

Water and development



Introduction

Nutrient neutrality (NN) is a means of ensuring that new development does not add to existing nutrient burdens within river catchments, so there is no net increase in nutrients such as nitrogen or phosphate as a result of the development. Implementation of stricter rules on NN has meant widescale hold-ups of housebuilding in affected catchments across England. Following months of legal challenges and political pressure, the government has announced its intention to make nutrient neutrality rules optional for developers. This note recaps the principle of NN, covers the implications of the government's recent announcement for farmers, land managers and developers, and takes a look at other emerging rules on water and development.

Nutrient neutrality – what's happened so far?

In [July 2022](#) we wrote about Natural England's approach to enforcing EU-derived case law on protecting designated sites (e.g. SSSIs) from increased water pollution and again in our Spotlight on nature-based solutions in [November 2022](#). At the present time, according to the Department for Levelling Up Housing & Communities, 62 Local Planning Authorities (LPAs) are impacted by NN rules in England, with each impacted LPA engaged at different stages of enabling a local supply of nutrient offsets for housebuilders to purchase. As recently as July this year, the High Court confirmed the applicability of NN rules to planning applications in affected areas, with an estimated 100,000 homes held up in planning until offset mechanisms could be agreed at a local level. This contributes towards the housing delivery rate being at a 15-year low.

What has been proposed?

Acknowledging the political sensitivity of housebuilding targets, ministers had signalled widely that a relaxation of the NN rules was imminent. On 29 August 2023, substantial amendments to the Levelling Up and Regeneration Bill were tabled by the government, which seek to regulate when and how nutrients should be considered in water treatment and development planning. The government's proposed approach is to specify that when making a relevant planning decision, LPAs must assume that nutrients in urban wastewater from the proposed development, whether alone or in combination with other factors, will **not** adversely affect the relevant protected site, even if evidence to the contrary is presented.

Further proposed amendments build on the government's promise to place a new legal duty on sewerage undertakers to upgrade wastewater treatment works in sensitive catchments to the highest technical standard possible, proposing powers to require the Secretary of State to declare nutrient-sensitive catchments and to set different permissible nutrient concentrations than the current legal standard in these areas. The effect is to transfer the burden of water quality improvements in affected catchments away from developers and onto water companies. This is not the urgent result that housebuilders may have hoped for though. The Bill is currently at Report stage in the House of Lords and will need to return to the House of Commons to seek its agreement to the amendments before it receives Royal Assent. Most of the Bill becomes law at that point or within two months, however the nutrient neutrality amendments require specific implementation regulations so there is likely to be a delay before they come into effect.

Is the government still committed to environmental improvement?

Under the [Environmental Improvement Plan 2023](#) (EIP), the government has legally binding targets to reduce nutrient runoff from agriculture in affected catchments by 15% by 2028, and overall by at least 40% by 2038, and to reduce phosphorus loadings from wastewater by 50% by 2028 and by 80% by 2038. Stepping back from river protection measures is both legally and politically risky given the ongoing publicity against sewage outflows. However, campaigners against NN focussed on the relatively small proportion of overall diffuse pollution caused by households compared to agriculture and industry, arguing that the burden for delivering NN was falling disproportionately on the housebuilding sector. In taking a new approach to NN the government has accepted that there is a different balance to be achieved in improving water quality. The nutrient burden of the expected 100,000 new homes by 2030 in affected catchments will still be mitigated through additional funding for Natural England's existing Nutrient Mitigation Scheme and paid for by larger housebuilders. The government has also said it wants Natural England to play a facilitating role in working with local authorities and the private sector to improve the health of river systems through new Protected Site Strategies. These will be drawn up by Natural England in partnership with local communities to achieve full site restoration for vulnerable habitats.

What about diffuse pollution from agriculture?

While the spotlight has been taken away from new housing, it has not yet been fully shone on agriculture. As previously confirmed in the EIP, farm inspections are to rise from 1,500 per annum in 2021-22 to 4,000 per annum in 2022-23 onwards and their focus on pollution risk in vulnerable catchments will be increased. However, the government has placed the focus on further investment for farming: an additional £166 million of funding for slurry infrastructure, £25 million for research into nutrient management innovation, and a new consultation on modernising fertiliser product standards to increase the use of organic and recycled nutrients in fertilisers. In addition, the selection of high-priority water management options in the new environmental land management schemes will be encouraged by 'premiums' from 2024, and a bespoke plan for the River Wye is expected this autumn. It is however worth recalling that the EIP predicts a rapid improvement in water quality after 2028 as a critical mass of farmers adopt pollution avoidance measures, implying that regulation will get tougher if the short-term incentives are not effective at reducing diffuse pollution.

