

LORDS AMENDMENTS TO THE
NATURAL ENVIRONMENT AND RURAL COMMUNITIES BILL

[The page and line references are to HL Bill 23, the bill as first printed for the Lords.]

Clause 2

1 Page 2, line 15, at end insert –

“() The purpose in subsection (2)(e) may, in particular, be carried out by working with local communities.”

Clause 8

2 Page 4, line 25, leave out subsections (4) to (6)

Clause 11

3 Page 5, line 17, leave out “4” and insert “4(1) or (4)(a)”

Clause 15

4 Page 6, line 25, at end insert “as soon as is reasonably practicable after giving the guidance”

Clause 16

5 Page 6, line 35, at end insert “as soon as is reasonably practicable after giving the directions”

Clause 19

6 Page 7, line 29, leave out from “which” to “and” in line 30 and insert “relevant persons’ policies are developed, adopted and implemented (by rural proofing or otherwise)”

Clause 25

7 Page 8, line 28, at end insert “as soon as is reasonably practicable after giving the directions”

Clause 38

- 8 Page 13, line 18, at end insert “as soon as is reasonably practicable after giving the directions”

Clause 41

- 9 Page 15, line 12, at end insert “as soon as is reasonably practicable after revising it”

Clause 42

- 10 Page 15, line 28, at end insert “as soon as is reasonably practicable after revising it”

Clause 44

- 11 Page 16, line 23, leave out “for the purpose of ascertaining whether” and insert “if he has reasonable grounds to suspect that he may find there evidence that”

- 12 Page 16, line 38, after “powers)” insert “other than paragraph 2A(1)(b) of that Schedule”

- 13 Page 16, line 39, at end insert –

“(5) Subsections (6) and (7) apply where an inspector seizes a substance under subsection (1)(c).

(6) The inspector must give to a person on the premises, or affix conspicuously to some object on the premises, a notice stating –

- (a) what he has seized and the ground for seizing it, and
- (b) the address for service for any claim for the return of the substance.

(7) The inspector –

- (a) may retain the substance for so long as is reasonably necessary for the purposes of any investigation or proceedings in respect of an offence under section 43;
- (b) subject to any order for forfeiture under section 43(5) or any claim made within the relevant period by a person entitled to the return of the substance, may retain the substance or, after the relevant period, destroy or otherwise dispose of it.

(8) “The relevant period” means the period ending 28 days after –

- (a) any proceedings in respect of an offence under section 43 are finally determined, or
- (b) if no such proceedings are brought, the time for bringing such proceedings expires.”

After Clause 44

- 14 Insert the following new Clause –

“Codes of practice

(1) The Secretary of State may –

- (a) issue a code of practice in connection with any of the provisions of section 44 or Schedule 2 to the Food and Environment Protection Act 1985 (c. 48) as applied by section 44(4), and

- (b) revise or replace such a code.
- (2) An inspector must have regard to any relevant provision of a code when discharging any function under any provision mentioned in subsection (1)(a).
- (3) But an inspector's failure to have regard to any provision of a code does not make him liable to criminal or civil proceedings.
- (4) A code—
 - (a) is admissible in evidence in any proceedings, and
 - (b) must be taken into account by a court in any case in which it appears to the court to be relevant.”

After Clause 54

15 Insert the following new Clause—

“Denotification

In section 28D of the 1981 Act (denotification), in subsection (1), for “no longer” substitute “not”.”

16 Insert the following new Clause—

“Effect of failure to serve certain notices in connection with SSSIs

After section 70A of the 1981 Act insert—

“70B Effect of failure to serve certain notices

- (1) This section applies where the relevant conservation body—
 - (a) has (whether before or after the commencement of this section) taken all reasonable steps to ensure that, under any provision listed in subsection (2), notice is served on every owner and occupier of any land to which the notice relates, but
 - (b) has failed to do so.
- (2) The provisions are—
 - (a) section 28(1) (notification of SSSI);
 - (b) section 28(5) (confirmation or withdrawal of notification of SSSI);
 - (c) section 28A(3) (notice varying notification under section 28);
 - (d) section 28A(5) (notice confirming or withdrawing variation of notification);
 - (e) section 28B(2) (notification of additional land to be included in SSSI);
 - (f) section 28B(7) (confirmation or withdrawal of notification);
 - (g) section 28C(2) (notification of enlargement of SSSI);
 - (h) section 28C(3) (confirmation or withdrawal of notification of enlargement);
 - (i) section 28D(2) (denotification);
 - (j) section 28D(5) (withdrawal or confirmation of denotification);

