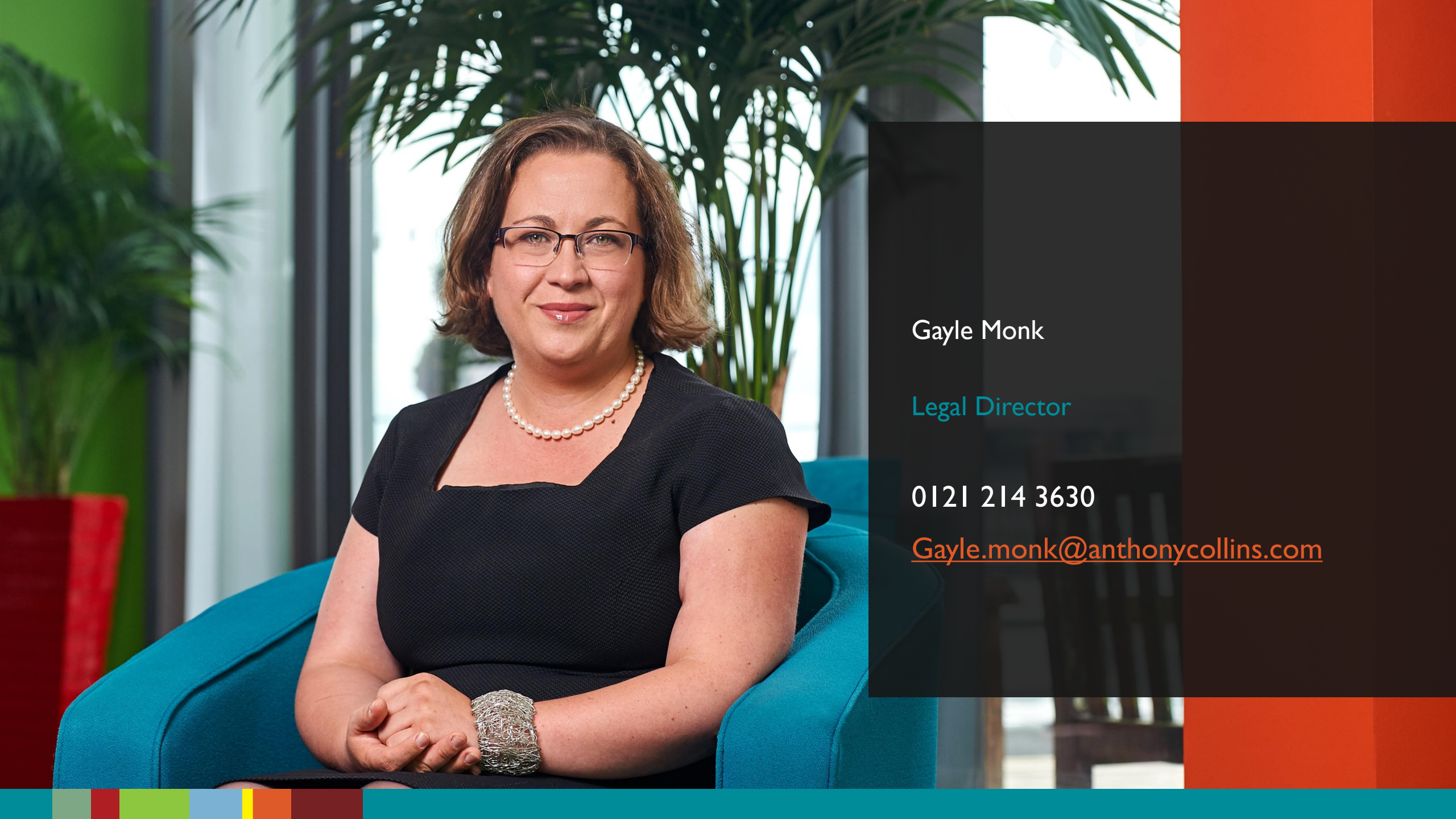


ADEPT Environment Committee April 2023 – Retained EU Law Bill and Biodiversity

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Retained EU Law Bill – its effect and impact

“Sunset” – i.e., the revocation of all:

- EU-derived subordinate legislation
- Retained direct EU legislation
- Retained EU rights

Note Acts of Parliament are unaffected (including any amendments made to them by amending legislation).

