

Lawyers comment on PIB nature recovery clause

Introduction

The Government's flagship Planning and Infrastructure Bill ("the Bill") was published on 11 March 2025 and forms a core plank of the Labour Party's 2024 manifesto commitments to build 1.5 million new homes and drive economic growth. If enacted, the Bill will represent a sea change in the UK's planning, infrastructure and environmental legal frameworks.

[David Elvin KC](#), [Alex Goodman KC](#) and [Alex Shattock](#) were recently instructed to write legal opinions on the Planning and Infrastructure Bill. [David Elvin KC](#) was instructed by NatureSpace Partnership Ltd. [Alex Goodman KC](#) and [Alex Shattock](#) were instructed by Wild Justice.

Their opinions conclude that the Planning and Infrastructure Bill, if enacted in its current form, will reduce the existing levels of environmental protection for key aspects of England's legally protected ecological features. In a similar vein, the Office for Environmental Protection's recent [advice](#) to the Government, provided under section 30(3) of the Environment Act 2021, concludes that the Bill would have the effect of reducing the level of environmental protection provided for by existing environmental law.

David Elvin KC's published opinion for NatureSpace Partnership Ltd was submitted to the Public Bill Committee for consideration by Members of Parliament, and can be read [here](#). A summary is available [here](#).

Alex Goodman KC's and Alex Shattock's opinion for Wild Justice can be read [here](#), with further information regarding Wild Justice's prospective judicial review challenge [here](#) (and reported in [the Guardian](#)).

While the Bill's wider provisions will be of general interest to planning and environmental law practitioners, academics and activists, this article focuses on Part 3, which concerns development and nature recovery.

Background

The Ministry of Housing, Communities and Local Government ("MHCLG") [guidance](#) to the Bill sets out its five overarching objectives, including 'introducing a more strategic approach to nature recovery'. The rationale is described in the following terms:

"When it comes to development and the environment, we know we can do better than the status quo, which too often sees both sustainable housebuilding and nature recovery stall. Instead of environmental protections being seen as a barrier to growth, we want to unlock a win-win for the economy and for nature. The Bill will introduce a new Nature Restoration Fund that will unlock and accelerate development while going beyond simply offsetting harm to unlock the positive impact development can have in driving nature recovery."

This was accompanied by a factsheet concerning the proposed Nature Restoration Fund:

"Existing approaches to protect and restore our most important habitats and species have not been able to reverse the trend of environmental decline, while creating significant barriers to building the homes and infrastructure we need. To grow the economy and recover nature we

need new tools and a new approach. We want to make better use of the millions of pounds that are spent each year on bespoke mitigation and compensation schemes, by using this money to fund strategic interventions that provide greater benefit for nature than the status quo. Through this approach we want to provide the necessary certainty for all parties that we will take consolidated, coordinated action to drive nature recovery whilst allowing vital development to come forward.”

At the heart of the Bill is a policy aim to achieve balance between the Government’s objectives of building 1.5 million homes in the next five years and meeting England’s biodiversity targets, as set out in the Environment Act 2021.

Part 3: Development and Nature Recovery

The current position

Under the extant legal framework, endangered species are protected in planning decisions through a network of Special Areas of Conservation (“SACs”) and Special Protection Areas (“SPAs”), known as protected sites or European sites. Under the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the competent authority (usually a local planning authority) must carry out an appropriate assessment in order to satisfy itself, beyond all reasonable scientific doubt, that a development proposal will have no adverse effects on the integrity of a protected site (regulation 63). The appropriate assessment embodies the “precautionary principle”, which requires a high standard of investigation of the effects on a protected site: *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris Van Landbouw, Natuurbeheer en Visserij (Case C-127/02)* [2005] All ER (EC) 353.

Environmental Delivery Plans

The Bill proposes to overhaul the existing framework. Part 3 of the Bill introduces the novel concept of an ‘Environmental Delivery Plan’ (clause 48). Natural England will be provided with powers to prepare an Environmental Delivery Plan (“EDP”) for an area, subject to the Secretary of State’s approval, which would identify environmental features in a specified area that would be impacted by a specified type and amount of development, and how to address these impacts. There is no express duty on the Secretary of State to make an EDP, although there is an obligation to revoke an EDP if the Secretary of State considers that it no longer passes the overall improvement test, considered below (clause 59(2)).

The requirements of an EDP, set out in clauses 49-51, include:

1. The kind of development to which it applies;
2. A map showing the boundaries of the development area;
3. The reasons for its application;
4. The maximum amount of development to which it may apply;
5. One or more charging schedules setting out the rates or other criteria to which the amount of ‘nature restoration levy’ is to be determined for each development to which the EDP applies;
6. The environmental features which are likely to be negatively impacted by development in the EDP’s area, including a protected species;
7. The measures being taken by or on behalf of Natural England to address those impacts;
8. An explanation of why the conservation measures are considered appropriate.

