



Evidence to the Public Bill Committee for the Planning and Infrastructure Bill on behalf of the Mammal Society

Emailed to scrutiny@parliament.uk on Wednesday 14th May 2025.

For the attention of:

Member of Parliament	Party	Constituency	Role
Gideon Amos	LibDem	Taunton and Wellington	Planning Spokesperson
Nesil Caliskan	Labour	Barking	
Ellie Chowns	Green	North Herefordshire	Planning Spokesperson
Lewis Cocking	Conservative	Broxbourne	
Jim Dickson	Labour	Dartford	
Mark Ferguson	Labour	Gateshead Central and Whickham	
Olly Glover	LibDem	Didcot and Wantage	
John Grady	Labour	Glasgow East	
Paul Holmes	Conservative	Hamble Valley	Shadow Planning Minister
Gen Kitchen	Labour	Wellingborough and Rushden	
Amanda Martin	Labour	Portsmouth North	
Luke Murphy	Labour	Basingstoke	
Matthew Pennycook	Labour	Greenwich and Woolwich	Planning Minister
Lee Pitcher	Labour	Doncaster East and the Isle of Axholme	
Michael Shanks	Labour	Rutherglen	
David Simmonds	Conservative	Ruislip, Northwood and Pinner	
Rachel Taylor	Labour	North Warwickshire and Bedworth	

1.0 The Mammal Society

1.1 The Mammal Society is a British charity, founded in 1954, devoted to the study and conservation of mammals. We work to ensure a bright future for mammals in the British Isles and Ireland by:

- Inspiring, supporting and enhancing conservation projects and policies that protect and restore native mammal populations and their habitats.
- Empowering conservationists, students, citizen scientists and nature champions to play a key role in mammal conservation now and in the future through providing training, resources and survey activations.
- Building public awareness of and support for mammal conservation through education, communications and campaigns.

1.2. Our work is supported by the advice of our Trustees and Science Advisory Committee, who include many national and international experts on mammal ecology, environmental law, nature conservation, and environmental impact assessment.

2.0 Scope of Evidence

2.1. Our submission to the Public Bill Committee relates only to Part III of the Bill. We have no comment on other Parts of the Bill.

3.0 Summary of our Concerns

3.1. The Mammal Society's concerns regarding Part III of the Bill relate to the lowering of the level of protection afforded to nature, and the Government's failure to recognise, account for or compensate for this. Specifically:

1. In the expert professional opinion of our Trustees and Science and Advisory Committee, Part III of the Bill constitutes regression of the environmental protection afforded under the current legislative regime. This is supported by both the OEP and several legal opinions from leading planning and environment silks.
2. Such regression of protection is not simply a legal or procedural matter, but one of critical concern in respect of the interrelated biodiversity and climate crises and the Government's existing commitments on nature.

3.2. These points are explained further below.

4.0 Detailed Analysis

Regression of Environmental Protection

4.1. We understand and sincerely appreciate that the Government wishes to create ‘win-win’ outcomes for both nature and its “growth” agenda. We also agree that a strategic approach to delivering net benefit for nature can be very effective – for example, by following the Lawton principles of creating spaces for nature that are bigger, better quality and more connected. However, we have significant concerns regarding the current proposals, and do not consider that they will achieve that ‘win – win’ for the following reasons.

- (i) The current legislative arrangements, where ecological surveys, impact assessment, mitigation and compensation are undertaken on a site-by-site basis, ensure that the actual impacts of a proposal are understood and taken account of. By applying a no net loss or net gain approach rigorously, we can expect that the overall outcome post-development should be at least “not environmentally worse than” the baseline.
In the proposed new approach, no new surveys are required for individual developments, a levy is paid, and compensation is undertaken at a strategic level. However, at no point have the current Bill proposals indicated that there will be any survey work (even at a strategic level) when the Environmental Delivery Body sets up the Delivery Plan for an area. [It may be intended that this should form part of guidance or secondary legislation, but unless it forms part of the Bill, no real safeguard would exist for this important step]. Without survey work, there will be no record of which habitats or species were lost to development within the Plan area, and hence it will be impossible to determine whether there has been a net gain or loss of nature. Without baseline data, or post-intervention monitoring, it will be impossible to determine whether the Plan has been successful. It therefore cannot be claimed that the outcomes will be positive, or that there will be no regression of protection.
- (ii) The Bill makes no specific provision for irreplaceable habitats or critically endangered species. As currently drafted, any habitat or species could be the subject of a Delivery Plan, including irreplaceable features such as ancient woodland and the endangered species they support such as the hazel dormouse. By their very nature, such habitats cannot be readily recreated – as such they are excluded from Biodiversity Net Gain calculations and subject to a separate compensation regime. In all but cases of the most extreme need, impacts on such habitats should be avoided. By treating such irreplaceable natural assets as fungible, the Bill reduces the level of legal protection for our most important natural capital below the current level.
- (iii) The current legal framework – established under the Conservation of Habitats and Species Regulations 2017 (“Habitats Regulations”) and the Wildlife and Countryside Act 1981 – is well-established, effective and provides a high degree of legal certainty in the protection of nature. It ensures that considerations relating to biodiversity are embedded into decision-making processes and provides structured, science-based mechanisms to assess