Are nature-based solutions still on the table?

The government's solution to NN would remove a valuable demand-side driver for nature-based solutions, but opportunities may well still exist. Government amendments to the Bill also propose that a sewerage undertaker must consider whether "nature-based solutions, technologies and facilities relating to sewerage and water" could be used. Permanent land-use change through woodland creation and innovations such as Integrated Constructed Wetlands both offer biodiversity-positive and carbon-negative solutions for water companies, LPAs and developers looking for cost-effective and sustainable water treatment. It is possible that land for sewerage treatment purposes could be compulsorily purchased and pricing may be substantially reduced from the development-market drivers that have been considered under NN, but a constructive dialogue with the Environment Agency and Natural England on ideas for nature-based infrastructure solutions could be beneficial. For land managers with wetland or woodland creation opportunities, strategic thinking on selling [different credits from the same piece of land](#) will be beneficial.

Water availability

Water quality is not the only issue holding up new development, as the availability of water in certain catchments is also now being factored in by Natural England in planning decisions. As we discussed in our [Spotlight on Water](#), total water demand in the UK is predicted to increase by up to 9% by 2050, whilst availability could decrease by as much as 11% over the same period because of climate change. Recent legal challenges to protect vulnerable habitats from water stress have been successful: a long-running [dispute](#) as to whether agricultural abstraction has been causing a protected fenland habitat in the Broads national park to dry out culminated in the High Court determining that public authorities need to take appropriate steps to prevent harm to habitats. In Norfolk, this has resulted in abstraction licences being withdrawn from farmers in the catchment.

Other vulnerable catchments are taking a more progressive approach to water scarcity through a concept known as "water neutrality". This is defined as development that does not increase the rate of water abstraction for drinking water supplies above existing levels, with the emphasis placed on water efficiency measures in new and existing homes prior to 'offsets' being secured, for example through the voluntary cessation of abstraction licences. Since 2021, Natural England has been taking steps to enforce 'water neutrality' on developments in the 'Sussex North Water Resource Zone', covering areas of West Sussex around Horsham and Crawley. However, voluntary water neutrality mechanisms are also appearing in other drought-prone parts of England, such as [Bedfordshire](#). Developing approaches to land management that retain more water in the landscape can improve flood resilience, offer carbon emissions reductions and improve overall catchment performance as 'water neutrality' bites. For land managers in water-stressed catchments, increasing the overall amount of water retained and stored in the landscape may be the optimal nature-based opportunity.

Conclusion

Nutrient pollution in water should be a relatively straightforward issue to stop: it can be tackled through investment in treatment, or incentives (including regulation) to stop pollutants entering watercourses to start with. In breaking the requirement for NN solutions to be delivered by developers, the government has shifted the financial burden back onto the taxpayer to pay for both water treatment and land management interventions to prevent pollution at source.

There are two major problems remaining here. The first is the overall incoherent framework for water management, with separate regimes for drainage, drinking water and environmental protection. The [Lowland agricultural peat task force](#) identified that lack of water remains the biggest threat to food production in England, and in accepting its recommendations, the government now needs to find the political will to deliver on its pledge

to deliver more strategic planning for water to integrate quality, availability, climate and environmental concerns. If not, the result will be piecemeal problem-solving, which doesn't offer clarity for anyone.

The second problem is timing. Political lobbying has stalled the development of nutrient offset projects despite developers' and landowners' enthusiasm to deliver them, and it has now undermined them altogether but without any clear indication of when reforms to the underlying legislation will deliver results. The Levelling Up Bill is unlikely to be passed by the expected King's Speech in November, although the Bill should be carried to the next parliamentary session. The delay also gives time for environmental lobbying, which is likely to keep pressure on politicians to challenge the government's position. An amendment to undo the government reform has already been tabled in the House of Lords where the government does not hold a majority.

So, the announcement does not give short-term relief to housebuilders wanting to get 'spades in the ground'. For the time being, NN rules remain unchanged meaning developers seeking to implement existing planning consents or applying for new planning consents will be required to meet NN requirements. Meaning they will continue to need to secure nutrient offset credits directly from landowners to progress their development projects.

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