make a compensation order to benefit those affected by the nuisance, or even place conditions on the use of the premises where the nuisance occurred.

For more information on this and resources to help with preparing a statutory nuisance complaint, please see the [Useful Resources](#) section.

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The purpose of a RoN campaign or litigation is not really to get compensation, except perhaps to get compensation to clean up the river. However, statutory nuisance presents an opportunity for a local council to take action against polluters, which will put pressure on them to act more responsibly. There are advantages to pursuing a statutory claim over a common law nuisance claim, including:

- Standing – there is no need to be affected by the nuisance, meaning that a great range of people can bring a statutory claim to stop the nuisance impacting a river.
- Reduced costs – if your local council brings the claim, the statutory nuisance procedure does not require you to pay the defendant's costs if the claim is unsuccessful. If you bring the claim, magistrates' court costs will probably be less than a JR.
- The efficiency of making a statutory claim – an applicant need only provide 21 days' notice before bringing a complaint to court. The process is speedy compared to a civil court claim.
- While compensation from winning a claim in statutory nuisance is limited and smaller than through the common law route, it is possible to file a private law claim after the statutory claim has been completed. (It is important to keep in mind that, in certain instances, as explained below, this cannot be a viable option, as the limited compensation cannot cover the damages caused.)

### Statutory Nuisance Examples

- **Foul smells from a sewage treatment centre:** *Hounslow LBC v Thames Water* [2003] confirmed that sewerage works were subject to the operation of provisions relating to statutory nuisance given in the EPA 1990 s.79(1)(d). The local authority applied for an abatement notice because the sewage treatment centre was emitting bad smells, which amounted to a nuisance.
- **Sewage and rubbish on a beach:** In *R v Carrick District Council, ex parte Shelley* [1996] Env LR 273. Sewage led to rubbish being washed up on the beach of a Cornish village, so residents complained to the local council and asked them to use their powers under statutory nuisance to issue an abatement notice. The local council at first found that there was no statutory nuisance and did not want to act because the sewage company was disputing the charges. The applicants challenged the refusal by judicial review, and the judge told the local council they needed to evaluate the situation and not wait for the sewage company's appeal. Eventually, the local authority did in fact find that there was a statutory nuisance and served an abatement notice on the sewerage undertaker requiring screening, which was duly complied with.

## Severe River Pollution

Where there is a risk of harm from severe river pollution, the activity will be regulated by the Contaminated Land Regime of Part 2A of the Environmental Protection Act.



Cheryl Vacchini River Calder, West Yorkshire.

## Environmental Damage Regulations

You can also ask the regulator to enforce the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 or the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 if concerned about serious environmental damage. Companies, farms, or individuals responsible for environmental damage are obligated to report it immediately to the regulator, take immediate preventive action, and carry out clean up operations where necessary. The Environmental Damage Regulations do not impose criminal liability or fines, but instead seek to prevent and remediate environmental damage from operators of primarily industrial and agricultural activities based on the ‘polluter pays’ principle by requiring those liable for damage to:

- Take immediate preventive action.
- Report an imminent threat and any environmental damage promptly to the regulators.
- Carry out remedial and compensatory measures (such as clean-up of polluted water or biodiversity offsetting where remediation is not possible).

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The ED regime covers only the most serious environmental damage to a protected species or natural habitat, an SSSI, surface water or groundwater, marine waters, or land. It applies to situations where there is an imminent risk of damage or where damage has already occurred. Regarding rivers, environmental damage to water is defined as causing deterioration in the water's status (under the Water Framework Directive 2000 (2000/60/EC) and the Groundwater Directive 2006 (2006/118/EC)). The regulations impose strict liability for some activities, and fault-based liability for others (regulation 5). Strict liability is imposed for activities listed under schedule 2 of the England ED Regulations 2015. Some of the strict liability activities which can affect rivers include the activities regulated under the Environmental Permitting regime:

- Waste management
- The management of mining waste
- Discharges to water and groundwater
- Water abstraction and impoundment.
- Use of pesticides, biocides, or dangerous substances.

For fault-based liability offences, the prosecution needs to prove the operator either intended to cause damage or was negligent as to whether damage would be caused in the case of environmental damage to protected species, natural habitats, or SSSIs. Regulators also have the power, in certain situations, to undertake preventive or remedial operations and recover the costs from the relevant operator. NGOs and concerned parties have the right to request that the regulator take action.

## Farming Rules for Water

### Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018

You can also ask the regulator to enforce the farming rules for water. The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018, also known as 'the farming rules for water', set out several rules to protect rivers from harmful agricultural practices. The rules aim to prevent pollution from spreading manure or fertiliser, spraying pesticides and herbicides, and various activities which could result in soil erosion and water pollution. They include a requirement to plan the application of nutrients to the soil in such a way as to ensure that the nutrients are used appropriately, in accordance with the farming rules for water. Statutory guidance may be found [here](#). They also have rules for livestock, such as not allowing animals to graze within 5m of a water body. Farms are inspected and advice given with time to make changes, and there can be prosecutions for not following the rules. At the time of writing, [the High Court is due to consider a judicial review of the Environment Agency](#) to enforce rules to prevent pollution of the River Wye; the claimant has argued that the rules are not being enforced.

## *Farming Rules for Water Prosecution Example*

**A prosecution of a farmer for destroying 1.5km of a riverbank:** The EA and NE prosecuted a farmer who used bulldozers and excavators to dredge and re-profile a 1.5km stretch of the River Lugg in Herefordshire, cutting down trees and building a raised hard standing area. In total, 71 mature trees within the SSSI were completely uprooted and 24 trees felled, with native vegetation and nesting sites destroyed. Due to the exceptionally high diversity of wildlife, the Lugg is a designated SSSI, with 121 river plant species that provide habitats for invertebrates, fish, and birds. The damage to the river and banks removed the habitats of hundreds of these species, including otters, kingfishers, and salmon, as well as destroying trees, aquatic plant life and invertebrates. He was jailed and ordered to pay £1.25m in costs including £655,000 towards restoring the riverbank, which will take decades to be restored. The unconsented works were in breach of several regulations, including the farming rules for water.

## Regulatory Approaches to Addressing Diffuse Water Pollution from Agriculture

The regulators have a range of tools and programs available to them to work with farmers to prevent diffuse water pollution. A RoN-oriented organisation can try to find out what programs are in use in the region, and whether regulators are following up with farmers and enforcing the farming rules for water.

In terms of pollution from agriculture, the Environment Agency (EA) inspections found that more than half of farmers are not compliant with the rules pertaining to storage of slurry (which is a mix of animal faeces, urine and waste which is used to create fertilizer and spread on land). Farmers are required not to store slurry within 10 metres of inland and coastal waters. According to the Department for Environment, Food and Rural Affairs (Defra) and the EA, if a farmer does not follow the rules for storing slurry, they can be prosecuted and fined up to £5,000 in a magistrates' court, or get an unlimited fine in the Crown Court. However, from 2018 to 2020, 243 breaches of the farming rules for water had led to no prosecutions, while 2021 saw 300 violations and only six prosecutions.

A common regulatory approach is where Natural England (NE) enters into Land Management agreements with farmers. However, enforcement remains an issue, and to date there is no case of NE compelling a farmer to enter into a management agreement. The Catchment Sensitive Farming Program is run by the Defra, NE and the EA. It aims to reduce air and water pollution from farming activities by providing advice and management techniques, as well as funding for equipment. In doing so, the programme may provide the farmer/agricultural business with advice or alternative materials/equipment that minimise the extent to which rivers are contaminated by agricultural pollution. An example of the

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Environment Agency working with farmers to improve river quality is the EA's regulatory program in the River Axe, where intensive dairy farming has led to river pollution.

Many have noted that there are stronger regulatory approaches available to public bodies to address the issue of diffuse water pollution and suggest that a coordinated effort is needed, involving local governments, the secretary of state, the EA, NE, and DEFRA, to help farmers stop polluting rivers.

## Report an Environmental Incident or Crime

If you are concerned that any of the above crimes are being committed against a protected species, contact the Environment Agency here. You can call the EA's hotline 0800 807060 to report an environmental incident, including flooding, water pollution, dead fish, illegal fishing, or damaged riverbanks. When gathering information for evidence, consider taking time-stamped photos and videos and obtain witness statements. Note down exactly when and where the photos and video were taken.

See the Useful Resources section for more on Civil and Criminal Offences, as well as more on Protected Sites and Designations, Water Quality, Drinking Water, Interactive Maps, and Static Maps of protected habitats and watercourses in the UK.

## 5. Gathering Information and Submitting an Information Request

### 5. GATHERING INFORMATION AND SUBMITTING AN INFORMATION REQUEST

#### HOW TO GATHER INFORMATION

*Step by step guide to Gathering Information*

Using River Wye as an Example

#### ENVIRONMENTAL INFORMATION REQUESTS

Examples of the information you may wish to request include:

*Template Information Request Letter*

*Information Request Top Tips*

Examples of Information Requests

In addition to proving your case, demanding evidence via statutory rights to information can be an indirect means of attracting attention to your issue, embarrassing public bodies, and pressing them to take action, without a costly court case. If public bodies refuse to disclose information, you can challenge the decision without the risk of paying costs for a court case, at least at the first stages (it is also possible to bring a judicial review claim to challenge the decision not to disclose information).

## How to Gather Information

Government bodies, scientific bodies, and legal non-profit organisations publish reports freely available on their websites. Here are some tips for gathering information:

Search Categories	Search Items	Remarks
General	Public body websites	Public body websites maintain detailed information on water bodies: <ul style="list-style-type: none"> <li>- Environmental Agency (EA)</li> <li>- Natural England (NE)</li> <li>- Natural Resources Wales (NRW)</li> <li>- Department of Food and Rural Affairs (DEFRA)</li> <li>- Joint Nature Conservation Committee (JNCC)</li> </ul>
	Media and social media	Check media and social media articles about the river, like policies, campaigns, pollution, sewage dumping, and legal issues.
Geographical Information	Maps	Check the river on the various maps in the resources list to gain more information about

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		water quality status, habitats, species, and the threats facing it.
	Water quality	The Environmental Agency (EA) has water quality information about most water bodies in England.
Legal Status	Protected status	JNCC and NE have information about Special Areas of Conservation (SAC) / Sites of Special Scientific Interest (SSSIs).
	Past legal challenges or campaigns	The local library may have an archive. Environmental NGOs and Fish Legal will have articles about past legal challenges.
Interested parties	River trusts (local or national)	They may be undertaking campaigns or monitoring work to protect the river, where you can join forces. They may also have a lot of knowledge.
	Conservation NGOs	
	Anglers' groups	Anglers groups are not RoN organisations; from a RoN perspective, fish have the right to swim and live out their lives. But they have an interest in environmental protection so you can work together.  Anglers have fishing rights, which means they can bring civil cases against farmers or companies responsible for slurry, chemical, or sewage spills.
	Universities	Universities may be researching the river habitat.
	Public and private landowners along riverbanks	They have riparian rights and might have fishing rights, meaning they can have a claim in common law nuisance against a polluter.
Human Intervention	Presence of farms and factories	They are often responsible for fertiliser, pesticide, slurry or chemical run-off or discharge.
	Ongoing or previous river restoration projects	NGOs working on restoring rivers might be a good partner to work with on legal campaigns.



Designations/ Protected Zones	Why is this important for Rivers?
<p>Site of Special Scientific Interest (SSSI)</p> <p>Ramsar Site (treated in the same way was as SACs and SPAs a matter of policy)</p> <p>Special Area of Conservation (SAC)</p> <p>Special Protection Area (SPA)</p> <p>(SACs and SPAs are also referred to as: Emerald Network site, former Natura 2000 site, National Site, and often designated as an SSSI).</p>	<ul style="list-style-type: none"> <li>• Covered by the Habitats Regulations.</li> <li>• Habitats assessment required for development.</li> </ul>
Drinking Water Safeguard Zones	Stronger protections for water quality
Nitrate Vulnerable Zones	Stronger requirements for farmers
Nutrient sensitive areas (Urban Waste Water Treatment Regulations 1994)	Stronger requirements for farmers

See [4. Action by Regulators](#) for more about the above.

## Step by step guide to Gathering Information

### *Using River Wye as an Example*

#### **Search your river on the Joint Nature Conservation Committee (JNCC) site**

On the Joint Nature Conservation Committee [site](#) you can search River Wye. The river's [JNCC page](#) explains that it is listed as a Special Area of Conservation (SAC). It has two habitat designations, and nine species designations. The Annex numbers refer to the Habitats Directive. Cross referencing the freshwater fish with the [JNCC's freshwater fish guide](#), we can see that Atlantic Salmon, for example, are protected under a few legal regimes, including the Habitats Regulations and Bern Convention.

#### **Search the river on the Emerald Network Site map**

Now that we know River Wye is a SAC, we know it will be part of the Emerald Network. Using the site code name from the JNCC page, we can enter it into the [Emerald Network database](#), which brings up another map. Clicking all of the options in the layers list brings up more information on the map, and we can see there are few protected woodlands in and around the River Wye. If you don't have the site code from the JNCC, you can also input a postcode into the Emerald Network map to immediately learn about the presence of SACs and SPAs in your area.

**Search the river on the WWF map**

Search the name River Wye on the [WWF River map](#). The WWF Map doesn't immediately bring you to the full River Wye but shows you the general area. Scrolling down on the left side, we see the map change colours as it shows us where rivers are facing threats from various industries or sewage. We can see that sections of the River Wye have moderate water quality status, and that the area is facing threats from agriculture.

**Check the river on the River Basin Management Plan interactive map**

[Here](#) you can find out which areas are drinking water zones, nitrate vulnerable zones, and protected SAC habitats. You can also find detailed information on chemical and ecological water quality.

**Check the river on Natural England's designated sites page**

On [designatedsites.naturalengland.org](https://designatedsites.naturalengland.org), you can search rivers by name and be taken to a page with maps and details on the site. We can see that conservation advice is also present.

**Search the river on the Catchment Data Explorer**

The EA keeps detailed information about the ecology and chemical status of rivers (broken up into smaller sections of the rivers). You can use the [RBMP map](#) to click on the sections of the River Wye to obtain that water body's complete water quality information.

**Check Defra's maps**

Check if it is part of a Ramsar Site, Nitrate Vulnerable Zone, Drinking Water Protected Area, or Important Bird Area. Defra has [static maps](#) for all of these and an [interactive map](#).

**Check how many hours of sewage have been dumped into the river**

Greenpeace has [a map](#) to check this. All along the River Wye there are areas with hundreds of hours of sewage spills recorded.

**Check if the river is on the Freshwater Habitats Trust's list of important freshwater landscapes**

On the Freshwater Habitats Trust's website, they have a wealth of information including [a map](#) of important freshwater areas. The map shows that the Shropshire rivers are part of the network, but not the River Wye.

**Check if Fish Legal has brought any cases in the area**

Fish Legal's [map](#) of cases is a good place to start to look for any ongoing or past legal claims.

**Check for the presence of protected species in the area on the National Biodiversity Network Atlas**

The [NBN Atlas](#) contains detailed information on various species. Start by choosing a postcode near the river and search by location. Then check for the presence of fish in the area. Compare the list of fish present with the lists of fish protected under the WCA and Habitats Regulations. According to [the map](#), along the River Wye there have been reports of several protected species of fish.



chris\_hikes\_etc via instagram *Golitha Falls, Cornwall*.

## Environmental Information Requests

After reviewing the available evidence and published reports, you may want to obtain more information specifically about planning permission or general/any other statistics. You can submit a request for environmental information to any public body or private body providing a public service, like a water company, and they can only refuse in relatively rare cases. It's free to submit a request, and if you request relatively specific or a small amount of information, you will not be charged. The public body should provide the information within 40 days maximum.

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### What:

The Environmental Information Regulations 2004 (EIR) provide public access to environmental information held by public authorities (in line with the first pillar of the Aarhus Convention). The legislation interacts with the Freedom of Information Act 2000 (FOIA), which allows members of the public to make FOI requests for non – environmental information. It may be wise to clarify that you are asking for information under the EIR because the scope for providing information is wider for environmental than non-environmental information, and there are fewer possibilities for refusal. The EIR provide access to environmental information in two ways:

- public authorities must proactively disseminate environmental information on websites and in annual reports, including information on policies, plans, and programmes, environmental impact assessments, monitoring data, and reports on the state of the environment.
- members of the public are entitled to request environmental information from public authorities.

The EIR cover any recorded information held by public authorities in England, Wales, and Northern Ireland. The Information Commissioner's Office (ICO) has a useful guide, and there is a Code of Practice on the discharge of the obligations of public authorities under the EIR.

### *Examples of the information you may wish to request include:*

- Licence applications and Condition Assessments carried out by public authorities such as Natural England and Countryside Council for Wales
- Statistics regarding the existing environmental state of water or biodiversity levels in a waterway
- Details of any inspections carried out in a specified period, such as the last 12 months.
- Statistics regarding the levels of pollution in a waterway
- Data from the periodic monitoring of companies completed by a public authority - monitoring is conducted to ensure that companies are operating in a way that is compliant with their planning permissions.

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- Information about an application for planning permission (*Markinson v Information Commissioner* (EA/2005/0014)).
- Information regarding the population of specific species
- The state of the elements of the environment (air, atmosphere, water, soil, land, landscape, natural sites, biological diversity, genetically modified organisms, and the interaction amongst these elements).
- Factors (such as substances, energy, noise, radiation, waste, emissions, discharges, and other releases) affecting or likely to affect the environment.
- Measures (such as policies, legislation, plans, programmes, and environmental agreements) and activities affecting or likely to affect (either directly or indirectly) the elements of the environment.
- Reports on the implementation of environmental legislation.

