

# ENVIRONMENT BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords amendments to the Environment Bill as brought from the House of Lords on 14 October 2021.
- 2 These Explanatory Notes have been prepared by the Department of Environment, Food and Rural Affairs in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 16, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 4 to 11, 13 to 27, 29 to 30, 32, 34 to 42, 44, 46 to 64, 68 to 74, 76 to 83 and, 85 to 93 were tabled in the name of the Minister.
- 6 Lords Amendment 1 was tabled by Lord Teverson, and was opposed by the Government.
- 7 Lords Amendment 2 was tabled by Baroness Bennett of Manor Castle, and was opposed by the Government.
- 8 Lords Amendment 3 was tabled by Baroness Hayman of Ullock, and was opposed by the Government.
- 9 Lords Amendment 12 was tabled by Baroness Brown of Cambridge, and was opposed by the Government.
- 10 Lords Amendment 28 was tabled by Baroness Parminter, and was opposed by the Government.
- 11 Lords Amendments 31 and 65 were tabled by Lord Krebs, and were opposed by the Government.
- 12 Lords Amendment 33 was tabled by Lord Anderson of Ipswich, and was opposed by the Government.
- 13 Lords Amendment 43 was tabled by Baroness Bakewell of Hardington Mandeville, and was opposed by the Government.
- 14 Lords Amendment 45 was tabled by The Duke of Wellington, and was opposed by the Government.
- 15 Lords Amendment 66 was tabled by Baroness Young of Old Scone, and was opposed by the Government.

- 16 Lords Amendment 67 was tabled by the Earl of Devon, and was opposed by the Government.
- 17 Lords Amendment 75 was tabled by Baroness Ritchie of Downpatrick, and was opposed by the Government.
- 18 Lords Amendment 84 was tabled by Baroness Jones of Whitchurch, and was opposed by the Government.
- 19 Lords Amendments 94 and 95 were tabled by Baroness Meacher, and were opposed by the Government.
- 20 In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment.

# Commentary on Lords Amendments

## Lords Amendments before Clause 1

### Lords Amendment 1\*

- 21 Subsection (1) of this amendment states that the purpose of the Act is to address the climate and biodiversity emergency domestically and globally. Subsection (2) requires the Prime Minister to declare a climate and biodiversity emergency domestically and globally as soon as reasonably practicable, and no later than one month following Royal Assent. Subsection (3) requires the Government to take account of subsections (1) and (2) when implementing the Act.

## Lords Amendments to Clause 1: Environmental targets

### Lords Amendment 2\*

- 22 Lords Amendment 2 would amend clause 1(3) to include soil health and quality as a priority area for long-term legally binding targets set under the Bill. Clause 1(2) requires the Secretary of State to set at least one long-term target in each priority area.

## Lords Amendments to Clause 2: Environmental targets: particulate matter

### Lords Amendment 3\*

- 23 Lords Amendment 3 would amend clause 2 to require the level of the air quality target for PM2.5 to be less than or equal to 10µg/m<sup>3</sup> and the achievement date to be on or before 1 January 2030. The amendment also requires the PM2.5 air quality target to follow the World Health Organization Air Quality guidelines as far as practicable.

## Lords Amendments after Clause 2

### Lords Amendment 4

- 24 Lords Amendment 4 would insert a new clause which introduces a requirement for the Secretary of State to set a target relating to the abundance of species ("the species abundance target"). Subsection (2) provides that the species abundance target must be achieved by 31st December 2030. Subsection (3) clarifies the duty to set the species abundance target in this clause does not discharge the duty on the Secretary of State to set a long-term target for biodiversity under clause 2. Subsection (4) provides that before setting or amending the species abundance 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. Subsection (5) clarifies the elements of the environmental targets framework set in clause 2 that apply to the species abundance target. The new clause was amended at report stage to include a strengthened requirement to set a legally binding target to halt species decline by 2030.

## Lords Amendments to Clause 3: Environmental targets: process

### Lords Amendments 5 to 10

- 25 Lords Amendments 5 to 10 are consequential on Lords Amendment 4.

