

## All change for nature recovery and habitats assessments? The Planning & Infrastructure Bill 2025



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The provisions of the [Planning & Infrastructure Bill](#) (“the Bill”) relating to nature recovery represent some of the Government’s most ambitious planning reforms in the Bill.

The Government’s [Guide to the Bill](#) explains that the aim of the reforms is ‘*to facilitate a more strategic approach to the discharge of environmental obligations and result in improved environmental outcomes being delivered more efficiently.*’ A related aim is to facilitate the faster delivery of housing to help achieve the Government’s ambition of delivering [1.5 million homes](#) over this Parliament, as there will no longer be a need to conduct a site-specific assessment in each case. There is also a clear desire to avoid future political embarrassment along the lines of the [£100 million bat tunnel](#) for the HS2 project. The Government’s hope is that a strategic approach to nature restoration will allow development to make a positive contribution to nature recovery rather than simply maintaining the status quo.

The Bill seeks to deliver on these aims with a set of reforms centred on two key concepts: Environmental Delivery Plans (“EDPs”) and the Nature Restoration Levy (“NRL”). This blog post will provide a brief overview of EDPs and the NRL before concluding with commentary on the proposed reforms.

### *EDPs*

An EDP is defined in cls.48 and 50 as a plan that sets out:

- environmental features likely to be affected by development (the protected features of a European Site, SSSI or Ramsar site, or a protected species);
- conservation measures to protect and enhance those features, which should both address the environmental impact of development on an environmental feature and contribute to the overall improvement in conservation status of an environmental feature;
- the amount of NRL to be paid; and
- which environmental obligations are discharged, disapplied or modified if a developer pays the NRL.

An EDP must also specify:

- the development area it covers, by reference to a map, the kind and maximum amount of development covered by the EDP (cl.49);
- the expected cost of conservation measures (cl.50);
- a charging schedule which sets rates for the NRL (cl.51);
- the conservation status of environmental features at the time the EDP comes into force;
- why the selected conservation measures are appropriate, alternative conservation measures considered and the reasons for rejecting those alternatives;
- the terms of any licence granted by the EDP to Natural England to facilitate the implementation of measures; and
- how the EDP will be monitored (cl.52).

Natural England are responsible for preparing an EDP, although secondary legislation can specify that another delivery body is to take on Natural England's responsibilities under this part of the Bill (cl.74).

EDPs must be drafted, so far as Natural England considers relevant, having regard to the development plan for the area, the Environmental Improvement Plan issued by Government, any strategies under the Environment Act 2021 (such as local nature recovery strategies, species conservation strategies and protected site strategies) and any other relevant strategies and plans (cl.53).

Natural England must consult on a draft EDP for at least 28 working days (cl.54). The Bill lists a number of bodies that Natural England must consult, including the Environment Agency, the Joint Nature Conservation Committee, relevant local planning authorities and the Marine Management Organisation where any part of the EDP covers waters adjacent to England.

Before making an EDP the Secretary of State must be satisfied that it passes the overall improvement test. That requires a finding that "*conservation measures are likely to be sufficient to outweigh the negative effect, caused by the environmental impact of development, on the conservation status of each identified environmental feature*", having regard to the maximum amount of development covered by the EDP (cl.55).

Once made, the Secretary of State must either publish an EDP or direct Natural England to do so.

Further detail regarding the making of EDPs is to be set out in secondary legislation (cl.53).

An EDP can only last for a maximum of 10 years (cl.49). After an EDP has been made, Natural England is responsible for reporting on it both at the midpoint and endpoint of the EDP's time in force (cl.57). The report must cover:

- how much development is still available under the EDP;
- how much NRL has been paid;
- whether conservation measures have been implemented and if not, why not;
- whether conservation measures are having their intended effect;
- what the conservation measures are costing and whether this cost aligns with expectations under the EDP; and
- any amendments or expected amendments to the EDP.

The Secretary of State may amend or revoke an EDP, either on her own initiative or at the request of Natural England. However, an EDP cannot be amended so as to remove development from it for which a developer has already paid the NRL. The Secretary of State may also direct Natural England to reconsult on any amended EDP (cl.58).

An EDP must be revoked where it no longer passes the overall improvement test, unless it can be amended to enable it to comply. If an EDP is revoked, the Secretary of State must take action to outweigh any negative effects of development for which the developer has already paid the NRL (for example, continuing to take conservation measures which were part of the revoked EDP).

Natural England are also responsible for the implementation of conservation measures in an EDP (cl.71).

A new duty to cooperate is imposed on public authorities to provide such reasonable assistance as Natural England requires in connection with the preparation and implementation of an EDP, which extends to:

- the provision of information;
- the imposition or variation of a planning condition; and
- assistance with the implementation of conservation measures.

