EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL DELIVERY PLANS (APPROPRIATE PRIORITISATION) REGULATIONS 2026

2026 No. 655

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Alex Bush, Deputy Director for Nature Restoration Fund at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The policy team at the Ministry of Housing, Communities and Local Government can be contacted with any queries regarding the instrument: Nutrient.PPD@communities.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations relate to the implementation of the Nature Restoration Fund ("NRF"). The NRF is established by Part 3 of the Planning and Infrastructure Act 2025 ("the Act") and is an alternative approach for developers to meet certain environmental obligations relating to protected sites and species.

4.2 These regulations fulfil the duty in section 63(9) of the Act for the Secretary of State to make regulations setting out the appropriate prioritisation, by Natural England, of conservation measures when preparing or amending an Environmental Delivery Plan ("EDP").

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is in relation to England only.

5. Policy Context

What is being done and why?

5.1 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 required.

5.2 The NRF enables Natural England to bring forward EDPs, which set out the strategic action to be taken to address the impact that development has on a protected site or species. This will include a package of conservation measures to address the environmental impacts of development covered by the EDP and secure an environmental uplift. Crucially, these actions must go further than the current approach and support nature recovery, providing an overall improvement to the conservation status of the identified environmental features.

5.3 Where an EDP is in place and is used by a developer, the developer is no longer required to undertake their own assessments, or deliver project-specific interventions, for issues addressed by the EDP. In order to use an EDP the developer is required to commit to pay the levy. Funds from the levy are used to pay for the conservation measures set out in the EDP.

5.4 This creates the opportunity for housing and infrastructure to do more for environmental recovery. Rather than being limited to addressing the impact of a single development, an EDP will be able to pool resources and deliver conservation measures at scale to maximise the outcome for the environment. At the same time, developers will benefit from a streamlined process and simple user experience.

5.5 This instrument provides the legislative framework setting out how Natural England should prioritise conservation measures to be included in a draft or amended EDP, when appropriate to do so.

What was the previous policy, how is this different?

5.6 Previously, a developer would be required to undertake their own assessments and deliver project-specific interventions to mitigate certain environmental impacts. When considering what kind of interventions to make, these environmental assessments required the mitigation hierarchy to be rigidly applied. This meant that projects needed to demonstrate that they had avoided harm wherever possible before moving on to consider mitigation measures and lastly compensation measures.

5.7 Where an EDP is in place and a developer utilises it, the developer is no longer required to put in place project-specific interventions to address the environmental impacts addressed by the relevant EDP, except to the extent that the EDP requires certain conditions to be imposed on the development. Instead levy payments fund conservation measures which address those impacts strategically.

5.8 Since this new system enables Natural England to deliver more strategic environmental improvements it is not appropriate to consider the mitigation hierarchy on a project-specific level, but instead to consider which conservation measures are put into the EDP when it is drafted. Furthermore, it is appropriate to allow Natural England, as the statutory nature conservation body in England, discretion to consider when the mitigation hierarchy should be followed and when it should be departed from.

6. Legislative and Legal Context

How has the law changed?

6.1 When Natural England draft EDPs they will set out the suite of conservation measures that will be included in it to address the environmental impact of the development to which the EDP applies. For example, an EDP covering nutrient pollution will set out how the combined effect of the conservation measures will go beyond the current expectations of nutrient neutrality and lead to an improvement in water quality.

6.2 The Regulations set out how conservation measures must be prioritised by Natural England when preparing or amending an EDP. As far as they consider appropriate Natural England must prioritise conservation measures that avoid the negative effect of EDP development (avoidance measures) over measures that mitigate (mitigation measures), and mitigation measures over measures that compensate (compensation measures) for that effect.

6.3 Avoidance measures will, in most cases (but not always), be conservation measures of the type mentioned in section 61(10) (conditions of development) of the Act. Compensation measures will, in most cases (but not always), be conservation measures of the type mentioned in section 61(5) (network conservation measures) of the Act.

