

## ENVIRONMENT BILL

### Supplementary Delegated Powers Memorandum from the Department for the Environment, Food and Rural Affairs

#### Introduction

This Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) to assist with scrutiny of the Environment Bill (“the Bill”). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation and other delegated powers which were added or amended at Commons Report stage. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

#### **Clause NC21 Habitats Regulations: power to amend general duties - A power for the Secretary of State to amend references to the requirements of the Directives**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution Procedure*

#### Context and purpose

Regulation 9 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), sets out duties on public authorities in relation to “the requirements” of the Habitats and Wild birds Directives. Paragraph (1) of that regulation applies to the Secretary of State, Natural England and authorities exercising functions in the marine area, and requires them to exercise their functions, relevant to nature conservation, so as to secure compliance with the requirements of the Directives. In the case of other authorities, paragraph (3) of the regulation imposes a duty when exercising any of their functions to have regard to the requirements of the Directives. The purpose of this power is to enable the Secretary of State to realign these provisions to take account of the evolution of domestic biodiversity priorities after leaving the European Union, while not diminishing the overall level of environmental protection provided. The power will also enable the Secretary of State to provide greater clarity to public authorities as to the precise requirements these duties relate to, removing uncertainty that may have inhibited authorities from complying with the duties as fully as might otherwise have been the case.

#### Justification for taking the power

Part 1 of the Bill provides for a power to set long term environmental targets together with a requirement to set at least one long term target in four priority areas, including biodiversity. It also provides for the preparation of an Environmental Improvement Plan for England. Regulations made under this power to amend regulation 9 will therefore only be capable of coming into force after January 2023, following the setting of targets in priority areas under clause 1 and the first review of the Environmental Improvement Plan. The power will enable the Secretary of State to ensure “the requirements” referenced in this provision refer to our new domestic biodiversity targets and policies with respect the enhancement of biodiversity, whilst at the same time providing greater clarity as to what is expected of authorities to whom these duties apply. Before exercising this power the Secretary of State will have regard to the particular importance of furthering the conservation and enhancement of biodiversity, and may only make regulations if he is satisfied that the amendments further the conservation and enhancement of biodiversity, and, in particular, do not reduce the level of environmental

protection provided by the 2017 Regulations. The provision also requires the Secretary of State, to consult such persons as the Secretary of State considers appropriate.

#### Justification for taking the procedure

The Department's view is that amending this general duty in relation to biodiversity is likely to be of particular interest to Parliament and therefore has proposed that the regulations are subject to the affirmative procedure.

### **Clause NC22 Habitats Regulations: power to amend Part 6 - A power for the Secretary of State amend the requirements of assessing the impact of protected sites of plans and projects**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution Procedure*

#### Context and purpose

Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), sets out requirements for the assessment of plans and projects on European protected sites, restricts the approval of such plans or projects unless the decision-maker is satisfied that the site is not adversely affected and provides for derogations. Part 1 includes general provisions on this, and then further provisions relating to individual regimes for consenting different types of plan or project. The provisions originate in the requirements of paragraphs (3) and (4) of Article 6 of the Habitats Directive and have been the subject of considerable case law in both the domestic and European courts. The purpose of this provision is to enable the Secretary of State to make amendments to these provisions that do not reduce the level of protection provided at present. This will enable the Secretary of State to adapt the process to domestic developments and provide greater clarity as to the requirements where he considers this appropriate.

#### Justification for taking the power

Though the United Kingdom has left the European Union, the network of European sites is still important in meeting our international obligations with respect biodiversity, and in meeting our domestic biodiversity objectives. Improving the condition of protected sites is likely to be an important element in meeting any long-term target set under clause 1 of the Bill, in relation to biodiversity. Ensuring that plans and projects that could impact upon these sites are properly assessed and adverse impacts upon them avoided, will be important in meeting the Government's ambitions in relation to biodiversity. At the same time however, the Government continues to look to improve the operation of these provisions, where this is possible, e.g. adding additional clarity as to the requirements into the legislation. The Government would like to explore more strategic approaches to achieving these requirements. Such a strategic approach already underlies the proposals in clauses 103 (species conservation strategies) and 104 (protected sites strategies). The Government considers there may be further opportunities to deliver our ambitions in relation to protected sites more strategically, and that amendments to Part 6 may be necessary to do so. Further, future changes to the consenting regimes, that Part 6 applies to, may lead to opportunities to improve how Part 6 operates in relation to those regimes, in ways that go beyond what may be strictly consequential upon those changes. In order to address concerns that this power could be used in future to undermine our existing protection of biodiversity, it is provided that before making any regulations under this provision the Secretary of State will have regard to the particular importance of furthering the conservation and enhancement of biodiversity, and may only make regulations if he is satisfied that the amendments, do not reduce the level of

environmental protection provided by the 2017 Regulations. The provision also requires the Secretary of State, to consult such persons as the Secretary of State considers appropriate.

Justification for taking the procedure

The Department's view is that amending the requirements to assess the impact of plans and projects on protected sites, is likely to be of particular interest to Parliament and therefore has proposed that the regulations are subject to the affirmative procedure.