## **Lords Amendments to Clause 4: Environmental targets: effect**

### **Lords Amendment 11**

26 Lords Amendment 11 is consequential on Lords Amendment 4.

### **Lords Amendment 12\***

27 Lords Amendment 12 would amend clause 4 to provide that the Secretary of State has a duty to ensure that interim targets set under clauses 10 and 13 are met.

## **Lords Amendments to Clause 5: Environmental targets: reporting duties**

### **Lords Amendment 13**

28 Lords Amendment 13 is consequential on Lords Amendment 4.

## **Lords Amendments to Clause 6: Environmental targets: review**

### **Lords Amendments 14 to 16**

29 Lords Amendments 14 to 16 are consequential on Lords Amendment 4.

## **Lords Amendments to Clause 8: Annual reports on environmental improvement plans**

### **Lords Amendment 17**

30 Lords Amendment 17 is consequential on Lords Amendment 4.

## **Lords Amendments to Clause 10: Reviewing and revising plans: interim targets**

### **Lords Amendments 18 to 20**

31 Lords Amendments 18 to 20 are consequential on Lords Amendment 4.

## **Lords Amendments to Clause 11: Reviewing and revising plans: other requirements**

### **Lords Amendment 21**

32 Lords Amendment 21 is consequential on Lords Amendment 4.

## **Lords Amendments to Clause 13: Renewing plans: interim targets**

### **Lords Amendments 22 to 24**

33 Lords Amendments 22 to 24 are consequential on Lords Amendment 4.

## **Lords Amendments to Clause 14: Renewing plans: other requirements**

### **Lords Amendments 25 and 26**

- 34 Lords Amendments 25 and 26 are consequential on Lords Amendment 4.

## **Lords Amendments to Clause 15: Environmental monitoring**

### **Lords Amendment 27**

- 35 Lords Amendment 27 is consequential on Lords Amendment 4.

## **Lords Amendments to Clause 18: Policy statement on environmental principles: effect**

### **Lords Amendment 28\***

- 36 Lords Amendment 28 removes the exemptions for 'the armed forces, defence or national security' and 'taxation, spending or the allocation of resources within government' from the requirement on Ministers of the Crown when making policy to have due regard to the policy statement on environmental principles.

### **Lords Amendment 29**

- 37 Lords Amendment 29 would add new subsections (4) to (6) to clause 18. Subsection (4) provides that the duty in subsection (1) applies when making policy in Scotland only on reserved matters.
- 38 Subsection (5) clarifies that section 14(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) does not apply to Ministers of the Crown when making policy relating to reserved matters in Scotland.
- 39 Subsection (6) confirms that the term "reserved matters" has the same meaning as that set out in the Scotland Act 1998.

## **Lords Amendments to Clause 22: Principal objective of the OEP and exercise of its functions**

### **Lords Amendment 30**

- 40 Lords Amendment 30 would amend subsection (5) of clause 22 to place a requirement on the OEP to set out in its strategy how it intends to cooperate with devolved environmental governance bodies (as defined in clause 46). This would facilitate cooperation between the OEP and equivalent bodies in the devolved administrations while respecting the devolution settlements.

## **Lords Amendments to Clause 24: Guidance on the OEP's enforcement policy and functions**

### **Lords Amendment 31\***

- 41 Lords Amendment 31 would omit the existing clause 24 and replace it with a new clause addressing the OEP's independence.
- 42 Subsection (1) would require the OEP to have complete discretion in carrying out its

functions including in preparing its enforcement policy, exercising its enforcement functions, and preparing and publishing its budget.

- 43 Subsection (2) would require the Secretary of State to lay before Parliament and publish a statement setting out the OEP budget at the start of each multi-annual period, and no later than 1 April 2023.
- 44 Subsection (3) would require the Secretary of State to lay before Parliament and publish a statement in response to any request for additional funding from the OEP due to a change in the body's responsibilities or functions, within three months of the request being received.
- 45 Subsection (4) would require the Secretary of State to obtain the consent of the Environment, Food and Rural Affairs and Environmental Audit Committees of the House of Commons before making and terminating appointments of the non-executive members of the OEP.