- (k) section 28J(3) (notice of proposed management scheme);
 - (l) section 28J(8) (withdrawal or confirmation of management scheme).
- (3) The validity of the notice is not affected by the failure to serve it on every owner and occupier of the land.
 - (4) For the purposes of sections 28 to 28Q, the time when the notice is to be treated as having been served is the time when the relevant conservation body took the last of the steps referred to in subsection (1)(a).
 - (5) If the relevant conservation body becomes aware of its failure to serve a notice on an owner or occupier, it must serve a copy of the notice on that owner or occupier.
 - (6) Nothing in subsection (3) or (4) renders the owner or occupier liable—
 - (a) in relation to anything done or omitted to be done before the commencement of this section, or
 - (b) under section 28P(1) or 28Q(4) in relation to anything done or omitted to be done before the copy of the notice is served under subsection (5).
 - (7) “The relevant conservation body” means—
 - (a) in relation to land in an area in England—
 - (i) subject to sub-paragraph (ii), Natural England;
 - (ii) in relation to any time before the commencement of section 27AA, English Nature;
 - (b) in relation to land in an area in Wales, the Countryside Council for Wales.”

Before Clause 56

17 Insert the following new Clause—

“Criteria for designating National Parks

- (1) In section 5 of the National Parks and Access to the Countryside Act 1949 (c. 97) (criteria for designating National Parks), after subsection (2) insert—
 - “(2A) Natural England may—
 - (a) when applying subsection (2)(a) in relation to an area, take into account its wildlife and cultural heritage, and
 - (b) when applying subsection (2)(b) in relation to that area, take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of its special qualities by the public.”
- (2) The amendment made by subsection (1) applies for the purposes of the confirmation or variation on or after the day on which this section comes into force of orders made before that day as it applies for the purposes of the confirmation or variation of orders made on or after that day.”

Clause 56

18 Page 22, line 5, leave out from first “the” to “as” and insert “1949 Act”

After Clause 60

19 Insert the following new Clause –

“Emergency financial assistance

- (1) Amend section 155(4) of the Local Government and Housing Act 1989 (c. 42) (authorities eligible for emergency financial assistance) as follows.
- (2) After paragraph (h) insert –
 - “(i) a National Park authority; or
 - (j) the Broads Authority.”
- (3) Omit “or” preceding paragraph (h).”

Clause 62

20 Page 25, line 19, leave out from “byway” to end of line 22

21 Page 25, line 24, at end insert –

“() it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,”

22 Page 25, line 25, at beginning insert “immediately before commencement”

23 Page 25, line 36, leave out subsection (3) and insert –

- “(3) Subsection (1) does not apply to an existing public right of way over a way if –
- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
 - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
 - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles –
 - (i) was reasonably necessary to enable that person to obtain access to the land, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (3A) “The relevant date” means –
- (a) in relation to England, 20th January 2005;
 - (b) in relation to Wales, 19th May 2005.
- (3B) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies –
- (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
 - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,

the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.

- (3C) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.
- (3D) For the purposes of subsections (3)(c)(i) and (3B)(a), it is irrelevant whether the person was, immediately before commencement, in fact –
- (a) exercising the existing public right of way, or
 - (b) able to exercise it.”

24 Page 25, line 44, at end insert –

“() Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c. 37) has effect subject to this section.”

After Clause 62

25 Insert the following new Clause –

“Presumed dedication of restricted byways and use by pedal cycles etc.

- (1) Amend section 31 of the Highways Act 1980 (c. 66) (dedication of highway presumed after public use for 20 years) as follows.
- (2) After subsection (1) insert –
- “(1A) Subsection (1) –
- (a) is subject to section 61 of the Natural Environment and Rural Communities Act 2005 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but
 - (b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.”
- (3) After subsection (10) insert –
- “(10A) Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way.”
- (4) After subsection (11) insert –
- “(12) For the purposes of subsection (1A) “mechanically propelled vehicle” does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle).””

26 Insert the following new Clause –

“Presumed dedication and applications under section 53(5) of the 1981 Act

- (1) In section 31 of the 1980 Act, after subsection (7) insert –
- “(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section

53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.

- (7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.”
- (2) The applications in relation to which the amendments made by subsection (1) apply include any application under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) which falls within section 62(3)(a), (b) or (c).”