In preparing a draft EDP, Natural England must notify the Secretary of State (clause 53(1)) and have regard to several factors, including the development plan for the area and the current environmental improvement plan (clause 53(2)). Natural England must publish the draft EDP for consultation after preparing it, including seeking the views of named statutory consultees (clause 54(1)).

Once prepared by Natural England, the draft EDP must be “made” by the Secretary of State in order to take effect. The draft EDP may only be made if it passes the ‘overall improvement test’ (clause 55(3)), namely:

“if the 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.” (clause 55(4))

The standard of ‘likely to be sufficient to outweigh’ appears to represent a significant departure from the ‘reasonable scientific doubt’ standard in the Habitats Regulations 2017. The rationale for the change is explained in the following terms in MHCLG’s [guide](#) to the Bill:

“Assessing the environmental impact of a development requires a high level of technical knowledge and a bespoke assessment is required, even for small developments. Each development must then be linked to specific mitigation measures with development being blocked where such measures are not readily available. While this approach addresses the specific impact of a development, by not taking a holistic view, mitigation measures may not secure the best outcomes for the environment. This approach may also lead to higher than necessary administrative costs, because of multiple transactions and information exchanges, as well as inefficient allocation of limited specialist capacity such as ecologists, whose focus is solely on project level mitigation work rather than the recovery of habitats and species overall.”

The Nature Restoration Fund

The nature restoration levy provisions run in tandem to the EDP regime. The levy contributions, taken together, are referred to in the accompanying [fact sheet](#) and the [Explanatory Notes](#) as the ‘Nature Restoration Fund’.

Clause 61 provides that developers will be able to apply to Natural England to pay a nature restoration levy for a specific EDP, and must do so once the request is accepted by Natural England. Once the developer has committed to paying the levy, they are exempted from the obligations under the Habitats Regulations. Further, the commitment to paying the levy means that the decision-maker must disregard the environmental impact of development on a protected feature of a protected site (clause 61(3)(a)).

Commitment to paying the levy also has the effect of treating a developer as having been granted a licence under regulation 55 of the Habitats Regulations 2017, section 16 of the Wildlife and Countryside Act 1981 or section 10 of the Protection of Badgers Act 1992. The combined effect of these provisions is that a developer who commits to pay the levy will be treated as if they were granted a licence for the disturbance of a protected species, and the impacts on those species are to be disregarded.

Thus, not only will it no longer be incumbent on a developer to satisfy the competent authority that a development proposal will have no adverse effects on the integrity of the protected site;

those potential adverse effects must also be “disregarded” in respect of a developer who has committed to pay the levy.

Significantly, there is no requirement in the Bill for nature restoration levy contributions to be spent at any particular point in the development, or the lifetime of the EDP. Regulations made regarding the levy must, under clause 66(1), require Natural England to spend the levy on conservation measures relating to the environmental feature in relation to which the levy is charged. The regulations do not, however, have to specify whether payments are spent prior to the commencement of development (e.g. to avoid harm to habitats) or after completion, at which point the harms in question may have materialised already. As noted in the Office of Environmental Protection’s [advice](#) to the Government on the Bill:

“The bill is silent as to when conservation measures must be implemented and by when they must be effective. This gives rise to the possibility of significant impacts on the conservation status of protected species or sites arising before the successful implementation of conservation measures. This is not present under existing environmental law (regulation 63 of the Habitats Regulations 2017).”

As made clear by the Explanatory Notes, the levy regime is aimed at introducing additional flexibility. Funds raised can be spent on “*relevant conservation measures as well as the administrative costs that arise*” and “*maintenance activities*”. MHCLG’s guide to the Bill makes clear that the Government does not consider the levy regime to compromise the level of protection afforded under the Habitats Regulations:

“This approach will not reduce overall levels of environmental protection. It will do the opposite, by enabling development to go beyond maintaining an unacceptable environmental status quo and make a positive contribution to nature recovery.”

This view was reiterated in the [Impact Assessment](#) published on 6 May 2025, which states that the Nature Restoration Fund “*is expected to deliver improved environmental outcomes while also reducing delays in discharging environmental obligations*”.

Next steps

Following the conclusion of a second reading on 24 March 2025, the Bill is currently at Committee Stage, with oral evidence sessions due to report later this month. A series of amendments have been proposed, including the introduction of special protections for “irreplaceable” habitats, a requirement for EDPs to specify timetables for conservation measures and the application of the overall improvement test.

The Government has indicated its intention for the bill to receive Royal Assent by July 2025 – an ambitious timeframe, reflecting the Government’s commitment to speeding up the planning process generally. However, how far the Bill, once enacted, will balance its twin aims of speeding up housing development and environmental conservation remains to be seen.

This article was written by Claudia Hyde.