## **Lords Amendments to Clause 27: Monitoring and reporting on environmental improvement plans and targets**

### **Lords Amendment 32**

- 46 Lords Amendment 32 is consequential on Lords Amendment 4.

## **Lords Amendments to Clause 37: Environmental review**

### **Lords Amendment 33\***

- 47 Lords Amendment 33 would omit subsection (8) of clause 37 regarding the circumstances in which the court may grant a remedy in an environmental review, and replace this with new subsections (8) and (8A). The new subsection (8) would provide that the court may grant any remedy available on a judicial review (other than damages) where it has made a statement of non-compliance. The new subsection (8A) would set out factors that the court must consider when deciding whether it would be in the interests of justice to grant a remedy.

## **Lords Amendments to Clause 46: Interpretation of Part 1: general**

### **Lords Amendments 34 and 35**

- 48 Lords Amendments 34 and 35 are consequential on Lords Amendment 4.

## **Lords Amendments to Clause 56: Separation of waste**

### **Lords Amendment 36**

- 49 Lords Amendment 36 provides that the consultation requirement in inserted section 45AZC(5) of the Environmental Protection Act 1990 may be met by a consultation before clause 56 comes into force.

### **Lords Amendment 37**

- 50 Lords Amendment 37 provides that the consultation requirement in inserted section 45AZE(4) of the Environmental Protection Act 1990 may be met by a consultation before clause 56 comes into force.

### **Lords Amendment 38**

- 51 Lords Amendment 38 amends new section 45AZE of the Environmental Protection Act 1990

to add a requirement for the Secretary of State to lay guidance regarding the separation of waste before Parliament before the guidance is published.

## **Lords Amendments to Clause 57: Electronic waste tracking: Great Britain**

### **Lords Amendment 39**

- 52 Lords Amendment 39 adds the Scottish Environment Protection Agency to the definition of "enforcement authority" under new section 34CB(8) of the Environmental Protection Act 1990. This would enable Scottish Ministers to make provision under new section 34CA(1) to empower the Scottish Environment Protection Agency to impose civil sanctions.

## **Lords Amendments to Clause 63: Powers to make charging schemes**

### **Lords Amendment 40**

- 53 Lords Amendment 40 would amend clause 63(2) such that the inserted paragraph (n) of section 41(1) of the Environment Act 1995 would enable the Environment Agency, the Natural Resources Body for Wales and the Scottish Environment Protection Agency to create a charging scheme as a means of recovering costs they have incurred in performing functions conferred on them in regulations made under Schedule 5 (Producer Responsibility Disposal Costs).

## **Lords Amendments to Clause 64: Waste Charging Northern Ireland**

### **Lords Amendment 41**

- 54 Lords Amendment 41 would amend clause 64(1) such that the inserted Article 76A(2)(c) of the Waste and Contaminated Land (Northern Ireland) Order 1997 would enable the Department of Agriculture, Environment and Rural Affairs in Northern Ireland to create a charging scheme as a means of recovering costs they have incurred in performing functions conferred on them in regulations made under Schedule 5 (Producer Responsibility Disposal Costs).

## **Lords Amendments to Clause 67: Littering enforcement**

### **Lords Amendment 42**

- 55 Lords amendment 42 would require guidance under inserted section 88B of the Environmental Protection Act 1990 concerning littering enforcement to be laid before Parliament or Senedd Cymru as appropriate, before it is published.

## **Lords Amendments after Clause 72**

### **Lords Amendment 43\***

- 56 Lords Amendment 43 inserts a new clause requiring that the use of pesticide products, active substances, safeners and synergists in Great Britain must only be authorised if a competent authority is satisfied that there will be no significant short-term and no long-term negative effect on the health of honeybees or wild pollinator populations. The process to be followed, including consultation with the public, is set out. The new clause is due to come into effect on 1 February 2023.

*These Explanatory Notes relate to the Lords Amendments to the Environment Bill as brought from the House of Lords on 14 October 2021 [HL Bill 53]*

## **Lords Amendments to Clause 73: Environmental recall of motor vehicles etc.**

### **Lords Amendment 44**

- 57 Lords Amendment 44 provides for regulations under clause 73 to be subject to the affirmative resolution procedure.