### Who:

Anyone can make a request (you don't need a lawyer). Information requests can be submitted to public authorities including:

- Government departments (EA, NE, NRW, Defra, Ofwat, OEP)
- Public authorities (You can't make an information request to a court, but you can send one to the Ministry of Justice)
- Any organisation or person that carries out functions of public administration, including privatised water companies (i.e. Thames Water) (*Fish Legal v Information Commissioner* [2015] UKUT 52 (AAC)) and energy companies.

### How:

Before making an FOI/EIR request, check whether the information has already been requested or reported on through the transparency and freedom of information releases database. Separately, the EA maintains a public register for information and provides a guide on how to find information which has already been published. See the government guide on how to make an FOI request. The EA and NE do not publish all replies to EIRs, but NE keeps a list of requests, and you can ask to see the replies.

EIR requests can be made orally or in writing (the latter is advised). You do not technically need to state that the request is made pursuant to the EIR, but it's advisable to do so. The aim

## King’s Legal Clinic RIGHTS OF NATURE RIVER TOOLKIT

is to make a straightforward request so that the body cannot refuse it unless a charge is paid. In order to avoid having to pay costs, make the request as specific as possible by narrowing the time frame or geographic area. You should also give your name (not needed if you’re asking for environmental information) and a contact postal or email address. It’s a good idea to include the date of the request. Upon receipt of a request, as soon as possible and no later than 20 working days from receipt of the request, a public authority must:

- Inform the applicant whether it holds the information and, if so, make that information available.
- Seek to clarify particulars of the request with the applicant if they consider the request to be too general.

If the request is complex and voluminous, the deadline can be extended to 40 days. The public body also has a duty under reg. 9(2)(b) to assist the requester in providing those particulars. The duty in reg. 9(1) is to provide advice and assistance ‘so far as it would be reasonable’. Appeals against refusals to supply information have been brought on the basis that the public body has failed to comply with its advice and assistance duty. Information requests can be submitted to the department email addresses below. The names of the departments are linked to their FOI Request pages.

### Contact Information for EIR/FOI Requests

<a href="#">Environment Agency:</a>	<a href="mailto:enquiries@environment-agency.gov.uk">enquiries@environment-agency.gov.uk</a>
<a href="#">Natural Resources Wales:</a>	<a href="mailto:accesstoinformationteam@naturalresourceswales.gov.uk">accesstoinformationteam@naturalresourceswales.gov.uk</a>
<a href="#">Department for Environment, Food, and Rural Affairs:</a>	<a href="mailto:defra.helpline@defra.gov.uk">defra.helpline@defra.gov.uk</a>
<a href="#">Natural England:</a>	<a href="mailto:enquiries@naturalengland.org.uk">enquiries@naturalengland.org.uk</a>

### Template Information Request Letter

To: [eir.requests@thameswater.co.uk](mailto:eir.requests@thameswater.co.uk)

Subject: Request for Information –

To whom it may concern,

*Under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, I am writing to request information regarding:*

- 1) *The number of times untreated sewage were released into River Alam between January 2020 to September 2022.*
- 2) *Whether you are required to test for pesticides, ammonia and phosphates in stream and river water, and if you can give details for any test results for the presence of these chemicals.*

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*Please provide details of any assessments conducted and details of any action Thames Water has taken as a result of this. If you cannot provide the full information, please provide the information that is available.*

### Reasons for Refusal

The right to environmental information means that disclosure of information should be the general rule and public authorities can only refuse in a few clearly defined cases, mostly relating to public contracts and public procurement. There is also a rule regarding commercial interests: if disclosing the information would adversely affect the confidentiality of commercial or industrial information, where such confidentiality is provided by law to protect legitimate economic interest, then the exception applies. In this context, commercial means that the information relates to a commercial activity, such as the sale or purchase of goods, while industrial means the processing of raw materials and the manufacture of goods in factories. As such, businesses with public contracts may try to argue that disclosing information would negatively affect their legitimate economic interests. The request may also be refused if the request is too general or relates to internal communications. However, even in cases where there is an exception to the general rule, the public authority should still disclose if it is in the public interest to do so. If the public interest in disclosing the information outweighs the public interest in not disclosing the information, the public authority should disclose the information. As such, if your request is denied, you can argue in the appeal that it is in the public interest to disclose. See the examples below for a case in which Fish Legal obtained internal emails from Natural Resources Wales (NRW).

### Reviews and Appeals

If the information is refused, the refusal notice should explain the reasons and how to request a review of the refusal within a fixed time limit. At the review stage, it may be worth considering if you can refine your request to meet the reasons for refusal. For example, if information is refused because it will be too costly to identify it, ask for less or more specific information: for example, details of all inspections and testing carried out at the mouth of the river during a three-month period.

If the authority still refuses to provide all the information, you may make a complaint to the Information Commissioner's Office (ICO) – which can be submitted via this [link](#). This must be done promptly, within six months of receiving the results of the internal review. The ICO can require the public body to supply the information if it meets the EIR/FOIA requirements. If the ICO believe the public body does not need to provide the information, there is a right of appeal to the First-Tier Tribunal (Information Rights) (FTT(IR)). An appeal must be made within 28 calendar days of the decision notice being signed. The FTT(IR) can either uphold the ICO's decision or substitute a new one. The FTT will be conducting an appeal of the whole case, so it is not limited to simply reviewing the decision of the ICO. It will be conducting a full review. There is a further right of appeal on a point of law to the Upper Tribunal, and from there a potential appeal to the Court of Appeal.

## Information Request Top Tips

- Only request specific information that is relevant to your case — requesting too much information can lead to delays. The public authority may also claim that it would be too costly to provide and refuse on those grounds.
- If necessary to reduce the amount of information requested, ask for information in stages, or related to a specified period (such as six months) or to a limited physical area.
- Requests for information and a review of a refusal may be made without the assistance of a lawyer; individuals or legal clinics can make FOI requests to save on costs.
- Keep a systematic record of complaints made by individuals or the organisation, replies and dates for replies, to enable an overview and avoid repetitious complaints.

## Examples of Information Requests

- Sewage: London Waterkeeper publishes [draft formal complaint emails](#) to Thames Water and the ICO to be sent by rapid response groups.
- Protected Sites: Wild Justice, a [RoN](#) legal organisation which campaigns and brings cases to protect UK wildlife, requested data on all SSSIs from NE to be sent in an excel format. The information was already publicly available but only in an inconvenient format. See a copy of the letter [here](#). This data could be useful to provide evidence of overarching or systemic failures by the regulators to protect SSSIs and could form the basis of a complaint or judicial review.

See the [Useful Resources](#) and [Useful Organisations](#) sections at the end of the toolkit for links to [Interactive Maps](#), and helpful websites on [Water Quality](#), [Drinking Water](#), and [Scientific Information](#) and for more on [Requesting Information](#).



## 6. Reporting and Complaints

### **6. REPORTING AND COMPLAINTS**

#### REPORT RIVER POLLUTION TO THE REGULATOR

Environment Agency Investigation and Prosecution Examples

#### SUBMIT A COMPLAINT TO THE ENVIRONMENT AGENCY

Environment Agency and Natural Resources Wales Complaint Examples

#### THE OFFICE OF ENVIRONMENTAL PROTECTION

OEP Action Examples

Examples of complaints to other public bodies

## Report River Pollution to the Regulator

The Environment Agency (EA) is required to regulate all pollution discharges as well as monitor groundwater abstraction and maintain and improve fisheries (Environment Act, 1995). The EA is also responsible for regulating and monitoring water quality in England, has certain powers to regulate water pollution, and has the power to resolve the effects of water pollution incidents where these are caused by a regulated facility (e.g., a business that is regulated by a permit) (under the EPRs, reg 57). The EA can bring prosecutions against individuals or organisations that pollute water, and can require clean-up operations, or undertake the clean-up itself and charge the polluter. It is possible to report any deterioration in water quality to the EA so they can use their investigative and remedial powers or prosecute the polluting party. More information on the EA's powers to regulate environmental permits, including assessments, enforcement actions, prosecutions, and interventions, can be found on the EA website, [here](#). Note, however, that the EA has a wide discretion as to when to prosecute and when to use remedies such as warning letters. They are not under a duty to prosecute every incident of river pollution. As stated in a recent [article](#) covering the effect of cutbacks at the EA,

Between April 2016 and December 2020, investigators within the agency gathered evidence and prepared case files on 495 serious incidents, involving the worst type of pollution of rivers and coastal waters as well as serious waste crimes, according to the internal document.

They recommended that the agency prosecute in all the cases. But the document shows that after intervention by managers just 35 cases were taken forward to prosecution, the rest being dealt with via a lower sanction such as a warning letter, or dropped all together and marked for no further action.

In practice the EA only prosecutes in the most serious water pollution cases. As Defra has overall responsibility for the EA and its budget, political pressure at the ministerial level can be important when pushing the EA to act in relation to a particular matter. Investigations by the OEP may have a similar effect.

## How

Document and collect any evidence of the river pollution issue that you are concerned with. See the [Information Gathering](#) and [useful resources](#) sections for more information. To report a water pollution incident to the EA, call the EA incident hotline on 0800 80 70 60. The hotline is open 24-hours a day. It is also important to keep a record of all your reports and conversations with an authority. That way, if the EA fails to act, having a record of events will allow you to pursue a complaint against the EA (explained below).

## *Environment Agency Investigation and Prosecution Examples*

- **Sewage:** In 2022 alone, 10 water and sewerage companies operating in England discharged sewage into rivers and the sea on 301,091 occasions, but only seven prosecutions were brought against four water companies (as reported by the [FT](#)). Data on sewage overflows can be found on Defra's website, [here](#).
- **Agriculture:** In 2004 and 2005, the EA investigated several instances of river pollution caused by agricultural chemicals from sheep farming. As a result of this investigation, there were nine prosecutions.

See also [4. Action by Regulators for Criminal Prosecutions and Enforcement Actions](#) and [Prosecutions for Water Pollution: Environmental Permitting Regulations](#).

## Submit a Complaint to the Environment Agency

In the instance that the EA does not respond to your report and fails to remedy the river pollution, there are other steps you may take to encourage the EA to do so. Every public body in England and Wales has a complaints process and Natural Resources Wales has a similar process to the EA.

1. **Make a Freedom of Information Request:** You may request information that the EA has regarding pollution of your local river, or information on the steps they are taking to remedy this. See the [information gathering](#) section for how to submit an environmental information request.

2. **Submit a complaint to the EA:** If the EA have failed to act after repeated reports of the pollution, a complaint may be submitted directly to them at [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk), and further contact details may be found [here](#). If you are unhappy with the response to the complaint, it may be escalated and reviewed by a manager.

3. **Submit a complaint to the Parliamentary and Health Service Ombudsman:** If the EA have not dealt with your complaint in a satisfactory way, you may complain

to the [Parliamentary and Health Service Ombudsman](#). To do so, you must fill in the [complaints form](#). You must then [contact your local MP](#) with your complaint, so that it can be referred to the ombudsman. Once it has been referred, the ombudsman may consider your complaint. You can see a list of complaints brought against the EA to the ombudsman on their website, [here](#).

#### 4. Complain to the Office for Environmental Protection (OEP).

### *Environment Agency and Natural Resources Wales Complaint Examples*

- **Complaint concerning sewage permits:** Fish Legal obtained internal NRW emails which revealed that the regulator considered serving a statutory notice on Welsh Water to demonstrate that it was 'not being passive', but that angling clubs on the river would have to 'just live with' the fact that planned improvements were unlikely to be completed until 2030. Fish Legal subsequently used this information to support its complaint in a letter sent to NRW, calling for an urgent review of all discharge permits for storm sewage overflows in Wales to determine whether they are compliant with the law. You can read more [here](#).
- **Complaint to Ombudsman concerning EA's failure to regulate neighbour's sewage:** A case illustrating a sewage-related complaint against the EA for failing to take enforcement action against a neighbour whose sewage was contaminating the complainant's land can be found [here](#). The Ombudsman did not uphold the complaint, finding in the EA's favour.

## The Office of Environmental Protection

The OEP was established by the Environment Act 2021 to hold government and public authorities to account. The OEP is responsible for investigating the failure of a public authority, such as the Environment Agency, to implement or comply with environmental law, including laws relating to water pollution, nature conservation, and environmental assessment and monitoring. The OEP also publishes data and reports on its website, and so could be useful for gathering information. The OEP also advises the government and commissions research reports. According to the OEP's website, the two most common ways in which a public authority could fail to comply with environmental law are:

- failing to take proper account of environmental law when carrying out its activities, e.g., not carrying out an environmental impact assessment.

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- unlawfully exercising, or failing to exercise, any activities it must carry out under environmental law, e.g., not properly regulating environmentally harmful activities it is responsible for licensing.

If you believe that a public authority like the EA has not complied with their obligations, such as to investigate instances of river water pollution, you can submit a complaint to the public authority and a complaint against them. After going through the available complaints systems, you can contact the OEP to investigate the public body. You may submit a complaint to the OEP via their online form or by post. The OEP will then complete an initial check against their investigation criteria. If this is successful, they will assess your complaint in more detail and decide whether to investigate the complaint. An investigation will focus on whether the EA has breached environmental law and will result in an investigation report containing conclusions and recommendations. Alternatively, where the OEP pursues a court case, the report will be replaced by the court judgment.



*River Liza, Lake District, England.*

### *OEP Action Examples*

- **Enforcing water quality laws:** In December 2021, the Department for Environment, Food, and Rural Affairs (Defra) missed its deadline to publish a new

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River Basin Management Plan, which it is required to do every six years under the Water Framework Directive. As stated on the OEP's website, this was important because 'The Government's 25 Year Environment Plan goal for water is that at least 75% of our waters are close to their natural condition ('good ecological status'). The WFD Regulations set various legal targets, including for each body of surface water (other than an artificial or heavily modified water body) to achieve good ecological status by 22 December 2027. However, information from the EA indicates that only 16% of surface water bodies in England currently achieve good ecological status or potential. The OEP wrote to Defra about this issue but did not take any enforcement action. The River Basin Management Plan was published one year late in 2022. Read more.

- **Investigation into sewage overflow:** The OEP began a statutory investigation in 2022 into the roles of Ofwat, the EA and the Secretary of State for the Environment, Food and Rural Affairs in the regulation of combined sewer overflows (CSOs) in England. CSOs discharge untreated sewage and wastewater when the sewerage system is overloaded. This was the result of a complaint made by WildFish. Result pending.
- **Annual Report January 2024:** The OEP published its annual report in January 2024, and noted that the target to meet "good" ecological surface water status by 2027 for 75% of water bodies is not on track to be met.

### *Examples of complaints to other public bodies*

- **Greenwashing complaint to address sources of diffuse water pollution:** River Action has filed three complaints to the Advertising Standards Authority (ASA), after a strong body of evidence suggests that Red Tractor's advertising, website and YouTube content is misleading consumers about the environmental standards with which its assurance scheme purports to guarantee compliance. There is strong evidence that many Red Tractor-assured farms do not meet high levels of environmental protection and, in many cases, do not even comply with legal minimum standards. An assessment carried out by the Environment Agency (EA) in 2020, revealed that Red Tractor Assured farms were responsible for the majority of instances of agricultural pollution over a five-year period. Results pending.

See 12. Useful Resources section for more on Domestic Complaints.

## 7. Judicial Review

### 7. JUDICIAL REVIEW

JUDICIAL REVIEW TO PROTECT RIGHTS OF NATURE

Judicial Review Examples

ENVIRONMENTAL JUDICIAL REVIEW OF PLANNING DECISIONS

*Biodiversity Net Gain*

ENVIRONMENTAL PROTECTION LAWS IN WALES

*Challenging Planning Permission of Factory Farms with JR*

Planning Law JR Examples

## Judicial Review to protect Rights of Nature

A judicial review (JR) is an application to the Administrative Court to review the decision of a public body, such as the EA, Thames Water or Ofwat. It may be appropriate if you are concerned about a public body's failure to protect a river, whether through inaction, a breach of obligations, or if they have created a plan to tackle an environmental issue that does not measure up. JR is also used to challenge planning permission granted for development which could pollute rivers or damage habitats. JR can be used to ask the courts to consider the effects of public decisions on aspects of the environment, including water quality, biodiversity, and habitat protection. It is generally an anthropocentric remedy but can be diverted to make RoN arguments, depending on the context. There are strict time limits, so it is crucial to seek legal advice as soon as possible! NGOs can also consider submitting evidence or applying to intervene to advance Rights of Nature arguments in support of an existing JR.

JR is complex but it is useful to understand how it works, in case it may be relevant as part of a broader campaign. See the Public Law Project's [guide](#) for an overview. The Administrative Court also publishes a detailed annual procedural [guide](#). A brief summary can also be found in [this article](#).

From a RoN perspective, you may be able to rely on the duties of public bodies under the Habitats Directive (which is part of UK law due to its implementation through the Wildlife and Countryside Act 1981). This type of argument was brought in the case of *Morge v Hampshire County Council [2011]*, where the claimant challenged the lawfulness of planning permission to build a bus route, questioning whether sufficient consideration had been given to the impact of its construction toward bat habitats. The Habitats Directive may be thought of as a RoN legal provision because it places significant obligations on decision-makers (such as local authorities) to take into account wildlife considerations. This includes obligations to fulfil periodic reporting obligations (under the Habitats and Wild Birds Directive).

### What:

Judicial review (JR) is a type of litigation which involves a judge 'reviewing' whether a public body's decision was lawful. For example, activists could bring a JR to ask the court to

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review a grant of planning permission for a hydropower dam or an industrial animal farm. The judge can set aside the decision, make a declaration that it was unlawful, and give guidance on what needs to be considered in a new decision process. JR can also be used to hold government bodies to account for failing to act. For example, the anti-pollution charity River Action brought a JR against the Environment Agency (EA) for allowing excess phosphorous to destroy the ecology of the River Wye (result pending). The usual outcome of a successful judicial review is that the public body is ordered to *reconsider* their decision.

