

Planning & Infrastructure Bill: Briefing for Committee Stage

12 May 2025

Link Priority amendments:

Part 3: Environmental Delivery Plans – Clauses 48–78

Part 3 of the Planning and Infrastructure Bill introduces Environmental Delivery Plans (EDPs). It currently represents a serious risk to environmental protection in England.

EDPs would allow developers to pay a Nature Restoration Levy in place of existing legal obligations to avoid, reduce or redress harm to protected wildlife sites and species. This includes legal duties under the UK's most significant wildlife legislation: the Habitats Regulations and the Wildlife and Countryside Act 1981. These laws protect habitats (such as wildflower meadows, woodlands and peatlands) and species (such as dormice, otters and birds). They are proven to be proportionate and effective.

Strategic approaches like EDPs trade off some of the strict legal protection for nature sites and species for environmental benefits to protected features at a wider scale. These approaches can sometimes offer opportunities to deliver environmental gains at scale at the same time as speeding up development. For example, under the Habitats Regulations, strategic schemes have been successfully implemented for Great Crested Newts (district level licensing) and for access to greenspace.

However, proposals in Part 3 currently lack the safeguards needed to ensure the reliable delivery of benefits for nature. The EDP approach would sacrifice the high level of legal certainty for environmental outcomes provided by current environmental law for a high degree of uncertainty. In our view, this would constitute a regression in environmental law. This view is shared by the Office for Environmental Protection which issued formal advice to the Government on 2 May, stating:

In our considered view, the bill would have the effect of reducing the level of environmental protection provided for by existing environmental law. As drafted, the provisions are a regression. This is particularly so for England's most important wildlife - those habitats and species protected under the Habitats Regulations.

In its current form, Part 3 proposals are not compatible with the Government's legal obligations to halt and reverse the decline of nature. In order to get back on track for planning reform that could secure a "win-win" for development and nature, we recommend the following changes:

- **A schedule of conservation measures** to ensure that nature benefits are delivered in timely and transparent fashion – clause 52 – amendment 3
- **A scientific test for EDPs** to ensure that this approach cannot be applied to inappropriate sites or species – clause 53
- **A stronger overall improvement test** to ensure that environmental improvements will be delivered with certainty and substantially outweigh harm – clause 55 – amendments 14 & 119
- **Requirements to avoid harm before offsetting** to apply the "mitigation hierarchy" – clause 61 – amendment 54
- **Remove viability as a consideration** for setting the Nature Restoration Levy – clause 62

Clause 52 – amendment 3

The bill would allow harm to protected wildlife to go ahead with no guarantee about when compensatory measures designed to offset harm would be carried out. An EDP can run for 10 years, and there is no guarantee that environmental benefits would be delivered in that time.

This represents a significant risk that harms may outweigh benefits for many years, potentially indefinitely, with serious environmental consequences.

There are numerous precedents of failure offset schemes and poorly utilised funds. For example, the Water Restoration Fund, Section 106, the Infrastructure Levy and the Statutory Biodiversity Credits for biodiversity net gain have all experienced underutilised or poorly allocated funds.¹ Centralised levies often fail to deliver targeted environmental outcomes in practice due to lack of scrutiny on spend and available expertise.

By contrast, under current practice, where harm does take place, mitigation and compensatory measures are usually delivered upfront. This avoids damage to nature in return for uncertain future benefits for nature.

Please support amendment 3 as a priority. This amendment would require EDPs to include a transparent schedule of compensatory measures. This would help ensure that benefits for nature are delivered in timely and transparent fashion. Where there is risk of irreversible harm to nature (such as a critical pollution threshold being crossed), then environmental benefits should always be delivered upfront.

This approach is perfectly possible, while still retaining benefits for sustainable development. We welcome the Government's Budget initial allocation of £14 million to the Nature Recovery Fund, which will allow some "pump priming" of actions to restore nature. Additional actions should be undertaken upfront, paid back by developers on a cost-recovery basis. The presumption that compensation should ordinarily be delivered upfront should be written into the Bill, with a hard line that this should always be the case if there is a risk of irreparable damage to specific natural features.

If there is a significant lag between the delivery of associated natural enhancements and new development, this could lead to a net loss of nature, and actively undermine progress towards our legal Environment Act targets. This is also critical for public trust. A significant delay between new development and its associated environmental compensation and enhancement measures risks eroding public faith that benefits will materialise.

