

LORDS AMENDMENTS TO THE
ENVIRONMENT BILL

[The page and line references are to HL Bill 16, the bill as first printed for the Lords]

Before Clause 1

1 Insert the following new Clause—

“Purpose and declaration of biodiversity and climate emergency

- (1) The purpose of this Act is to address the biodiversity and climate emergency domestically and globally.
- (2) As soon as reasonably practicable and no later than one month beginning with the day on which this Act is passed, the Prime Minister must declare that there is a biodiversity and climate emergency domestically and globally.
- (3) The Government must have regard to this purpose and declaration when implementing the provisions of this Act.”

Clause 1

2 Page 2, line 1, at end insert—
“(e) soil health and quality.”

Clause 2

3 Page 2, line 21, leave out subsection (2) and insert—
“(2) The PM_{2.5} air quality target must—
(a) be less than or equal to 10µg/m³,
(b) so far as practicable, follow World Health Organization guidelines,
and
(c) have an attainment deadline on or before 1 January 2030.”

After Clause 2

4 Insert the following new Clause—

“Environmental targets: species abundance

- (1) The Secretary of State must by regulations set a target (the “species abundance target”) in respect of a matter relating to the abundance of species.
- (2) The specified date for the species abundance target must be 31 December 2030.
- (3) Accordingly, the species abundance target is not a long-term target and the duty in subsection (1) is in addition to (and does not discharge) the duty in section 1(2) to set a long-term target in relation to biodiversity.
- (4) Before making regulations under subsection (1) which set or amend a target the Secretary of State must be satisfied that meeting the target, or the amended target, would halt a decline in the abundance of species.
- (5) Section 1(4) to (9) applies to the species abundance target and to regulations under this section as it applies to targets set under section 1 and to regulations under that section.
- (6) In this Part “the species abundance target” means the target set under subsection (1).”

Clause 3

- 5 Page 2, line 34, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 6 Page 2, line 37, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 7 Page 2, line 40, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 8 Page 3, line 6, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 9 Page 3, line 17, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 10 Page 3, line 21, at end insert “and
(c) the species abundance target,”

Clause 4

- 11 Page 3, line 26, at end insert “, and
(c) the species abundance target set under section (*Environmental targets: species abundance*) is met.”
- 12 Page 3, line 26, at end insert—
“(c) interim targets are met.”

Clause 5

- 13 Page 3, line 28, leave out “or 2” and insert “2 or (*Environmental targets: species abundance*)”

Clause 6

- 14 Page 4, line 14, leave out from “under” to “in” in line 15 and insert “sections 1 to (*Environmental targets: species abundance*)”
- 15 Page 4, line 19, leave out “and 2” and insert “to (*Environmental targets: species abundance*)”
- 16 Page 4, line 29, leave out “section 1 and 2” and insert “sections 1 to (*Environmental targets: species abundance*)”

Clause 8

- 17 Page 5, line 39, leave out “and 2” and insert “to (*Environmental targets: species abundance*)”

Clause 10

- 18 Page 7, line 16, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 19 Page 7, line 18, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 20 Page 7, line 33, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”

Clause 11

- 21 Page 8, line 6, leave out “and 2” and insert “to (*Environmental targets: species abundance*)”

Clause 13

- 22 Page 8, line 31, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 23 Page 8, line 33, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 24 Page 9, line 3, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”

Clause 14

- 25 Page 9, line 21, leave out “and 2” and insert “to (*Environmental targets: species abundance*)”
- 26 Page 9, line 26, leave out “and 2” and insert “to (*Environmental targets: species abundance*)”

Clause 15

- 27 Page 9, line 38, leave out “and 2” and insert “to (*Environmental targets: species abundance*)”

Clause 18

- 28 Page 11, line 24, leave out paragraphs (a) and (b)

- 29 Page 11, line 26, at end insert –

- “(4) Subsection (1) applies to policy relating to Scotland only so far as relating to reserved matters.
- (5) Section 14(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) (UK Ministers must have regard to guiding principles on the environment in making policies extending to Scotland) does not apply to policies so far as relating to reserved matters.
- (6) In this section “reserved matters” has the same meaning as in the Scotland Act 1998.”

Clause 22

- 30 Page 13, line 25, at end insert “, and

- (b) how the OEP intends to co-operate with devolved environmental governance bodies.”

Clause 24

- 31 Leave out Clause 24 and insert the following new Clause –

“OEP independence

- (1) The OEP has complete discretion in the carrying out of its functions, including in –
 - (a) preparing its enforcement policy,
 - (b) exercising its enforcement functions, and
 - (c) preparing and publishing its budget.
- (2) At the start of each period of multi-annual funding and no later than 1 April 2023, the Secretary of State must lay before Parliament, and publish, a statement setting out the multi-annual budget which they intend to provide to the OEP.
- (3) The Secretary of State must lay before Parliament, and publish, a statement responding to any request from the OEP for additional funding due to a change in the body’s responsibilities or functions, within three months of that request being received.
- (4) In making or terminating appointments under paragraph 1 and paragraph 5 of Schedule 1, the Secretary of State must obtain the consent of the Environment, Food and Rural Affairs and Environmental Audit Committees of the House of Commons.”