Clause 63

27 Page 26, line 2, leave out subsections (1) and (2) insert—

- “(1) In section 53(3) of the Wildlife and Countryside Act 1981 (c. 69) (modification of definitive map and statement in consequence of certain events)—
- (a) in paragraph (b) (expiration of period raising a presumption of dedication), after “public path” insert “or restricted byway”, and
 - (b) in paragraph (c)(i) (discovery of evidence of right of way), after “public path” insert “, a restricted byway”.
- (2) Amend section 34 of the Road Traffic Act 1988 (c. 52) (prohibition of driving mechanically propelled vehicles elsewhere than on roads) as follows.
- (2A) In subsection (2), omit “(subject to section 34A of this Act)”.
- (2B) After subsection (2) insert—
- “(2A) It is not an offence under this section for a person with an interest in land, or a visitor to any land, to drive a mechanically propelled vehicle on a road if, immediately before the commencement of section 47(2) of the Countryside and Rights of Way Act 2000, the road was—
- (a) shown in a definitive map and statement as a road used as a public path, and
 - (b) in use for obtaining access to the land by the driving of mechanically propelled vehicles by a person with an interest in the land or by visitors to the land.”
- (2C) In subsection (6), for “and section 34A of this Act do” substitute “does”.
- (2D) In subsection (7), insert at the appropriate place in the alphabetical order—
- ““interest”, in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights;”.
- (2E) After subsection (7) insert—
- “(8) A person—
- (a) entering any land in exercise of rights conferred by virtue of section 2(1) of the Countryside and Rights of Way Act 2000, or

(b) entering any land which is treated by section 15(1) of that Act as being accessible to the public apart from that Act, is not for the purposes of subsection (2A) a visitor to the land.””

Clause 68

28 Page 29, line 3, leave out from “must” to end of line 14 and insert “provide the Council with such staff, accommodation, services and other facilities as appear to the Secretary of State and the Scottish Ministers to be necessary or expedient for the proper performance of the Council’s functions.”

Clause 74

29 Page 31, line 26, leave out “or give guidance or directions” and insert “, give directions or guidance or issue codes of practice”

Clause 76

30 Page 32, line 9, leave out subsection (1) and insert –

“(1) The fact that a function is conferred by or under this Act or an Act passed after the passing of this Act does not prevent it from being the subject of an agreement.”

31 Page 32, line 38, leave out “that section” and insert “section 77”

Clause 88

32 Page 37, line 21, at end insert “as soon as is reasonably practicable after giving the directions”

Before Clause 92

33 Insert the following new Clause –

“Natural beauty in the countryside

The fact that an area in England or Wales consists of or includes –

- (a) land used for agriculture or woodlands,
- (b) land used as a park, or
- (c) any other area whose flora, fauna or physiographical features are partly the product of human intervention in the landscape,

does not prevent it from being treated, for the purposes of any enactment (whenever passed), as being an area of natural beauty (or of outstanding natural beauty).”

Clause 94

34 Page 40, line 34, leave out subsection (4)

Clause 99

35 Page 42, line 10, at beginning insert “In”

36 Page 42, line 10, after “Broads)” insert –

- “(a) section (*Criteria for designating National Parks*) (criteria for designating National Parks) comes into force at the end of the period of two months beginning with the day on which this Act is passed, and
- (b) the other provisions”

37 Page 42, line 27, after “miscellaneous)” insert “–

- (a) section (*Natural beauty in the countryside*) (natural beauty in the countryside) comes into force at the end of the period of two months beginning with the day on which this Act is passed, and
- (b) ”

Schedule 1

38 Page 46, line 6, leave out “applies” and insert “can apply”

Schedule 2

39 Page 49, line 37, leave out “applies” and insert “can apply”

Schedule 5

40 Page 63, line 20, at end insert –

“PART 3

CODES OF PRACTICE

- 12 (1) The Secretary of State may –
 - (a) issue a code of practice in connection with any of the provisions of sections 18A to 18F of the 1981 Act (including any of those provisions as applied by Part 2 of this Schedule), and
 - (b) revise or replace such a code.
- (2) An inspector must have regard to any relevant provision of a code when discharging any function under any of the provisions mentioned in sub-paragraph (1)(a).
- (3) But an inspector’s failure to have regard to any provision of a code does not make him liable to criminal or civil proceedings.
- (4) A code –
 - (a) is admissible in evidence in any proceedings, and
 - (b) must be taken into account by a court in any case in which it appears to the court to be relevant.”

41 Page 63, line 20, at end insert –

“PART 4

CONSTABLE’S SEARCH WARRANT POWER EXTENDED TO CERTAIN OTHER ACTS

- 13 (1) Section 19(3) of the 1981 Act (issue of search warrants for purpose of obtaining evidence of offence) applies in relation to an offence under each of the Acts mentioned in sub-paragraph (2) as it applies in relation to an offence under Part 1 of the 1981 Act.

(2) The Acts are –

- (a) the Destructive Imported Animals Act 1932 (c. 12);
- (b) the Conservation of Seals Act 1970 (c. 30);
- (c) the Deer Act 1991 (c. 54);
- (d) the Protection of Badgers Act 1992 (c. 51).”

