Planning and Infrastructure Bill 2025: Briefing for House of Lords Report Stage

20 October 2025

Summary

CIEEM urges Peers to amend Part 3 of the Planning and Infrastructure Bill so that it focuses exclusively on diffuse and cumulative environmental impacts – specifically nutrient neutrality, water quantity, water quality and air quality – and excludes protected species and impacts to protected features of protected sites through impact mechanisms other than diffuse cumulative impacts (e.g. direct loss or destruction).

This targeted approach would ensure that the Bill can achieve its intended aim of delivering the Government's stated aims of tackling strategic, system-level environmental challenges without undermining existing environmental protections or creating perverse incentives for developers to destroy ecologically important habitats and species without making any effort to avoid or mitigate harm.

Restricting Part 3 to diffuse impacts will:

- Enable landscape-scale restoration to tackle complex, cumulative impacts.
- Provide developers with certainty and clarity, rather than greater complexity and risk.
- Avoid undermining some existing and emerging nature markets (such as private nutrient mitigation schemes) – although achieving this comprehensively would also need a further amendment, to avoid impacting for example nutrient offsets and similar, that requires Natural England to integrate any existing private solutions into EDPs.

Please see the appendix below for further explanation of our main concerns with Part 3 of the Bill, which unfortunately are not all capable of being addressed by the amendments tabled thus far.

1. Why Part 3 Needs to Be Refocused

As drafted, Part 3 enables Environmental Delivery Plans (EDPs) and a Nature Restoration Fund (NRF) to offset environmental impacts from development. However, its current scope is too broad – potentially applying to all protected species and protected features of protected sites –

and risks replacing established and effective systems for managing ecological impacts under the Habitats Regulations, Wildlife and Countryside Act and Protection of Badgers Act frameworks.

This would:

- Allow the loss of valuable habitats and species on the vague promise of new habitats being created somewhere and at some point in the future, without adequate evidence for there to be confidence in the outcome.
- Create duplication and confusion for developers and local planning authorities.
- Introduce greater uncertainty in the planning system.
- Undermine investor confidence in private mitigation markets (e.g. nutrient neutrality schemes, district licensing).
- Risk environmental regression, by allowing payment into a fund to bypass existing duties to avoid or mitigate harm on-site.

In contrast, limiting Part 3 to diffuse, cumulative impacts would enable Natural England and local authorities to address real planning bottlenecks (such as nutrient pollution) that cannot be solved by individual developers on-site.

2. A Targeted Approach: Focus on Diffuse Impacts

CIEEM supports the principle of strategic, evidence-based environmental planning.

We recommend that EDPs and the Nature Restoration Fund be restricted to addressing:

- Nutrient neutrality and water quality in sensitive catchments;
- Air quality impacts arising from multiple developments; and
- Water quantity and flood resilience where linked to cumulative development effects.

These are the kinds of system-level challenges that require strategic solutions – beyond the control of individual developers – and where coordinated, catchment-scale action can deliver real environmental improvements.

Restricting EDPs in this way would give effect to the Government's intention that the Bill acts as a targeted, proportionate mechanism to accelerate development while protecting nature.

3. Safeguarding Nature Markets and Private Investment

There is growing concern that the Nature Restoration Fund could undermine private investment in mitigation and nature markets – including nutrient mitigation and habitat banking schemes.

If developers are required to pay a levy into the NRF instead of purchasing capacity in existing mitigation schemes, existing private schemes could collapse, damaging investor confidence and reducing mitigation availability at precisely the time when it is needed most. Additionally, the fear alone of EDPs being created which undermine private mitigation markets is likely to cause private providers of mitigation solutions to be more reluctant to bring forward schemes, which would by extension reduce the availability of mitigation options in non-EDP areas, and have the perverse effect of slowing down development.

To prevent this, we recommend that:

- The Nature Restoration Fund should prioritise investment into existing markets and private schemes where these exist and meet required standards.
- Natural England should be required to work in partnership with existing market operators before establishing new interventions.
- EDPs must include clear evidence, baseline data and delivery accountability, ensuring that funds collected translate into measurable ecological outcomes.