A judge may also refuse permission for judicial review if they believe that, even if the JR claim is successful, it is highly likely that the outcome for the claimant would not be substantially different. A claim must be brought promptly and at least within **three months** of the date on which the grounds for bringing the claim first arose, regardless of the date at which the claimant first became aware of them. If bringing a JR of a planning decision, the case must be brought within **six weeks**. Normally two weeks notice by letter should be sent before issuing a case in court. Before bringing a claim, consider the following:

- a) *Is there an alternative legal remedy?*
- b) *Is this a decision by a public body of a type which is capable of being judicially reviewed?*
- c) *Is there an individual or organisation with a 'sufficient interest' to bring the claim?*
- d) *Is the decision: illegal, procedurally flawed, and/or irrational?*

a) *Is there an alternative legal remedy?*

JR should only be used as a last resort. An application for JR can be rejected if there is another legal alternative, for example, an appeals process where you can ask the public body to review their decision directly, or an appeals tribunal where the decision can be challenged.

b) *Is this a decision by a public body of a type which is capable of being judicially reviewed?*

Only public bodies, such as a local authority, council, a government minister, the Environment Agency, regulator, or a private company exercising a public interest, such as a water company, can have their decisions reviewed in a JR. In general, if a contract exists between the parties, then it will be a private law case and not subject to JR.

c) *Is there an individual or organisation with a 'sufficient interest' to bring the claim?*

The claimant could be a local resident who is affected by the water pollution, a local campaigning organisation, or a national campaigning organisation with relevant knowledge of the type of harm. Although it is possible to bring a claim as an individual, it may be more strategically beneficial to bring a group claim where 'sufficient interest' may be easier to establish (subject to the costs considerations explained below). Some charities such as Friends of the Earth have taken **RoN** approaches, working directly on behalf of rivers and animals, while others, like Fish Legal, represent anglers. Both types of organisations will be able to demonstrate sufficient interest.

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Judicial review procedures also allow a third party (such as an NGO) to 'intervene' in a case and provide expert evidence. If considering JR, you might also contact the [RoN](#) and river protection organisations in the [resource list](#) to discuss if they would be interested in an intervention in support of your claim. They can bring evidence, additional legal arguments and add weight to your claim.

### *d) Is the decision: illegal, procedurally flawed, and/or irrational?*

In order to bring a JR, you must have grounds— a reason with a legal basis. The grounds for a JR are:

- illegality;
- procedural impropriety;
- unreasonableness/irrationality (a very high threshold);
- a breach of legitimate expectations; or,
- If human rights have been infringed upon, proportionality. This entails the court asking, was the decision proportionate? In other words, is the interference with the fundamental human right no more than necessary to accomplish the objective? For example, has the failure of the regulator to prevent pollution of a river interfered with the Article 8 right to private life of wild swimmers, and if so, was that 'necessary' for resource reasons? See the [Human Rights Act](#) section for more.

A decision can fall under the illegality criteria if it is *ultra vires*, which is where a public body has acted outside the scope of their powers as granted by Parliament, or if the decision was made based on an error of law. Examples include:

- The decision maker has misunderstood the law and either refused to act or acted incorrectly.
- They have applied an internal policy inflexibly without considering the individual circumstances of the case or have blindly followed a recommendation of a third party without considering all the relevant factors themselves. This is known as a 'fettering of discretion'.
- The public body has, in making their decision, overlooked, or ignored key factors (such as the effect of decisions on natural entities and other environmental considerations)

See [Judicial Review Examples](#) below for examples of these grounds in an environmental context.

Procedural impropriety is a ground of JR that focuses on the way a decision was made. For example, decision makers should not be biased. Decision makers must comply with procedural requirements outlined in statute and imposed by common law. The statute may have mandatory requirements, such as the requirement to carry out an Environmental Impact Assessment before granting planning permission for certain types of development, like very large industrial animal farms or airports. The legislation may also require the public body to:



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- consult with certain parties or groups (for example, the requirement to consult with Natural England before granting planning permission in some cases)
- Give notice (e.g., by placing advertisements in a newspaper)
- Notify those affected of their right to appeal against the decision.

### Remedies:

If successful, the court has the discretion to grant a remedy. In an environmental JR, quashing orders and declarations are the most common remedies.

- Quashing Order: this renders the original decision void, and a new decision will be required.
- Declaration: This declares that the action complained of was unlawful. For example: in *R (ClientEarth) v The Secretary of State for the Environment, Food and Rural Affairs [2013] UKSC 25*, the Supreme Court granted a declaration that the UK was in breach of the EU Air Quality Directive 2008. The declaration was necessary in order to make it clear that national or EU enforcement action could be taken immediately.

### Environmental JR Costs and Costs Capping

Legal aid has a means (financial resources) and a merits test and is only provided to individuals, not NGOs. Where multiple people are affected by a decision, the Legal Aid Agency would assess a notional community contribution. In simple terms, it would be difficult to get legal aid in an environmental judicial review claim in the case of a river unless a decision of a public body was particularly affecting one or two individuals who were in receipt of benefits or on a low income.

It is necessary to consider both the costs of paying a lawyer to represent and the potential costs of the opponent's lawyer if they win. The UK operates on a 'loser pays' system, where if you lose, you will have to pay the winner's costs in judicial review. This makes financial protection very important, especially in environmental cases.

Environmental JR claims are subject to costs capping under the Aarhus Convention. This means that if you lose an environmental law claim, the amount you need to pay is generally capped. For claimants, the current starting point for costs caps is £5,000 for individuals and £10,000 in all other cases. The costs for defendants are capped at £35,000. These are the caps applied in 'Aarhus cases' i.e. cases with an environmental element. However, the court may amend the costs cap at their discretion, having regard to the financial resources of the parties, provided the case does not become prohibitively expensive for the claimant (Civil Procedure Rules 45.44). Changes to costs caps must be made early on in the proceedings, in order to allow for reasonable predictability, and only made after a confidential hearing (*RSPB v SoS [2017] EWHC 2309*). Changes to costs capping in environmental cases are rare so do not let this deter you from bringing a claim! Even if only part of the case is environmental, Aarhus

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Convention costs capping still applies (*R (Lewis) v Welsh Ministers* [2022] EWHC 450 (Admin)). More information can be found on the Public Law Project [website](#) and in the [resources list](#).



*River Erme, Piles Copse, Devon.*

### *Judicial Review Examples*

- **Negative impact of water abstraction on protected wetlands, orchids, and butterflies:** In 2022, landowners Tim and Angelika Harris won a judicial review claim against the EA, arguing that the agency ‘failed to do enough to protect rare wetland species and habitats of international importance from the impacts of water abstraction’. The EA had set out plans to review the practice of water abstraction in some SSSI areas, but not others, and the claimants argued that the EA’s review did not go far enough. The Harris’s concern was that unsustainable water abstraction by farmers was causing irreversible damage in the wetlands in the Broads national park. The area of concern, Catfield Fen, in the Ant Valley, along with nearby Sutton Fen, has 90% of the UK's rare fen orchids and swallowtail butterflies. The High Court ruled the EA had ‘acted irrationally’ in breach of the Habitats Directive,

which it was legally obligated to uphold, even after Brexit. Read more in this [BBC article](#).

- **Effect of a temporary sewage pipe on water quality and fish:** In *Preston, R (On the Application Of) v Cumbria County Council* [2019] EWHC 1362 (Admin), the High Court ruled that a decision by Cumbria County Council to allow United Utilities to continue using a temporary sewage outfall at Kendal Wastewater Treatment Works for another 12 months was unlawful, because the Water Company had not conducted a proper habitats assessment to show how the sewage was affecting the water quality and fish living in the SSSI area of the river, in accordance with the Habitats Regulations. Read more about the case [here](#).
- **Challenging the Government's plan for the sewage pollution crisis:** The Good Law Project and conservation charity WildFish are currently bringing a case against the government using the public trust doctrine, challenging the government's Storm Overflows Discharge Reduction plan, which gives water companies until 2050 to tackle the current sewage pollution crisis. The public trust doctrine is an emerging argument in environmental law. WildFish began the claim by issuing a pre-action protocol letter challenging the Defra's sewage plan and its potential to have adverse ecological effects, arguing that the plan was unlawful as it would be in breach of current environmental laws. Read more about the challenge [here](#) and [here](#). Case pending.
- **Ofwat's failure to regulate the sewage industry:** Campaign group Wild Justice filed proceedings against Ofwat, the water services regulator for England and Wales for their lack of action in regulating sewage discharge. They argued that the regulator's failure to act breaches their obligations under the Urban Wastewater Treatment Regulations and the Water Industry Act. See [here](#). The case was unsuccessful.
- **JR of the Environment Agency for alleged failure to enforce regulations to protect River Wye from pollution:** River Action argues, among other things, that The Environment Agency has adopted an approach to enforcing the Farming Rules for Water that ultimately frustrates the purpose of the legislation it is supposed to enforce. The case is being heard in the High Court in 2024. See more about the case [here](#).
- **Challenging a River Basin Management Plan:** Fish Legal, acting on behalf of the Pickering Fishery Association, brought a legal challenge to the government's deficient River Basin Management Plan for the Humber district, as signed off by then Secretary of State for Environment, Food and Rural Affairs (DEFRA), and published in December 2022. The High Court ruled that the government and the EA, had failed in their mandatory legal duties to review, update, and put in place measures to restore

rivers and other water bodies under the WFD Regulations. The Costa Beck is failing for fish under the WFD Regulations, partially due to sewage pollution. Yorkshire Water's 'storm' sewage overflow at Pickering treatment works discharged into the Costa Beck over 250 times in 2020 and over 400 times in 2019.

The Court found that the fundamental requirement to assess and identify specific measures to achieve the legally mandatory targets for each water body – such as tightened environmental permits for controlling sewage pollution – had unlawfully not been done. The Judge characterised the Secretary of State's approach as one of 'smoke and mirrors', noting that there was no evidence that the programme of measures could reasonably be expected to achieve the environmental objectives. The Secretary of State was in effect planning to fail. The Court also found the public consultation process undertaken by the Environment Agency to be unlawful because it failed to provide the necessary information for anglers on the Upper Costa Beck to understand what action was being proposed to address the reasons for the fish failure, and therefore defeated their right to participate and contribute to the river planning process. Read more about the case of *Pickering Fishery Association v Secretary of State for Environment*, [here](#).

## Environmental Judicial Review of Planning Decisions

Environmental Planning law is a complex subject, but objecting to planning applications is something anyone can do. An overview of planning law in England can be found [here](#). One way to protect your river is to try to prevent the building of developments that will cause more pollution. You can object to planning applications and later use JR to challenge a grant of planning permission for a construction project which will negatively impact a river, such as a commercial or housing development, or a large-scale agricultural change, such as a factory farm. These can lead to increased sewage discharge, water abstraction, pesticide, and fertilizer run-off. Any type of development on land will require planning permission ([s57\(1\)](#), TCPA 1990). Depending on the development, planning permission can be approved by the local planning authority, the Secretary of State, or deemed by a development order. Before granting planning permission, the planning authority may need to consult with the Environment Agency (EA), Natural England (NE), Natural Resources Wales (NRW), and the public. NE must be consulted for planning projects in and around SACs and SSSIs. See [Chapter 4](#) for more on [Regulatory Bodies](#) and [Local Planning Authorities](#).

The [public consultation period](#) is an opportunity to make your voice heard. There are strict deadlines during the consultation process and to challenge any decisions so keep an eye on the local council's website planning portal in order to find out about proposed developments as soon as possible. ELF recently brought a successful case challenging the [lack of a re-consultation](#) before the granting of planning permission for a development of a wharf. The

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High Court ruled that the failure to re-consult was unfair, and the planning permission was quashed.

Before allowing large infrastructure construction projects to go forward, planning authorities must take into account 'material considerations', including factors such as water contamination risks. If the planning authority does not consider a construction company's activity in relation to its effect on surrounding bodies of water, this may be grounds for judicial review. Some developments require an Environmental Impact Assessment (EIA) before planning permission is granted. A screening assessment must first be conducted to work out if an EIA is needed. For larger developments like factories, farms, windfarms, shopping malls, and car parks, an EIA will be required if the development is in a sensitive area, such as a Site of Special Scientific Interest (SSSI), a Special Protection Area (SPA) or a Special Area of Conservation (SAC). The most common grounds for challenging an EIA in an appeals process or judicial review are:

- The development required an EIA, but none was carried out. This may mean challenging the screening assessment.
- The public had insufficient opportunity to make representations about the project.
- Not all of the relevant environmental impacts were assessed.

In addition to an EIA, the planning decision maker may also be able to require:

- A strategic environmental assessment.
- A habitats regulations assessment (HRA) for SACs under the Habitats Regulations.
- A species licence under the WCA or Habitats Regulations.
- Demonstrate 10% biodiversity net gain increase.

See the [planning law](#) regulations section for more on licensing and HRAs. HRAs are important because they make use of the precautionary principle. The developer must show that the development is not likely to have a significant impact on the SAC habitat and protected species. This is a high bar, and as such it may be possible to challenge developments near and in SACs by using habitats assessments.

### **Biodiversity Net Gain**

Under the Environment Act 2021, mandatory biodiversity net gain (BNG) requires developers to demonstrate 10% increase in biodiversity. The net gain can be either on or offsite, although onsite is preferred. This does not apply to all developments but does apply to all major developments from 2024. Defra publishes guidance on how to calculate biodiversity metrics, and secondary legislation will further clarify how BNG will work in practice.

Currently the 10% increase only applies to England, with Wales having another system for ensuring biodiversity improvement under the s6 duty (see '[Environmental Protection Laws in Wales](#)' below). Some potential questions around BNG relate to transparency – how will

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authorities monitor sites to ensure 10% BNG is actually achieved and maintained? Potentially it will also be possible to challenge the calculations submitted by developers to ensure that BNG plans are accurate.

You can learn more about the biodiversity duty and strategies for public bodies by seeing the links in the [planning law](#) resources section.

## Environmental Protection Laws in Wales



Susannah Miller, *River Glaslyn, Beggelert, Wales.*

In Wales, there are enhanced due diligence requirements for biodiversity and climate change which are obligations on public bodies. These provisions may be useful when requesting information, bringing a complaint, objecting to planning permission, or bringing a JR against the government or a government department. There are three pieces of legislation to note in Wales, whose overarching aim is to implement sustainable development:

- [Well-being of Future Generations \(Wales\) Act 2015](#)
- [Environment \(Wales\) Act 2016](#)
- [Planning \(Wales\) Act 2015](#)

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The Environment (Wales) Act 2016 introduced an enhanced biodiversity and resilience of ecosystems duty (the section 6 or s6 duty) for public authorities (PAs) in the exercise of functions in relation to Wales. The duty implements the Convention on Biological Diversity (CBD). The biodiversity duty adds weight to the strength of a judicial review of planning permission since a claimant can argue that the environmental impact assessment did not cover biodiversity adequately. To comply with the s6 duty, public authorities should embed the consideration of biodiversity and ecosystems into their early thinking and business planning, including any policies, plans, programmes and projects, as well as their day-to-day activities. To ensure that Wales is contributing to the reduction of greenhouse gas emissions, the Act places a duty on the Welsh Ministers to ensure that the net Welsh emissions account in 2050 is at least 80% lower than the baseline. These duties are relevant to public bodies in a variety of ways, including procurement (for example, an NGO might want to campaign for hospitals and schools to serve plant-based foods to meet their climate change and biodiversity duties), development, and planning permission. These duties could form the basis of a complaint, an FOI request, or a JR. You can learn more about current issues surrounding the Well-Being of Future Generations Act and river pollution and factory farming in Wales here.

In England and Wales, individuals and NGOs can also bring issues forward through petitions. In Wales, if a petition receives over 10,000 signatures, the Petitions Committee will consider asking for a debate in the Senedd chamber. A petition titled 'Stop the proliferation of intensive poultry units (IPUs) by legislating and introduce a moratorium until this can be achieved' was submitted for review after receiving over 5,000 signatures by a nature conservation organisation seeking to protect rivers and the Wales countryside. See the Useful Resources section for more on Wales.

### Challenging Planning Permission of Factory Farms

You can protect rivers from diffuse water pollution by challenging the grant of planning permission for an industrial animal farms. The Countryside Charity in Shropshire has a useful discussion of the legal issues surrounding industrial chicken farming here. In brief, the rapid growth of the livestock industry poses a threat to rivers because of increased water pollution negatively impacting freshwater ecosystems. In addition to the rise of phosphates in rivers from the chicken farms themselves, industrial farming leads to increased traffic of large trucks, since the chickens are moved four times in the course of their lives, first as eggs, then as day-old chicks, then as four-week-old chickens to be slaughtered, and then again, after they are killed, to be sold.

The EA recognizes that most intensive pig and chicken farming operations fall under Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, which is the same category as an airport or a nuclear power plant. This means an environmental impact assessment (EIA) is required before granting planning permission for an industrial animal farm. An EIA will contain different information depending on the project proposed, but generally, land, water, pollution, climate, odour, and visual impacts must be assessed. Unfortunately for people (and rivers) living near these

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factory farms, there is a presumption that it is standard for farms to be in the countryside, so planning permission is often granted. However, there are some NGOs bringing judicial review cases to ask the courts to review and set aside the granting of planning permission for the industrial animal farms. See example below.