Schedule 7

42 Page 65, line 30, at end insert –

“1A A joint committee of two or more local authorities which is discharging, in relation to an area of outstanding natural beauty, functions of those authorities under sections 89 and 90 of the Countryside and Rights of Way Act 2000 (c. 37).”

Schedule 9

43 Page 68, line 3, at end insert –

“4A Developing, promoting, marketing or operating –
(a) standards relating to the quality of products, or
(b) systems for the classification of products.

4B Developing, reviewing or operating schemes for the certification of products or of operations connected with production or supply of products.”

44 Page 68, line 6, leave out from beginning to “in” in line 7 and insert –

“6 Providing or promoting the provision of –
(a) training for persons engaged in or proposing to be engaged”

45 Page 68, line 33, leave out paragraph 15

Schedule 10

46 Page 69, line 2, at end insert –

“Acting through subsidiaries

- (1) A section 80 order may include provision –
 - (a) enabling the board to establish subsidiaries, and
 - (b) enabling or requiring the board to carry out specified functions through subsidiaries.

(2) “Subsidiary” means a subsidiary as defined by section 736 of the Companies Act 1985 (c. 6) or Article 4 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).”

47 Page 69, line 15, leave out paragraph (b)

48 Page 69, line 20, at end insert –

“() But a section 80 order may not include provision by virtue of subparagraph (1) conferring power to enter a dwelling.”

49 Page 69, line 26, after “by” insert “, or on behalf of,”

- 50 Page 70, line 5, leave out paragraph (b)
- 51 Page 70, line 16, after “purpose” insert “or purposes”
- 52 Page 70, line 17, at end insert –

“Power to charge for services

- 4A A section 80 order may provide that the board (or a subsidiary of the board) may make such charges for any services as appear to the board (or subsidiary) to be reasonable.

Incidental powers

- 4B (1) A section 80 order may include provision enabling the board to do anything that appears to it to be conducive or incidental to the discharge of its functions.
- (2) The order may, in particular, provide that the board may –
- (a) enter into agreements;
 - (b) acquire or dispose of property;
 - (c) raise funds by means of voluntary contributions;
 - (d) accept gifts.
- (3) The power to make provision falling within sub-paragraph (2)(c) applies whether or not the order also makes provision under paragraph 4 (levies).”

- 53 Page 70, line 18, leave out from beginning to end of line 21 and insert –

“Approval of appropriate authority, consultation etc.

- 5 (1) A section 80 order may include provision making the exercise of a specified function or description of functions conferred on the board –
- (a) subject to the approval of the appropriate authority, or
 - (b) subject to any other conditions.
- (2) The provision that may be made by virtue of sub-paragraph (1)(b) includes, in particular –
- (a) provision requiring the board to be satisfied, before a levy is –
 - (i) imposed, or
 - (ii) terminated,that the imposition or termination of the levy is desired by a substantial number of the persons who would be or are affected by the levy;
 - (b) provision requiring ballots to be conducted, in such circumstances as may be specified in the order, for the purpose of ascertaining the views of persons who would be or are affected by a levy;
 - (c) provision requiring the board to consult a specified person or a description of persons before exercising a specified function or description of functions.”

- 54 Page 70, line 33, at end insert “or an authorised officer”
- 55 Page 70, line 34, leave out sub-paragraph (2) and insert –

- “(2) If a section 80 order creates an offence by virtue of sub-paragraph (1), the order –
- (a) must provide for the offence to be triable only summarily, and
 - (b) may not provide for the offence to be punishable with imprisonment.
- (3) A section 80 order –
- (a) may make provision enabling proceedings for an offence under the order to be brought within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge, but
 - (b) may not authorise the commencement of proceedings for such an offence more than 2 years after the date on which the offence was committed.”

Schedule 11

- 56 Page 83, line 11, after “Wales” insert “(including their adjacent territorial waters)”
- 57 Page 83, line 14, after “Wales” insert “(including their adjacent territorial waters)”
- 58 Page 84, line 10, at end insert –
- “() Sub-paragraph (3) extends to England and Wales (including their adjacent territorial waters) only.”
- 59 Page 84, line 16, leave out “33” and insert “34”
- 60 Page 84, line 17, after “interest” insert “and limestone pavements”
- 61 Page 84, line 38, leave out “in England”
- 62 Page 84, line 39, leave out from “area” to end of line 2 on page 85
- 63 Page 85, line 3, after ““the” insert “Council and the”

Schedule 12

- 64 Page 100, line 3, at end insert –
- | | | |
|---|-----|---|
| “Local Government
Housing Act 1989 (c. 42) | and | In section 155(4), “or” preceding paragraph (h).” |
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