

Planning and Infrastructure Bill – written evidence submitted by Freshwater Habitats Trust

Background

1. Freshwater Habitats Trust is a national freshwater wildlife conservation charity. For more than 35 years, we have carried out scientific research and practical conservation work to reverse the long-term decline of freshwater wildlife. In the course of this work, we have gained extensive experience of the impacts of development on freshwater species and habitats. Our staff make up half of the Newt Conservation Partnership (along with staff from Amphibian and Reptile Conservation), meaning we have been closely involved in the design and delivery of the NatureSpace District Licensing scheme – a private-sector led strategic mitigation scheme addressing the impacts of development on Great Crested Newts.
2. We are submitting evidence in relation to Part III of the Planning and Infrastructure Bill. Our submission is based on **A)** evidence gathered during seven years of compensation habitat delivery within the District Licensing scheme; **B)** our broader experience of interactions between development and freshwater habitats, particularly with regards to habitats which cannot easily be recreated when lost or degraded ('irreplaceable habitats').
3. As pioneers of strategic licensing to address development impacts on Great Crested Newts, Freshwater Habitats Trust recognise the potential win-wins which could result from more widespread adoption of strategic approaches to address impacts of development on *some* protected sites and species. However, we're concerned about the erosion of existing nature protections which the Bill would cause if passed in its current form.

Executive summary

4. We are concerned that successful existing strategic approaches could be unintentionally undermined by provisions in the Bill. **We recommend that the accompanying guidance for clause 74 be amended, to clarify that private- and third-sector organisations can be designated to develop Environmental Delivery Plans (EDPs).** As evidenced by the [consistently good results](#) of NatureSpace's District Licensing scheme for Great Crested Newts, private and third-sector organisations may sometimes be better placed to produce EDPs, with greater expertise on the environmental feature in question. This amendment would enable them to do so where appropriate.
5. We are concerned that increasing adoption of strategic approaches will increase the risk that habitats which cannot feasibly be recreated through the NRF are lost or degraded. **We therefore recommend that amendment 18 be incorporated into the Bill, to prevent EDPs from being applied to irreplaceable habitats.**

6. Like many of our eNGO colleagues, we think that safeguards in Part III of the Bill are currently insufficient to ensure that nature protection laws are not weakened in practice. We support amendments 3, 14 and 19 in this regard.

Amendment to accompanying guidance for Clause 74: Power to designate person to exercise functions under this part

7. Clause 74 allows the Secretary of State to designate another person to exercise the functions of Natural England under Part III of the Bill.
8. Whilst the Bill wording does not exclude private- and third-sector designated persons, the explanatory notes for the Bill specify that the SoS can designate 'by regulation, another **public** body to exercise the same functions as Natural England'. **A change to guidance for this clause would be immensely valuable**, to ensure that private- and third-sector organisations can be designated to prepare EDPs where appropriate.
9. Freshwater Habitats Trust is part of the Newt Conservation Partnership, a community-benefit society set up to create and restore high-quality habitat for Great Crested Newts and compensate for habitat lost or degraded by development. We have been the delivery body for the NatureSpace District Licensing scheme since its inception seven years ago. District Licensing is an alternative to standard licensing routes and is regulated by Natural England, who also run their own 'District Level Licensing' scheme for Great Crested Newts.
10. District Licensing is administered by NatureSpace, a private company, whilst compensation habitat is delivered by the Newt Conservation Partnership, a community benefit society formed by expert freshwater habitats/amphibian NGOs, Freshwater Habitats Trust and Amphibian and Reptile Conservation. Species experts seconded from these organisations are directly involved in site selection and compensation habitat design, whilst Natural England, who are independent of the scheme, ensure regulatory compliance. District Licensing operates in 68 Local Planning Authorities (covering about 20% of England), running alongside the Natural England-administered District *Level* Licensing scheme
11. The success of District Licensing for Great Crested Newts demonstrates the strong case for private- and third-sector 'designated persons'. The close involvement of species experts in scheme implementation has delivered [excellent results for Great Crested Newts](#), with 88% of mature compensation sites occupied by the species. Compensation habitat has also made a major contribution to wider nature recovery goals, with Threatened wetland plant species rapidly colonising the unpolluted (well-sited and well-designed) ponds, and more than half of all ponds already achieving priority status.

Support for amendment 18, on irreplaceable habitats

12. Irreplaceable habitats are those which are very difficult to restore or create, generally because they take a long time to form (e.g. ancient woodlands, blanket bog) or are reliant on very specific conditions to form (e.g. limestone pavements, lowland fens).
13. For the purpose of Biodiversity Net Gain, an incomplete list of irreplaceable habitats was made in early 2024. A consultation to devise a final list was [planned for later in 2024](#), but never materialised.
14. The proposals in Part III of the Planning and Infrastructure Bill make the publication of a full list of irreplaceable habitats all the more important. The expansion of strategic mitigation has the potential to deliver win-wins for nature and development, but nature outcomes will be undermined if habitats that are incompatible with strategic mitigation are bundled into EDPs. The simplest way to prevent this would be to incorporate amendment 18 into the Bill, and produce a comprehensive list of irreplaceable habitats, as promised by the last Government.
15. An expanded list is warranted because the existing lists of irreplaceable habitats are incomplete. Although a final definition of irreplaceable habitats has not been agreed, any sensible definition would include several other habitat types. Amongst freshwater habitats, for instance, we have advocated for the inclusion of ice age ponds within an expanded list. These ponds were formed in the last ice age, more than 11,000 years ago. Although they are defined as irreplaceable on geological criteria, England's ice age ponds support some of the UK's most important freshwater assemblages, including relict species that are rare and endangered in other habitat types.

Freshwater Habitats Trust comment on additional amendments proposed by Wildlife and Countryside Link

16. We support amendments proposed by Wildlife and Countryside Link – many of which have already been tabled – to safeguard the substance of the Habitats Regulations and strengthen the EDP approach. Below, we outline amendments which we support, using examples of the approach taken within the existing District Licensing strategic mitigation scheme (see paragraphs 9-11) as evidence that these changes are practicable. Amendments we support are:
17. Amendment 3, which would ensure that timetables are published for conservation measures within EDPs, and that compensation for significant impacts is delivered in advance of harm from development.
 - District Licensing delivers compensation habitat in advance of impact, ensuring that Great Crested Newt populations do not decline.
18. Amendment 14, strengthening the overall improvement test to mandate 'significant' overall improvement.

- District Licensing creates four new ponds for or every Great Crested Newt pond lost to development, ensuring overall improvement.
19. Amendment 19, which would require a developer to take 'reasonable steps to appropriately apply the mitigation hierarchy, including by seeking to avoid harm to any protected feature'.
- In District Licensing, risk zone mapping is applied, so that developers pay a fee which is approximately proportionate to impact. This incentivises avoidance or reduction of impacts.
20. [Priority amendment 2 proposed by Wildlife and Countryside Link](#) [not tabled as of 25 April], to ensure that EDPs can only be prepared where it can be demonstrated that 'implementing conservation measures as part of an EDP could contribute to a significant environmental improvement in the conservation status of a protected feature'.
- Developments threatening nationally important newt populations are ineligible for District Licensing, and must use standard licensing routes.
21. The amendment [proposed by Wildlife and Countryside Link](#) [no. 25, not tabled as of 25 April], to ensure that the NRF provides funding for ongoing monitoring and management, so that ecological improvements are maintained long-term.
- District Licensing funds ongoing management and monitoring of compensation habitat for 25 years as part of the scheme.