### Planning Law JR Examples

- **Grant of planning permission for factory farm:** A local action group, Tasley Chicken Factory Farm Action Group, was involved in a six-year fight against a planning application to build four large commercial broiler poultry sheds (300 feet long x 80 feet wide), processing 1.5 million chickens a year close to the town of Bridgnorth. Following a successful legal challenge in the Court of Appeal (*R(Squire) v Shropshire Council [2019] EWCA Civ 888*), Shropshire Council's original decision to approve the intensive chicken farm at Tasley was quashed in early summer 2019. In reviewing the grant of planning permission to build an industrial facility housing 210,000 chickens, Lindblom LJ quashed the planning permission because a complete environmental impact assessment had not been undertaken - specifically, a proper assessment of the environmental effects of odour and noise were not given in the Environmental Impact Assessment (EIA). A revised planning permission application was again submitted, and the council rejected it in 2021. An inspector then backed the rejection decision in 2023. The applicant chose not to appeal the decision to the courts, and the case is now closed.
- **Phosphate pollution from poultry farming:** Fish Legal issued a judicial review against Powys County Council for granting planning permission for the expansion of a poultry farm within the catchment area of River Wye, a Special Area of Conservation. They argue that the council had not properly assessed the effects of the additional poultry manure on River Wye's phosphate levels. The case was unsuccessful in the Court of Appeal. See [here](#) for more information.
- **Phosphates in diffuse water pollution from new homes:** In 2020, Natural England published an advice note to Somerset local authorities on development in relation to the Somerset Levels and Moors Ramsar site, which it considered was at risk from the effects of eutrophication caused by excessive phosphates, an issue that could be exacerbated by foul water generated by new developments. It advised that local authorities should undertake a habitats regulations assessment (HRA) of the implications of a project and only grant consent if it was ascertained that any development would not have an adverse effect of the integrity of the site. In 2023, *Fry and Son Ltd v Secretary of State for Levelling Up Housing and Communities*, the developer appealed, arguing that a habitats assessment was not needed. The High Court confirmed that the strict precautionary approach in the Habitats Regulations meant that a habitats assessment (an 'appropriate assessment') was indeed required. New developments which are capable of contributing additional nitrates and



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phosphates to the already high levels of diffuse water pollution, and thus ecologically harming the protected interest features of riverine and coastal European sites, must conform with the requirement for appropriate assessment under the Habitats Regulations. Planning authorities must refuse permission for these new developments unless they can be certain beyond all reasonable scientific doubt that the new development will not adversely affect those European sites. The case is being appealed to the Court of Appeal.

See the [Useful Resources](#) section for more on [Strategic Litigation](#), [Judicial Review](#), [Wales](#), and [Planning Law](#). See also the [Useful Organisations](#) section for NGOs that can assist with judicial review

## 8. Civil and Human Rights Act Claims

### 8. CIVIL AND HUMAN RIGHTS ACT CLAIMS

#### NUISANCE, NEGLIGENCE, HUMAN RIGHTS, AND COMPETITION LAW CLAIMS

##### COMMON LAW NUISANCE

##### *Riparian Rights and Fishing Rights Claims*

##### *Fishing Rights*

##### Examples of Claims for Breach of Fishing Rights

##### NEGLIGENCE

##### Negligence Example

#### THE EUROPEAN COURT OF HUMAN RIGHTS AND THE HUMAN RIGHTS ACT

##### *How the Human Rights Act implements the European Convention of Human Rights in the UK*

##### *Environmental ECtHR/HRA Claims*

##### *Grounds for an Environmental ECtHR/HRA Claim with Examples*

##### ECtHR Article 8 Claims in Practice

##### *Climate Change European Court of Human Rights Cases*

#### HUMAN RIGHTS ACT CLAIM IN THE UK

##### *Damages Claim in County Court*

##### *How to bring an HRA Claim*

##### Nuisance, Negligence, and Human Rights Act Examples

#### COMPETITION LAW CLASS ACTION

## Private Law Claims

This section outlines some of the anthropocentric legal remedies which may be used to tackle river degradation. Nuisance, Negligence, and Human Rights Act civil claims may be useful in holding corporations or public authorities accountable for water pollution and poor management of water and sewage. These are claims that individuals and businesses can bring on their own behalf against companies and government bodies, rather than sanctions by the regulator, or public law judicial review claims. Care is needed not to miss limitation time limits – normally one year for the Human Rights Act and six years in civil cases (or three where personal injury is involved).

## Common Law Nuisance

Common law nuisance is a tort or civil wrong. Nuisance is defined as any continuous activity or state of affairs causing a substantial and unreasonable interference with a claimant's land or his use or enjoyment of that land. In addition to private nuisance, which is a tort, there is also public nuisance, which can be either a crime or a tort (discussed in chapter 4) and statutory nuisance (see chapter 4). You can learn more about nuisance [here](#) and [here](#).

In *Marcic*, Mr. Marcic brought a nuisance claim against the water company because of sewage overflow into his back garden. In *Dobson*, bad smells and mosquitos from a sewage treatment plant were found to be a nuisance to people living in the neighbourhood. Both cases are explained further in the [Nuisance, Negligence, and HRA Examples](#) below. A case with potential to strengthen private nuisance law in respect to water pollution from sewage is

currently awaiting judgement by the Supreme Court: *The Manchester Ship Canal Company Ltd (Appellant) v United Utilities Water Ltd (Respondent) No 2.*

## Riparian Rights and Fishing Rights Claims

Although riparian rights are private law and are anthropocentric rights, we were encouraged to include them in our toolkit as an underused way to protect rivers. If the landowner or tenant owns the land on one side of the river, there is a presumption that they own the waterbed up to the middle line of the river. If they own the land on both sides of the river or stream, they are presumed to own the waterbed. In neither case does the landowner own the water, but in both cases, they will also own the airspace above the river. In the case of a tidal river, the government (Crown) owns the riverbed. There are a range of riparian rights but those most relevant for protecting rivers include:

- The right to flowing water, free from pollution.
- The landowner's right to protect their land from flooding and erosion.

Alongside these rights, an individual also has duties, the most relevant of which is:

- A duty not to pollute the water or obstruct its flow.

### How

As explained above, riparian owners have responsibilities not to pollute water. A riparian owner may have a claim in nuisance directly against another riparian owner who causes water pollution further upstream, if the polluted water flows through the claimants' watercourse.

If there has been an interference with an individual's riparian rights, they may have a common law claim in nuisance (*Pride of Derby and Derbyshire Angling v British Celanese* [1953]) against the polluter.

However, please note that the riparian rights cases to date have been related to interference with commercial activities on the river, and we know of no cases to date where a riparian owner or nature conservation organisation brought a claim without referencing a loss of profit. However, that is not to say this scenario is impossible as most of these claims settle. This area of law may present an opportunity for a future test claim by a riverbank owner. Perhaps they could argue loss of amenity due to no longer being able to swim in the river?

### Remedy

If the claim is successful, an injunction may be issued to prevent the defendant from further interfering with the riparian rights and altering the river. However, many claims will settle for damages.

## Fishing Rights

Fishing rights are rights to fish in water and take fish away. Riparian owners are assumed to have fishing rights, but they can also be sold, so they are not always the same thing. Most of Fish Legal's nuisance claims for damages brought on behalf of angling societies are made under common law fishing rights. Please note however that angling societies cannot be considered RoN organisations, due to the animal welfare issues pertaining to fishing. In some cases, anglers take fish away (meaning the fish are killed). Read more about animal welfare perspectives on recreational angling [here](#).

### *Examples of Claims for Breach of Fishing Rights*

- **Dredging of a river:** In 2013, Fish Legal represented a riparian member in a case against a local farmer for damage caused to a salmon and trout fishery at Chenson Bridge on the River Taw. A farmer dredged part of the river Taw and dug out the banks to create a crossing for vehicles and cattle, destroying sea trout and salmon pools. The [case settled](#).
- **Sewage pollution:** Anglian Water was ordered to pay the Cambridge Fish Preservation and Angling Society (CFPAS) for restocking the River Cam following the pollution which wiped out hundreds of fish, including specimen bream. The Angling Society leases the riverbank and so had riparian rights, which in general includes fishing rights. The society brought a claim against the water company for causing pollution that caused a decline in fish stocks, and the water company agreed to pay for loss amenity and loss of profit.
- For more examples of civil litigation tackling water pollution, see [Fish Legal](#), which has brought over 70 cases on water pollution.

## Negligence

It might be possible to use the tort of negligence to protect a river by seeking an injunction or declaration (and possibly damages to remedy the harm). To succeed in a negligence claim, it is necessary to show that injury or loss is caused to the injured party by the wrongdoer's failure to meet their legal duty to take reasonable care. Be sure to check what the time limits are for your claim. Generally, the time limit for bringing negligence claims is either three years from the date on which the claimant had the requisite knowledge and the right to bring such an action, or six years from the date of damage occurred, whichever is later. This is subject to an overriding time limit of 15 years from the date of the negligent act or omission, regardless of when the damage was discovered.

### *Negligence Example*

**Draining of a pond:** Fish Legal, acting on behalf of Rhymney and District Angling Society, brought a successful negligence claim against the Caerphilly County Borough Council, after the council caused many fish to die while negligently draining a lake to carry out desilting works. Although the Angling Society is not a RoN organisation, the arguments used relate to the failure to protect fish. The Council failed to put protection in place to prevent fish being lost via an outlet pipe and left the water levels in the lake so low that most of the carp, bream and roach suffocated in the exposed silt. Read about the case [here](#).



Susannah Miller, *River Thames, Richmond*

## The European Convention of Human Rights and the Human Rights Act

The European Convention of Human Rights (ECHR) as incorporated in the Human Rights Act 1998 is a purely anthropocentric remedy and there are no specified environmental rights. For example, environmental damage alone, to a scenic area or a protected species, cannot form the basis of an ECHR claim. (*Kyrtatos v. Greece*). However, some of the rights contained in the ECHR, such as the Article 8 right to private life, have been used to advance environmental rights. Although this is still anthropocentric, we are providing a brief overview

and some ideas about how it could be used to advance a RoN approach, either as part of a judicial review or as a freestanding claim for damages in the County Court. For example, an individual could consider an experimental human rights-based claim about poor bathing water where this had a significant impact on private life.

To bring this type of environmental Article 8 claim, the claimant must show that their well-being, family life, and/or enjoyment of their home has been both severely and directly negatively impacted by environmental damage (*Lopez Ostra v Spain*), although it is not necessary to prove damage to health. The requirements for being impacted are similar to those required for a common law nuisance claim. However, Article 8 is a qualified right allowing a defence on the basis of necessity: for example, if the public authority can show the cost of action is a burden on public finances.

## How the Human Rights Act implements the European Convention of Human Rights in the UK

Human Rights claims in the UK are brought under the Human Rights Act 1998 (HRA). Claims can be brought against public authorities and included as a ground of judicial review. The European Convention of Human Rights is signed by states which are part of an organisation called the Council of Europe (no connection to the European Union). Residents of Council of Europe member states, like the UK, can petition the European Court of Human Rights (ECtHR) in Strasbourg if their human rights have been breached and they have exhausted all domestic remedies. In the UK, you may only appeal to the ECtHR after bringing your case all the way to the Supreme Court. The Council of Europe is not an EU body, so the UK's membership is not affected by Brexit.

Since 1998, the human rights listed in the ECHR (known as 'Convention rights') have been part of domestic UK law under the Human Rights Act 1998 (HRA). This means that all Convention rights are also protected by domestic law. Claimants can use their Convention rights as an argument ('grounds') for a case, including a judicial review, in the domestic courts. After reaching the Supreme Court, and exhausting all local remedies, parties can appeal to the ECtHR, which makes final decisions. In the UK since the HRA most cases are settled domestically and do not go to the ECtHR, but its case-law and approach is relevant to decision-making in England and Wales.

## Environmental ECtHR/HRA Claims

The ECtHR has dealt with claims involving the environment, including cases concerning noise complaints, bad odours from waste management plants, environmental pollution, lead poisoning, and lack of access to sanitation and running water. The Convention rights most frequently used in cases relating to the environment and water are Article 2, the right to life, Article 3, the right to freedom from torture, and most importantly, Article 8, the right to privacy and family life. Articles 2 (right to life) and 3 (freedom from torture) are absolute rights, which means the state cannot restrict them at all. Article 8 is a qualified right, which

means the right to privacy and family life can be restricted by the state in certain circumstances. With Article 8, public authorities have to strike a balance between the rights of the individual and protecting the interests of the wider community to achieve a fair result. Only victims can bring a claim under the HRA.

## Grounds for an Environmental ECtHR/HRA Claim with Examples

The founding case for Article 8 environmental claims is *Lopez Ostra v Spain (1994)*, in which an applicant successfully argued that her Article 8 rights to privacy and family life had been violated by the hydrogen sulphide emissions from a waste treatment plant near her home, which caused chemical pollution and bad odours.

The elements that contribute to an environmental Article 8 claim (often intertwined with the Article 2 right to life) might include:

- An exposure to an environmental hazard, to pollution or nuisance,
- which affects applicants:
  - directly (i.e. affects the victim, not the environment alone, even if the hazard is unlawful),
  - and severely (with regards to duration, intensity, and mental/physical effects on the applicant's wellbeing/quality of life).
- The nuisance capable of being proven beyond reasonable doubt.
- The state/public authority must also be able to be held responsible. Factors include:
  - whether the situation was spontaneous or long-standing,
  - whether the public authority was or should have been aware of the harm caused to the victim, and,
  - to what degree the applicants themselves contributed to the situation or could have remedied it themselves (*Dubetska v Ukraine (2011)* factors).

When considering if Article 8 has been breached, the court will ascertain whether the public authority is liable by reviewing the public authority's obligations. The court will ask whether there was:

- a negative obligation on the state not to cause a certain type of environmental harm,
- a positive obligation on the state to regulate private industry to prohibit and/or control environmental harm.

These obligations on the state are further explained below:

- **Negative obligations:** The state has a duty not to cause certain types of environmental harm. This duty not to cause harm may be implemented by law. If the state broke the law by causing harm, then the environmental harm would be illegal. At the same time, this duty is balanced against other obligations and public interests.

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For example, the state also needs to stimulate the economy and provide for its citizens' energy needs. Where building and construction cause environmental harm, this doesn't mean that the state has breached Article 8; they may have a legitimate reason for causing environmental harm. This is called a legitimate aim, for example, to maintain prosperity.

- **Positive obligations:** The state has a duty to regulate industries that can cause environmental harm. For example, Ofwat is the public authority in the UK that regulates the water and sewage industry. The duty to regulate industry is magnified if the activity by private entities is inherently dangerous.

### *ECtHR Article 8 Claims in Practice*

Where a tourist development had destroyed a swamp area, destroying its scenic nature and value as a habitat for protected species, the court found that harm to the environment alone could *not* form the basis of the Article 8 claim (*Kyrtatos v. Greece* (2003)). They were not convinced that the applicant had been directly negatively impacted by the destruction of the natural habitat.

This contrasts with a case where a reservoir was opened for an emergency discharge which caused a serious flood in the surrounding area around (*Kolyadenko and Ors. v Russia* (2012)). The ECtHR found the government had taken inefficient and negligent measures to combat this problem and were at fault. More importantly, along with the environmental damage, the applicants' 'home'/'property' had been destroyed, so there was an obvious breach of Articles 8 and 2.

Although there is not yet a specific Convention right to enjoy a healthy environment, the ECtHR has found such a right in the context of a violation of Article 8 in two cases: *Ba ĉila v Romania* (2010), which concerned lead poisoning in the local area due to a lead and zinc manufacturing plant, and *Di Sarno and others v. Italy* (2012), which concerned the failure to deal adequately with waste.

Another interesting case concerning Article 8 and Article 14, the right to freedom from discrimination is *Botta v Italy* (1998). Mr. Botta, who was disabled and in a wheelchair, argued that his Article 14 and 8 rights were breached when he went on holiday with another disabled friend in Italy and found that the beaches did not have adequate facilities, changing rooms, or a ramp to allow disabled people to get to the beach. The court decided against him on both his Article 14 and Article 8 claims. However a similar claim could be brought in relation to a river in the future, since the ECHR is a 'living instrument' and the court's approach is to reflect this in its decisions.



## Climate Change European Court of Human Rights Cases

Lessons can be learned from human rights cases such as the successful *Urgenda* climate change case brought against the Dutch government, where the Dutch Supreme Court ordered the Dutch Government to reduce its emissions immediately in line with its human rights obligations. Rivers, like all of nature, are negatively impacted by climate change. For example, rivers in the Amazon dropped to record low levels in October 2023 because of drought, with the Rio Negro at its lowest point in 121 years, according to reporting by the Financial Times.

The ECtHR has decided to consider a group of climate change cases. Three of these cases have been heard by the Grand Chamber and are awaiting a decision. *Duarte Agostinho and Others v. Portugal and 32 Others*, concerning children and teens alleging that their home countries have breached their Convention rights by failing to address climate change, was heard on September 27, 2023. You can watch the full hearing before the Grand Chamber here.

Another pending climate change case which concerns water is *Carême v France*. You can watch the full case, heard on March 29, 2023, by the Grand Chamber here. It was heard alongside the third accepted climate change case, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, concerning a group of elderly people who complained about the worrying effects of climate change on their health. In *Carême v France*, the former mayor of Grande-Scynthe, a suburb of Dunkirk, complained that his Article 2 and 8 Convention rights are at risk, because his home is likely to be subject to flooding by 2040, and because the French Government has failed to take adequate measures to meet its commitments under the Paris Agreement and reduce greenhouse gases. He has appealed to the ECtHR after bringing his case to the French court of last resort, the Conseil d'État. At the time of writing, we await the results of the *Aghostino* and *Carême* cases before the ECtHR to find out whether more of these types of claims will be possible.



*flooded River Calder, West Yorkshire, England.*

## Human Rights Act Claim in the UK

An application to the ECtHR may only be made once you have exhausted all available remedies in the UK. HRA claims can only be brought against a public authority, such as a local council, government minister/department, or statutory body. You cannot bring a HRA claim against a private organisation. It is typically necessary to complain to the relevant regulatory body before bringing a claim (*Marcic v Thames Water*). The remedy is ‘just satisfaction’. This might simply be a finding that the HRA was breached, or it could be modest damages.