Clause 27

- 32 Page 15, line 32, leave out “and 2” and insert “to (*Environmental targets: species abundance*)”

Clause 37

- 33 Page 22, line 23, leave out subsection (8) and insert –
- “(8) Where the court makes a statement of non-compliance it may grant any remedy that may be granted by it on a judicial review other than damages.
- (8A) In determining whether it would be in the interests of justice to grant a remedy, the court must have regard to –
- (a) the nature and consequences of the authority’s failure to comply with environmental law, and
 - (b) the likelihood that the grant of a remedy would cause –
 - (i) substantial hardship to, or substantial prejudice to the rights of, any person other than the authority, or
 - (ii) any detriment to good administration.”

Clause 46

- 34 Page 28, line 41, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”
- 35 Page 29, line 7, leave out “section 1 or 2” and insert “sections 1 to (*Environmental targets: species abundance*)”

Clause 56

- 36 Page 38, line 2, at end insert –
- “(6) The requirement in subsection (5) may be met by consultation carried out before this section comes into force.”
- 37 Page 38, line 36, at end insert –
- “(4A) The requirement in subsection (4) may be met by consultation carried out before this section comes into force.”
- 38 Page 38, line 38, at end insert –
- “(6) The Secretary of State must lay before Parliament, and publish, the guidance.”

Clause 57

- 39 Page 43, line 4, at end insert “or the Scottish Environment Protection Agency”

Clause 63

- 40 Page 56, line 28, after “Schedule 4” insert “or 5”

Clause 64

- 41 Page 57, line 41, after “Schedule 4” insert “or 5”

Clause 67

42 Page 61, line 21, at end insert –

- “(4A) The Secretary of State must lay before Parliament and publish guidance, and any revised guidance, issued by the Secretary of State under this section.
- (4B) The Welsh Ministers must lay before Senedd Cymru and publish guidance, and any revised guidance, issued by the Welsh Ministers under this section.”

After Clause 72

43 Insert the following new Clause –

“Protection of pollinators from pesticides

- (1) A competent authority must not authorise for use any pesticide product, active ingredient, safener or synergist unless it is satisfied that there will be no significant short-term negative effect, and no long-term negative effect, on the health of honeybees or wild pollinator populations.
- (2) A pollinator risk assessment report relating to the relevant substance must be published by an expert body.
- (3) The expert body must consist of individuals free from vested interests in pesticide use, who shall have been independently appointed.
- (4) The pollinator risk assessment report must include –
 - (a) data examining acute and chronic effects of the relevant substance on honeybees, bumblebees, solitary bees, butterflies and hoverflies,
 - (b) all relevant available scientific evidence relating to any pollinators,
 - (c) conclusions relating to the likely acute and chronic effects of the relevant substance on honeybees, bumblebees, solitary bees, butterflies, hoverflies and other pollinators,
 - (d) an assessment of the likelihood of synergistic effects, and
 - (e) the identification of any risks to pollinators where the available evidence is insufficient to reach a conclusion.
- (5) The expert body must consult the public on the draft content of the pollinator risk assessment report.
- (6) When making any authorisation decision the competent authority must –
 - (a) aim to achieve a high level of protection for pollinators,
 - (b) be satisfied that the requirements of subsections (2) to (5) have been met,
 - (c) consult all relevant authorities with environmental responsibilities,
 - (d) consult such other persons as the competent authority considers appropriate,
 - (e) lay before Parliament, and publish, a statement explaining why the competent authority is satisfied that the requirements of subsection (1) have been met,
 - (f) ensure the public has been informed by public notice early in the decision-making procedure, and in an adequate, timely and effective manner, that a decision will be made, and

- (g) ensure the public has been consulted on the decision that the competent authority intends to make, including on any mitigation or restriction measures that are proposed.
- (7) The consultation period for the purposes of subsection (6)(g) must be of at least three months, except for emergency derogations where the period will be at least four weeks.
- (8) This section comes into force on 1 February 2023.
- (9) In this section –
 - “authorisation of use” includes authorisation by derogation;
 - “competent authority” means –
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers;
 - (d) the Secretary of State when acting with the consent of either or both the Welsh Ministers in relation to Wales and the Scottish Ministers in relation to Scotland.”

Clause 73

44 Page 64, line 10, leave out “negative” and insert “affirmative”

After Clause 78

45 Insert the following new Clause –

“Storm overflows

- (1) In Part 4 of the Water Industry Act 1991 (sewerage services), after Chapter 3 insert –

“CHAPTER 4

STORM OVERFLOWS

141A Duty on sewerage undertakers to take all reasonable steps to ensure untreated sewage is not discharged from storm overflows

- (1) A sewerage undertaker must demonstrate improvements in the sewerage systems and progressive reductions in the harm caused by untreated sewage discharges.
- (2) The Secretary of State, the Director and the Environment Agency must exercise their respective functions under this and any other Act to secure compliance with this duty.