Whilst there are no tabled amendments to address this risk, it could potentially be tackled through regulations/secondary legislation.

4. Benefits of Restricting the Scope of Part 3

Focusing Part 3 solely on diffuse impacts would:

- Accelerate development by unlocking homes held up by nutrient neutrality and similar issues.
- Strengthen environmental outcomes by enabling landscape-scale restoration and catchment-based planning.
- Protect existing environmental safeguards for habitats and species.
- Provide clarity for developers, minimising overlap with Biodiversity Net Gain and Habitats Regulations.
- Help to maintain investor confidence in private nature markets.
- Support the Government's growth agenda without sacrificing nature.

This approach represents a balanced, evidence-led solution that is consistent with the Government's ambition to "*build faster while protecting the environment*".

5. Conclusion and Recommendations

CIEEM calls on Peers to:

1. **Support Amendment 130** – which restricts the use of EDPs to addressing diffuse and cumulative impacts (nutrient neutrality, water quality and quantity and air pollution). Peers should seek to exclude all provisions enabling EDPs to be created to address other forms of impact on protected species and protected features of protected sites (for example direct destruction), as there is no evidence that the EDP approach will improve outcomes in these circumstances..
2. **Support Amendment 148** – which works to ensure that secondary legislation (Regulations) coming forward under Part 3 provide for the application of the mitigation hierarchy (i.e. the preference of avoiding harm first, if possible), the use of scientific evidence and baseline data to inform EDPs, protecting irreplaceable habitats, and promoting conservation action to happen before the impact from development in certain circumstances (for example where there might otherwise be irreversible harm).
3. Ensure the Nature Restoration Fund supports and complements – rather than competes with – existing nature markets. *This would require an additional amendment, which CIEEM would be happy to work with Peers on, or could potentially be addressed through regulations/secondary legislation*

4. Apply the super-affirmative parliamentary procedure to any secondary legislation under Part 3. *This would require an additional amendment, which CIEEM would be happy to work with Peers on*.
5. We would also encourage Peers to support Amendments 93 and 94 – which seek to improve outcomes for chalk streams.

By supporting these targeted amendments, the House of Lords can help turn the Bill into a constructive tool for strategic environmental management, enabling nature recovery at scale while unlocking sustainable development.

APPENDIX:

CIEEM'S KEY CONCERNS AND QUERIES ON THE PLANNING AND INFRASTRUCTURE BILL

10 October 2025

This note outlines the remaining key concerns that CIEEM has about Part 3 of the Planning and Infrastructure Bill (PIB). It takes account of the amendments to Part 3 announced by the Government in July 2025.

Please be aware that the matters listed below are not the entirety of CIEEM's concerns – rather, they are key matters that we believe, if adequately addressed, would substantially reduce the level of 'in principle' opposition to the Bill (from CIEEM and potentially others).

Please also be aware that one of our concerns is the risk of the PIB undermining the flow of private finance into nature markets, and by extension delays being caused to development that is reliant on those markets (particularly outside of future Environmental Delivery Plan (EDP) areas). We have not expanded upon this particular concern in this appendix, in light of MHCLG's statement that this particular issue is being looked into on behalf of the Government and is likely to be addressed.

Concern 1: Evidence-Based Decisions

Explanation:

We were pleased to see that the Government's proposed amendment (new clause 87A) included the need for Natural England (NE) and the Secretary of State (SoS) to 'take account' of the best available scientific evidence when exercising functions related to EDPs.

Our concerns here however remain threefold:

- Firstly and most importantly, the circumstances in which the SoS is under a duty to 'take account' of the best available scientific evidence as expressed under proposed clause 87A(1) are limited to the preparation, amendment or revocation of EDPs or when taking remedial action due to an EDP failing.