## Damages Claim in County Court

It is possible to bring a claim for ‘just satisfaction’ against a government body for a breach of the Human Rights Act in the local County Court. The remedy could take the form of damages (a payment of money as compensation) or a declaration, or even potentially an order to remedy the harm. An example would be a wild swimmer who got sick after regular swimming in a local river to argue a breach of Article 8. The difficulty with this approach is that it is relatively untested and that, if unsuccessful, the Claimant would be liable for their opponent’s legal costs.

## Protection of Private Property: Idea for an Experimental Claim

Article 1 of Protocol 1 of the European Convention on Human Rights provides for protection of private property. A recent case illustrating how this works in practice is *Associations of Communally-owned Forestry Proprietors v. Romania* (2023). In this case, foresters in Romania were prohibited from using their forests to cut down and sell wood after the forests were classified as part of a *Natura 2000* site (the counterpart to the Bern Convention's Emerald Network in the EU). The foresters were entitled to compensation for the loss of access to their property. They were denied compensation for over a decade and Romania failed to publish any methodology for how to calculate the compensation. Meanwhile, the foresters maintained the forests at their own expense, as they were legally obliged to do so. The Court noted that the applicants' complaint was not that the State had acted in a certain way but that it had failed to act, specifically by failing to adopt a set of methodological rules for granting the compensation to which they were entitled. The Court granted just satisfaction, and ordered the state to pay the foresters compensation.

Polluted watercourses owned by riparian owners may represent a unique opportunity to bring claims against public authorities for failing to protect the watercourse from pollution. As explained above, riparian owners own the land of the riverbank. They do not own the water but are entitled to water flowing in its natural state. A riparian owner could potentially argue that their Article 1 Protocol 1 right to protection of private property is violated if their watercourse and/or riverbank is polluted.

## How to bring an HRA Claim

If you believe you are a victim of a Human Rights Act violation, you can bring a claim against the public authority for damages. Claims that are for under £15,000 (and for personal injury up to £50,000) must be started in the County Court as opposed to the High Court (*Andrews v Reading Borough Council [2004] EWHC 937*). If the claim is for under £100,000 it can be brought in the County Court. The advantage is that it is slightly cheaper, but it may be desirable to bring complex and more innovative claims in the High Court. Claims over £100,000 must be started in the High Court. You can read more about exceptions to the civil procedure rules [here](#). Claims under the HRA can be started in the ordinary way in the county court, by issuing a claim on Form N1. Remember to tick the box on the form to indicate that your claim involves a Human Rights Act point. If your claim is successful, in that you prove that the public authority did not act in a way that was compatible with the Human Rights Act, the court has a number of powers and may award damages. It should be noted that damages for breaches of human rights are generally quite modest. A breach of the HRA can also serve as the basis for a judicial review in the Administrative Court, and you can also request compensation as part of JR. See [Chapter 7](#) for more on Judicial Review.

## *Nuisance, Negligence, and Human Rights Act Examples*

- **Sewage flooding into a garden:** In the case of *Marcic v Thames Water Utilities plc* [2003] HL, Mr Marcic's back garden was frequently flooded by sewage, and he sued Thames Water in private nuisance and for a violation of his Article 8 rights. The flooding was caused by overloading of the sewer network. Issues with sewage and flooding are relevant to rivers because they can affect the groundwater. Groundwater and surface water from lakes, rivers, and reservoirs interact through hydrologic exchange flows. No criminal claim could be brought because Thames Water had a permit to discharge sewage. While the Court of Appeal found in Marcic's favour, the House of Lords (the equivalent of today's Supreme Court) found that Marcic should have complained to Ofwat, the economic regulator for the water industry, who had the power to make an enforcement order to order Thames Water to protect Marcic's home. The HL found that Thames Water was acting within the statutory regime designed to control the sewerage network — the company funded improvements to the sewerage network under a formula derived from legislation (Water Industry Act 1991) and operated by Ofwat. The HL noted that there was already a statutory remedy available, since Ofwat could have made an enforcement order against Thames Water. The court confirmed that the statutory scheme under which Thames Water operated was compliant with the HRA because the regulator could have made an enforcement order if the claimant had complained to Ofwat. Since Marcic had not complained to Ofwat and gone through the appropriate channels before bringing a case, he lost the case. It is estimated that the cost to Thames Water, if he had won, would have been £1 billion.

An interesting question remains — what would happen if the claimant had complained to the regulator, but they had refused to make an enforcement order, or had made an enforcement order and Thames Water had not complied? Furthermore, is there any scenario in which an individual could ask the court to make a declaration of incompatibility about legislation, where their Article 8 rights have been breached because of failures by water companies acting within their legal statutory basis?

Note that *Marcic* is being reconsidered by the Supreme Court in *The Manchester Ship Canal Company Ltd (Appellant) v United Utilities Water Ltd (Respondent) No 2*. The decision is expected soon. The issue at hand in the case is whether The Manchester Ship Canal Company Limited ("MSCC") bring a private law claim in nuisance and/or trespass against United Utilities Water Limited ("UU") in respect of unauthorised discharges of untreated foul water by UU into the canal?

- **Smells and mosquitos from a sewage treatment plant:** In the case of *Dobson v Thames Water Utilities Ltd* [2011] EWHC 3253 (TCC), claims were brought in nuisance, negligence, and under Article 8 HRA by 1,350 claimants regarding odour and mosquitoes from the defendant's nearby sewerage treatment plant. The majority

of the test claims succeeded in nuisance, and damages were awarded to landowners. The Article 8 HRA claims were successful, but no further damages were awarded.

## Competition Law Class Action

Professor Carolyn Roberts is bringing an environmental class action suit against water companies. This represents a creative use of competition law to try to put pressure on water companies and hold them to account for poor sewage management. At the time of writing, a legal claim has been issued against one of six UK water companies who are facing legal collective actions for allegedly abusing their dominant market position by underreporting the number of times they cause pollution incidents and overcharging customers as a result. All six water companies are accused of underreporting the number of times they cause pollution incidents by spilling or discharging sewage into waterways in breach of environmental rules. This is the first collective action case where the competition abuse centres on compliance with environmental laws and reporting responsibilities to regulators. Professor Carolyn Roberts, an environmental and water consultant represented by Leigh Day, is bringing the claims on behalf of more than 20 million household customers who have been overcharged because of the companies allegedly abusing their monopoly position. The claim against Severn Trent Water is brought on behalf of 8 million customers. Case pending.

See the [Useful Resources](#) section for more on [Statutory nuisance complaints](#), [Riparian rights](#), and [Human Rights and European Court of Human Rights Claims](#). See also the [Useful Organisations](#) section for legal organisations that can assist with civil claims.

## 9. International Mechanisms: Soft Law Complaints

### 9. INTERNATIONAL MECHANISMS: SOFT LAW COMPLAINTS

#### WHAT IS A SOFT LAW REMEDY?

##### *Bern Convention Complaint*

Examples of Bern Convention Complaints

##### *OECD Complaint*

Examples of OECD Complaints

##### *Communication to the UN Special Procedures*

## What is a soft law remedy?

Soft law refers to agreements and principles that are not legally binding, but which could be called 'quasi-legal'. Soft law processes do not usually involve courts. In the UK, soft law complaints, such as the Bern Convention complaint regarding the UK government's badger cull policy and the failure to protect crested newts, have been successful in gaining media coverage and raising awareness about species conservation.

The key soft law approaches we consider are:

- Complaints against the state under the Bern Convention
- Complaints against a multinational under the OECD guidelines

The advantages of pursuing a soft law remedy are that it:

- Costs very little to submit a claim or complaint and avoids litigation costs.
- Can generate publicity and support for the issue you are trying to solve.
- Can lead to mediation between the parties and a remedy.

The main disadvantage is that:

- It is not legally enforceable.

## Bern Convention Complaint

Referring to the 'intrinsic value' of wild flora and fauna that needs to be preserved in its preamble, the Bern Convention could be seen as a RoN-oriented treaty. It features a simple and no-cost complaint mechanism, whereby an individual or organisation can bring a complaint against the state for failing to protect the habitats of protected species of wildlife, including protected wild plants, animals, birds, fish, and their habitats. Before bringing such a complaint you should use any available local and national judicial remedies. If a protected river area habitat or species is under threat, and you have already complained to the regulator without success, you could consider making a complaint under the Bern Convention.

### What

The Convention on the Conservation of European Wildlife and Natural Habitats ([Bern Convention](#)) applies in most of Europe and in some countries outside the EU, including the UK. As a treaty, it is binding on the countries that sign it. It requires parties to promote national policies for the conservation of wild flora and fauna, and their natural habitats through conservation, education, and research. The Convention features the Emerald Network Areas of Special Conservation Interest (ASCIs) and provides for monitoring and control of endangered species. In the UK, the convention is implemented through the [Wildlife and Countryside Act 1981 \(WCA\)](#), and is further implemented by the EU [Habitats and Wild Bird Directives](#), which are implemented by the [Conservation of Habitats Regulations 2017](#).

The Convention lists which species are in need of protection by the signatory nations at different levels of protection. In the UK, there are 379 protected animal and plant species, including 223 Birds, 83 Mammals, 20 Fish, 12 Reptiles, and 16 plants. River habitats protected under the Bern Convention can be found on the [Emerald Network Viewer map](#). Click on the river to be taken to a page which includes a list of the protected animals and plants at the site, as well as data regarding threats to, and notes on, the site. Click on the names of protected animals for a page with more information and a photo of the animal. Click on the habitat data number for a page about the type of vegetation with photos. As an example, see the [data set](#) on the River Avon.

Protected flora species are found in Appendix I of the Convention, while protected fauna, including freshwater fish, are found in Appendices II and III. The list of protected freshwater fish also overlaps with other legal protections, as noted in the [guidance](#) for designating SSSIs to protect freshwater fish, published by the JNCC.

### How

Individuals or NGOs can make a complaint against a contracting state using a relatively simple form on the Convention's website, [here](#). Before bringing a complaint under the Bern Convention, you should have raised the issue at a local and national level, such as by making a complaint to the Environment Agency (EA) or Natural England (NE). However, it's not necessary to have exhausted all judicial remedies, and you do not need to have already brought a judicial review. The complaint must be drafted concisely in under three pages with a maximum of a five-page annex.

The Secretariat should then screen the case and request further information if needed. If the Secretariat decides that there is a valid complaint, they will request information from the contracting party (meaning the state), who will have four months to reply. The complaint is then assessed by the Standing Committee, who make decisions on the measures to be adopted. Depending on the context, the Standing Committee may decide to:

- Propose an on-the-spot appraisal.

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- Adopt a specific recommendation, the implementation of which will be followed-up afterwards.
- Make general recommendations referring to all parties or addressing a broad issue.

Many complaints that reach the Secretariat involve specific construction projects that affect the habitats of species in a natural area. Construction projects often involve a high risk of causing water pollution and biodiversity loss, as the building of any sort of foundation requires the site's vegetation and topsoil to be stripped. It is also possible to draw a link between the levels of concrete wash water, cement, solvents, adhesives, and silts that enter waterways and its effect on surrounding flora and fauna.

### *Examples of Bern Convention Complaints*

#### **Damage to species from mining (Serbia)**

In 2022, the King's Legal Clinic assisted [Earth Thrive](#) and a local Serbian organisation, EkoKrajiste (Eco Region), to file a complaint under the Bern Convention against threats to flora, fauna, and wild habitats from a British-funded mine. The submission employed novel 'Rights of Nature' arguments. The submission argued that Serbia's permitting of a mine violated several Articles of the Convention because the government failed to prevent an illegal and detrimental mining project from polluting two rivers, leading to endangerment of flora and fauna species. The state replied claiming that mining had stopped. The Committee then proposed a training seminar with the government body, citing the number of reports it had received relating to mining in Serbia, and asked both parties to send further updates in February 2024, so the claim is continuing. You can read more about the claim [here](#).

#### **Badger Culling (UK)**

The [Born Free Foundation](#), [Badger Trust](#), and [Eurogroup for Animals](#) submitted a complaint in 2019 re the culling in England of badgers, which are an Annex III species under the Bern Convention. The complainants alleged that the UK's badger culling policies to control bovine tuberculosis breached the Bern Convention, and did not in fact resolve bovine TB, see [here](#). The claim is on standby, but was successful in raising awareness to the issues, including the conflict between policies that favour animal farmers and policies that favour nature and species protection. The claim may have been successful in pressuring the government, because in 2021, the government announced a plan to phase out the badger culling policy in favour of vaccinations against TB.

#### **Fish in Bystroe Estuary Canal (Ukraine)**

In 2004, the Danube Environment Forum submitted a complaint concerning the excavation of a shipping canal in the Danube delta, which was likely to adversely affect the Ukrainian Danube Biosphere Reserve Wetlands and the dynamics of the Danube delta, as explained in this [WWF](#) article. The standing committee conducted investigations involving numerous parties, including the UN, the EU, and the governments of Ukraine, The Republic of Moldova, and Romania. The case was eventually closed in 2016 after a program for



enhanced monitoring of fish was implemented. In 2021, a complex program of reintroducing freshwater sterlet fish into the Danube River in Ukraine was undertaken, following the plan's adoption at the 38<sup>th</sup> Standing Committee Meeting of the Bern Convention.

The reports to the Standing Committee can be found here: <https://www.coe.int/en/web/bern-convention/-/bystroe-estuary-canal>.

## OECD Complaint

Where a river is affected by the actions of a multinational corporation, it may be possible to use the (anthropocentric) complaints mechanism of the Organisation for Economic Co-operation and Development (OECD), an intergovernmental organisation founded to promote global trade and investment. The OECD guidelines for Multinational Enterprises (MNEs) on Responsible Business Conduct are recommendations for best business practices covering a wide range of issues, including environmental and climate change related issues. The guidelines are not legally binding on member states but are rather recommendations to transnational corporations. The guidelines were updated in 2023, and now recommend that corporations use due diligence to identify and address their adverse impacts on climate change, animal welfare, biodiversity, deforestation, pollution, and other environmental concerns. The guidelines also apply to MNE's value chains, including the parent company, related brands, auditors, investors, lenders, buyers, consultants, platforms, joint ventures, and other business partners. For example, this means that a complaint can be brought about the actions of a subsidiary.

OECD complaints have a mixed history of success in achieving the aim of tackling corporate behaviour in relation to the environment. They are a tool to raise awareness, especially outside the UK. An OECD complaint was made against Drax, the UK-based energy company, for making misleading or inaccurate statements about their environmental impact. The resulting media highlighted greenwashing.

## How

1. When the OECD principles are not followed, a complaint may be submitted to the country's 'National Contact Point' (NCP). The UK's NCP is part of the Department of International Trade. They may be contacted on [UK.NCP@trade.gov.uk](mailto:UK.NCP@trade.gov.uk) or +44(0) 20 7215 5000. More information can be found [here](#).
2. An individual or community organisation can bring a complaint to the National Contact Point (NCP) in the country where the multinational is based, provided it is an OECD country. There is no required format, but OECD Watch, an independent organisation, has produced a complaint template.
3. You can find copies of other complaints on the OECD Watch website as a guide. List the specific chapters and paragraphs from the Guidelines that have been breached. In

the case of river pollution, the most relevant chapters of the Guidelines are likely to be Chapter II – General Policies; Chapter VI – Environment, including degradation of marine and freshwater ecosystems, water pollution, and mismanagement of waste, including hazardous substances; Chapter VIII Consumer Protection, including data protection.

4. The NCP should consider the admissibility of the complaint and may ask the company to respond before deciding.
5. If the complaint is accepted, the NCP will offer mediation to the parties to resolve the issue. This can be an opportunity for activists and community members to present their case to the company directly. If this mediation is rejected by either of the parties, the NCP will examine the issue to determine whether there has been a breach of the guidelines.
6. Final statement – Where mediation is successful, the final statement will explain what the parties agreed to. Where mediation is not successful and examination is undertaken, the NCP may make an assessment of the alleged violations and make (non-binding) recommendations for the party to remedy any breaches.

Consider which paragraphs of the Guidelines are most relevant to your circumstances. Has the company failed to consult with the local community? Has the company failed to recognise the threat of serious damage to the environment, or are they using a lack of scientific certainty as a reason to continue their practices? Has the company failed to educate and train workers in preventing environmental practices? MNEs are required to carry out risk-based due diligence with respect to adverse environmental impacts. These due diligence requirements are further strengthened by the EU Corporate Sustainability Reporting Directive (CSRD) and Germany's Due Diligence Supply Chain Act (LkSG). If you can demonstrate a range of breaches by the corporation, even if these are not directly related to the harm caused to the river, this will encourage the NCP to intervene.

### *Examples of OECD Complaints*

#### **Hydroelectric Dam in Laos**

The OECD complaints process was used, with varying degrees of success, to engage with developers to protect rivers in *Finance & Trade Watch Austria et al vs Andritz AG*, concerning the Xayaburi Dam. The Xayaburi Dam hydroelectric power project in the Mekong river basin in Laos came into commercial operation in 2019, and 95% of the electricity it generates is sold to Thailand. A complaint was brought to the Austrian NCP against the Austrian engineering company, Andritz, in 2014. From a human rights perspective, there were concerns that the dam would negatively impact fisheries and rice farming, putting millions of livelihoods at risk and negatively impacting food security in Cambodia. From a **RoN** perspective, a 2014 Strategic Environmental Assessment concluded that the Xayaburi project would cause devastating effects on the natural environment, including the likely extinction of 41 critically threatened species, a significant reduction in biomass of fish due to the inability of migratory species to circumvent the dam, changed

hydrology, as well as a deterioration in water quality. During the course of mediation and negotiations between Andritz and the complainants, some complainants left the process, indicating that they were unhappy with the outcomes. Others stayed and continued to have a constructive dialogue with Andritz about its policies and actions to mitigate the effects of the dam. However, in 2022 the Thailand Supreme Administrative Court dismissed a lawsuit brought by villagers against Thai state agencies, who had signed a purchase agreement to purchase electricity from the dam.