141B Storm overflow discharge reduction plan

- (1) The Secretary of State must prepare a plan for the purposes of –
 - (a) reducing discharges from the storm overflows of sewerage undertakers whose area is wholly or mainly in England, and
 - (b) reducing the adverse impacts of those discharges.
- (2) The reference in subsection (1)(a) to reducing discharges of sewage includes –
 - (a) reducing the frequency and duration of the discharges, and

- (b) reducing the volume of the discharges.
- (3) The reference in subsection (1)(b) to reducing adverse impacts includes –
 - (a) reducing adverse impacts on the environment, and
 - (b) reducing adverse impacts on public health.
- (4) The plan may in particular include proposals for –
 - (a) reducing the need for anything to be discharged by the storm overflows;
 - (b) treating sewage that is discharged by the storm overflows;
 - (c) monitoring the quality of watercourses, bodies of water or water in underground strata into which the storm overflows discharge;
 - (d) obtaining information about the operation of the storm overflows.
- (5) When preparing the plan the Secretary of State must consult –
 - (a) the Environment Agency,
 - (b) the Authority,
 - (c) the Council,
 - (d) Natural England,
 - (e) sewerage undertakers whose area is wholly or mainly in England, or persons representing them, and
 - (f) such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must publish the plan before 1 September 2022.
- (7) The Secretary of State may at any time revise the plan, having consulted the persons referred to in subsection (5), and must publish any revised version.
- (8) The plan, and any revised version of it, must be laid before Parliament once it is published.

141C Progress reports on storm overflow discharge reduction plan

- (1) The Secretary of State must publish reports (“progress reports”) relating to the plan under section 141B.
- (2) A progress report is to contain the Secretary of State’s assessment of –
 - (a) the progress made, during the period to which the report relates, in implementing the proposals in the plan (or any revised version of it), and
 - (b) the effect of that progress on the matters referred to in section 141B(1)(a) and (b).
- (3) The first progress report must relate to the period of three years beginning with the day on which the plan under section 141B is first published.
- (4) Subsequent progress reports must relate to successive periods of five years after the period referred to in subsection (3).

- (5) A progress report must be published within 12 weeks following the last day of the period to which it relates.
- (6) A progress report must be laid before Parliament once it is published.

141D Annual reports on discharges from storm overflows

- (1) A sewerage undertaker whose area is wholly or mainly in England must publish annual reports in relation to the undertaker's storm overflows ("storm overflow reports").
- (2) A storm overflow report must specify, for each of the sewerage undertaker's storm overflows –
 - (a) the location of the storm overflow;
 - (b) the watercourse, body of water or underground strata into which the storm overflow discharges;
 - (c) the frequency and duration of discharges from the storm overflow in the period to which the report relates;
 - (d) where the information is available, the volume of each discharge in that period;
 - (e) information on any investigations that have taken place or improvement works that have been undertaken in relation to the storm overflow during that period.
- (3) Storm overflow reports are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by a sewerage undertaker before 1 April in the year after the calendar year to which it relates.
- (5) A storm overflow report must –
 - (a) be in a form which allows the public readily to understand the information contained in the report, and
 - (b) be published in a way which makes the report readily accessible to the public.
- (6) The duties of a sewerage undertaker under this section are enforceable under section 18 by –
 - (a) the Secretary of State, or
 - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.

141E Environment Agency reports

- (1) The Environment Agency must publish annual reports in relation to the operation of storm overflows of sewerage undertakers whose area is wholly or mainly in England.
- (2) A report under this section must specify –
 - (a) the location of the storm overflows;
 - (b) the watercourse, body of water or underground strata into which the storm overflows discharge;
 - (c) the frequency and duration of discharges from the storm overflows in the period to which the report relates;
 - (d) where the information is available, the volume of each discharge in that period.

- (3) Reports under this section are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by the Environment Agency –
 - (a) before 1 April in the year after the calendar year to which it relates, and
 - (b) in such manner as the Environment Agency thinks fit.

141F Interpretation of Chapter 4

- (1) In this Chapter, references to a storm overflow of a sewerage undertaker are to any structure or apparatus –
 - (a) which is comprised in the sewerage system of the sewerage undertaker, and
 - (b) which, when the capacity of other parts of the system downstream or of storage tanks at sewage disposal works is exceeded, relieves them by discharging their excess contents into inland waters, underground strata or the sea.
- (2) References in this Chapter to discharges from a storm overflow do not include discharges occurring as a result of –
 - (a) electrical power failure at sewage disposal works,
 - (b) mechanical breakdown at sewage disposal works,
 - (c) rising main failure, or
 - (d) blockage of any part of the sewerage system downstream of the storm overflow.
- (3) Section 17BA(7) (meaning of sewerage system of a sewerage undertaker) applies for the purposes of subsection (1).”