  Crucially therefore, there is no reference to the SoS being required to take account of the best available scientific evidence when deciding whether or not to actually make an EDP that NE has prepared (i.e. after EDP 'preparation' - at the point at which the Secretary of State is applying the 'overall improvement' test before deciding to make an EDP and enabling it to pass into force). There does not seem to be any reasonable explanation for this omission. It seems crucial that the most important decision being taken by the SoS – deciding whether or not an EDP is 'made' – be guided by the best available evidence.

- Secondly, the phrase 'take account of' when referring to the best available scientific evidence does not in our view necessarily imply a duty to act in accordance with that

evidence where reasonably practicable. We believe that the duty as currently expressed could be discharged by NE or the SoS simply demonstrating that they are aware of the evidence in question. Whilst we accept that there may be circumstances where it is not practical to pursue the measures that are shown to be most successful in evidence (for example due to cost), our view is that any departure from evidence must be transparently explained and justified. We believe that the duty expressed in proposed clause 87A should be for NE and the SoS to 'act in accordance with the best available scientific evidence where reasonably practicable'.

- Thirdly, the PIB, even after amendment, is silent on what happens when there is no evidence (or very little evidence) available to inform an EDP. In our view, the PIB should be explicit that if there is insufficient evidence to robustly underpin an EDP, either the EDP cannot be made, or NE must itself collect the evidence that is necessary (e.g. through commissioning surveys).

Concern 2: Notional Nature of the 'Overall Improvement' Test

Explanation:

CIEEM was pleased to see the strengthening of the 'overall improvement' test in clause 60(4) so that the test is only passed where the effect of the conservation measures will 'materially' outweigh the negative effect of the EDP development on the conservation status of each identified environmental feature.

Our concerns however relate to the preceding text at clause 60(3), which states:

*"The Secretary of State may make the EDP only if the Secretary of State **considers** that the EDP passes the overall improvement test"*

Our view, supported by discussions with solicitors, is that this form of words inserts discretionary space that would enable the SoS to reach decisions when deciding whether or not to 'make' an EDP that are either not supported by evidence or weakly supported by evidence.

This would mean that the increased stringency of the 'overall improvement' test introduced by the Government's amendment would be undermined, by placing the SoS's subjective opinion in primacy over whatever the evidence may show.

The proposed form of wording is a marked departure from current legislation – for example, the Habitats Regulations state that:

"….the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site…"

The wording of the existing Habitats Regulations therefore clearly dictates that the decision of the competent authority must flow from and be consistent with the available evidence. If it does not, then it can be challenged in that basis.

Our concern about the SoS's opinion being framed in primacy in this respect is compounded by the matters previously outlined above (Concern 1), which omit the making of EDPs from needing to take account of the best available scientific evidence (so in addition to not needing to take account of the best available scientific evidence, the SoS may also freely express that he or she 'considers' that the evidence is wrong and a conflicting decision can therefore follow).

We have heard advice that suggests that were an EDP to be challenged on the basis that the decision for it to be 'made' conflicted with the available evidence over whether or not the 'overall improvement' test had been passed, the courts would only intervene if there had been:

i) An error made in following the decision-making process outlined in the legislation; or
ii) If the SoS's interpretation of the available evidence relevant to the application of the 'overall improvement' test was so unreasonable or irrational that it was 'outrageous in its defiance of logic'.

Our concern is that point ii) above sets an extremely low bar for the confidence that *should* exist that EDP measures will be effective, before an EDP is 'made' that then permits damage to occur as a result of development. This is critically important, particularly for very high value/importance environmental features such as Internationally protected sites. The balance of evidence should at least indicate that an EDP will work, before the EDP can be made, and this must be determined on an objective rather than subjective basis.

Our concern is that the existing wording of the Bill appears to make it possible for the SoS to 'make' an EDP even if the evidence suggests that there is only a low probability that the EDP measures will be successful in achieving the overall improvement that is required, if the SoS 'considers' that the required overall improvement would nonetheless occur, despite the poor odds.