### River Pollution from Mining

RAID filed a complaint in UK NCP regarding pollution of the Nya Pende River in Chad by the mining company Glencore UK, which is registered in England. The complaint alleged that Glencore had breached OECD Guidelines by failing to conduct environmental and human rights due diligence. Although the complaint was not successful in the final stages, it is helpful to consider the complaint in order to understand how a case of river pollution was compiled as an OECD complaint, and to examine the grounds upon which the company were alleged to have breached. The complaint is linked [here](#)

### Communication to the UN Special Procedures

Under [Special Procedures](#) there are independent experts known as Special Rapporteurs within the [UN Human Rights Council](#) who report and advise on human rights issues. One of their roles is to communicate with government bodies, organisations, and countries to report on a past or ongoing human rights violation and request clarification on the issue and possible action to resolve the matter. This is very much an anthropocentric mechanism used to draw attention to human rights issues alongside alternative methods to impose pressure to stop a violation, though it is largely symbolic. The special rapporteur most relevant to rivers is the [Special Rapporteur for Human Rights and the Environment](#), currently David Boyd. The [Special Rapporteur on the human rights to safe drinking water and sanitation](#) is also relevant. The special rapporteur also publishes reports that may be useful in gathering evidence, especially in an international context. For example, a [recent report](#) highlights the mismanagement, pollution, and overexploitation of rivers, toxic contamination of water by metals and other chemicals, and how these impact accessibility to safe drinking water. The special rapporteurs also regularly issue calls for inputs which could be used to attract media attention.

#### How:

A submission must be made to the special rapporteur to notify them of the violation. They may then decide whether to pursue the submission and submit a communication, subject to their mandate and Article 9 of the [Code of Conduct](#). A submission may be made by an individual, group, organisation, inter-governmental entity, or national human rights body. A submission may be made via the [online form](#).

See the [Useful Resources](#) section for more on [OECD Complains](#) and [Bern Convention Complaints](#).

# 10. Political and Community Legal Action

## **10. POLITICAL AND COMMUNITY LEGAL ACTION**

### WORKING WITHIN THE SYSTEM

*Objecting to Planning Permission of Development*

*Additional Objections to Factory Farms*

*Update Local Plans*

*Apply for Bathing Water Designation*

*Public Consultations on River Basin Management Plans*

### LOCAL CAMPAIGNING AND POLICY CHANGE

*Mobilisation*

*River Charter*

*Community Declarations*

*Council Motions*

*Council Motion Example*

*Local Byelaws*

### CAMPAIGNING FOR NATIONAL POLICY CHANGE

*Petitions*

*Campaign to Protect Environmental Legislation*

*Campaign for a Sustainable Food System*

*Plant Based Treaty Campaign*

The law can sometimes be used independently through a court action to effect change. But in the contested area of environmental law, lobbying and political campaigning to change the law that may be needed or be part of a strategy complementing court action. Political campaigning to change laws recognizes that existing legal mechanisms are inadequate, and that we need to change the system. Political campaigns can help the public and politicians shed the belief that the current legal system is good enough, by exposing the limits of what is currently legally possible and saying that change is needed for the legal system to work properly. In this section, we suggest action you can take within the current legal system, and actions you can take to try to change laws and policies, both at the local and national level.

## Working within the System

### Objecting to Planning Permission of Development

You can object to planning permission of developments, such as factories, commercial developments, or housing developments, and factory farms. Since agriculture is responsible for 40% of diffuse water pollution, objecting to planning permission of new factory farms is something that communities can do to protect a river. There is no need for standing for the initial objection stages and you do not need legal advice, so this is something that legal clinics can do too. You can raise concerns and request that the local authority require the developer to undertake an environmental impact assessment (EIA). Environmental issues that

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you can raise concerns about are not limited by any specific list, but some common environmental issues you could raise as requiring an EIA would include:

- Water pollution from free range chicken/egg farms, including concerns about phosphates, pesticides, and nitrates which lead to algal bloom and unhealthy rivers, which will reduce the fish population and reduce biodiversity. This is also an issue near drinking water protected areas.
- Increased sewage from housing developments leads to water pollution and you can argue that this is bad for any nearby SSSIs and requires a habitats assessment.

An indirect RoN approach to preventing harm to a river from development is to demonstrate that there are protected species in the area. You can ask the local authority for all data on species found in the area (for a fee) or check the Defra and NBN atlas maps to find out what species have been recorded in the area. If there are any species listed under the Wildlife and Countryside Act (WCA) or Habitats Regulations in the area, the developer will generally need a licence, but these are not very difficult to get. Typically, a developer will also need to carry out an ecological survey to find out if there are indeed any protected animals in the area. Ecological surveys can only take place during certain times of year depending on the animal. Common animals that developers need a licence for include bats (all 18 species), dormice, and great crested newts. If the developer gets a licence this will come with certain requirements to carry out work in a responsible way. If they do not get a licence and protected species are present, then any damage they cause could lead to a criminal prosecution.

If the development is in an SSSI, a habitats assessment is required, so you can raise this objection if one hasn't been conducted. You can check which protected species are at the protected site on the JNCC website and raise concerns about all the species listed.

You can also raise concerns about water abstraction and the negative impacts it could have on an SSSI or drinking water protected area. Farmers and developers need a permit if abstracting more than 20 m<sup>3</sup> a day of water. If no permit has been granted, this will present another opportunity for objection. (It is also possible to bring a JR against the granting of abstraction permits, see the Judicial Review Examples section.)

### *Additional Objections to Factory Farms*

As a RoN organisation seeking to protect a river, you can expand your objections against factory farming to include a range of issues, including sustainability of the food system, animal welfare, public health issues, and climate change. In raising concerns about sustainability, you can cite the importance of a sustainable food system and maintaining biodiversity for future generations. Sustain is an organisation advocating for sustainable farming practices with further information that you can provide to your planning authority. You can also raise concerns about animal welfare as part of your objection. Humane Society International publishes scientific reports on the poor animal welfare of industrially-farmed

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animals. The strongest argument against factory farming is that it does not satisfy animal's need for an appropriate environment, breaching their "freedom from discomfort" which is protected under the "five freedoms" in existing animal welfare laws. You can also raise concerns about public health issues, including the overuse of antibiotics, and contribution of processed meat and red meat to various public health issues. See the Plant Based Health Professional's fact sheet for more. You can also raise concerns about climate change and emissions. This applies especially to grazing cattle for beef.

See also Challenging Planning Permission of Factory Farms.

### Update Local Plans

Local planning authorities must review their Local Plan and Statement of Community Involvement at least once every five years. NGOs or residents based in the local area can press for more river friendly policies, for example, requiring new developments to improve water quality.

### Apply for Bathing Water Designation

Surfers Against Sewage have published a toolkit to help you apply for bathing water designation for your toolkit, as part of their Protecting Wild Waters campaign. Water bodies with this designation are tested regularly and have to meet a certain standard. The designation helped clean up beaches in the past and now can be used for rivers. The process of obtaining official designation involves public consultation.

### Public Consultations on River Basin Management Plans

Members of the public can contribute to Environment Agency (EA) consultations on river basins. River basin management plans set out objectives and measures to prevent the deterioration of freshwater. A map of river basin districts may be found on the government website here. The EA is responsible for preparing river basin management plans (RBMPs) under the WFD Regulations.

Under the WFD Regulations, a river basin management plan must be developed for each river basin district and reviewed and updated every six years. The EA will announce online consultations which the public can take part in. The current planning cycle is 2022-2027. The most recent consultation took place in 2022, and the EA received 270 responses. You can read the most recent consultation outcome on the government's website here. In the past, the RBMPs drafted with help from consultations have helped tackle diffuse water pollution (from livestock) in the Northumbria river basin district, the River Axe Special Area of Conservation, and Humber river basin district. There are more examples of case studies on the gov.uk website here.

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Recently, the High Court made a decision which could have implications for the RBMPs currently in use. In the Upper Costa Beck, the High Court has found the public consultation process undertaken by the Environment Agency was unlawful because it failed to provide the necessary information for anglers to understand what action was being proposed to address the reasons for the fish failure. Therefore, these actions defeated their right (the right of the anglers) to participate and contribute to the river planning process (*Pickering Fishery Association v Secretary of State for Environment, Food and Rural Affairs*). See [Judicial Review Examples](#) for more on this case.



resident heron and shopping trolley, River Ravensbourne, South London.

## Local Political Action

### Mobilisation

Mobilisation starts by building a network to protect your river for when serious environmental harm does arise, and legal action is needed. There are many inspiring examples of local networks built around rivers and river conservation. Local campaigners may also benefit from linking up with NGOs campaigning nationally for policy change.

## River Charter

Communities in Dartington, Devon created a River Charter for River Dart, a public document written on behalf of the river. UK-wide networks such as the Community Chartering Network help communities set up River Charters, which can be used to build community engagement and vigilance, then mobilise action when problems arise. River Action is also campaigning for a Charter for Rivers nationally.

## Community Declarations

Another option is to symbolically declare the rights of a local river in an event to generate publicity as a campaign. For example, in June 2021, the community group, Friends of the Cam, held a public event to declare the rights of the River Cam. While this strategy is symbolic and does not create any legal remedies for addressing harm to rivers, community declarations can raise local awareness of the rights that the river should have. The attention raised by a public declaration can also help generate local support for other strategies with legal impacts, such as local byelaws and council motions.

### How:

Consider the Universal Declaration of River Rights, drafted by Earth Law Center, and make a similar declaration that applies to your local river. The declaration, which governments around the world already use as a template to draft legislation to protect their rivers, provides that all rivers shall possess, at minimum, six fundamental rights:

*The right to flow*

*The right to perform essential functions within their ecosystem*

*The right to be free from pollution*

*The right to feed and be fed by sustainable aquifers*

*The right to native biodiversity and*

*The right to regeneration and restoration.*

## Council Motions

A council motion is an expression of an authority's stance and position on an issue, and a resolution to take action of some kind in relation to it. Persuading the local council to pass a motion in support of the Rights of Nature is another cost-free campaign option to raise awareness of the RoN approach at a local level. A motion can include commitments such as consulting local communities and incorporating RoN into council decision-making. When considering passing a motion, think about what you actually want to achieve. Focus on the end goal of change in the world, then think about how the means of a motion can get towards that.

Perhaps the aim is to have the council take other actions in a RoN approach. A Council Motion is one means by which this can be facilitated, but the goal isn't the motion itself; there is an end goal beyond this, and the motion is a path/means towards this.



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Here are some different ideas of what councils could do:

- could be aspirational, stating an aspiration to protect the local river.
- could form part of Council policy documents (e.g., local plans)
- could establish a representative body without legal effect (i.e., towards representing a river with some form of "subjecthood", but not legal subjecthood). This body would take on the role of guardianship of the river, as an organisation with members who have the river's best interests in mind. This could involve some citizen science to provide monitoring by taking water samples, as well as providing reports to the council, filing complaints, and working with NGOs and campaigning on behalf of the river. London Waterkeeper is an example of what this could look like – it has sent many complaints to the regulator regarding sewage pollution on the River Thames.
- could create a non-binding community charter.

Here are some sample motions from counties in Ireland and Northern Ireland which have passed three **RoN** council motions:

- Derry City and Strabane District Council (Northern Ireland)
- Fermanagh and Omagh District Council (Northern Ireland)
- Donegal County Council (Republic of Ireland)

After a motion is passed, the council could undertake **RoN** work – for example, Derry City and Strabane Council have held **RoN** workshops to discuss how those working for and with the council can incorporate a **RoN** approach into their work. Local communities and councils may decide to pursue a campaign to adopt a local byelaw and a council motion. This approach will help to create enforceable rights at the local level, whilst also ensuring that our political systems are beginning to work with a **RoN** perspective in mind.

### How

- **Draft a **RoN** motion!** Consider previous council motions regarding **RoN**. Friends of the Earth Northern Ireland have drafted a helpful document which highlights some of the points that a motion may refer to.
- **Find a proposer!** Build a strong relationship with local councillors who have an interest in nature to decide which councillor to ask to propose the motion.
- **Find a seconder!** The motion will be proposed by your chosen councillor and must be seconded by another councillor (i.e., they agree that the motion warrants discussion).
- **Debate!** After this, the motion will be discussed and then voted upon.
- **Adopt the motion!** In order to be adopted, a majority must vote in favour of adopting the motion.

Council motions can also be used to put pressure on Westminster by demonstrating the stance of the local community on a particular issue. For example, a campaign against fracking has made use of council motions as a political tool. Council motions expressing the council's

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stance against fracking can increase pressure on parliament, influence your MP, raise public awareness, and can also involve the council writing to ministers. As such, a council motion could be used in conjunction with another environmental campaign to protect rivers.

See the council motion guide linked [here](#). Although it relates to a motion on a different topic manner, it sets out some useful tips and methods for gathering support and raising awareness for a council motion. See also gov.uk page [here](#) for examples of council motions related to biodiversity, climate change, and the UN Sustainable Development Goals.

### Council Motion Example

The Lewes District Council in Sussex proposed and passed a motion in February 2023 to start working towards a declaration of rights for the River Ouse in the form of a River Charter. The relevant section of the motion read:

*This Council would like to explore Rights of Rivers in a local context and in particular the River Ouse and work with local communities, relevant stakeholders and local authorities along the River Ouse towards producing a 'Declaration on the Rights of the River Ouse' for adoption by the Council within 2 years.*

More information and a draft charter (using the [Universal Declaration of River Rights](#) as a guide) can be found on the movement's website [here](#).

### Local Byelaws

Local byelaws are laws made by a local council that apply to the local council area. Passing a local byelaw is a procedure that can be used to protect the local environment within the power that the local council has. Local councils may create a local byelaw to recognise rivers as a subject with their own legal rights, but this is contentious and has not had success to date. The byelaw would set out a clear statement of the rights of a river, the parties who may enforce these rights, and the mechanisms which may be used to enforce these rights. This will require a big political campaign, unless all the council members are already on board. See the (unsuccessful) [Frome Town Council byelaw proposal](#) for an example of a RoN byelaw. Additionally, model byelaws on pleasure grounds, public walks, and open spaces (including waterways) can be found [here](#). This process is likely to require support and promotion from local community groups, as well as the local council and relevant government bodies.

You may want to think carefully about what a byelaw would try to achieve and ensure that it is within the competence of a local authority; as well as whether it could get approval. The byelaw procedure could be used to protect the river in other ways.

#### How:

- Consider previous byelaw applications ([Frome Town Council byelaw proposal](#)).
- Draft a byelaw which recognises the rights of your local river.

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- Adopt the byelaw under the ordinary procedure for agreeing public nuisance byelaws under general powers contained in the Local Government Act 1972.
- Submit the byelaw to the DLUHC for approval.

At the time of writing, the River Frome byelaw is the best example of this approach, which enabled the local community to highlight the importance of the river. Unfortunately, this proposal was rejected in 2020 by the Department for Levelling Up, Housing and Communities (DLUHC), on the basis that it duplicated existing environmental law. But this doesn't mean other communities should not follow suit, if only for symbolic effect. Given that England and Wales currently do not have **RoN** laws, there is an argument that byelaws which establish the rights of rivers do not duplicate existing law. Byelaw proposals are a crucial step in establishing the rights of rivers at the local level and an increase in such proposals will emphasise this to the DLUHC.

The location in which you are proposing byelaws is important in the process. Areas such as Northern Ireland and Wales have more autonomy to make local byelaws and a range of devolved powers (see this [EJNI briefing](#) for further discussion on this). This could be utilised to ensure that the first river rights byelaw is adopted – paving the way for others in England to follow.



Susannah Miller, *River Wye, Hay on Wye, Wales.*

## Campaigning for National Policy Change

The broader vision of Rights of Nature is towards transforming the legal system and various aspects of government policy. This means political campaigning through engagement with the political party system. Social change doesn't happen in a linear fashion and there isn't a prescription for what this looks like, but various avenues include:

- **RoN** in a party's platform/manifesto;
- getting individual MPs to champion **RoN** causes, whether as a whole or for an issue in their constituency. MPs could champion **RoN** causes by:
  - introducing a Private Member's Bill; or
  - seeking to amend existing legislation or policy.

To advance Rights of Nature (**RoN**) at a national level, campaigners may encourage political parties to incorporate **RoN** into party policies and manifestos. Encouraging a range of political parties to recognise **RoN** increases the likelihood of establishing **RoN** in statute. The Green Party in England, Wales, and Ireland respectively have produced **RoN** policies which serve as useful templates. See examples [here](#) and [here](#).

### How:

Draw up a motion for a political party, to be promoted by a party member with an interest in the river. Write to the local MP drawing their attention to local issues where **RoN** are at stake. Provide them with examples of possible policies – such as those above. Identify politicians interested in nature, for example on an All-Party Parliamentary Group (APPG). A constituent can ask the MP to ask a Parliamentary Question, to seek amendments to legislation going through Parliament from a **RoN** perspective, or even propose a Private Members Bill.

## Law Reform

A group of charities, including Wildlife & Countryside Link, ClientEarth, the RSPB and Friends of the Earth are backing a new piece of legislation requiring more environmentally-friendly and health-positive decision making. The Environmental Rights Bill, drafted by David Wolfe KC and Kate Cook of Matrix Chambers, would establish a human right to a clean, healthy and sustainable environment for everyone, if adopted into election manifestos and progressed in the next Parliament. You can read more about [The Right to a Healthy Environment](#) in chapter 1. See [here](#) for more about the new bill proposal.