46 Insert the following new Clause –

“Reporting on discharges from storm overflows

In Chapter 4 of Part 4 of the Water Industry Act 1991 (as inserted by section 80 above), after section 141E insert –

“141EA Reporting on discharges from storm overflows

- (1) Where there is a discharge from a storm overflow of a sewerage undertaker whose area is wholly or mainly in England, the undertaker must publish the following information –
 - (a) that there has been a discharge from the storm overflow;
 - (b) the location of the storm overflow;
 - (c) when the discharge began;
 - (d) when the discharge ended.
- (2) The information referred to in subsection (1)(a) to (c) must be published within an hour of the discharge beginning; and that referred to in subsection (1)(d) within an hour of it ending.
- (3) The information must –
 - (a) be in a form which allows the public readily to understand it, and
 - (b) be published in a way which makes it readily accessible to the public.

- (4) The duty of a sewerage undertaker under this section is enforceable under section 18 by –
 - (a) the Secretary of State, or
 - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (5) The Secretary of State may by regulations make provision for exceptions from the duty in subsection (1) or (2) (for example, by reference to descriptions of storm overflows, frequency of discharge or the level of risk to water quality).
- (6) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) The Secretary of State may not make regulations under this section unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.””

47 Insert the following new Clause –

“Monitoring quality of water potentially affected by discharges

- (1) In Chapter 4 of Part 4 of the Water Industry Act 1991, after section 141EA insert –

“141EB Monitoring quality of water potentially affected by discharges from storm overflows and sewage disposal works

- (1) A sewerage undertaker whose area is wholly or mainly in England must continuously monitor the quality of water upstream and downstream of an asset within subsection (2) for the purpose of obtaining the information referred to in subsection (3).
- (2) The assets referred to in subsection (1) are –
 - (a) a storm overflow of the sewerage undertaker, and
 - (b) sewage disposal works comprised in the sewerage system of the sewerage undertaker,
 where the storm overflow or works discharge into a watercourse.
- (3) The information referred to in subsection (1) is information as to the quality of the water by reference to –
 - (a) levels of dissolved oxygen,
 - (b) temperature and pH values,
 - (c) turbidity,
 - (d) levels of ammonia, and
 - (e) anything else specified in regulations made by the Secretary of State.
- (4) The duty of a sewerage undertaker under this section is enforceable under section 18 by –
 - (a) the Secretary of State, or
 - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.

- (5) The Secretary of State may by regulations make –
 - (a) provision as how the duty under subsection (1) is to be carried out (for example, provision as to the type of monitor to be used and where monitors must be placed);
 - (b) provision for exceptions from the duty in subsection (1) (for example, by reference to descriptions of asset, frequency of discharge from an asset or the level of risk to water quality);
 - (c) provision for the publication by sewerage undertakers of information obtained pursuant to subsection (1).
- (6) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) The Secretary of State may not make regulations under this section unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.”

- (2) In section 213 of the Water Industry Act 1991 (power to make regulations) in subsection (1), for “or 105A” substitute “105A, 141EA or 141EB”.

48 Insert the following new Clause –

“Report on elimination of discharges from storm overflows

- (1) The Secretary of State must prepare a report on –
 - (a) the actions that would be needed to eliminate discharges from the storm overflows of sewerage undertakers whose areas are wholly or mainly in England, and
 - (b) the costs and benefits of those actions.
- (2) The Secretary of State must publish the report before 1 September 2022.
- (3) The report must be laid before Parliament once it is published.”

Clause 88

49 Page 86, line 17, leave out “, in particular,”

50 Page 86, line 18, leave out “, repeals or revokes” and insert “or repeals”

51 Page 86, line 19, leave out “an enactment (including”

Clause 90

52 Page 89, line 19, leave out “, in particular,”

53 Page 89, line 20, leave out “, repeals or revokes” and insert “or repeals”

54 Page 89, line 21, leave out “an enactment (including”

After Clause 92

55 Insert the following new Clause –

“Biodiversity gain in nationally significant infrastructure projects

Schedule (*Biodiversity gain in nationally significant infrastructure projects*) makes provision about biodiversity gain in relation to development consent for nationally significant infrastructure projects.”

Clause 93

56 Page 94, line 41, after “1990” insert “or Schedule 2A to the Planning Act 2008”

57 Page 94, line 42, at end insert –

“(6A) Regulations under this section may amend subsection (2)(b) so as to substitute for the period for the time being specified there a different period of at least 30 years.”

58 Page 94, line 45, at end insert –

“(8A) The Secretary of State must keep under review –

- (a) the supply of land for registration in the biodiversity gain site register;
- (b) whether the period specified in subsection (2)(b) or in paragraph 9(3) of Schedule 7A to the Town and Country Planning Act 1990 can be increased under subsection (6A) or paragraph 9(4) of that Schedule without adversely affecting that supply.”

Clause 94

59 Page 95, line 8, after “1990” insert “or Schedule 2A to the Planning Act 2008”

Clause 95

60 Page 97, line 6, at end insert –

“(2B) The Secretary of State must issue guidance to local planning authorities as to how they are to comply with their duty under subsection (2A)(a) when complying with subsections (1) and (1A) in their capacity as such authorities.

(2C) Guidance under subsection (2B) must be –

- (a) published by the Secretary of State in such manner as the Secretary of State thinks fit,
- (b) kept under review, and
- (c) revised where the Secretary of State considers it appropriate.