Given that the very nature of 'making' an EDP requires ecological outcomes 10 years into the future to be predicted; the lack of, range of, and uncertainty around much ecological science, the discretionary nature of SoS's powers, the lack of requirement for the SoS to 'take account' of the best available scientific evidence when making an EDP (concern 1 above) and the position of NE, it seems very difficult to see how a legal challenge could realistically be brought on the basis that the SoS's decision to make an EDP was contrary to the evidence.

For the avoidance of doubt, CIEEM is <u>not</u> advocating in principle that it should necessarily be 'easy' for third party legal challenges to be made against an EDP, as we appreciate that this would compromise the ability to actually progress an EDP within a reasonable timescale and open it to be seriously mired by opportunistic or vexatious legal challenges. **We do however believe that there should be no question that, before an EDP can be made, the SoS's decision that the overall improvement test is passed should at least be supported by the weight of the best available scientific evidence that this will be the case**. We believe that in circumstances where the evidence indicates that EDP measures are unlikely on balance to work, then a legal challenge should then stand a reasonable prospect of being heard by the courts, which does not presently appear to be the case.

We believe that this weakness in the Bill can be corrected by amending clause 60(3) to remove the words that place the SoS's 'consideration' in primacy over the available evidence of relevance to the application of the overall improvement test, as follows:

"The Secretary of State may make the EDP only if ~~the Secretary of State considers that~~ the EDP passes the overall improvement test"

Such an amendment would in our view make clear that the SoS's decision must necessarily be consistent with the weight of whatever evidence is available to facilitate the application of the overall improvement test.

Concern 3: Missing Part of the Mitigation Hierarchy

Explanation:

Similar to the above, we welcome the Government's proposal via an amendment to clause 55 to only permit conservation measures to be delivered 'elsewhere' (away from the protected site of impact) if NE considers that this would make a greater contribution to the improvement of the conservation status of the affected feature.

Notwithstanding this, the Government's amendment does not put in place any mechanism to prefer or prioritise conservation measures that might help to *avoid* harm to a protected site in the first place (the Government's proposed amendment to clause 55 can be taken to mean (for example) that new habitats will be created to compensate those that are destroyed in other parts of the same protected site, in preference to elsewhere.

Whilst we accept that there may be reasonable practical justification for impact avoidance or mitigation measures not being practical in some specific circumstances (e.g. excessive cost, low prospect of success etc), we believe that it would be perfectly possible to propose an amendment that requires NE to consider and where possible use 'reasonable endeavours' (or words to that effect) to include measures that would prevent or reduce the impact on a protected site, in preference to resorting to compensation measures, and if this is not reasonably practicable to provide a statement explaining why.

Such a statement need not be onerous to produce – it could simply be a short paragraph summarising NE's views, that serves to provide reassurance that opportunities to avoid harm rather than try to compensate for it were not simply ignored or overlooked. An amendment of this nature would not tie NE's hands or limit their approach, it would simply ensure that the mitigation hierarchy, a process that has been shown to lead to better environmental outcomes, is not needlessly circumvented.

Concern 4: Use of the Phrase 'have regard to' with respect to EDP Objectives

Explanation:

We welcome that the Government has proposed amendments that would require NE to 'have regard to' the following when preparing or amending an EDP:

i) The conservation objectives of any affected protected site (proposed clause 87A(5);
ii) The need to achieve favourable conservation status for any affected protected species within its natural range (proposed clause 87A (6)); and
iii) The overall coherence of each relevant site network of which the protected site forms a part, so far as it relates to the protected feature being impacted (proposed clause 87A(8))

Aligning EDPs with these objectives is certainly, in our view, an improvement.

However, our residual concern here is that it is widely recognised in environmental law that the phrase 'have regard to' is insufficiently strong to precipitate robust outcomes in decision-making.

It is for this reason that the 'biodiversity duty' placed upon public bodies by Section 40 and 41 of the Natural Environment and Rural Communities Act 2006 (as amended) was strengthened by the Environment Act 2021. In practice, the original NERC Act requirement to 'have regard to' the conservation of biodiversity was being widely interpreted at least in practice by public bodies as being a requirement for them to 'be aware of' the need to conserve biodiversity, rather than to actually take any particular action to further this objective.

