

Written Evidence for the Planning and Infrastructure Bill Public Bill Committee

Submitted by Hampshire & Isle of Wight Wildlife Trust

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Executive Summary

Part 3: Development and Nature Recovery violates fundamental principles underpinning environmental protections, amounting to a regression in environmental law and risking further biodiversity decline through introducing a simple ‘pay to pollute’ system in place of current environmental regulations. We are concerned that the Bill will lead to the following issues:

1. An undermining of the mitigation hierarchy
2. An erosion of the polluter pays principle
3. The loss of the precautionary principle
4. Standards for having an EDP signed off by the Secretary of State are not stringent enough to ensure that EDPs will always deliver positively for nature
5. A risk that levy income paid to Natural England will not be sufficient to deliver positively for nature
6. A risk that EDPs will not be delivered before harm occurs or in perpetuity, and that irreplaceable damage may occur if conservation measures are not delivered prior to development harm
7. A risk that the Overall Improvement Test is not suitably robust and does not ensure a net-gain for nature is delivered by EDPs
8. No obligation on Natural England to remedy any failure to deliver measures set out in an EDP
9. An undermining of nature markets in the UK, redirecting investment elsewhere
10. A risk of no improvement to the developer experience.

Introduction

1. Hampshire & Isle of Wight Wildlife Trust is a registered charity that manages over 60 nature reserves and other land for nature totalling 5,000 hectares, offers advice to landowners, works with developers to provide biodiversity net gain and nutrient mitigation solutions, provides educational services and represents almost 30,000 members. The written evidence provided raises our concerns about, and offers our recommendations for, Part 3: Development and Nature Recovery. We would be happy to expand on this document and give oral evidence.
2. We have direct experience in the Solent region of providing high quality mitigation schemes that allow development to proceed quickly whilst delivering net benefits for nature. These operate within existing laws and regulations and

indeed rely on the backstop of fundamental principles like the mitigation hierarchy and polluter pays to ensure our schemes deliver certainty, fairness and good outcomes for both nature and developers. We have written to both MHCLG and Defra to offer our direct experience in any pilot phase or testing of a new approach.

3. The Bill needs extensive changes to fully address the risks. There are several amendments being put forward that we support, however, due to the sheer number of necessary amendments, the risk of these overlapping or conflicting with each other, and the rushed timetable, we believe the more sensible approach is to pause Part 3 for due process. We believe a pausing of Part 3 is necessary to allow time for pilot testing, consultation and impact assessment to avoid the very real risks it poses to both nature and developers.

Mitigation Hierarchy

4. The proposed nature restoration levy in Part 3 of the Bill undermines critical pillars of effective environmental governance. This includes the mitigation hierarchy, which encourages developers to avoid harm in the first place, rather than simply pay a levy to permit damage. The nature restoration levy allows developers to simply pay to offset harm they cause, rather than go through the steps of avoiding harm first, then if that is not possible minimise and then compensate. Allowing developers to skip straight to the final step in the hierarchy disincentivises them to avoid harm to nature; this represents a weakening of the Habitat Regulations and a regression in environmental law. The result is that protected species and habitats that are not covered by an EDP will be better protected than species and habitats that are covered, even though they are both covered by the same legislation, namely the Habitats Regulations, Wildlife and Countryside Act or Protection of Badgers Act. This two-tier approach will create confusion for land managers and developers and will be bad for nature restoration.
5. The EDP approach should be required to follow the principles of the mitigation hierarchy, including an explicit duty on Natural England to ensure developers have taken reasonable steps to appropriately apply the mitigation hierarchy and seek to avoid harm in the first instance where possible. Likewise, an EDP should set out how all reasonable measures have been taken to avoid harm to protected features before considering compensation.

Polluter Pays Principle

6. The polluter pays principle is a critical pillar of environmental governance, meaning that those responsible for the damage should bear the costs of dealing with the impacts, working to deter damage. Clause 64 undermines this core principle, stating that Natural England must have regard to impacts on the

“economic viability of development” and “other actual or expected sources of funding for those conservation measures” when setting the levy. This means that if developers argue that they cannot afford to pay or Natural England acquires funding elsewhere, there is a chance developers can destroy habitats for protected species and not have to pay the full cost of offsetting that damage. This is out of line with the principle and is therefore in conflict with the Environment Act 2021.

7. This is reinforced by clause 62 which requires the Secretary of State to consider when making the regulations that the overall purpose of the nature restoration levy is to ensure costs incurred in maintaining or improving the conservation status of environmental features can be funded (wholly or partly) by developers in a way that does not make development economically unviable. If a developer cannot afford to put right the harm their development would cause, the development should simply not go ahead.