## **Lords Amendments after Clause 78**

### **Lords Amendment 45\***

- 58 Lords Amendment 45 inserts a new clause into the Bill. This amendment contains elements designed by the government and others that were put forward by the Duke of Wellington. The government opposed the Duke of Wellington's elements.
- 59 The governments elements of Lords amendment 45 would create a new Chapter 4 (storm overflows) in Part 4 of the Water Industry Act 1991. The amendment would place new duties on the Secretary of State, sewerage undertakers wholly or mainly in England, and the Environment Agency. Firstly, it would require the Secretary of State to prepare a plan for the purposes of reducing discharges from storm overflows and reducing their adverse impact in England. It would also require progress reports to be submitted to Parliament 3 years after the storm overflow discharge reduction plan is first published and every 5 years thereafter. Secondly, it would require sewerage undertakers wholly or mainly in England to report annually on their storm overflow discharges. Thirdly, it would require the Environment Agency to report annually on storm overflow activity of sewerage undertakers wholly or mainly in England. The clause would also provide an interpretation for the new chapter 4.
- 60 \* The Duke of Wellington's elements of Lords Amendment 45 would place a new duty on sewerage undertakers in England and Wales to make improvements to their sewerage systems and demonstrate progressive reductions in the harm caused by discharges of untreated sewage. It would also require the Secretary of State, the Director of Ofwat (the economic regulator) and the Environment Agency to ensure compliance with the duty through the exercise of their respective functions.

### **Lords Amendment 46**

- 61 Lords Amendment 46 would insert a new clause into the Bill placing a new duty on sewerage undertakers operating wholly or mainly in England to publish details of storm overflow discharges in near real time (within an hour of a storm overflow starting and stopping). The duty will require sewerage undertakers to publish the timing and location of discharges and in a way that is readily accessible to the public. The Secretary of State may make regulations which provide for exceptions to the duty in certain cases, for example where it is technically infeasible to monitor at a particular site.

### **Lords Amendment 47**

- 62 Lords Amendment 47 would insert a new clause into the Bill placing a new duty on sewerage undertakers operating wholly or mainly in England to continuously monitor the water upstream and downstream of a discharge point from a storm overflow or a sewage disposal works to obtain information about water quality. Requirements as to how monitoring is to be undertaken and published by sewerage undertakers will be in accordance with regulations made by the Secretary of State.



## Lords Amendment 48

- 63 Lords Amendment 48 would insert a new clause into the Bill placing a new duty on the Secretary of State to produce a report on the actions which would be needed by sewerage undertakers wholly or mainly in England to eliminate storm overflows and the cost and benefits of doing so. The report would need to be published before 1 September 2022 and laid before Parliament.

## Lords Amendments to Clause 88: Valuation of other land in drainage district: England

### Lords Amendments 49 to 51

- 64 Lords Amendments 49 to 51 would change a consequential amendment power being inserted into the Land Drainage Act 1991 from a power to amend any Act, to a power to amend the Land Drainage Act 1991 only.

## Lords Amendments to Clause 90: Valuation of agricultural land in drainage district: England and Wales

### Lords Amendments 52 to 54

- 65 Lords Amendments 52 to 54 would change a consequential amendment power being inserted into the Land Drainage Act 1991 from a power to amend any Act, to a power to amend the Land Drainage Act 1991 only.

## Lords Amendments after Clause 92

### Lords Amendment 55

- 66 Lords Amendment 55 would introduce a biodiversity net gain requirement for Nationally Significant Infrastructure Projects (NSIPs). This requirement is set out through the schedule introduced by Amendment 93.

## Lords Amendments to Clause 93: Biodiversity gain site register

### Lords Amendment 56

- 67 Lords Amendment 56 is consequential to Lords Amendment 93.

### Lords Amendment 57

- 68 Amendment 57 would allow for the Secretary of State to change the minimum time for which biodiversity gains must be secured.
- 69 This may not be changed to a period of less than 30 years, which is the initial duration specified in the Bill's provisions.
- 70 The power applies both to off-site biodiversity gain site enhancements and to the on-site biodiversity value increases which are considered significant and therefore secured (through a planning obligation, conservation covenant or planning condition).

