



## Statement from NatureSpace regarding KC opinion on Part 3 of the Planning and Infrastructure Bill

NatureSpace Partnership Ltd (NSP), like many working in the ecological and environmental sector, is concerned about the threats to England's legally protected ecological features arising from the Government's Planning & Infrastructure Bill, specifically Part 3 of the Bill on "Development and Nature Recovery".

NSP therefore requested the Legal Opinion of the well-respected planning and environmental law barrister, David Elvin KC of Landmark Chambers [David Elvin KC - Landmark Chambers](#), on whether Part 3 reduces the existing levels of environmental protection in England and / or is in breach of international law.

Mr Elvin's Opinion is that Part 3 **does** reduce the existing levels of environmental protection for key aspects of England's legally protected ecological features.

His view is that the approach adopted in Part 3 is a "*significantly laxer approach to protection*", which "*allows issues of mitigation/offsetting, compensation and improvement to be fudged in the overall improvement test, wholly depending on the individual decision made by NE and the adequacy of the resourcing provided for these purposes*". Mr Elvin adds that "*It is not even clear that the production of an Environmental Delivery Plan for specific development will be any speedier for development than the [current system] where the rules are well-understood.*"

More specifically:

In relation to the protection of sites designated under the Habitats and Wild Birds Directives: Mr Elvin states that "*the requirement of the so-called overall improvement test (in reality the "likely outweighing" test, not as rigorous as para 94 of the Explanatory Notes suggests) is also not as stringent a protection as that applied under [the existing legislation] since cl. 56(4) only requires that "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."* A "*likely outweighing*" of a negative effect, which appears to be a simple balancing approach, is by no means equivalent to being certain to a high standard that an adverse effect will not occur as the result of the development which is beyond reasonable scientific doubt". He adds that "*The overall improvement test applied here does not require the systematic and rigorous protection afforded by [existing legislation] and amounts to a reduction in the level of protection. The test simply allows all the factors to be put together without a mandatory systematic analysis of either environmental effects or the level of certainty of success in avoiding or offsetting harm, and is based on an overall judgment which is a laxer and, in my opinion, a clear reduction in the level of environmental protection*".

In relation to plant and animal species protected under existing legislation: Mr Elvin concludes that the discretionary, rather than mandatory, approach adopted under Part 3 means that the same level of environmental protection **will not** be achieved. As an example, Mr Elvin states as regards the rarest "European protected species": "*Specifically, the three licensing tests of regulation 55(2), 55(9)(a) and 55(9)(b) are not required to be applied in the context of an EDP. I therefore consider that the PIB as currently drafted which will replace the HR 2017 licensing where EDPs are made will not maintain the same level of environmental protection since it does not require compliance with the same level of protection as is currently in existence which will be true even if as a matter of discretion in some cases they are applied, since the tests are currently mandatory and universal (subject to exceptions)*".

In relation to the EU / UK Trade and Cooperation Agreement: For the above reasons Mr Elvin also concluded that "*Part 3 of the PIB and the associated schedules of the PIB as they currently stand **do** amount to a weakening or reduction of the environmental levels of protection within Article 391(2) "the levels that are in place at the end of the transition period" i.e. at the end of 2020*".