The weakness of the phrase 'have regard to' was admitted by the Government's Nature Minister, Mary Creagh MP, in her oral evidence to the Environmental Audit Committee on Monday 21 July when answering questions on the degree to which Local Nature Recovery Strategies (LNRSs) should influence Local Plans. The Minister herself pointed out the weakness of the 'have regard to' phrase and noted that the Levelling up and Regeneration Bill strengthened this duty so that it became a duty to 'take account of' the LNRSs when drafting Local Plans.

Concern 5: Liability Vacuum for Implementation of EDP Measures

Explanation:

Setting aside for a moment the duties for NE to monitor and report upon the effect of EDPs, and the new provisions in the Government's proposed amendments for remediation measures (discussed separately below), the only actual obligation that the PIB appears to place upon NE to ensure the effective implementation of EDP measures occurs at clause 71(1), which states:

"Nature restoration levy regulations must require Natural England to ***spend money*** *received by virtue of the nature restoration levy on conservation measures that relate to the environmental feature in relation to which the levy is charged…"*

Our first concern is that the above obligation can be satisfied even if only a tiny proportion of the money collected through the Nature Restoration Levy (NRL) is actually spent on the EDP measures referred to. The clause does not require all monies (or even most of the money, or all of the money minus administrative costs etc) to be spent on EDP measures.

More importantly however, neither this clause nor any other appears to obligate NE to actually ensuring the delivery of the EDP measures themselves. Clause 76(1)(b), for example, names NE as having the function of "…*taking conservation measures, and doing anything else that Natural England considers necessary to implement EDPs"* and says that NE *"…may pay another person to take conservation measures"*, but identifying NE as having the function of taking conservation measures is not the same as placing an obligation upon them to actually exercise that function (and to do so to the fullest extent that is reasonably practicable). It may be argued nonetheless that this creates a 'reasonable expectation' that NE would endeavour to implement the conservation measures, but we see no reason why this cannot be made an inescapable duty.

We fully understand that, as NE is likely to have to procure contractors to deliver EDP measures in many instances on its behalf, NE cannot itself be required to deliver the measures. Additionally, during the course of an EDP the details of conservation measures may evolve from that originally envisaged in the EDP, as new information becomes available. However, a clause could in our view have been included that would have required NE to use 'all reasonable endeavours to either deliver or procure the delivery of the conservation measures set out in the EDP, pursuant to the achieving the objectives of that EDP to meet the overall improvement test' (or similar wording).

Whilst the Government has proposed an amendment to clause 55 that would require an EDP to *"…set out the anticipated sequencing of the conservation measures…"*, this amendment can again be discharged simply through the provision of a timeline – adherence or attempted adherence to which is not then obligatory. We also have a criticism that this particular amendment should have placed an expectation on NE 'where possible' to deliver conservation measures that are designed to prevent harms from occurring from being delivered after that harm has been permitted to happen.

NB: For awareness only, we are aware of separate concerns raised by others, that if monies collected under the NRL are passed to other public authorities under the provisions of clause 71(5)(d), then these do not seem to be 'ring fenced' for use in implementing EDP measures in the same way as if the monies were still held by NE.

Concern 6: Risk of 'Remediation' Measures Being Set Up to Fail

Explanation:

This concern is a 'compound' concern caused by the ways in which various clauses ('aspects') of the PIB and Government-proposed amendments to it related to 'backup' measures, amendments/revocation of an EDP and 'remediation' measures interact with each other. We will try to outline and explain these below.

Aspect 1: Backup Measures

Firstly, we are pleased to see the Government's proposed amendment to clause 55 that requires an EDP to contain details of 'backup' measures that must be implemented "…*in the circumstances set out in the EDP*…", which *"…must relate to the effectiveness of the conservation measures that have already been implemented, as revealed by the monitoring of the EDP.."*

We would firstly refer to our concern number 5 above, that regardless of what it says in an EDP, there does not appear to be any binding obligation on any party to actually seek to implement the EDP measures (whether they be the 'main' measures, or the backup measures).