(2D) The first guidance under subsection (2B) must be published by the Secretary of State within the period of two years beginning with the day on which section 98 of the Environment Act 2021 comes into force.”

Clause 99

61 Page 100, line 35, at end insert—

“(7) The Secretary of State must lay before Parliament, and publish, the guidance.”

Clause 102

62 Page 102, line 24, at end insert—

“(7A) The Secretary of State must lay before Parliament, and publish, the guidance.”

Clause 103

63 Page 104, line 27, at end insert—

“(8A) The Secretary of State must lay before Parliament, and publish, the guidance.”

Clause 105

64 Page 106, line 15, at end insert “or (*Environmental targets: species abundance*)”

After Clause 106

65 Insert the following new Clause—

“Habitats Regulations: limits on powers to amend

The Secretary of State may only make regulations under section 105 or 106—

- (a) for the purposes of—
 - (i) securing compliance with an international environmental obligation, or
 - (ii) contributing to the favourable conservation status of species or habitats or the favourable condition of protected sites;
- (b) if the regulations do not reduce the level of protection provided by the Habitats Regulations, including protection for protected species, habitats or sites; and
- (c) following public consultation and consultation with—
 - (i) the Office for Environmental Protection,
 - (ii) Natural England,
 - (iii) the Joint Nature Conservation Committee, and
 - (iv) other relevant expert bodies.”

After Clause 107

66 Insert the following new Clause –

“Duty to implement an enhanced protection standard for ancient woodland in England

- (1) The Government must implement an enhanced protection standard for ancient woodland, hereafter referred to as the “ancient woodland standard” in England as set out in subsections (2), (3) and (4) and this must have immediate effect.
- (2) The ancient woodland standard must set out the steps necessary to prevent further loss of ancient woodland in England.
- (3) The ancient woodland standard commits the Government to adopting a standard of protection which must be a requirement for all companies, persons or organisations involved in developments affecting ancient woodlands in England.
- (4) This standard must be that –
 - (a) any development that causes direct loss to ancient woodland or ancient woodland and ancient and veteran trees must be refused unless there are wholly exceptional reasons and, in addition, a suitable compensation strategy must be in place prior to development commencing,
 - (b) any development adjacent to ancient woodland must incorporate a minimum 50-metre buffer to provide protection, reduce indirect damage and provide space for natural regeneration,
 - (c) any ancient or veteran trees must be retained within a development site, including a root protection area and appropriate buffer zone.
- (5) This buffer zone must be whichever is greater of –
 - (a) an area which is a radius of 15 times the diameter of the tree with no cap, or
 - (b) 5 metres beyond the crown.”

Clause 110

67 Page 109, line 13, leave out “in writing signed by the parties.” and insert “signed as a deed by the parties,

- (d) the agreement makes provision for the payment of consideration to the landowner, or states that no consideration is to be provided, and
- (e) the agreement includes provision regarding the duration or end date of the agreement.”

After Clause 133

68 Insert the following new Clause –

“Amendments of Schedule 7B to the Government of Wales Act 2006

- (1) Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru) is amended as follows.
- (2) In paragraph 9(8)(b) (exceptions to restrictions relating to reserved authorities) –
 - (a) omit the “or” at the end of paragraph (v);

- (b) after paragraph (vi) insert “; or –
(vii) the Environment Act 2021.”
- (3) In paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown) –
 - (a) omit the “or” at the end of paragraph (v);
 - (b) after paragraph (vi) insert “; or –
(vii) the Environment Act 2021.””

Clause 138

- 69 Page 123, leave out line 20 and insert “sections 16 to 19”
- 70 Page 123, line 22, at end insert –
 - “(ab) sections 16 to 18 (policy statement on environmental principles) extend to England and Wales and Scotland;”
- 71 Page 124, line 20, at end insert –
 - “(za) section (*Report on elimination of discharges from storm overflows*) (report on elimination of discharges from storm overflows) extends to England and Wales;”
- 72 Page 124, line 32, after “that” insert –
 - “(a) the amendments made by Schedule (*Biodiversity gain in nationally significant infrastructure projects*) (biodiversity gain in nationally significant infrastructure projects) have the same extent as the provisions amended, and
 - (b) ”

Clause 139

- 73 Page 125, line 16, at end insert –
 - “(ia) section (*storm overflows*) (storm overflows) and section (*Report on elimination of discharges from storm overflows*) (report on elimination of discharges from storm overflows);”.
- 74 Page 125, line 41, at end insert –
 - “(la) sections (*Reporting on discharges from storm overflows*) and (*Monitoring quality of water potentially affected by discharges*) (reporting and monitoring duties relating to discharges from storm overflows etc);”

Schedule 3

- 75 Page 155, leave out lines 2 to 16 and insert –
 - “24A OEP independence in Northern Ireland**
 - (1) The OEP has complete discretion in the carrying out of its functions in Northern Ireland, including in –
 - (a) preparing its enforcement policy,
 - (b) exercising its enforcement functions, and
 - (c) preparing and publishing its budget.