### Lords Amendment 58

- 71 Lords Amendment 58 would set a duty on the Secretary of State to keep under review the supply of off-site biodiversity gains and whether the minimum duration (of 30 years) can be increased without adversely affecting that supply. This is intended to encourage increases to

the minimum duration provided that the Secretary of State is confident that the increase will not stifle the supply of biodiversity enhancements and therefore risk undermining the market for biodiversity gains and ability to deliver gains in appropriate locations for wildlife.

- 72 Changes made to the minimum duration would apply to all new allocated biodiversity gain sites or biodiversity gain plans submitted for approval, but would not retrospectively change the terms of existing site agreements (for example, existing conservation covenants or planning obligations attached to approved biodiversity gain plans).

## **Lords Amendments to Clause 94: Biodiversity credits**

### **Lords Amendment 59**

- 73 Lords Amendment 56 is consequential to Lords Amendment 93.

## **Lords Amendments to Clause 95: General duty to conserve and enhance biodiversity**

### **Lords Amendment 60**

- 74 Lords Amendment 60 would amend clause 95 to require the Secretary of State to give guidance to local planning authorities. The guidance would specify how they are to take a local nature recovery strategy into account when discharging their duties under new section 40(1) and (A1) of the Natural Environment and Rural Communities Act 2006 concerning the conservation and enhancement of biodiversity.
- 75 The Secretary of State would be required to publish this guidance within two years from when clause 98 comes into force, in such manner as the Secretary of State thinks fit. The Secretary of State would then be required to keep the guidance under review and revise it when they consider it appropriate.

## **Lords Amendments to Clause 99: Content of local nature recovery strategies**

### **Lords Amendment 61**

- 76 Lords amendment 61 would amend clause 99 to require guidance made under the clause to be laid before Parliament before it is published.

## **Lords Amendments to Clause 102: Species conservation strategies**

### **Lords Amendment 62**

- 77 Lords amendment 62 would amend clause 102 to require guidance made under the clause to be laid before Parliament before it is published.

## **Lords Amendments to Clause 103: Protected site strategies**

### **Lords Amendment 63**

- 78 Lords amendment 63 would amend clause 103 to require guidance made under the clause to be laid before Parliament before it is published.

## **Lords Amendments to Clause 105: Habitats Regulations: power to amend general duties**

### **Lords Amendment 64**

79 Lords Amendment 64 is consequential on Lords Amendment 4.

## **Lords Amendments after Clause 106**

### **Lords Amendment 65\***

80 Lords amendment 65 would place limits on the scope for the Secretary State to amend the Conservation of Habitats and Species Regulations 2017 when exercising the powers set out in Clause 105 or 106. The Secretary of State would only be able to make regulations for the purposes of:

- a. Securing compliance with international environmental obligations;
- b. Contributing to the favourable conservation status of species or habitats or the favourable condition of protected sites.

81 Regulations could only be made if there is no reduction in the level of protection provided by the Habitats regulations, and following public consultation with the Office of Environmental Protection, Natural England, the Joint Conservation Committee, and other relevant expert bodies.

## **Lords Amendments after Clause 107**

### **Lords Amendment 66\***

82 Lords Amendment 66 would insert a new clause into the Bill following clause 107 requiring the Government to implement an enhanced protection standard for ancient woodland that takes immediate effect. The standard would apply to all companies, persons or organizations involved in developments affecting ancient woodlands in England.

83 The standard would require refusal of any development affecting ancient woodland except in exceptional circumstance and would require a suitable compensation strategy to be put in place prior to the development commencing. The standard would also require any development adjacent to ancient woodland to incorporate a protective "buffer zone" as defined by the clause and for any ancient or veteran trees within a development to be retained.

## **Lords Amendments to Clause 110: Conservation covenant agreements**

### **Lords Amendment 67\***

84 Lords Amendment 67 would amend clause 110 to require a conservation covenant agreement to be signed as a deed by the parties. It would further require that the agreement must:

- a. make provision for the payment of consideration to the landowner (or state that no consideration is to be provided); and
- b. include provision regarding the duration or end date of the agreement.