Secondly however, leaving it open for an EDP to define the circumstances in which backup measures must be taken does not amount to an obligation to expediently implement backup measures in circumstances where monitoring shows that an EDP has begun to fall short, or for the backup measures to be sufficient to address any reasonable worst-case shortfall in achieving an 'overall improvement', or for the backup measures to actually be implemented to a sufficient degree to reverse that shortfall in its entirety. This is instead left to the authors of the

EDP to decide. Under this clause, it is open for an EDP to include minimal provision for potential backup measures, and instead rely on the provisions for an EDP to be amended, or for potential for remediation measures to be brought to bear if an EDP is revoked or reaches its end point without achieving an overall improvement.

Aspect 2: Amending or Revoking a Failing EDP

It is our understanding that clause 63 pertaining to the amendment of an EDP does not make it obligatory to amend an EDP in the circumstances that monitoring shows that it is failing to deliver an overall improvement (as currently written, even post amendment, this clause says that the SoS 'may' amend an EDP in the circumstances set out).

If therefore the **mid-point** monitoring report required under the Government's proposed amendment to clause 62 included an assessment that the EDP was unlikely to pass the overall improvement test, then the choices available would be:

- The SoS could *choose* to amend the EDP in a way that was considered likely to restore the potential for the EDP to achieve the overall improvement test by the EDP **end date**; or
- The 'backup' measures under clause 55 could be implemented (although as per 'concern 5' set out above there does not appear to be any binding obligation on any party to actually implement an EDP – either the 'main' or 'backup' measures contained therein); or
- The SoS could choose to revoke the EDP, which would have the effect of bringing the 'main' measures in the EDP to an end (although the consented development and therefore environmental damage would remain consented), and trigger the 'remediation' provisions (see below).

Aspect 3: Remediation Measures

In order for the remediation provisions in the Government's proposed amendments to the PIB to be triggered, our understanding is that either:

- The EDP would have been revoked before its originally intended end date without having met the 'overall improvement' test; or
- The EDP has reached its end point without having met the 'overall improvement' test.

The Government's proposed amendment (clause 64A) requires that in these circumstances, the SoS 'must' take such remedial action as the SoS considers proportionate for the purpose of seeking to materially outweigh the negative effect on the affected environmental features. When considering what is 'proportionate' the SoS must take into account the cost of the remedial action.

Given the foregoing analysis, our concerns here are that:

1. Backup measures written into EDPs are <u>not</u> required to be of sufficient scope to be able to address a reasonable worst-case scenario for the performance of the main EDP measures (in fact, whilst backup measures must be specified in an EDP, no bar whatsoever is set for how efficacious these backup measures should be expected to be – they must merely have been written into the EDP)

2. Even if backup measures outlined in an EDP were robust, there is a lacuna in terms of there being no binding obligation on any party to actually implement them (the current

wording of the proposed amendment to clause 55 states that the backup measures 'must' be implemented, but is silent on who must implement them, and as outlined above in concern 5, neither NE nor any other entity is obligated in the PIB to actually deliver the measures in an EDP, beyond the requirement for NE to 'spend money')

3. Additionally, whilst monitoring may be ongoing as per the Government's proposed amendment to clause 76, NE are only required to produce a report on the progress of the EDP derived from that monitoring at the mid and end points of the EDP (at which point an assessment of the likelihood of achieving the overall improvement objective must be made). The SoS may not therefore be made aware that an EDP is failing until the mid-point of the EDP (i.e. year 5).