- (2) In making and terminating appointments under paragraph 2(2B) and paragraph 5(8B) of Schedule 1, the Northern Ireland Department must obtain the consent of the Committee for Agriculture, Environment and Rural Affairs of the Northern Ireland Assembly.”

Schedule 4

- 76 Page 162, line 34, at end insert –
“(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.”

- 77 Page 165, line 38, at end insert –
“(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.”

Schedule 5

- 78 Page 166, line 37, after “appoint” insert “, or make provision for the appointment of,”

- 79 Page 168, line 8, at end insert –
“(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.”

- 80 Page 170, line 11, at end insert –
“(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.”

Schedule 6

- 81 Page 172, line 7, at end insert –
“(3) The requirement in sub-paragraph (1)(a) may be met by consultation carried out before this paragraph comes into force.”

- 82 Page 174, line 16, at end insert –
“(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.”

Schedule 7

- 83 Page 176, line 9, at end insert –
“(1A) The requirements in sub-paragraph (1) may be met by consultation carried out, and assessments and draft regulations published, before this paragraph comes into force.”

- 84 Page 179, line 3, at end insert –
“(2) The requirement in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.”

Schedule 9

- 85 Page 183, line 31, leave out paragraph (b) and insert –
“(b) are made of plastic or any other single use material, and”

Schedule 10

- 86 Page 188, line 12, after “without” insert –
“(a) the consent of a person entitled to grant access to material on or accessible from the premises, or
(b) ”.
- 87 Page 188, line 16, after “without” insert “consent or”
- 88 Page 188, line 24, after “require” insert “consent or”
- 89 Page 188, line 26, after “done” insert “without them”

Schedule 11

- 90 Page 190, line 41, at end insert –
“(4A) The requirement in subsection (4) may be met by consultation carried out before this section comes into force.”

Schedule 14

- 91 Page 217, line 6, at end insert –
“(6) The Secretary of State must lay the biodiversity metric, and any revised biodiversity metric, before Parliament.”
- 92 Page 218, line 38, at end insert –
“(4) The Secretary of State may by regulations amend sub-paragraph (3) so as to substitute for the period for the time being specified there a different period of at least 30 years.”

After Schedule 14

- 93 Insert the following new Schedule –

“SCHEDULE 14A**BIODIVERSITY GAIN IN NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS****PART 1****PRINCIPAL AMENDMENTS TO PLANNING ACT 2008**

- 1 The Planning Act 2008 is amended as follows.
- 2 In section 103 (Secretary of State is to decide applications), after subsection (1) insert –
“(1A) Schedule 2A makes provision about biodiversity gain in relation to decisions of the Secretary of State under sections 104 and 105; and for related matters.”

- 3 (1) Section 104 (decisions in cases where national policy statement has effect) is amended as follows.
- (2) For subsection (3) substitute—
- “(3) The Secretary of State must decide the application in accordance with any relevant national policy statement.
- (3A) In particular, if a relevant national policy statement contains a biodiversity gain statement under Schedule 2A in relation to development of the description to which the application relates, the Secretary of State may not grant the application unless satisfied that the biodiversity gain objective contained in the statement is met in relation to the development to which the application relates.
- (3B) Subsections (3) and (3A) do not apply to the extent that one or more of subsections (4) to (8) applies.”
- (3) In each of subsections (4), (5) and (6), for “any relevant national policy statement” substitute “subsection (3) or (3A)”.
- (4) In subsection (8), for “a national policy statement” substitute “subsection (3) or (3A)”.
- 4 (1) Section 105 (decisions in cases where no national policy statement has effect), after subsection (2) insert—
- “(3) Where there is a biodiversity gain statement under Schedule 2A in relation to development of the description to which the application relates, the Secretary of State may not grant the application unless satisfied that the biodiversity gain objective contained in the statement is met in relation to the development to which the application relates.
- (4) Subsection (3) does not apply to the extent that the Secretary of State is satisfied that deciding the application in accordance with that subsection would have an effect referred to in section 104(4), (5), (6) or (7).”
- 5 After Schedule 2 insert—

“SCHEDULE 2A

Section 103

BIODIVERSITY GAIN

Introductory

- 1 (1) This Schedule applies to development which—
- (a) is of a description of development to which a development consent order application may relate, and
- (b) is not excluded development,
- to the extent that the development is carried out in England.
- (2) In this Schedule—
- “development consent order application” means an application made under section 37 which falls to be determined under section 104 or 105;

“excluded development” means development of a description specified in regulations made by the Secretary of State.