¹ <https://www.hbf.co.uk/policy/unspent-developer-contributions/#~:text=Section%20106%20agreements%20are%20negotiated,impact%20of%20a%20specific%20development.https://www.argroup.co.uk/planning-and-development-what-changes-will-a-labour-government-bringhttps://theriverstrust.org/about-us/news/not-one-penny#:~:text=The%20Rivers%20Trust%20Movement%20has,reversing%20harm%20on%20the%20environment.> ; According to the first annual report by the Defra from February 2024 to February 2025, the total income from statutory credit sales was £247,416. However, the projected administrative expenses for the same period are approximately £300,000, surpassing the income generated. https://www.gov.uk/government/publications/biodiversity-net-gain-statutory-credits-annual-report-2024-to-2025/biodiversity-net-gain-statutory-credits-annual-report-2024-to-2025?utm_source=chatgpt.com

Clause 53- amendment 27

The Government has committed to a “modular” approach to expanding EDPs, covering protected features one by one. Existing laws continue to apply to features not covered by an EDP. For example, an EDP may enable a strategic approach to water pollution, while existing species protection continues to apply.

We welcome that approach, but the bill does not currently include a rigorous process for adding new protected features. While there are some consultation requirements under clause 54, clause 55 leaves the final decision as to whether an EDP is appropriate for a protected feature to the subjective opinion of the Secretary of State. This introduces a risk that in future EDPs are applied to inappropriate habitats or species (potentially on account of political pressure), or used at an inappropriate geographical scale, without evidence that the approach will benefit nature.

Great scientific rigour is needed. There are some proven examples of where strategic approaches can work: for example for Great Crested Newts, for nutrient neutrality, and for public access to natural greenspace. However, a strategic approach will not be appropriate for some environmental issues, including many protected species and irreplaceable habitats. For example, this may be because a species is reliant on specific surroundings for feeding, breeding and roosting (such as bats), or it may be because a habitat cannot reliably be replaced (such as ancient woodland).

If an EDP were introduced for an environmental feature without good evidence that it could be effective, effective environmental laws would be disapplied. This could pose major risks for the survival of protected wildlife and habitats in England.

The Bill should be strengthened to guarantee that EDPs are only brought forward where there is rigorous, independent scientific evidence, including from relevant ecological survey data, including site-specific surveys where needed, that a strategic approach could work for the environmental impact and that the plan would lead to a significant improvement.

Ensuring sufficient data upfront to inform the scope and coverage of an EDP is essential to avoid negative impacts that would otherwise be identified through the site-specific process. Transparency is critical for ensuring rigour and faith in system. Without robust and clearly demonstrable evidence, the system would risk a backlash and lengthy challenge.

Our recommendation: Clause 53, page 86, before subsection (1i) insert—

(X) Natural England may only decide to prepare an EDP for a protected feature if it can demonstrate that implementing conservation measures as part of an EDP could contribute to a significant environmental improvement in the conservation status of the relevant environmental feature at an ecologically appropriate scale.

The potential for an EDP approach could be established through trials and monitoring. This would not slow down roll out of EDPs for important environmental features (such as newts and nutrient neutrality) where the potential for this kind of approach has already been demonstrated. It would ensure that inappropriate features are not exposed to risky, unproven EDPs.

Clause 55 – amendments 14 & 119

The Government's EDP approach hinges on Clause 55 and the "overall improvement test". An EDP may only be agreed if benefits for protected features are likely to outweigh harm. This is intended to provide certainty that the approach will overall be positive for protected wildlife.

However, there are two significant weaknesses with Clause 55.

Most importantly, the requirement that compensatory measures should only be "likely" to outweigh harm introduces unacceptable uncertainty and subjectivity about the environmental outcomes. This leaves a large amount of leeway for a Secretary of State to decide whether measures are likely to be sufficient. This kind of exercise of Ministerial judgement is extremely difficult to challenge in court.

This "likely to" test is a significant regression compared with the high standard of legal and scientific certainty required for environmental outcomes under the Habitats Regulations. The regulations require that where development is proposed that would have adverse effects on a protected site (a Special Area of Conservation or a Special Protection Area), compensatory measures must be taken with a high standard of scientific rigour.

Please support amendment 119 as a priority. We recommend that "likely to" should be replaced by "will" as a vital change. This would strengthen the overall improvement test with a legal requirement that compensatory measures "will" deliver benefit. Rather than rely on the balance of probability and Ministers' discretion, this would ensure a high level of legal and scientific certainty of environmental outcomes, in line with current legislation.