and mitigate environmental harm. Under this regime, mitigation or compensation for impacts on species and habitats is defined based on scientific analysis and conservation evidence. The level of mitigation required is defined by need. In contrast, the Bill, by requiring the Delivery Body to take into account development viability, will allow the level of mitigation to be reduced (potentially below the level of no net loss) if the required compensation is deemed unaffordable. This would result in outcomes for nature that would be worse than under the existing legislative regime. It is important to point out that not all developments are necessary, appropriate and in the public interest. If a development project is so marginally viable that it cannot cover the essential costs of mitigating its environmental impacts, it should be the location and design of the project which is re-considered, not the need to adequately protect nature.

- (iv) The Habitats Regulations are among the most important and effective legal tools for ensuring that environmental protections are upheld in practice. Maintaining this level of protection is a minimum requirement for delivering on the Government's commitments to halt and reverse biodiversity loss. It is also a legal obligation under section 112(7) of the Environment Act 2021, which provides that:

"The Secretary of State may make regulations under this section [amending the Habitats Regulations] only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations."

Section 113(3) of the Environment Act 2021 reinforces this position. In contrast, the proposals under Part III of the Bill would dismantle this robust and proven framework, replacing it with an untested system and introducing significant legal and scientific uncertainty. The proposed system grants broad discretion to ministers, weakens core legal duties and undermines the clarity and enforceability of current protections.

- (v) The mitigation hierarchy is a fundamental principle of environmental law which requires that harm to biodiversity be avoided wherever possible, then minimised, mitigated, and only as a last resort, compensated. Removing this principle, as in the current draft of Part III of the Bill, would fundamentally weaken safeguards that have been in place for decades.
- (vi) The proposed regime would allow development to proceed before compensatory measures are in place. This creates a real risk that damage to protected sites and species could go unmitigated, for extended periods. Where vulnerable species are present this could result in local extinctions when there is no new habitat for them to occupy.
- (vii) Under Clause 55 of the Bill, an Environmental Delivery Plan may be approved if the Secretary of State determines that the benefits for affected natural features are "likely to outweigh" the harm caused. This introduces an inherently weak and subjective test. The phrase "likely to outweigh" lacks legal specificity and legal certainty, is open to interpretation and fails to require any robust evidentiary standard or demonstrable

ecological gain. It grants excessive discretion to ministers and could result in minimal or delayed compensation being deemed sufficient.

- 4.2. These changes represent a serious regression in environmental protection. They replace clear, legally enforceable duties with vague and discretionary processes. In doing so, they risk creating a regime in which outcomes for nature are based on ministerial opinion rather than scientific evidence and robust legal standards. Removing the existing legal tests of Imperative Reasons of Overriding Public Importance and lack of suitable Alternatives, and replacing them with a delivery body mandated to promote “growth” will inevitably result in regression of environmental protection.
- 4.3. The Mammal Society is extremely concerned that, throughout the progress of the Bill so far, the Government has not recognised this regression. Since the Minister’s statement under Section 20 (3) of the Environment Act claimed that “this Bill would not have the effect of reducing the level of environmental protection of existing environmental law”, many qualified ecologists and environmental impact assessment professionals have advised that (for the reasons above) this would not be the case. In the last two weeks the OEP has provided its advice that the Bill constitutes regression, the Government published its delayed impact assessment which admitted that there was little evidence to support the view that nature was acting as a blocker to development (hence raising doubt as to the need for Part 3) and there have been three legal opinions published by leading planning and environmental KCs, all concurring that the Bill represents regression.
- 4.4. The Government has not responded, or provided any data, evidence or expert opinion to support the Minister’s view. This creates a significant lack of confidence in how the Bill would deliver ‘win-wins’ for nature in operation, since the decision as to whether a Delivery Plan would effectively mitigate for any nature conservation impact would ultimately also lie with the Secretary of State for HCLG. No information has been provided as to how that decision would be made, nor whether any appropriately qualified experts would be consulted. Clearly, unsupported statements by a Minister charged with delivering growth would not inspire confidence in the outcomes of the Bill for nature.