## **Lords Amendments after Clause 133**

### **Lords Amendment 68**

85 Clauses 49 to 53 and 83 establish powers that are exercisable concurrently by the Secretary of State and the devolved authorities. Restrictions in Schedule 7B to the Government of Wales Act 2006 prevent the Senedd from removing a Minister of the Crown function that is exercised concurrently or jointly with a Minister of the Crown without the consent of the UK Government. Lords Amendment 68 would disapply the relevant restrictions in respect of the concurrent powers in the Bill, by adding the Environment Bill to the lists of enactments in paragraphs 9(8)(b) and 11(6)(b) of Schedule 7B. This will allow the Senedd to alter the concurrent arrangements in future without needing the UK Government's agreement.

## **Lords Amendments to Clause 138: Extent**

### **Lords Amendments 69 and 70**

86 Lords Amendments 69 and 70 are consequential on Lords Amendment 29.

### **Lords Amendment 71**

87 Lords Amendment 71 would amend clause 138 (Extent) to provide for the duty of the Secretary of State to prepare a report on the elimination of discharges from storm overflows (created by Lords Amendment 63) to extend to England and Wales. This is due to the operation of the devolution settlement with Wales and the cross-border nature of the areas of operation of sewerage undertakers.

### **Lords Amendment 72**

88 Lords Amendment 56 is consequential to Lords Amendment 93.

## **Lords Amendments to Clause 139: Commencement**

### **Lords Amendment 73**

89 Lords Amendment 73 would amend clause 139 (Commencement) to provide for the storm overflow duties imposed on the Secretary of State, sewerage undertakers and the Environment Agency by Lords Amendments 45 and 48 to come into force two months after Royal Assent.

### **Lords Amendment 74**

90 Lords Amendment 74 would amend clause 139 (Commencement) to provide for the proposed new duties of sewerage undertakers relating to reporting and monitoring (created by Lords Amendments 46 and 47 respectively) to come into force by commencement regulations.

## **Lords Amendments to Schedule 3: The Office for Environmental Protection: Northern Ireland**

### **Lords Amendment 75\***

91 Lords Amendment 75 would remove the provision in section 25A, as inserted under Schedule 3, for the Northern Ireland Department to issue guidance to the OEP on its enforcement policy in Northern Ireland and insert a new section making further provision concerning the independence of the OEP. The new section would provide that the OEP has complete

discretion in carrying out its functions in Northern Ireland including in preparing its enforcement policy, exercising its enforcement functions, and preparing and publishing its budget. This clause mirrors Lords Amendment 31 which similarly amends clause 25.

- 92 The Northern Ireland Department would also be required to obtain the consent of the Committee for Agriculture, Environment and Rural Affairs of the Northern Ireland Assembly before making and terminating appointments of the non-executive members of the OEP.

## **Lords Amendments to Schedule 4: Producer responsibility obligations**

### **Lords Amendment 76**

- 93 Lords Amendment 76 provides that the consultation requirement in paragraph 8 of Schedule 4 may be met by a consultation before paragraph 8 comes into force.

### **Lords Amendment 77**

- 94 Lords Amendment 77 provides that the consultation requirement in paragraph 20 of Schedule 4 may be met by a consultation before paragraph 20 comes into force.

## **Lords Amendments to Schedule 5: Producer responsibility for disposal costs**

### **Lords Amendment 78**

- 95 Lords Amendment 78 would amend Schedule 5 paragraph 4(1) to include the option of setting out a process for appointing an administrator in regulations.

### **Lords Amendment 79**

- 96 Lords Amendment 79 would provide that the consultation requirement in paragraph 10 of Schedule 5 may be met by a consultation before paragraph 10 comes into force.

### **Lords Amendment 80**

- 97 Lords Amendment 80 would provide that the consultation requirement in paragraph 18 of Schedule 5 may be met by a consultation before paragraph 18 comes into force.

## **Lords Amendments to Schedule 6: Resource efficiency information**

### **Lords Amendment 81**

- 98 Lords Amendment 81 would provide that the consultation requirement in paragraph 5 of Schedule 6 may be met by a consultation before paragraph 5 comes into force.