Unless:

- Restated
- Revoked and replaced
- Postponed
- Excluded

Abolition of:

- the supremacy of EU law
- general principles of EU law

Extent of the impact

There are some:

- 4,500 pieces of EU-derived subordinate law (UK enacted regulations)
- 1300 pieces of retained direct EU law (EU Commission Regulations and Implementing Decisions)
- 120 statutory instruments made under retained direct EU law

These span 300 different policy areas and 21 economic sectors

Impact on Local Government Law

Core Local Government Law is unaffected, as it is not rooted in EU law

However, the impact will be felt across all aspects of a Council's operations, such as:

- Employment laws such as the Working Time Regulations, Equal Pay and TUPE
- Planning
- Commercial law (e.g., Late Payment of Commercial Debts)



Impact on Environmental Law (I)

Some examples of what could go:

- The Conservation of Habitats and Species Regulations 2017 (the “Habitats Regulations”)
- The Waste (England and Wales) Regulations 2011 and amending regulations
- Environmental Information Regulations 2004
- Environmental Permitting (England and Wales) Regulations 2016 (as amended)
- Waste Electrical and Electronic Equipment Regulations 2013
- Energy Performance of Buildings (England and Wales) Regulations 2012
- Controlled Waste (England and Wales) Regulations 2012



Impact on Environmental Law (2)

- Defra has stated that their position would be to preserve retained EU law
- Even where laws are retained, the Bill requires retained EU law to be interpreted in line with domestic law. Risks fragmentation and re-interpretation of currently established principles.



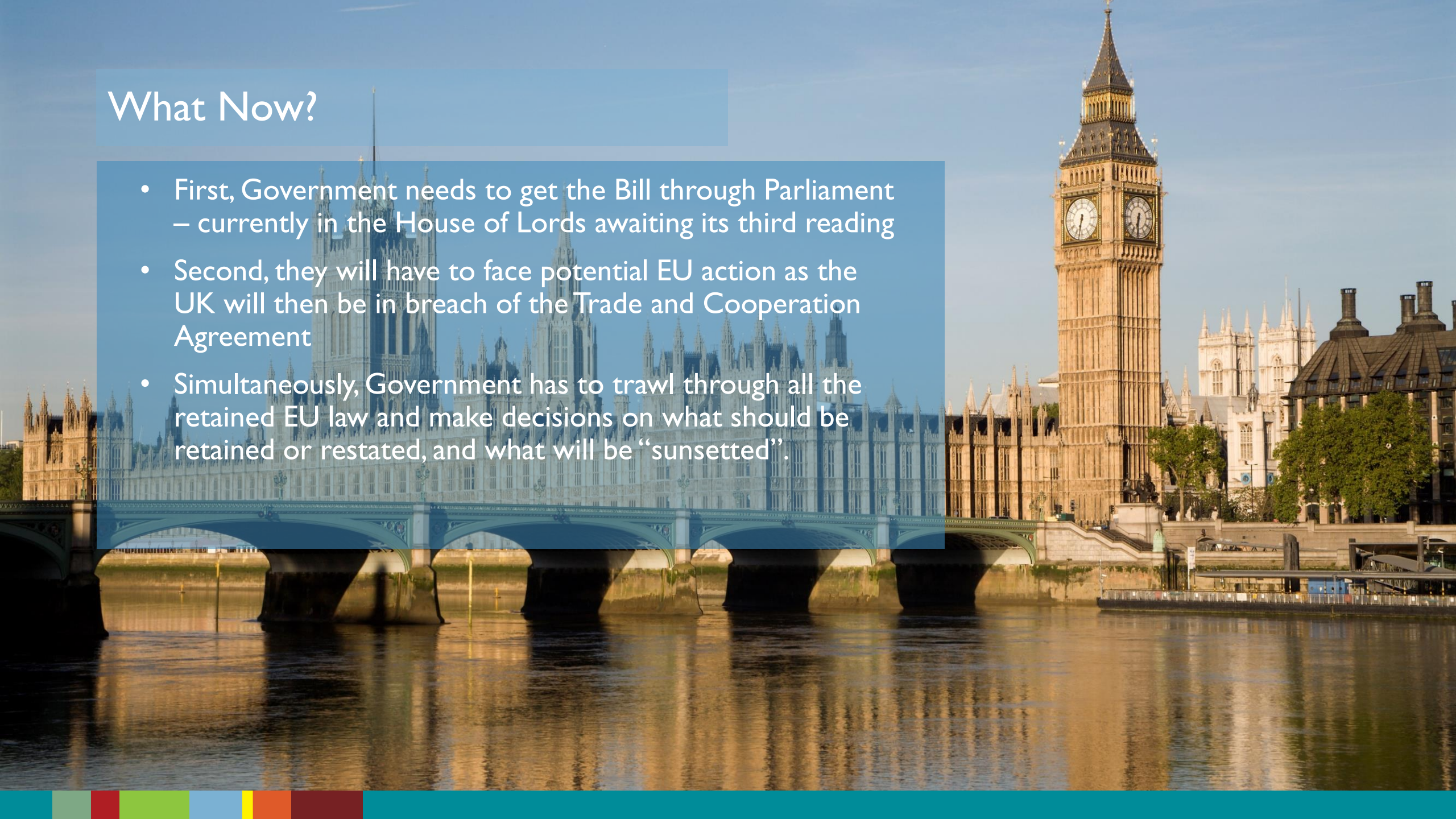
Biodiversity under the Environment Act 2021