The State of Nature

- 4.5 Britain is one of the most nature-depleted countries in the world. The most recent State of Nature report showed that, since 1970, UK species have declined by about 19% on average (32% in England), and nearly 1 in 6 species (16.1%) are now threatened with extinction. The Red List of British Mammals, produced by the Mammal Society and approved by IUCN, demonstrates that one quarter of British mammals are at risk of extinction, and that 42% of mammal species in England require urgent action. The English Red List includes not just critically endangered species like beaver and pine marten, but many species of bat, the iconic

hazel dormouse, and popular and familiar species such as the hedgehog. We continue to see changes in land use that impact nature, and increasing pollution and use of pesticides, and our natural environment is in crisis. As extinctions continue and populations continue to decline we will reach tipping points after which we may not be able to avoid ecosystem collapse. This will have significant ramifications for human wellbeing and the economy as ecosystem services on which we depend (such as food, water, fuel etc) become less available. The clear and present risks associated with the inter-related climate and nature crises cannot be overstated, and in such an emergency, we cannot afford to take risks with the few remaining nature resources we have left.

4.6 The Government is a signatory to the Global Biodiversity Framework (GBF), signed in Montréal in 2022. Part III of the draft Bill runs counter to at least six of the 23 targets in the GBF.

- **Target 1. Plan and Manage All Areas to Reduce Biodiversity Loss.** *Ensure that all areas are under participatory, integrated, and biodiversity inclusive spatial planning and/or effective management processes addressing land and sea use change, to **bring the loss of areas of high biodiversity importance, including ecosystems of high ecological integrity, close to zero by 2030**, while respecting the rights of indigenous peoples and local communities. (our emphasis)*
Without amendment to exclude areas and features of the highest biodiversity importance, or to consider the mitigation hierarchy, the Bill would hinder the achievement of this target.
- **Target 2. Restore 30% of all Degraded Ecosystems**
Ensure that by 2030 at least 30 per cent of areas of degraded terrestrial, inland water, and coastal and marine ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity.
As drafted, The Bill allows developers to ‘trash and compensate’ rather than contribute to restoration, hindering the achievement of this target.
- **Target 4. Halt Species Extinction, Protect Genetic Diversity, and Manage Human-Wildlife Conflicts**
Ensure urgent management actions to halt human induced extinction of known threatened species and for the recovery and conservation of species, in particular threatened species, to significantly reduce extinction risk
By allowing developments to proceed without survey work to identify whether significant populations of threatened species are present, the Bill could contribute to further species declines.
- **Target 6. Reduce the Introduction of Invasive Alien Species by 50% and Minimize Their Impact**
Eliminate, minimize, reduce and or mitigate the impacts of invasive alien species on biodiversity and ecosystem services by identifying and managing pathways of the introduction of alien species...
When site-specific ecological surveys are conducted, ecologists look out for invasive non-native species and advise on their control. By removing the need for such

ecological surveys, an unintended consequence of the Bill is likely to be the further spread of invasive species.

- **Target 11. Restore, Maintain and Enhance Nature's Contributions to People**
Restore, maintain and enhance nature's contributions to people, including ecosystem functions and services, such as regulation of air, water, and climate, soil health, pollination and reduction of disease risk, as well as protection from natural hazards and disasters, through nature-based solutions and/or ecosystem-based approaches for the benefit of all people and nature.

The Bill makes no provision for the protection of Ecosystem Services by removal of the need to carry out environmental impact assessments.

- **Target 18. Reduce Harmful Incentives by at Least \$500 Billion per Year, and Scale Up Positive Incentives for Biodiversity**

Identify by 2025, and eliminate, phase out or reform incentives, including subsidies, harmful for biodiversity, in a proportionate, just, fair, effective and equitable way...

Reducing the developer contribution to offsetting the impacts of development based on development viability would likely be considered a harmful incentive in the sense of Target 18.

4.7 The Bern Convention, which the UK ratified in 1982, and is a binding legal instrument which seeks to protect endangered and migratory species across Europe and parts of Africa. The Planning and Infrastructure Bill's core idea – that certain conservation laws can be disapplied for a development if compensation is paid – goes against the Convention's requirement for firm, case-by-case safeguards of habitats and species. By allowing environmental impacts to be “disregarded” in assessments and granting “deemed licences” for species harm, the Bill risks undercutting the strict protection standards that Bern obliges the UK to enforce.