Biodiversity gain statement

- 2 (1) A biodiversity gain statement is a statement of government policy in relation to the biodiversity gain to be achieved in connection with any description of development to which this Schedule applies.
- (2) In particular the statement must—
 - (a) set out a biodiversity gain objective for any description of development to which this Schedule applies, and
 - (b) set out that, where development consent order applications are made for any development of that description during a period specified in the statement, the development must meet that objective.
- (3) The statement may specify how development of any description may or must meet the biodiversity gain objective.
- (4) In this Schedule, references to the period for which a biodiversity gain statement has effect are to the period referred to in sub-paragraph (2)(b).
- 3 (1) A biodiversity gain objective is an objective that the biodiversity value attributable to development to which a biodiversity gain statement relates exceeds the pre-development biodiversity value of the onsite habitat by a percentage specified in the statement.
- (2) The percentage specified under sub-paragraph (1) must be at least 10%.
- (3) The Secretary of State may by regulations amend sub-paragraph (2) so as to change the percentage for the time being specified in it.
- 4 (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective how the biodiversity value or relative biodiversity value of any habitat or habitat enhancement is to be calculated.
- (2) That may include calculation by, or by reference to—
 - (a) a biodiversity metric set out in a document produced by the Secretary of State for the purposes of the statement,
 - (b) the biodiversity metric referred to in paragraph 4 of Schedule 7A to the Town and Country Planning Act 1990, or
 - (c) such other biodiversity metric as the Secretary of State considers appropriate.
- (3) The Secretary of State must—
 - (a) lay any document within sub-paragraph (2)(a) before Parliament, and

-
- (b) publish it in such manner as the Secretary of State considers appropriate.
- 5
- (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective—
 - (a) what the pre-development biodiversity value of onsite habitat consists of, and
 - (b) the date by reference to which it is calculated.
 - (2) A biodiversity gain statement may in particular under sub-paragraph (1)(b) specify a different date in relation to development on land where activities on the land before the making of a development consent order application have, or have had, the result that the biodiversity value of the onsite habitat is lower than it would otherwise have been.
 - (3) A biodiversity gain statement must include provision to secure that, where a development consent order application relates to land which is registered in the biodiversity gain site register, the pre-development biodiversity value of the onsite habitat includes the biodiversity value of the habitat enhancement which is, on the date specified under sub-paragraph (1)(b), recorded in the register as habitat enhancement to be achieved on the land.
- 6
- (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective what the biodiversity value attributable to any development consists of.
 - (2) In particular, a biodiversity gain statement may specify any of the following as included in the biodiversity value attributable to any development—
 - (a) the post-development biodiversity value of the onsite habitat,
 - (b) the biodiversity value of any offsite biodiversity gain allocated to the development (which may be registered offsite biodiversity gain), and
 - (c) the biodiversity value of any biodiversity credits purchased for the development.
 - (3) If pursuant to sub-paragraph (2)(a) a biodiversity gain statement specifies the post-development biodiversity value of the onsite habitat, the statement must specify what that value consists of.
 - (4) If pursuant to sub-paragraph (2)(b) a biodiversity gain statement specifies the biodiversity value of any offsite biodiversity gain allocated to the development, other than registered offsite biodiversity gain, the statement must specify—
 - (a) what offsite biodiversity gain consists of, and
 - (b) how the allocation of offsite biodiversity gain is to be recorded.

- (5) Provision under sub-paragraph (3) or (4) must include provision to secure that, where works are carried out for the purposes of any development that increase the biodiversity value of onsite or offsite habitat by an amount that is significant in relation to its previous biodiversity value, the increase is to be taken into account only if—
- (a) any habitat enhancement resulting from the works is maintained for a period specified in the statement, and
 - (b) the maintenance of that habitat enhancement is secured in a way specified in the statement (for example, through conservation covenants or requirements imposed by a development consent order).
- 7 (1) A biodiversity gain statement must set out whether, and if so how, the biodiversity gain objective applies in relation to development where the onsite habitat is irreplaceable habitat.
- (2) A biodiversity gain statement may specify requirements, in relation to any such development, relating to the making of arrangements for the purpose of minimising the adverse effect of the development on the onsite habitat.
- 8 A biodiversity gain statement must specify the evidence that persons making a development consent order application in relation to which the statement has effect must produce in order to demonstrate how the biodiversity gain objective is met.

Development covered by an existing national policy statement

- 9 (1) This paragraph applies where, at the time this Schedule comes into force, an existing national policy statement sets out policy in respect of a description of development to which this Schedule applies.
- (2) On the first review of the existing national policy statement under section 6 after the coming into force of this Schedule, the Secretary of State must amend the statement under section 6(5)(a) so as to include a biodiversity gain statement for development of that description.
- (3) The Secretary of State may issue a separate biodiversity gain statement (a “separate biodiversity gain statement”) having effect for any period before that for which the statement included in the existing national policy statement under sub-paragraph (2) has effect.
- (4) Before issuing a separate biodiversity gain statement the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (5) The Secretary of State must keep a separate biodiversity gain statement under review and may amend it at any time.
- (6) The Secretary of State must—
- (a) lay a separate biodiversity gain statement before Parliament, and