4. At the mid-point review associated with monitoring, if the EDP is judged likely to fall short of achieving an overall improvement by its end point, and if backup measures are not implemented, then the other option to avoid mandatory revocation is for the SoS to choose to amend the EDP, to restore its perceived potential to meet the overall improvement test by its end date. However, if this option is chosen, then the next obligatory monitoring point is the EDP end point, so if any amendments intended to 'fix' the EDP fail, then this may not be reported upon until the EDP has finished (i.e. year 10). It is worth noting at this juncture that no independent review of NE's monitoring report

5. Given the foregoing, it seems quite possible that a failing EDP could be allowed to continue to operate for the full 10 years, on the basis of an erroneous presumption having been made at the EDP mid-point that either backup measures or an amended EDP with adjusted 'main' measures will change the trajectory and avoid failure. The success of either of these approaches will not however be known until the EDP ends or is revoked, potentially meaning that inadequately mitigated environmental damage has been allowed to continue for a full 10 years before remediation is contemplated.

6. If the scenario outlined above comes to pass, then it seems very likely that the cost of remediation for 10 years of inadequately addressed environmental damage would be very high (i.e. not 'proportionate') and consequently that it would not be attempted.

Potential Fixes

Our concerns as outlined above could be addressed by:

1. Inserting a clear obligation on NE to use reasonable endeavours to implement the measures set out in the EDP (which would include both main measures and backup measures)
2. Inserting an expectation that backup measures included in the EDP should be sufficient to address a <u>reasonable</u> worst-case scenario (i.e. we are not advocating that an EDP should provide for eventualities that are very unlikely to occur)
3. Inserting an expectation that monitoring be reported upon earlier or more frequently if failure of the EDP measures is detected (so that this is reported upon to the SoS at the earliest possible opportunity and the opportunity to take action is not left until the mid or end points of the EDP, with the potential outcomes outlined above).

Concern 7: Exclusion of Irreplaceable Habitats from Loss Under EDPs

Explanation:

We are unconvinced by the Government's suggestion that loss of irreplaceable habitats under EDPs can be prevented through a combination of existing policy under the NPPF, reliance on Ministerial Statement or the Environmental Principles Policy Statements (EPPSs), or on the 'overall improvement' test.

With respect to the 'overall improvement' test – whilst it is obviously clear that irreplaceable habitats cannot be replaced, it is far less clear that it could not be argued that some form of compensation might be an 'overall improvement' (for example if it was believed that the replacement habitat brought other, different ecological benefits).

Additionally, there is often ambiguity over exactly what constitutes an 'irreplaceable' habitat – for example, the Biodiversity Net Gain (BNG) regulations include a list of habitats that are considered irreplaceable for the purposes of BNG, which many in the conservation sector believe requires updating, as it omits (for example) chalk streams, for which the UK holds responsibility for over 80% of the world's resource. With respect to the BNG Regulations, there is at least however an attempt to define and exclude irreplaceable habitats, and provisions put in place for the list of such habitats to be subject to review. Similar provisions would have benefitted the PIB.

Reliance on the NPPF has not prevented significant loss of irreplaceable habitats, and both the NPPF and Ministerial Statements can be amended or withdrawn with minimal scrutiny.

Concern 8: Potential for EDPs to Apply to 'Bundled' Environmental Features

Explanation:

Clause 55(2) States:

*"An environmental feature identified in an EDP **may** be –*

(a) A protected feature of a protected site, or
(b) A protected species"

Our concern here is that the word 'may' can be taken to mean that whilst an environmental feature identified in an EDP may be one of the two types of feature listed, it could also be read to mean that other types of feature not on the list could also be identified.

The principal worry here is that the wording above might allow (for example) an 'assemblage' of different species to be identified as an environmental feature in an EDP – for example, the entire bat assemblage of a County (up to 18 species).

Were this to happen, then an 'overall improvement' might be said to occur if (for example) 51% of the species within that assemblage are expected to benefit, even if the rarest and hardest species to accommodate might be driven to localised extinction.

Clearly this is not the intention of the PIB, if the accompanying explanatory notes are correct.

We are aware that the Minister during Lords Committee stage expressed the view that clause 55(2) was a 'closed list', but that is not how we read it at present. It could however easily be

made into an unambiguously closed list by changing the word ‘may’ to ‘must’, and this very minor change does not appear to have any wider implications for how the PIB might function.