4.8 In a 2023 policy statement, the Johnson administration identified five main principles to support environmental protection. They are:

- integration principle - which means that environmental protection should be integrated into the making of all policies, not just environmental policy.
- prevention principle - which means that government policy should aim to prevent environmental harm. The current approach for dealing with environmental impacts of development follows the "mitigation hierarchy" where impacts should always be avoided or reduced as far as possible, before mitigation or compensation are considered.
- rectification at source principle - which means that environmental damage should, as a priority, be addressed at its origin to avoid the need to remedy its effects later.
- polluter pays principle - which means that, where possible, the costs of environmental damage should be borne by those causing it, rather than the person who suffers the effects of the resulting environmental damage, or the wider community.

- precautionary principle - which helps policymakers deal with risks which may not be precisely calculable in advance and tends to lead to precautionary decision making that err on the side of greater environmental protection.

The Environment Act requires Ministers to have due regard for these principles (which are in any event internationally-agreed approaches in several treaties to which the UK is party). The current Bill does not conform to the prevention principle (by removing the need to follow the mitigation hierarchy), the polluter pays principle (by allowing development viability to influence how much the developer pays toward environmental harm caused) or the precautionary principle (by making assumptions without data gathering either in defining the EDPs or in estimating the impacts of development).

5.0 Conclusion and Recommendations

5.1. In conclusion, the Mammal Society contends that **Part III of the Bill as currently drafted represents a significant regression in environmental protection in England**. This is not simply a legal or procedural impact, nor the question as to whether a Minister of State misled the House. Given the state of nature in the UK, and the significant loss of habitats and species experienced over the last 50 years, **there is a need to do much more to protect nature, not less**. Investing in the natural capital which supports our lives and our economy would be in line with the Government's stated aims, and its international obligations in the Bern Convention and the Global Biodiversity Framework, to which the UK is a signatory. The implementation of Part III of the Bill as currently drafted would not deliver this.

5.2. Based on our review of the proposals and our knowledge of nature conservation and environmental impact assessment, our recommendation is that **Part III of the Bill should be withdrawn to allow time for due process, expert review and piloting**. We do not propose an extended period of repeated consultation, as in the introduction of Biodiversity Net Gain, but simply a trial to establish how meaningful net benefits can be defined and measured within the EDP structure. The revised Part III could then be introduced as an Amendment to the Act once it was clear it could deliver on the government's aim of better outcomes for nature.

5.3. The likely amendments we would expect to see to the Bill would include:

- Exclusion of irreplaceable habitats and critically endangered species from Environmental Delivery Plans and requiring case by case survey and impact assessment for these critical resources. A schedule should be added of the features, sites, habitats and species for which EDPs are inappropriate.
- Requirement for Natural England to undertake survey work across the entire area of any Environmental Delivery Plan for all environmental features to be included within the Plan to provide an appropriate baseline against which to assess success.
- Criteria for the Secretary of State to use to assess whether an EDP would deliver a net benefit for nature that are no less stringent than existing site-based criteria in order to ensure no regression.

- Requirement for further mitigation or compensation should the Secretary of State be minded to allow an EDP where a net benefit cannot be demonstrated (for example, where development viability has left the Plan under-funded).
- A requirement for mitigation and compensation measures in the EDP to be in place before any negative impact from development takes place.
- A requirement for developers to implement the mitigation hierarchy (and hence to make all attempts to avoid impacts on nature) before being allowed to pay into the Nature Restoration Fund.
- Removal of the consideration of development viability in setting the levy.
- A report should be produced annually setting out the losses and gains to nature as a result of the Bill so that its effects on nature loss can be assessed.

5.4. In conclusion, the Mammal Society supports in principle the objective of delivering strategic benefits for nature as part of an approach to streamlining planning and the delivery of infrastructure projects. However, we do not consider there to be sufficient safeguards within the Bill to have confidence this will be achieved. The state of nature resources in England are so fragile that we do not accept that this approach would be successful.

5.5. We are extremely concerned that the Bill has been introduced on an expedited programme, without consultation, without any supporting evidence, and was debated in the House without an Environmental Impact Report. The public is asked to accept that the Bill will provide a net benefit for nature simply because the Secretary of State (who does not appear to have any environmental credentials) says that it will. Despite many representations from environmental specialists, ENGOs and relevant Chartered Institutes, the Government has done no more than refer to the Secretary of State's statement under Section 20 (3) of the Environment Act that the Bill would not have the effect of reducing environmental protection. As explained above, our analysis does not support this.

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