## Petitions

You can also submit a petition, which must be started on the official website. If the petition reaches 100,000 signatures, it may be debated in parliament. See this [website](#) for more on how to create and submit a petition. For petitions in Wales, see this [website](#). See also [Environmental Protection Laws in Wales](#).

## Campaign to Protect Environmental Legislation

Campaigners can play a role in preventing the repeal of environmental legislation. Since Brexit, Parliamentary Sovereignty is no longer limited by the EU, which means it is easier for Parliament to repeal environmental legislation. The Environment Act 2021 requires Ministers to state when introducing a bill whether or not the proposed law involves a reduction in environmental protections. An excellent example of the government's attempt to repeal environmental legislation being thwarted arose in August 2023 when the government tried to scrap 'nutrient neutrality' and the proposal was rejected in the House of Lords. In addition to the environmental campaigners, the OEP's intervention seemed to be particularly important.

See also The Office of Environmental Protection.

## Campaign for a Sustainable Food System

Since agriculture is a leading cause of diffuse water pollution, a RoN organisation may want to bring a campaign against the expansion of factory farming. This may be used in combination with bringing planning permission objections or litigation. An example of a campaign to protect rivers from intensive animal farming is the campaign to protect River Wye, led in part by NGO River Action UK. River Wye became a 'wildlife death trap' after poultry and free-range egg farming intensified along the river. River Action also has a Rescuing Britain's Rivers Petition and a Charter for Rivers campaign to restore freshwaters to health by 2030.

Besides causing pollution, agriculture is also responsible for water abstraction, another threat to rivers. An example of a JR claim against the regulator regarding water abstraction permits in a protected habitats site can be found in the Judicial Review Examples section. Since food production accounts for 70% of global freshwater use, a campaign highlighting the water footprint of certain foods could potentially help consumers change their habits and lead to lower water consumption, thereby leading to lower water use. Data is not available on the specific amount of run off pollution caused by production certain foods, but we do have available data on water use by kg of food, so using the available data as part of a campaign to lower water use could be a good step forward to protect freshwater sources from drying up.

For example:

- rice, soy, oat, and almond milks all use less water than dairy milk, with soy using the least water (BBC News).
- eggs, beef, and chicken, animal derived sources of protein, use more water than tofu, lentils, chickpeas, and beans, which are plant-based sources of protein (watercalculator.org).

## Plant Based Treaty Campaign

In an effort to end animal farming and deforestation, as well as lower greenhouse gases to come in line with the Paris agreement (climate change affects rivers too!), you can ask your city to endorse the [Plant Based Treaty](#). Bristol, Glasgow, Glastonbury, and London have ongoing petitions. You can email your councillor or MP directly from the Plant Based Treaty's [website](#). The London Borough of Lambeth has already endorsed the treaty. You can also endorse this as an organisation, so a river trust may wish to endorse the treaty.

For more on [Community Tools](#) and [Water Pollution from Farming](#) see the [Useful Resources](#) section. See also the [Useful Organisations](#) section for organisations undertaking [River Policy and Campaigning](#) work.

## 11. Fictional Case Study

The River Alam is a natural river that runs from York to London. It is home to 200 species of plants and animals, including a species of newt and a species of moss which have been categorised as 'endangered' by the International Union for the Conservation of Nature (IUCN) after an ecological survey in 2018. Over the years, the quality of the River Alam has been deteriorating. A recent study by King's College London has found that the number of species has decreased at an alarmingly rapid rate in the past 10 years.

Nila is a young environmental activist living in a county through which the River Alam runs. They are concerned about the biodiversity loss and are interested in exploring legal avenues to protect the river. They have done research and found that there is a local organisation that shares their concerns. Friends of River Alam is a group of local community members concerned with ensuring the wellbeing and protection of the river. After speaking with Friends of River Alam, Nila learns that recently, the organisation has been trying to draft a Rights of Nature motion to send to the local council.

The deterioration in water quality has been caused by a number of factors, including waste run-offs from a nearby farm (Agricola) and sewage discharge from a mining company. Agricola is a dairy farm that has two thousand cows, but a recent disease carried by fleas has caused its livestock to decrease. In light of this, Agricola decided to test a new flea treatment containing the chemical Taurux, which they claim to be safe. Consequently, Taurux reaches the River Alam through the cattle's activities. The company claims this chemical is necessary for the wellbeing of their cows, and that there is no certainty that it has caused the deterioration in the River Alam's water quality.

Separately, Guys Group is a market-leading real estate developer looking to transform an area in the town into a residential district. Part of the development plan involves straightening a section of River Alam to accommodate the construction of houses on either side of the riverbank. Guys Group has submitted this plan to the local council, and the local council has granted them planning permissions to carry this out and build 100 houses along the riverbank. Preparatory abstraction works\* have taken place, and a local news outlet has reported on how these infrastructure works have negatively affected moss species along the river.

\* Abstraction is the permanent or temporary removal of water from a river, lake, reservoir, canal, estuary, or groundwater.

## What actions can Nila take to help protect the River Alam?

### *Gathering Information*

Nila can use the resources and maps provided in the Gathering Information section of this toolkit to find out as much as she can about the current state of the river, what threats face it, whether it is protected by any designations, and if it is the subject of any ongoing legal cases. They can also find out whether Friends of River Alam, any universities, citizen science, or anglers societies have ongoing projects in the area where they monitor water pollution. They can use Trout in the Town: Urban River Toolkit for Mending your Urban River to learn more about how to use citizen science to help the river ecologically.

### *Protected Species*

The first thing to note here is the endangered species of moss, which might be a protected species, which in turn means that the river may be part of a Special Area of Conservation ('SAC'). This means the river is protected by the Conservation of Habitats Regulations and the Bern Convention. Nila can find out more about the river and all its protected species and habitats, along with the causes of poor ecological or chemical status, by searching the river name on Natural England's and JNCC's websites.

### *Farm and Mine*

Complaints can be made to the regulator (Defra, EA, NE) about the negative impacts of the dairy farm, especially the new chemical. For the farm, Friends of River Alam can ask for a review of the dairy farm's activities, since farmers often receive payments for ecosystem services, and enter into land management agreements with NE. If they are in breach of any regulations, the loss of payments for ecosystem services might serve as an incentive to follow the regulations and change their practices. If they caused damage to the river and did not report it, this could be a violation of the Environmental Damage (Prevention and Remediation) (England) Regulations 2015.

An angling society with fishing rights may be able to bring a nuisance claim, as a result of dead fish, directly against the dairy farmer.

If the mine or farm has broken any laws, then the Environment Agency can launch an investigation. If they refuse to investigate and prosecute, it might be possible for Nila/Friends of River Alam to bring a private prosecution.

Expert evidence may be needed to prove that the new chemical caused a deterioration in water quality, but Nila/Friends of River Alam may also take water samples to show the high level of toxicity. Is the new chemical legal and is it really safe? If it can be proven otherwise, there may be a case against the farm.



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Friends of River Alam can start by gathering all the scientific evidence they can from both government sites and non-profit freshwater and biodiversity organisations. Wild Trout Trust provides some information on water quality monitoring which may be helpful in gathering evidence.

A campaign might involve a petition to ask the local authority to refuse similar industrial agricultural development, or a petition to ban the chemical from being used. Communities can also join forces with national campaigns against sewage pollution and industrial agriculture.

Has the farm been inspected recently? What information do they publish and what information does the EA or NE hold about the farm which could be revealed in an information request? For example, how many times has the chemical been sprayed and where exactly?

Friends of River Alam could ask the local authority to issue the farm an abatement notice under statutory nuisance powers, but this will require them to show that a nuisance exists.

### *Mine*

For the mine, Friends of River Alam can gather as much information as possible and try to find out if the mine has breached any laws or regulations. If it's unclear, they can try to request more information from the regulator. See here to learn more about the Coal Authority and legal framework that regulates mining. Have they breached the terms of their discharge permit? If the mine is within the supply chain of a multinational mining company, an OECD complaint could be made. Friends of River Alam can check the EA's page of information on the River Alam to find out whether the river has high levels of toxic chemicals documented in its water. A citizen science initiative may also be able to take more current water samples.

### *Housing Development*

Affected local individuals can make representations during the planning permission consultation process for the housing development, water abstraction permit, and the plan to straighten the river. If permission is granted it may be challengeable by judicial review (but remember, the time limit is six weeks!). Friends of River Alam can press for an environmental impact assessment, habitats assessment, and sustainability appraisal. If the river is in an SAC or SPA, the proposal will need to be screened for its impacts on the protected site and may require a habitats assessment. These assessments can then be reviewed and scrutinized (have they left anything out?). Additionally, Friends of River Alam/Nila may also scrutinise the developer's compliance with the legal protection of freshwater and migratory fish and their habitats under the 1) Wildlife and Countryside Act 1981, 2) Salmon and Freshwater Fisheries Act 1975, and 3) Eels (England and Wales) Regulations 2009. Friends of River Alam can request that the assessments be expanded to include more factors and challenge any grant of planning permission for lacking a specific assessment or the assessment being legally inadequate. The biggest issue with a new housing development is

likely to be increased sewage and phosphates. How much more sewage overflow will the housing development create and how will this impact the river's ecology? Importantly, even if Natural England and the Environment Agency are happy with the proposal, the local planning authority does not need to defer to the regulators on the issue of environmental impacts.

### *Sewage Overflow*

How much sewage has already been dumped into the River Alam in the previous few years? Friends of River Alam could bring a complaint or judicial review claim against the regulator for failing to fine and prosecute the water companies, and thus failing to protect the river, a protected habitat site, from too much sewage.

### *River Straightening*

The straightening of the river might also be challenged on the basis of disruption to protected habitats. A licence is required if any habitats of protected species are going to be disturbed for a long length of time or destroyed.

### *Biodiversity Net Gain*

The development will likely give rise to the biodiversity net gain requirement as well. The BNG plans can be scrutinized and challenged (e.g., do they really provide a net gain?).

### *Crowdfunding*

In order to bring legal challenges, Nila and Friends of River Alam will want to come up with a campaign and start crowdfunding to pay legal fees. What are some attractive features of the river that make it worthy of a campaign? Are there any kayaking communities using the river? Was it an area that people used to love to swim in, and is it no longer safe to swim in because of its poor ecological and chemical status? Does it feature a walkway or bike path that people like to use? Is any section of it owned by a conservation trust?

Environmental judicial reviews brought by members of the public can often benefit from adverse costs protection under the Aarhus Convention (see Chapter 7).

### *Rights of Nature Motion*

In order to pass a Rights of Nature motion, Friends of River Alam should aim to build a relationship with a local councillor if possible. They can also start building support for the idea with a community declaration. They might consider the approach of Frome Town Council in south-west England which produced a byelaw to grant legal personhood to the River Frome. The byelaw then needs to be submitted to the Department for Levelling Up, Housing and Communities (DLUHC) for approval. In the case of the River Frome, the byelaw was rejected, but further requests could help in building a **RoN** movement.

## 12. Useful Resources

### How to use the Useful Resources

This section serves as a bibliography for the toolkit and also features some of the links contained within the body of the toolkit, organised by chapter. There are additional academic works, articles, websites, maps, reports, and other toolkits listed under each chapter heading. Where no author is listed, the resource is likely a government page. Be sure to also visit the [Useful Organisations](#) section below.

### 1. Introduction

#### Rights of Nature Theory

- Berry, T., *The Great Work: Our Way into the Future*. (New York: Harmony Bell Tower 1999)
- Cullinan, C. *Wild law: A Manifesto for Earth Justice*. (Gaia Foundation. Totnes: Green 2010)
- Gilbert, J., Soliev, I., Robertson, A. *et al.* '[Understanding the Rights of Nature: Working Together Across and Beyond Disciplines.](#)' *Hum Ecol* 51, 363–377 (2023).
- Kauffman, C. M., Martin, P. L., *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press 2021) (Open Access)
- Lee, D. *et al.* *Community toolkit for rights of nature* (Earth Law Center, US)
- Scarpino, P.V. and Nash, R.F. '[The rights of Nature: A history of environmental ethics](#)', (1990) *The Journal of American History*, 76(4), p. 1240
- Stone, C.D. *Should trees have standing?: And other essays on law, morals, and the environment*. (Dobbs Ferry, NY: Oceana Publications 1996)
- Tanasescu, M., *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld: New Ecology Volume 6:, Transcript 2022) (Open Access)
- Tigre, M. A. '[Indigenous Communities of the Lhaka Honhat \(Our Land\) Association v. Argentina.](#)' *American Journal of International Law*, 115(4), 706–713. (2021).
- Zelle, A.R. *et al.* *Earth law: Emerging Ecocentric Law - A Guide for Practitioners*. (New York: Wolters Kluwer 2021)
- '[Can nature get it right? A study on rights of nature in the European context](#)' (Think Tank European Parliament 2021)
- '[Rights of Nature Timeline](#)' (Global Alliance for the Rights of Nature (GARN) 2023)

## The Right to a Healthy Environment

- Balfour-Lynn, H., & Willman, S., 'The right to a healthy environment in the United Kingdom: supporting the proposal for a new protocol to the European Convention on Human Rights.'(2022) Social Science Research Network
- De Vilchez, P., & Savaresi, A., 'The right to a healthy environment and climate litigation: a game changer?' 2021b) Yearbook of International Environmental Law, 32(1), 3–19
- Knox, J., & Boyd, D., 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (2018) *The Office of the High Commissioner for Human Rights, United Nations*
- Lawyers for Nature, 'LFN's Submission to Scottish Government Human Rights Consultation: Our submission highlighted the importance of a Rights of Nature approach to the Right to a Healthy Environment.'

## Rights of Rivers

- Cano Pecharroman L, 'Rights of Nature: Rivers That Can Stand in Court' (2018) 7 Resources 13
- Wesche, P., 'Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision', *Journal of Environmental Law*, Volume 33, Issue 3, November 2021
- Love Our Ouse, 'Rights of Rivers' (documentaries and articles)
- 'Rights of Rivers: A global survey of the rapidly developing Rights of Nature jurisprudence pertaining to rivers' (2020)
- Universal Declaration of the Rights of Rivers [www.rightsofrivers.org](http://www.rightsofrivers.org)

## Water Law

- Howarth, W. and Jackson, S. *Wisdom's law of Watercourses*. (London: Sweet & Maxwell 2011)

## 2. Rights of Nature Legal Strategy and the Legal System

### Costs and funding

- CrowdJustice, 'A Lawyer's Guide to Crowdfunding'
- Friends of the Earth, 'The cost of bringing environmental judicial reviews' (2018)

- Landmark Chambers, '[Costs in Environmental Cases: The New Aarhus Fixed Costs Rules and Beyond](#)'
- Public Law Project, '[Who can get legal aid?](#)'

## 3. International Conventions and EU Directives

### International and EU Law

- Małgorzata Smolak, '[How to use EU and international environmental law to protect rivers from hydropower development](#)' (2021)
- Carlos Zorrilla, Arden Buck, David Pellow. '[Protecting Your Community from Mining and Other Extractive Operations – A Guide for Resistance](#)' (*Mining Watch* 2016)
- The [Business and Human Rights Resource Centre](#) (BHRRC) collect data on human rights policy and performance from 10,000 companies in over 180 countries. They also feature an approaches mechanism whereby the BHRRC will approach companies and put pressure on them to explain what measures they are taking to stop or prevent environmental damage.

## 4. Action by the Regulators

### Civil and Criminal Offences

- Environment Agency, '[Offence Response Options](#)' (Policy Paper, 2023)
- Environment Agency, '[Enforcement and Sanctions Policy](#)'
- Sentencing Council, '[Environmental Offences Definitive Guideline](#)'
- Crown Prosecution Service, '[Legal Guidance: Wildlife Offences](#)' (2023)
- Royal Society for the Protection of Birds (RSPB), '[How to Report Crimes against Wild Birds](#)'
- Wildlife and Countryside Link, '[Wildlife Crime Report](#)' (2021)
- Environmental Agency, '[Report and Environmental Incident](#)'

### Statutory Nuisance

- Environmental Law Foundation, '[Statutory nuisance Guide and Template](#)'
- Gov.uk, '[Guidance on statutory nuisances](#)'
- Richard Buxton, '[Private and Statutory nuisance](#)'

## 5. Gathering Information and Submitting an Information Request

### Protected Sites and Designations

- Natural England, '[Search for designated sites](#)'
- Natural England, '[SSSI Introduction](#)'
- Bern Convention, '[The Emerald Network of Areas of Special Conservation Interest](#)'
- Environment Agency, '[River Basin Planning Process Overview: 3. Defining and describing the water environment](#)' (Overview of water body designations)
- Joint Nature Conservation Committee, '[Special Areas of Conservation in the United Kingdom](#)' (full list of all SACs in the UK)
- Joint Nature Conservation Committee, '[Ch.19 Freshwater Fish](#)' *Guidelines for the Selection of Biological SSSIs* (2018)
- JNCC, 'Freshwater Habitats Descriptions' <<https://sac.jncc.gov.uk/habitat/H3260/>> and <https://sac.jncc.gov.uk/habitat/H3140/> and <https://sac.jncc.gov.uk/habitat/H3160/> and <https://sac.jncc.gov.uk/habitat/H3150/>
- JNCC, '[Chapter 17 Birds](#)' *Guidelines for the Selection of Biological SSSIs* (including lists of birds who live near wetlands)
- Defra, Natural England, '[Guidance: Protected Plants](#)'

### Water Quality

- Environment Agency, '[How to use the Catchment Data Explorer](#)' (Information on Catchment Hierarchy, classifications, protected areas, and chemical status.)
- Environment Agency, 'Explore catchment data: Explore and download information about the water environment in your area and access river basin management plans. Search by water body, catchment, place, national grid reference, latitude, and longitude (for example '51.451, -2.604') or easting and northing (for example '358125,172619').' <<https://environment.data.gov.uk/catchment-planning>>
- Environment Agency, '[River Basin Management Plans](#)' Each river basin district has a river basin management plan. These plans set out the environmental objectives and a summary programme of measures to achieve those objectives.'
- JNCC, '[Surface water status](#)'

### Drinking Water

- [Drinking Water Inspectorate](#)
- To find out if your river forms part of a Drinking Water Protected Area check the RBMP interactive map, [here](#), and use the filtering function. You can also go to

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[data.gov.uk](https://data.gov.uk) and search '[Drinking Water Protected Area](#)' and '[Drinking Water Safeguard Zones](#)' to see maps of these protected areas of England, Wales, and Northern Ireland.