-
- (b) publish it in such manner as the Secretary of State considers appropriate.
- (7) A separate biodiversity gain statement is for the purposes of section 104(2) to (9) to be regarded as contained in the existing national policy statement.
- (8) If it appears to the Secretary of State that the existing national policy statement is inconsistent with a separate biodiversity gain statement, the Secretary of State may amend the existing national policy statement in such manner as seems appropriate to the Secretary of State to remove the inconsistency.
- (9) Where the existing national policy statement is amended pursuant to sub-paragraph (2) to include a biodiversity gain statement in relation to any description of development, a separate biodiversity gain statement relating to development of that description must be revoked as from the beginning of the period for which the new statement has effect.
- (10) If the existing national policy statement's designation as a national policy statement is withdrawn in relation to any description of development, any separate biodiversity gain statement relating to development of that description has effect as if it were a biodiversity gain statement issued under paragraph 10(2).
- (11) References in sub-paragraphs (4) to (10) to separate biodiversity gain statements include amended versions of such statements.
- (12) For the purposes of this Schedule, "existing national policy statement" means a national policy statement which is designated under section 5 before the coming into force of this Schedule.
- (13) For the purposes of sub-paragraph (2), an existing national policy statement is only reviewed under section 6 after the coming into force of this Schedule if the review begins after that time.

Development not covered by a national policy statement

- 10 (1) This paragraph applies where, at the time this Schedule comes into force or any subsequent time, no national policy statement sets out policy in respect of a description of development to which this Schedule applies.
- (2) The Secretary of State may issue a biodiversity gain statement in relation to that description of development.
- (3) Before issuing a biodiversity gain statement under sub-paragraph (2) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) The Secretary of State must keep a statement issued under sub-paragraph (2) under review and may amend or revoke it at any time.

- (5) The Secretary of State must –
 - (a) lay a statement issued under sub-paragraph (2) before Parliament, and
 - (b) publish it in such manner as the Secretary of State considers appropriate.
- (6) References in sub-paragraphs (3) to (5) to statements issued under sub-paragraph (2) include amended versions of such statements.
- (7) If after a statement is issued under sub-paragraph (2) a national policy statement relating to the description of development is designated under section 5, the Secretary of State must –
 - (a) include a biodiversity gain statement in relation to that description of development in the national policy statement, and
 - (b) revoke the statement issued under sub-paragraph (2).

Development at sea

- 11 (1) The Secretary of State may by regulations provide for this Schedule to apply, with or without modifications, to any development to which this paragraph applies.
- (2) This paragraph applies to development which –
 - (a) is of a description to which a development consent order application may relate, and
 - (b) is not excluded development,to the extent that the development is carried out in the English marine region.
- (3) In sub-paragraph (2), the “English marine region” means –
 - (a) the English offshore region, and
 - (b) the English inshore region, excluding waters in England.
- (4) Regulations under this paragraph may make provision modifying the application of this Schedule in relation to development which is carried out at an inter-tidal location.
- (5) In sub-paragraph (4), “inter-tidal location” means a location that –
 - (a) is in England, and
 - (b) is also at any time in the English inshore region.

Interpretation

- 12 For the purposes of this Schedule –
 - “biodiversity credits” means credits under section 94 of the Environment Act 2021;
 - “biodiversity gain site register” means the register under section 93 of the Environment Act 2021;
 - a “biodiversity metric” is a means of measuring the biodiversity value or relative biodiversity value of habitat or habitat enhancement;

- “development consent order application” has the meaning given by paragraph 1(2);
- “English inshore region” and “English offshore region” have the meanings given by section 322 of the Marine and Coastal Access Act 2009;
- “excluded development” has the meaning given by paragraph 1(2);
- “existing national policy statement” has the meaning given by paragraph 9(12);
- “irreplaceable habitat” has the meaning given in regulations under paragraph 18 of Schedule 7A to the Town and Country Planning Act 1990;
- “onsite habitat”, in relation to any development, means habitat on the land to which the development consent order application relates, and “offsite habitat” means habitat on other land;
- “registered offsite biodiversity gain” has the meaning given by paragraph 10 of Schedule 7A to the Town and Country Planning Act 1990.”

PART 2

SUPPLEMENTARY AMENDMENTS TO THE PLANNING ACT 2008

- 6 The Planning Act 2008 is amended as follows.
- 7 In section 37 (applications for orders for development consent), after subsection (3) insert –
- “(3A) The documents and information prescribed under subsection (3)(d) may include documents and information demonstrating how any biodiversity gain objective in a biodiversity gain statement under Schedule 2A having effect in relation to the development is to be met.”
- 8 In section 120 (what may be included in development consent order), in subsection (2), at the end insert –
- “(c) requirements designed to secure that –
- (i) the biodiversity gain objective under Schedule 2A relevant to the development is met;
 - (ii) any proposals included in the application for the order for the purposes of meeting the biodiversity gain objective are implemented.”
- 9 (1) Section 232 (orders and regulations) is amended as follows.
- (2) In subsection (5), at the end insert –
- “(f) regulations under paragraph 3(3) or 11 of Schedule 2A.”
- (3) In subsection (7), after “or 105(2)(b)” insert “or paragraph 3(3) or 11 of Schedule 2A”.”

Schedule 16

94 Page 234, line 27, leave out “second” and insert “first”

95 Page 234, line 29, leave out “third” and insert “second”

LORDS AMENDMENTS TO THE
Environment Bill

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