### **Lords Amendment 82**

- 99 Lords Amendment 82 would provide that the consultation requirement in paragraph 14 of Schedule 6 may be met by a consultation before paragraph 14 comes into force.

## **Lords Amendments to Schedule 7: Resource efficiency requirements**

### **Lords Amendment 83**

- 100 Lord Amendment 83 would provide that the consultation requirement in paragraph 5 of Schedule 7 may be met by a consultation before paragraph 5 comes into force.

## Lords Amendment 84

101 Lords Amendment 84 would provide that the consultation requirement in paragraph 14 of Schedule 7 may be met by a consultation before paragraph 14 comes into force.

## Lords Amendments to Schedule 9: Charges for single use plastic items

### Lords Amendment 85\*

102 Lords Amendment 85 would amend Schedule 9 to enable regulations to be made about charges for all single use items.

## Lords Amendments to Schedule 10: Enforcement powers

### Lords Amendment 86

103 Lords Amendment 86 would amend Schedule 10 to clarify that the powers of search and seizure set out in new section 108(4)(ka) of the Environment Act 1995 may be exercised with consent as well as with a warrant.

### Lords Amendments 87 to 89

104 Lords Amendments 87 to 89 are all consequential on Lords Amendment 86 to Schedule 10.

## Lords Amendments to Schedule 11: Local air quality management framework

### Lords Amendment 90

105 Lords Amendment 90 would provide that the consultation requirement in inserted section 81A(4) of the Environment Act 1995 may be met by a consultation before paragraph 4 comes into force.

## Lords Amendments to Schedule 14: Biodiversity gain as condition of planning permission

### Lords Amendment 91

106 Lords Amendment 91 would create a requirement for the biodiversity metric published for mandatory biodiversity net gain, which will be used for measuring the biodiversity value of land and enhancements, to be laid before Parliament. This will ensure that the document is clearly published and is available for scrutiny.

### Lords Amendment 92

107 Lords Amendment 92 would create a power for the Secretary of State to change the minimum time for which biodiversity gains must be secured. See Explanatory note for Lords Amendment 57.

## Lords Amendments after Schedule 14

### Lords Amendment 93

108 Lords Amendment 93 would introduce a new schedule that sets out the biodiversity net gain requirement for Nationally Significant Infrastructure Projects (NSIPs).

- 109 Paragraphs 1 to 4 amend sections 104 and 105 of the Planning Act 2008. Section 104 of the Planning Act relates to those NSIPs for which a national policy statement has effect, and section 105 relates to those for which a national policy statement does not have effect.
- 110 For all NSIP applications decided under section 104, paragraph 3 requires the Secretary of State (SoS) to be satisfied that the biodiversity gain objective contained in any NSIP's statement is met, in order for consent to be granted.
- 111 Paragraph 4 requires, for applications decided under section 105, the SoS to be similarly satisfied that the biodiversity gain objective set out in a biodiversity gain statement is met before granting an application.
- 112 Paragraph 5 inserts Schedule 2A into the Planning Act 2008. Schedule 2A Section 103: Biodiversity Gain, paragraph 1 outlines that this amendment would only apply to NSIPs that are in England and are not 'excluded developments', which are to be defined by regulations made by the SoS.
- 113 Paragraph 2 outlines how the biodiversity gain objective is to be set for NSIPs. It states that this is to be done through a 'biodiversity gain statement'. These policy statements will define the biodiversity gain objective and prescribe the processes through which biodiversity gains may be calculated, demonstrated and verified.
- 114 Paragraph 3 defines a biodiversity gain objective as an objective that development increases its attributed biodiversity value relative to the on-site habitat value before development. This increase must be at least 10%, though the SoS may amend this percentage temporarily or indefinitely by regulations.
- 115 Paragraph 4 says that a biodiversity gain statement may stipulate the method of calculating biodiversity value and specified that options include the metric published for development under the Town and Country Planning Act, a bespoke biodiversity metric or another biodiversity metric. The stipulated biodiversity metric must be published in an appropriate manner and, unless already laid before parliament in accordance with Town and Country Planning Act biodiversity gain provisions, must be laid before parliament.
- 116 Paragraph 5 says that a biodiversity gain statement may set out how the on-site habitat is defined and the date (for example, before any habitat clearance for development commences) for which a habitat's value must be assessed.
- 117 Sub paragraph 5(2) allows for a different pre-development date to be specified if activities on the land before making the development consent order application has resulted in a reduction in the biodiversity value of the on-site habitat (for example, where habitats have been degraded prior to development consent).
- 118 Sub-paragraph 5(3) states that the projected biodiversity value of a registered biodiversity gain site should be taken as the pre-development biodiversity value where development takes place on an existing biodiversity gain site.
- 119 Paragraph 6 says that a biodiversity gain statement may specify what the biodiversity value for the relevant development consists of and how biodiversity value, when secured for an appropriate duration, may be allocated to a development. This could include the post-development biodiversity value of the on-site habitat, the biodiversity value of any off-site biodiversity gain allocated to the development and the biodiversity value of any biodiversity credits purchased for the development
- 120 An increase in biodiversity value either on-site or off-site can only be taken into account if