### *NRL*

If there is a development to which an EDP applies, then ahead of development commencing a developer may request in writing to pay the NRL (cl.61). If Natural England (or another designated delivery body) agrees to this request, then the developer must pay the NRL. An EDP can also make payment of the NRL mandatory, in which case the EDP must explain why this is considered necessary (cl.61(5)).

Under Schedule 4, payment of the NRL is then treated as having discharged a number of environmental obligations under separate legislation, namely the [Conservation of Habitats and Species Regulations 2017](#) (“the Habitats Regulations”), the [Wildlife and Countryside Act 1981](#) (“WCA”) and the [Protection of Badgers Act 1992](#). Where these obligations have been discharged, there would be no need to carry out an appropriate assessment under the Habitats Regulations or obtain species’ licences under the WCA.

Much of the detail of how the NRL will operate in practice is left to secondary legislation. However, based on the wording of the Bill it appears likely that the future regulations will be modelled on the CIL Regulations in terms of assuming liability, payment and enforcement. The regulations must also require Natural England to spend any money that is collected on conservation measures that relate to the environmental feature in relation to which the NRL is charged (cl. 66).

Finally, cl.72 creates a new compulsory purchase power for Natural England, if authorised by the Secretary of State. The power may only be exercised if the land is required for the taking of a conservation measure.

### *Commentary*

Some measures in the Bill might be criticised for amounting to little more than tinkering. The proposed amendment to the wording of the acceptance stage for DCO applications in particular springs to mind (cl.6). The same cannot be said of the nature restoration provisions, which are truly ambitious, even if the provisions in the Bill will not entirely replace the current system of environmental protection. It will take time for EDPs to be produced and not every type of development throughout the country will be subject to an EDP. Further, even where an EDP is in place, unless payment of the NRL is mandatory, payment of the NRL and reliance on an EDP may be unsuitable for certain sites where there are environmental site-specific constraints.

Although the Habitats Regulations and WCA will remain unaffected in many areas (especially in the short-term), the potential for EDPs and the NRL to deliver a strategic approach to nature restoration is clear. Many environmental problems are not directly related to specific sites, with nutrient neutrality being

mentioned specifically by the Government in its Guide to the Bill as an example. EDPs and the NRL therefore represent an imaginative way of delivering mitigation and betterment on a strategic scale. They build on and expand existing good practice in the context of mitigation of recreational pressures through SANGs and SAMM payments, nutrient mitigation schemes and district licensing for protected species. The hope is that by making Natural England responsible for area-wide assessment and mitigation, rather than a piecemeal approach by developers responsible for individual parcels of land, conservation measures can be delivered more easily, more speedily and more cheaply. Where development relies on an EDP, a legal challenge to the grant of planning permission on habitats grounds would be excluded as the assessment would already have been undertaken in the making of the EDP. Again, it is hoped that this will reduce delays in the delivery of housing and other development.

However, if the new system is going to function effectively then it will require significant funding. Natural England (or another delivery body) will have an enormous amount of work to do in terms of producing EDPs, reviewing EDPs, collecting payment of the NRL and implementing conservation measures. The Government has allocated [£14 million](#) to the Nature Restoration Fund in the next financial year, but this figure may not be sufficient to equip Natural England with the resources to fulfil its extensive new responsibilities. To make a material difference to speeding up planning and improving the environment, EDPs will need to have a reasonably wide coverage across England and the costs of implementing conservation measures will need to be predicted accurately. The timing of implementation of EDPs, development and conservation measures will be crucial and is also dependent on the resourcing of Natural England – if development commences before conservation measures are put in place, there is a real risk that any harmful impacts on protected sites and species will not be mitigated. That issue is not dealt with in the Bill as drafted.

In addition, the setting of the levy in each EDP will have to be approached with particular care. In areas where payment of the NRL is optional, developers will only use this option if it is cheaper than conducting a site-specific assessment. In areas where payment of the NRL is mandatory, then if the NRL is set too high the NRL could simply become a barrier to development. Striking the right balance between ensuring development remains viable and yet allowing the NRL to fund meaningful conservation measures will be one of the most significant challenges in producing EDPs.

Whether the new system of EDPs will be a success or not will depend on how it is implemented (which to a large extent will depend on how the overarching provisions in the Bill are fleshed out by secondary legislation). Natural England will have to be properly funded, and a decision will need to be made as to what environmental issues should be addressed first via EDPs. Given the Government's reference to nutrient neutrality in its Guide to the Bill, it appears likely that one of the early EDPs will focus on providing a strategic solution to this issue. Ultimately, we will have to wait and see what happens, but for now the ambition and imagination of the proposals is to be welcomed.

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This blog summarises the content of two talks given as part of a seminar on 19 March 2025 on the topic of *The Planning and Infrastructure Bill: getting Britain building*, a recording of which can be viewed [here](#).