Part 6 of the Environment Act 2021 introduces:

- Biodiversity Net Gain
- The Public Sector Biodiversity Duty
- Biodiversity Reporting
- Local Nature Recovery Strategies
- Species Conservation and Protected Site Strategies
- Amendments to wildlife licensing powers
- Amendments to the Habitats Regulations
- Tree felling and planting
- Use of forest risk commodities in commercial activity

What Now?

- First, Government needs to get the Bill through Parliament – currently in the House of Lords awaiting its third reading
- Second, they will have to face potential EU action as the UK will then be in breach of the Trade and Cooperation Agreement
- Simultaneously, Government has to trawl through all the retained EU law and make decisions on what should be retained or restated, and what will be “sunsetting”.



The Biodiversity Duty – changes from the NERC Act

Previous biodiversity duty under section 40 of the Natural Environment and Rural Communities Act 2006 (NERC Act) was to “**have regard**, so far as is consistent with the proper exercise of those functions, to the purpose of **conserving biodiversity**.”

This changes under section 102 of the EA 2021 to:

“A public authority which has any functions exercisable in relation to England must from time to time **consider what action the authority can properly take**, consistently with the proper exercise of its functions, to further the general biodiversity objective.”

The “General Biodiversity Objective” is “the **conservation and enhancement** of biodiversity in England through the exercise of functions in relation to England”

The Biodiversity Duty (2)

Section (1A) requires that the authority must do one of the following:

- 1) Conclude that there is no new action it can properly take; or
- 2) Both:
 - a. Determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective; and
 - b. take such action as it considers appropriate to further that objective in the light of those policies and specific objectives

The Biodiversity Duty (3) Timescales

- Must first consider within one year of this provision coming into force – so by 31st December 2023.
- Thereafter no more than 5 years between the times at which the authority “considers”.