Alienation in time and space

8. As drafted, a clear timeframe for mitigation and compensation in the EDP is not provided. This undermines a fundamental existing principle of the Habitat Regulations, where any mitigation must be in place prior to impact and as close to the source of impact as possible.
9. Mitigation and compensatory measures should be delivered upfront to prevent a short-to-medium term decline in nature. A recent report by [Wild Justice](#) highlighted that only half of promises to mitigate harm to nature through the planning system had been kept, so there must be guarantees to guard against this. The requirement that compensation should be delivered upfront should be written into the Bill, alongside a requirement for EDPs to set out a timetable for implementation for each conservation measure, with environmental benefits delivered or secured in advance of harm.
10. The Fund will also sever any link between environmental compensation and the development causing harm. If EDPs are not geographically constrained, harm could occur in one part of the country and the compensation could be delivered in another. This undermines the rectification at source principle included in the Environment Act 2021.

Ring fencing of funds

11. The draft Bill does not include safeguards to ensure that money paid into the Nature Restoration Fund is solely directed towards mitigation and compensation schemes. At present, this money will also cover administrative costs for Natural England, divorcing the levy paid from compensation delivered and further undermining the polluter pays principle.

12. With Natural England increasingly resource constrained and the introduction of a new statutory direction to ‘promote growth,’ nature is bound to lose out when economic pressures arise. In addition, the levy will be discounted according to economic viability of the development, and potentially further discounted by existing funding. Funds raised by the levy must be ring fenced to ensure they are spent only on mitigation and compensation projects and the costs should be based on the true cost of delivering positive outcomes for nature in perpetuity.

Overall Improvement Test

13. The Overall Improvement Test, introduced in Clause 55, is a regression from the standards under Habitat Regulations. As drafted, the threshold for an EDP will be ‘likely to outweigh’. This is a far lower threshold than the Habitat Regulations Assessment sets the standard for mitigation measures of ‘beyond reasonable doubt’.
14. The term ‘outweigh’ is legally flimsy and is not ambitious enough to deliver nature’s recovery let alone robust compensation measures. Setting such a weak test means that in reality there is a good chance of further declines in biodiversity. We recommend including a requirement that benefits to nature must be significant and measurable, in line with the legal benchmark established under the Environment Act
15. The scope and detail of EDPs is not yet clear. Given the loss of site-based assessment, ensuring a robust evidence base to underpin the EDP will be critical to ensure a tangible overall improvement. The requirement in Clause 50(3)(b) that conservation measures must simply ‘contribute’ to an overall improvement for an environmental feature sets a very low bar for nature. To effectively measure impact and guarantee a positive gain for nature, EDPs must only be applied where scientific evidence demonstrates ecological suitability and where significant measurable benefits can be provided. A summary of evidence used by Natural England should be required.
16. Irreplaceable habitats (such as chalk streams and ancient woodlands) should be exempt from the EDP approach as they cannot be mitigated or compensated for.
17. The Secretary of State for Housing (note: not Defra) will be granted discretion to determine whether the “overall improvement” Test has been met by the EDP. This risks politically motivated decision-making on whether plans are suitable for delivering nature’s recovery, rather than scientific, evidence-based decisions which are needed to secure 30% of land and sea for nature by 2030. Parameters should be set that the Secretary of State must reconsider an EDP if new relevant evidence becomes available regarding its effectiveness, in line with the precautionary principle.

Regression in Environmental Law

18. The Bill as currently drafted amounts to a regression in environmental law. In effect, the Bill sets up a system of Nature Restoration Levy / Environmental Delivery Plan to replace the Habitat Regulations Assessment standard of “beyond reasonable doubt” with the lower threshold EDP test of “likely to outweigh”. The lack of pilot schemes or any evidence of effectiveness of this new approach risks serious unintended consequences and is very far away from the Government’s stated ambition of a “win-win” for development AND nature recovery.
19. The Bill would also undermine central and local government’s ability to meet their legal duties under the Environment Act and hit the targets of halting wildlife decline and securing 30% of land and sea for nature’s recovery by 2030.

Reporting and Accountability

20. As drafted, the Bill only requires reporting on the EDPs midway through and at the end of their designated time span, with no associated parameters. The absence of a specified reporting time frame embeds a significant risk of failing to identify significant issues with the EDP’s effectiveness and delivery in a timely manner. We strongly recommend that a more specific and frequent review timeframe is adopted within the Bill, including a requirement for EDPs to be reviewed after one year.
21. Clause 57(5) requires Natural England’s reports on EDPs to include whether conservation measures have been implemented and had their intended effect. However, there is no provision made for Natural England being required to take remedial steps if an EDP is not effective. As drafted, there is no obligation on Natural England to make good the shortfall and no detail on where the money would come from to remedy any failings of the EDP.
22. Due to risk of an EDP failing to deliver all of the benefits intended, a buffer should be factored in and the EDP should be required to deliver more than the damage it is compensating for.