Secondly, Clause 55 allows EDPs to be approved if benefits merely "*outweigh*" harm. This sets too low a bar and risks permitting harmful development without meaningful environmental gain. Strategic offsetting must be scientifically robust and *only* applied where it can deliver genuine, measurable improvements to nature. **Please support amendment 14 as a priority.** It would ensure that benefits from conservation measures *significantly outweigh* any harm to protected features.

Lessons from similar approaches, such as Biodiversity Net Gain (BNG) and nutrient neutrality, show that there is often under-delivery of environmental benefits under this kind of offsetting approach. Typically, schemes like BNG and many carbon offsetting programmes build in additional requirements for nature benefits to make good on any shortfall, such as the 10% gain requirement in BNG. The addition of significant is an essential buffer to avoid minuscule gains which may be lost or outweighed within the margin of error for delivery.

Benefits should be required to be measurable to ensure gains are readily quantifiable, recorded and can be monitored. Without measurement, it is impossible to quantify whether gains have been achieved, and the legislation complied with – risking uncertainty. Likewise, and the risk of degradation is much greater.

Without these changes, EDPs risk becoming a loophole for damaging development. Strengthening the overall improvement test will align the bill with the high level of legal certainty required under the Habitats Regulations and with the ambition for "significant" environmental improvement, established under the Environment Act 2021. In combination with the other changes proposed, this would help ensure EDPs become genuine tools for nature recovery—not degradation.

Clause 61 – amendment 54

The mitigation hierarchy is a fundamental principle of environmental planning. It requires developments to avoid harm, before mitigating damage and finally compensating for residual effects. A core environmental planning principle, and often, more cost-effective.

The proposed EDP system bypasses the mitigation hierarchy entirely, focusing instead on compensation for damage, or “offsetting”. No provisions are made to align the development and delivery of the EDPs with the mitigation hierarchy. There is no requirement under Part 3 for developers to try to avoid harm. This means that a development proposal could skip straight to damaging development and paying an offset fee, rather than attempt to avoid harm to protected sites and species.

We recognise that the bill’s proposals require some flexibility in application of the mitigation hierarchy, but skipping any requirement to avoid harm would be extremely risky. A reliance on the “overall improvement test”—that the Secretary of State must be satisfied that any harm is *likely to be outweighed*—is insufficient to ensure that damaging development does not take place. Nor are assurances that Natural England will include the mitigation hierarchy in an EDP a sufficient guarantee that the mitigation hierarchy will be followed with the required level of certainty. Unless it is a legal requirement, it is likely to be ignored in practice.

Please support amendment 54 as a priority. Part 3 should require adherence to the mitigation hierarchy, with Natural England ensuring developers first seek to avoid harm for particular projects. At the plan level, EDPs must show how avoidance was prioritised before resorting to compensation. This would not be unduly burdensome, as it would align with existing requirements, such as those through the Biodiversity Net Gain system.

The now-famous ‘bat tunnel’ in part stemmed from a failure to apply the mitigation hierarchy. Proper early use could have prioritised avoiding damage to ancient woodland, home to rare species like the Bechstein's bat, and prevented such issues.¹

Removing the mitigation hierarchy from the policy areas proposed risks creating unfair competition with existing high integrity schemes for nature, which are statutorily bound to honour the mitigation hierarchy. This will lead to withdrawal from the market of high integrity schemes that are already poised to deliver natural capital and ecosystem services to support developers in the immediate term.

The mitigation hierarchy aligns with tried and tested ecological best practice. Preserving existing features is often much better for nature than planting and trying to build or recreate habitats from scratch. In some cases, it is simply impossible to deliver associated habitats within a feasible time frame, with some taking considerable periods to form. In such cases, avoidance must be prioritised first and foremost and compensation is not a viable substitute. This principle is well cemented in other development policies and nature-based regulations. Its removal therefore risks a regression of environmental protection.

Inserting a requirement that developers attempt to avoid harm before following the EDP process would still allow strategic approaches to continue, with time-saving, cost-effectiveness and simplicity for developers, but it would not absolve them completely of the requirement to avoid harm first.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 89 organisations to campaign for nature, climate, animal welfare and a healthy environment for everyone. Wildlife and Countryside Link is a registered charity number 1107460 and a company limited by guarantee registered in England and Wales number 3889519.

Link is also a partner to the Better Planning Coalition, a cross-sector group of organisations working to deliver a planning system fit for people, nature and the climate.

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