Local Nature Recovery Strategy

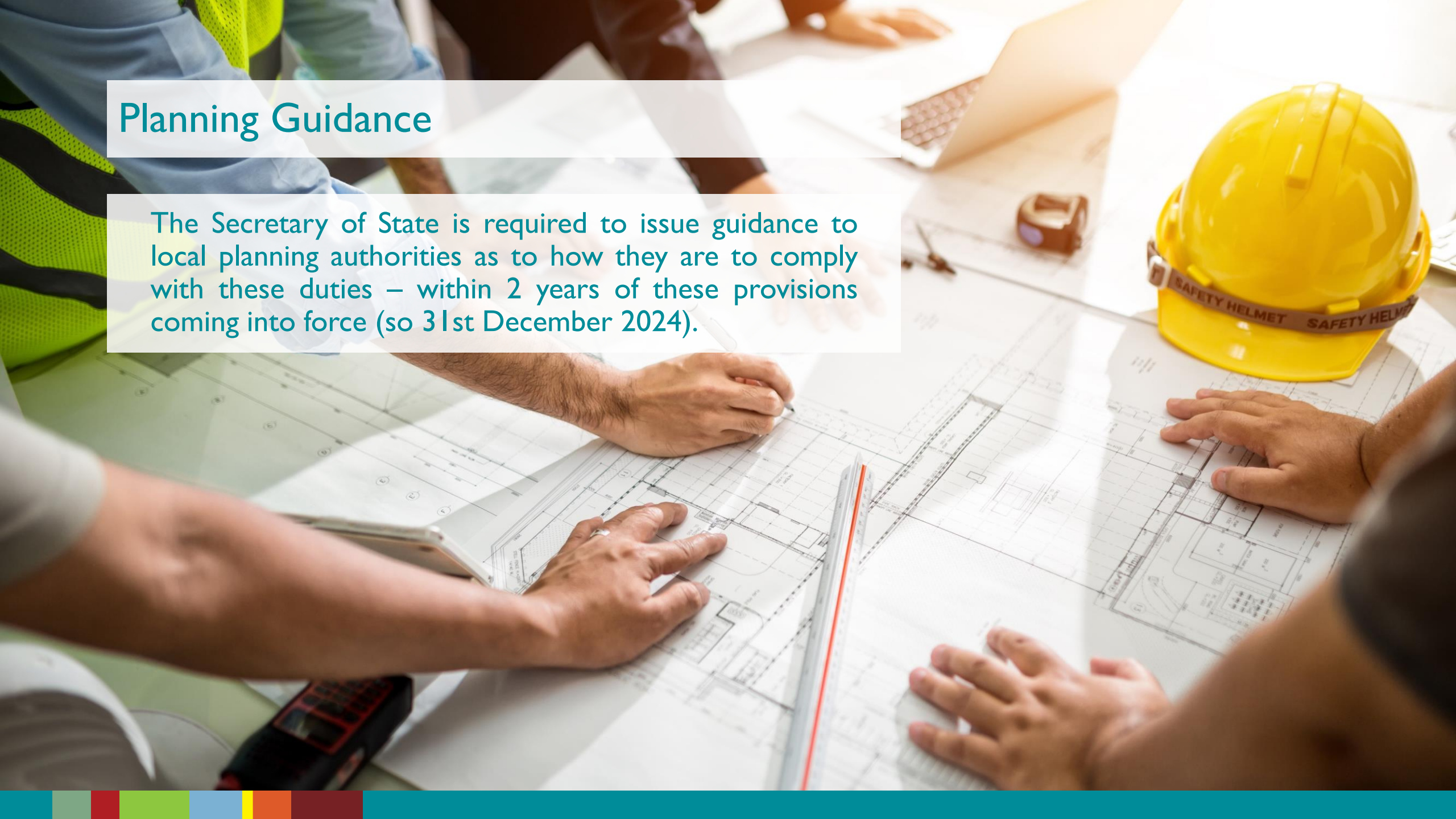
A background image showing a close-up of a yellow beehive box with many bees flying around and on it. The image is slightly blurred, focusing on the text overlay.

The Biodiversity Duty requires you to have regard to:

- Any relevant local nature recovery strategy – statutory guidance was published in March 2023 (<https://www.gov.uk/government/publications/local-nature-recovery-strategy-what-to-include>) (Secretary of State not yet appointed the relevant public bodies that will be the “responsible authorities”.)
- Any relevant species conservation strategy or protected site strategy prepared by Natural England

Planning Guidance

The Secretary of State is required to issue guidance to local planning authorities as to how they are to comply with these duties – within 2 years of these provisions coming into force (so 31st December 2024).





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QUESTIONS?

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