any habitat enhancement contributing to that biodiversity value increase is maintained for a period specified in the statement, and if the maintenance of that habitat enhancement is secured in a way specified in the statement.

121 Paragraph 7 relates to development on irreplaceable habitats. In recognition of the position set out in paragraph 1659 of the explanatory notes for the Environment Bill [HL Bill 16 Explanatory Notes], a biodiversity gain statement may disapply the biodiversity gain objective, or components of the objective for such development. It may also set requirements to minimise any adverse effects of the development on irreplaceable habitats.

122 Paragraph 8 states that the biodiversity gain statement must set out the evidence, likely to be specified in terms of documents types including a completed biodiversity metric, that must be provided for the biodiversity objective to be deemed met.

123 For developments where there are existing national policy statements, paragraph 9 says that, following commencement of the schedule, the SoS must amend the statement when it is next reviewed so as to include a biodiversity gain statement. In the time between the schedule being commenced and a review of a national policy statement, a separate 'biodiversity gain statement' may be issued which would have the same effect as a statement integrated within a national policy statement. This must be laid before Parliament and be published in a manner deemed appropriate by the Secretary of State. This separate biodiversity gain statement would then be revoked when the national policy statement is reviewed and the biodiversity gain content is integrated into the nationally policy statement. If an existing national policy statement relating to a development is withdrawn, any separate biodiversity gain statement relating to that development would come into effect.

124 Paragraph 10 states that a biodiversity gain statement may be produced for development which is not covered by a national policy statement. This would also be subject to requirements for consultation, laying before parliament and publication in an appropriate manner. This biodiversity gain statement would then be incorporated into any later national policy statement published for that type of development.

125 Paragraph 11 gives powers to the SoS to apply, with or without modifications, this schedule to developments at sea within England.

126 Part 2 sets out supporting amendments to the Planning Act 2008 which enable mechanisms such as requirements (similar to conditions applied to Town and Country Planning Act permissions) and document requirements to be set or adapted in relation to the biodiversity gain objective.

## **Lords Amendments to Schedule 16: Use of forest risk commodities in commercial activity**

### **Lords Amendments 94\* and 95\***

127 Lords Amendments 94 and 95 would amend sub-paragraph (4) of paragraph 17 and would require that the first review of the effectiveness of the legislation must be completed between the first and second anniversary of the Part 1 requirements coming into force.



## Financial Effects of Lords Amendments

128 Lords Amendments 40 and 59 require ways and means cover, which is provided by the existing ways and means resolution.

129 Lords Amendment 40 amends clause 63(2). That clause inserts into section 41(1) of the Environment Act 1995 powers for the Environment Agency (and devolved environmental bodies) to charge for the exercise of certain functions. The Lords amendment extends the charging powers to include functions under Schedule 5 to the Bill.

130 Lords Amendment 59 amends clause 94(1) of the Bill, which authorises the Secretary of State to make arrangements for biodiversity credits. The amendment extends the scope of the Secretary of State's power to include Schedule 2A of the Planning Act 2008, which is inserted by Lords amendment 93.

# ENVIRONMENT BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords amendments to the Environment Bill as brought from the House of Lords on 14 October 2021 (Bill 168).

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