- Environment Agency, '[Research and analysis: Drinking water protected areas: challenges for the water environment: Current and future issues for drinking waters, with a review of current measures to address the challenges.](#)'
- [Drinking Water Legislation](#)

### Additional Scientific Information

- Mainstone, C.P., and others, '[Chapter 6 Freshwater Habitats](#)' *Guidelines for the Selection of Biological SSSIs*. (Joint Nature Conservation Committee 2018)
- '[The National Biodiversity Network Atlas](#)' (The UK's largest repository of publicly available biodiversity data.)
- WildFish, '[Riverfly Census](#)'
- Canal River Trust, '[Rare and Protected Fish](#)' (including information on habitat locations, and Bern Convention Appendix information.)
- '[10 birds to look out for around the waterways](#)'
- '[How Wetlands help keep Rivers Clean \(and how you can too\): Indicators of poor wetland health](#)'
- JNCC, '[UK Biodiversity Action Plan Priority Habitat Descriptions](#)' (2016)
- Natural England, '[Guidance: Fish: advice for making planning decisions: How to assess a planning application when there are freshwater or migratory fish on or near a proposed development site.](#)'

### International Information Gathering

- The [Business and Human Rights Resource Centre \(BHRRC\)](#) collect data on human rights policy and performance from 10,000 companies in over 180 countries. They also feature an approaches mechanism whereby the BHRRC will approach companies and put pressure on them to explain what measures they are taking to stop or prevent environmental damage.

### Interactive Maps

- [Draft River Basin Management Plans Map](#), showing detailed water quality and designations information, including drinking water, Nitrate vulnerable zones, and SACs.
- [Emerald Network Viewer Map](#) (Bern Convention) showing SAC and SPA protected sites and habitats.
- [Defra's map of designated areas in the UK](#), including protected wetland habitats and chalk rivers.

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- [WWF UK rivers map](#) showing ecological status, and what threats they are facing (i.e., mining, agriculture). Clicking on a river will take you to its catchment data on the EA site.
- [Greenpeace Interactive map](#) of sewage spills in protected areas, accompanied by full data set.
- [Drinking Water Safeguard Zones and Nitrate Vulnerable Zones Map](#) (subject to increased protection from agricultural fertilizer and pesticides). Clicking on an NVZ allows you to click another button to be taken to a pdf document of evidence about the site and why it is an NVZ.
- [Natural England's Chalk Rivers Map](#)
- [The Rivers Trust Interactive Map of Sewage in Rivers](#), showing locations of treated sewage and combined sewer overflows (CSOs) or storm overflows
- NBN Atlas, '[Explore your Area: Enter your location or address](#)' (Species Map)
- [River Restoration Centre interactive map](#) of river restoration projects
- [Fish Legal map](#) of successful cases.
- Inland Waterway Association's [Map of Navigable Rivers and Canals](#)
- [Natural England SSSI Impact Risk Zones Map](#)

### Static Maps

- Static Maps of [various designations / protections](#)
- [Important Bird Areas](#)
- [Nitrate Vulnerable Zones 2017 Designations \(England\)](#)
- [Ramsar sites \(GB\) \(wetlands\)](#)
- [Special Areas of Conservation](#)
- [Less Favoured Areas \(Severely Disadvantages\)](#)
- [Freshwater Habitat's Trust Important Freshwater Areas Map](#)
- [Maps of River Catchment Areas in England and water levels](#)
- [Environment Agency's Statutory Main River Map](#)

### Requesting Information

- '[How to make a Freedom of Information \(FOI\) Request](#)'
- Information Commissioner's Office, '[Guide to the Environmental Information Regulations](#)'
- Information Commissioner's Office, '[How to access information from a public authority](#)'
- ICO, '[FOI and EIR Complaints](#)'
- '[Transparency and Freedom of Information Releases](#)' (Database including Defra's Freedom of Information releases)
- '[Natural England: Environmental Information Requests and Freedom of Information Requests](#)'



## 6. Reporting and Complaints

### Domestic Complaints

- Environment Agency, '[Complaints procedure: How to make a complaint about the Environment Agency's service, or appeal against a regulatory decision.](#)'
- Office of Environmental Protection, '[Complaints Process](#)'
- [Parliamentary and Health Service Ombudsman](#)

## 7. Judicial Review

### Strategic Litigation

- Public Law Project, '[Guide to Strategic Litigation](#)'
- Digital Freedom Fund, '[Strategic Litigation Toolkit](#)'

### Judicial Review

- Richard Buxton Solicitors, '[Judicial Process](#)'
- '[Administrative Court Judicial Review Guide 2023](#)'
- [Landmark Chambers, 'Using the EIR in environmental judicial review proceedings'](#)

### Planning Law

- Gov.uk '[Plain English guide to the planning system](#)'
- DLUHC, '[Guidance: Plan-making](#)'
- Gov.uk '[Guidance for complying with the biodiversity duty](#)'
- '[Consultation Period](#)'
- '[Fish: Advice for Planning Decisions](#)'
- '[Habitats Regulations Assessment Guidance](#)'
- '[Habitats Assessment Guidance: what is an appropriate assessment](#)'
- [Martin Goodall's Planning Law Blog](#)

### Wales

- '[Wales Environment and Climate Change Planning Strategy](#)'
- '[Environment \(Wales\) Act 2016: FAQs](#)'
- '[The Section 6 Biodiversity and Resilience of Ecosystems Duty: reporting guidance](#)'
- '[The Section 6 Biodiversity and Resilience of Ecosystems Duty: frequently asked questions](#)'
- '[Creating a petition](#)'

## 8. Civil Claims

### Riparian rights and Nuisance Law

- Birketts, '[Guide on Riparian rights](#)'
- Cambridgeshire County Council, '[Guide on Riparian rights](#)'
- Cornwall Council, '[Land drainage: rights and responsibilities](#)'
- Country Land and Business Association, '[Guide on Riparian rights](#)'
- Environment Agency, '[Living on the edge: A guide to your rights and responsibilities. of riverside ownership](#)'
- Gov.uk, '[Guidance: Owning a watercourse](#)'
- Richard Buxton Solicitors, '[Private and statutory nuisance](#)'
- St John's Chambers, '[Water Rights and Wrongs](#)'

### Human Rights and European Court of Human Rights Claims

- [Citizen's Advice: Taking legal action about Human Rights](#)
- [Damages under the Human Rights Act](#)
- [European Convention on Human Rights](#)
- Chris Miller, '[Environmental Protection and the European Convention on Human Rights](#)'. Daniel Garcia San José [Strasbourg, Council of Europe Publishing, 2005, 75 pp, ISBN 9287156980,], *Journal of Environmental Law*, Volume 18, Issue 3, 2006, Page 517
- '[Guide to the case-law of the European Court of Human Rights](#)' (ECtHR 2022)
- '[Environment and the European Convention on Human Rights Factsheet](#)' (ECtHR 2023)
- '[Guide on Article 8 of the European Convention on Human Rights](#)'
- '[Your application to the ECHR guide](#)'
- Shepherd + Wedderburn, '[Should proceedings be raised in the high court or the county court?](#)'

## 9. International Mechanisms – Soft Law Complaints

### Bern Convention Complaint

- [Bern Convention Case File Dashboard](#)
- [Complaint Form](#)

### OECD Complaint

- [The OECD guidelines for multinational enterprises](#)

- [‘How to file a complaint?’ 2023 OECD Watch](#) 2023 OECD Watch.
- [‘Template for complaint’](#) OECD Watch
- [UK National Contact Point](#)

## 10. Political and Community Action

### Community Legal Tools

- Gov.uk [Council Motions](#)
- Davis, M. [‘Local Governments, Climate Action, and Sustainability: The Role of Human Rights’](#) (2023). In W. Baber & J. May (Eds.), *Environmental Human Rights in the Anthropocene: Concepts, Contexts, and Challenges* (pp. 115-131). Cambridge: Cambridge University Press
- [Universal Declaration of River Rights](#)
- See above for [Planning Law](#) resources

### National Campaigning and Policy Change

- [The Environmental Rights Bill](#)
- River Action, [‘The Charter for Rivers is Launched in Parliament’](#)

### Protecting Rivers Toolkits

- Theo Pike, Dr. Paul Baskall, [Trout in the Town: Urban River Toolkit for Mending your Urban River](#). (Wild Trout Trust)
- Surfers Against Sewage: Protecting Wild Waters, [Toolkit Materials and Resources to Apply for Bathing Water Designation](#)

### Water Pollution from Farming

- [‘Catchment sensitive farming: Advice for farmers and Land Managers’](#)
- C. Chapman, R. Broadbent ‘Restoring our rivers— looking beyond nutrient neutrality.’ *The Habitats Regulations Assessment Journal*. (DTA Publications 2023)
- Environment Agency, Defra, [‘Guidance: Storing silage, slurry, and agricultural fuel oil. Rules you must follow’](#) (2023)
- Environment Agency, [‘Phosphorous: challenges for the Water Environment’](#) (2021)
- Gov.uk [‘Future farming in Devon’s Axe catchment’](#)
- Guibourg, C. [‘Climate change: Which vegan milk is best?’](#) (2019, February 22) *BBC News*

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- “It’s like pea soup”: poultry farms turn Wye into wildlife death trap.’ (2020, June 20). *The Guardian*
- Laville, S., ‘Shocking state of English rivers revealed as all of them fail pollution tests.’(2020, September 17) *The Guardian*
- ‘Revealed: no penalties issued under “useless” English farm pollution laws.’ (2021, February 12). *The Guardian*
- Stallard, E., ‘Water pollution: How clean are the UK’s rivers and lakes?’ (2022, January 13) *BBC News*
- Gov.uk ‘Water and sewerage companies in England: environmental performance report for 2020’

## 13. Useful Organisations

### Environmental and RoN Legal Organisations

Many of these organisations also share updates on their social media accounts.

#### Pursuing judicial remedies

- Client Earth - An organisation pursuing legal and policy work on an extensive range of environmental issues.
- Friends of the Earth - An organisation focused on developing an environmental campaign community across England and Wales.
- Wild Justice - A not-for-profit company who initiates pro-wildlife legal challenges against the UK government.
- WildFish - a UK charity campaigning for Wild Fish and their environment.
- Environmental Law Foundation - If interested in pursuing any of the legal methods contained in this guide, you may wish to contact ELF or one of their associated clinics for assistance with your case. Find a list of associated clinics [here](#).

#### RoN legal organisations pursuing campaigns and research

- Global Alliance for the Rights of Nature (GARN) - An organisation committed to promoting and implementing RoN across the world.
- Earth Thrive - International organisation working on protection, advocacy and establishment of rights of Nature, Law of Ecocide and Nature restorative justice in the Balkan & Mediterranean bioregions.
- Earth Law Center - A US-based organisation who promote and create resources relating to RoN.
- River Action UK - An NGO running campaigns to combat water pollution, leading the Charter for Rivers campaign.
- Lawyers for Nature - a collective of lawyers, researchers and campaigners that have come together to work on behalf of nature. They recently published a report entitled 'Realising Rights of Nature: Understanding the Variety of Legal Instruments.'
- Community Environmental Legal Defense Fund - A US -based organisation that have helped to write RoN political policies.

#### Non-RoN Oriented Legal Organisations

- Fish Legal - An organisation that brings legal action on behalf of anglers against companies and government agencies for pollution. A map of ongoing cases in the UK can be found [here](#).

## Scientific Freshwater and Biodiversity Information

- Joint Nature Conservation Committee (JNCC) - the statutory nature advisor to all four countries of the UK providing robust scientific evidence and advice to decision makers.
- National Biodiversity Network - a collaborative partnership created to exchange biodiversity information.
- The Riverfly Partnership - hosted by the Freshwater Biological Association, a network of associations focused on protecting water quality.

## River Conservation, Restoration, and Policy Work

- The London Waterkeeper - An organisation tackling water pollution, through information and campaigning, especially on the River Thames.
- The Rivers Trust - The overarching organisation for the 65 River Trusts in the UK who provide advice and recourses to local communities using their expertise and research. Details of the individual River Trusts can be found [here](#).
- The Wild Trout Trust - A charity focused on conducting conservation projects for local rivers.
- Canal & River Trust - A charity responsible for conducting practical work to protect and restore English and Welsh riverways, as well as promoting the importance of rivers.
- Windrush Against Sewage Pollution - An organisation focused on holding regulators to account through investigations and data analysis.
- Severn Rivers Trust - an organisation undertaking numerous river restoration projects, such as working farmers, removing barriers to fish migration, and reducing pollution.
- Inland Waterways Association - restoring navigable rivers and canals.
- Wildfowl & Wetlands Trust Charity (WWT) has a conservation unit that undertakes monitoring and habitat management.
- Freshwater Habitats Trust - A charity undertaking policy work, conservation projects, research, and monitoring of freshwater sites to improve biodiversity.
- The River Restoration Centre - an independent non-profit national expert advice centre for best practice river restoration, habitat enhancement and catchment management.

## Acknowledgments

This toolkit was written by Maya Pardo, Amanda Ignatia, and Freya Skyrme, with support from Sue Willman, Lecturer and Acting Director of Clinical Legal Education & Supervising Solicitor.

We thank Zoe Lujic (Earth Thrive); Tom Brenan and Emma Montlake (ELF); Theo Thomas (London Waterkeeper); Sir Crispin Agnew KC; Paul Powlesland (barrister, Garden Court Chambers); Bonnie Holligan; Joanna Smallwood; Ben Pontin (Cardiff University); Grant Wilson (ELC); and Lynda Sullivan (EJNI) for their valuable contributions and guidance. We are also grateful to King's Legal Clinic staff and students for editing, research, and reviewing: Aparna Mehrotra, Isabelle Standen, Sneha Bhardwaj, Guillermo Gari Ruibaldeflores, Sanja Katic, Saira Munir, Marcus Chan, and Addison Luck, as well as LSE student Andrew Tan Ri Yao. We are grateful for the review and editing undertaken by Barristers Edward Arash Abedian, Matthew Dale-Harris, Siân McGibbon, and Alex Shattock (Landmark Chambers), and Alex May (Lawyers for Nature). Design was funded by Kate Hodgson. Cover Design by Josa Taylor. Cover photo by Susannah Miller.

## Why was this toolkit developed?

This resource began as part of a King's Undergraduate Research Fellowship and was continued by students in the King's Human Rights and Environment (HRE) Legal Clinic under Sue Willman's supervision. The project was inspired by a proposal from Zoe Lujic of Earth Thrive to develop a RoN toolkit with a legal outlook, building on an activists' toolkit by Carlos Zorrilla. She suggested the toolkit could particularly benefit communities worldwide affected by mining projects. We consulted environmental groups, other legal clinics, and activists and decided to focus on rivers in the UK, in the hope that this guide could be expanded to other areas in the future. You can learn more about the KCL Environmental Legal Clinic on our [website](#).

This toolkit is produced as a guide to inspire action and not a definitive statement of the law. We apologize for any errors. We welcome any comments and feedback to King's Human Rights and Environment Legal Clinic at [hre-kingslegalclinic@kcl.ac.uk](mailto:hre-kingslegalclinic@kcl.ac.uk).

Date of publication: January 2024

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Activists, paralegals, lawyers, educators, and anyone wishing to protect rivers are welcome to freely use this material. Please cite the toolkit if you use it.

## About this Toolkit

The KCL Human Rights and Environment Legal Clinic toolkit promotes access to justice by de-mystifying the laws regulating water pollution and providing practical advice on how to use legal tools to protect rivers. The toolkit aims to help community activists, legal clinics, and legal professionals promote the Rights of Rivers, especially the right to be free from pollution.

With examples included throughout, the toolkit covers gathering information, information requests, submitting a complaint, criminal prosecutions, judicial review, environmental planning law, nuisance and human rights claims, soft-law transnational complaints, and public participation, including council motions, public consultations, and objecting to planning permission.

## UN Sustainable Development Goals

This toolkit promotes UN Sustainable Development Goals 3, 6, 12, 13, and 16. See the table below for a breakdown of the relevant sub-targets.

<b>3. Good Health and Well-Being</b>
3.9 By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination
<b>6. Clean Water and Sanitation</b>
6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally
6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate
6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes
6.b Support and strengthen the participation of local communities in improving water and sanitation management
<b>12. Responsible Consumption and Production</b>
12.4 By 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, in accordance with agreed international frameworks, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment
12.6 Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle
<b>13. Climate Action</b>
13.1 Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries



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13.2 Integrate climate change measures into national policies, strategies, and planning
13.3 Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning
<b>16. Peace, Justice, and Strong Institutions</b>
16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all
16.6 Develop effective, accountable, and transparent institutions at all levels
16.7 Ensure responsive, inclusive, participatory, and representative decision-making at all levels
16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
16.b Promote and enforce non-discriminatory laws and policies for sustainable development



Susannah Miller, *Glaslyn River, Beddgelert, Gwynedd, Wales*