6.4 What is "appropriate" will be context-specific for each EDP, therefore Natural England have a discretion to determine what is or is not appropriate. This is an administrative sub-delegation which is implicit in the enabling power.?

6.5 The Regulations requires Natural England to consider value for money as part of the determination of appropriateness. The term "value for money" is not defined in these Regulations in order to leave a degree of flexibility to Natural England to consider what it means in any given context and at a particular time.

6.6 The Regulations require Natural England to set out within the draft EDP whether each conservation measure they have selected is intended as an avoidance measure, a mitigation measure, or a compensation measure (either in whole or in some combination of the above).

6.7 The Regulations specify that this prioritisation only applies when Natural England is considering which conservation measures to include within a draft or amended EDP. These do not relate to the implementation of conservation measures and the order in which they must be brought forward.

Why was this approach taken to change the law?

6.8 Section 63(9) of the Act placed a duty on the Secretary of State to make regulations setting out the appropriate prioritisation, by Natural England, of conservation measures when preparing or amending an EDP.

6.9 The approach taken in this instrument seeks to ensure that Natural England considers the principles of the mitigation hierarchy (avoiding impacts before mitigating for them, and mitigating impacts before compensating for them) when designing an EDP. This reflects the principle that if harm can be avoided, that is generally better than managing or compensating for it later.

6.10 However, it remains important that Natural England are able to put in place the conservation measures that will most effectively deliver a material improvement to the conservation status of the protected site or species in question. For this reason,

Natural England are also required to consider the value for money of the conservation measures they are considering.

7. Consultation

Summary of consultation outcome and methodology

7.1 Views of the sector and relevant experts were sought as part of the development of the Act through a Planning Reform Working Paper on Development and Nature Recovery.

7.2 No formal consultation has been conducted for this instrument, as it implements previously agreed policy and is procedural in nature. Individual EDPs will be subject to formal consultation. The Government is also conducting focused engagement with relevant stakeholders on wider NRF implementation.

8. Applicable Guidance

8.1 To support effective implementation, the Secretary of State will publish statutory guidance on the NRF before the first EDPs are made. The aim will be to support Natural England in exercising its functions in compliance with the regulatory framework and to support developers and LPAs navigating this new system.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the Act, which this instrument implements, was subject to a full Impact Assessment which included an assessment of the NRF. That Impact Assessment is available online at: https://www.gov.uk/government/publications/planning-and-infrastructure-bill-impact-assessment.

9.2 Additionally, as per the Better Regulation Framework (2023), an impact assessment is not required where the regulatory change only applies to public sector bodies and generates no direct regulatory costs to private businesses or civil society. As such, these Regulations are outside the scope of the Framework. As such, the Framework does not require an impact assessment to be carried out.

Impact on businesses, charities and voluntary bodies

9.3 The impact on business, charities or voluntary bodies is optional or minimal: the only relate to how Natural England should approach the preparation or amendment of an EDP.

9.4 The legislation will not impact small or micro businesses, as described in 9.2.

9.5 There is no significant impact on the public sector as the NRF is intended to streamline how certain environmental impacts are considered through the planning system. The primary administrative functions will fall to Natural England and costs will be recoverable through the levy itself. Additional resource required within government for the ongoing implementation and operation of the NRF is expected to be minimal and this work will continue alongside other business as usual functions.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The legislation will be subject to ongoing review to ensure it is operating as intended.

10.2 The instrument does not include a statutory review clause. Section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply to provision in connection with the imposition of a tax, duty, levy or other charge, by virtue of section 28(3) of that Act.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 These Regulations are the first exercise of the powers in Part 3 of the Act to make appropriate prioritisation regulations.

12. European Convention on Human Rights

12.1 The Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government has made the following statement regarding Human Rights:

12.2 "In my view the provisions of the Environmental Delivery Plans (Appropriate Prioritisation) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").