Uncertainty in Natural Capital markets

23. Our nutrient neutrality programme has provided nitrate credits to facilitate over 2,600 homes across Hampshire. In the Solent, there are adequate nitrate credits available, but take up from developers has cooled due to uncertainty, putting housebuilding on hold. A lack of mitigation schemes is not a blocker to housebuilding in our region.
24. Wilder Little Duxmore is one of our rewilding sites on the Isle of Wight. This land now provides nitrate credits to facilitate development in the Solent region, having already provided credits for 100 developments and about 1,000 houses.

25. Another Isle of Wight rewilding site, Wilder Nunwell, has facilitated the development of over 1,600 new housing units and over 250 developments in total. Significant capacity is available via Portsmouth City Council's purchased stock of credits and through Hampshire & Isle of Wight Wildlife Trust's retained credits to continue to facilitate development throughout 2025 and beyond. Despite an abundance of credits available, the take up of credits has been slower than originally forecast.
26. The Nature Restoration Fund presents a risk to well-functioning nature markets, such as the Solent nitrate credit market, with uncertainty drying up investment.

Mitigation schemes

27. The Solent Waders and Brent Goose Strategy is a conservation partnership project, which aims to conserve internationally important brent goose and wading bird populations within and around the Special Protection Areas and Ramsar wetlands of the Solent coast.
28. Hampshire & Isle of Wight Wildlife Trust initiated the Solent Waders and Brent Goose Strategy, in partnership with other conservation organisations and local councils. The Strategy has enabled comprehensive surveying of birds since 2002 across the Solent, mapping over 15,000 records across 1,000 different sites.
29. This surveying has helped to locate the key places that these bird populations need to thrive and has provided an accurate picture of how birds move between sites, informing which locations need protecting or [mitigation](#) when councils are making planning decisions.
30. The underlying principle of the Strategy is to, wherever possible, conserve extant sites, and to create new sites, in order to enhance the quality and extent to the feeding and roosting resource for waders and brent geese.
31. This enables the roll out of high quality, evidence-based mitigation schemes which operate within the existing legal framework, strengthened by the mitigation hierarchy and precautionary principle. This allows development to proceed quickly whilst delivering measurable and significant net benefits for nature.

Chalk streams

32. Chalk streams are fundamentally irreplaceable habitats. Once a chalk aquifer is damaged, the habitat cannot be compensated for elsewhere. With 85% of the world's chalk streams located in England, we cannot afford to lose them. As currently drafted, the Bill represents a missed opportunity to secure nature's recovery through providing chalk streams with a protection in planning and classifying them as irreplaceable habitats.
33. These rivers are polluted and over-abstracted, leaving them in poor condition. In the South and East of England, we are heavily dependent on chalk streams for

the abstraction of clean water, making them essential to water security in England.

34. An amendment to the Bill could provide long-awaited protections for these precious rivers through Spatial Development Strategies, as tabled by Chris Hinchliff. This would require the Spatial Development Strategy to identify chalk streams in the area, identify measures to protect them and impose responsibilities on strategic planning authorities for their protection and enhancement.

Recommendations for amendments

35. We are in favour of the chalk stream protection amendment (clause 47) and the timing of EDP measures amendment (clause 52) both tabled by Chris Hinchliff. We are also in full support of the proposed amendment on evidence (clause 53), the amendment tabled by Gideon Amos on significant improvement test (clause 55) and the amendment tabled by Ellie Chowns on the mitigation hierarchy (clause 61).
36. Natural England must be satisfied that developers have adhered to the mitigation hierarchy, avoiding and minimising harm where possible, before payment to the NRF is made.
37. EDPs must be rooted in clear scientific evidence to justify compensatory conservation measures. Irreplaceable habitats must be exempted from the EDP approach as they cannot be mitigated or compensated for.
38. A transparent schedule of improvements must be included in the EDP with more robust guarantees of delivery and adequate funding that covers the full costs of nature conservation measures.
39. We firmly believe that the 'likely outweigh' condition for EDPs is not robust enough, leaving nature restoration efforts highly susceptible to failure. This test must be replaced with a robust significant improvement test based on evidence.
40. Our concerns are considerable enough that we think Part 3 of the Bill should be paused so that its potential impacts can be fully assessed, and pilots can be carried out to resolve the issues identified above.