ENVIRONMENT BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Environment Bill as introduced in the House of Commons on 12 May 2021 (Bill 3).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The Environment Bill ("the Bill") comprises two thematic halves. The first provides a legal framework for environmental governance. The second makes provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants.

2 The first part of the Bill was published in part as the draft Environment (Principles and Governance) Bill on 19 December 2018, fulfilling a legal obligation set out in section 16 of the European Union (Withdrawal) Act 2018. The measures published at that time related only to environmental principles and governance, and placing the previous government's 25 Year Environment Plan on a statutory footing.

3 The remaining parts of the Bill make provision for a range of environmental improvements. In its 2019 Manifesto, *Get Brexit Done: Unleash Britain's Potential*, the government pledged to "protect and restore our natural environment after leaving the EU". Measures in the Bill – many of which were consulted on by the previous government and included in the Environment

Bill introduced late in the first parliamentary session – take legislative steps to deliver that commitment. This supports the ambition to have 'the most ambitious environmental programme of any country on earth'.

4 The Environmental Governance Part of the Environment Bill (Part 1) includes provisions to:

- allow government to set long-term targets (of at least 15 years duration) in relation to the natural environment and people's enjoyment of the natural environment via statutory instrument;
- require government to meet long-term targets, and to prepare remedial plans where long-term targets are not met;
- require government to set, by October 2022, at least one long-term target in each of the priority areas of air quality, water, biodiversity, and resource efficiency and waste reduction;
- require government to set and meet an air quality target for fine particulate matter in ambient air ($PM_{2.5}$);
- require government to periodically review all environmental targets to assess whether meeting them would significantly improve the natural

environment in England;

- establish the process by which a long-term target is set and amended, as well as an enhanced process where a long-term target is lowered or revoked;
- require the government to have, and maintain, an Environmental Improvement Plan, a plan to significantly improve the natural environment, which sets out the steps the government intends to take to improve the natural environment, and which sets out interim targets towards meeting the long-term targets;
- require government to produce an annual report on the Environmental Improvement Plan, to consider progress towards improving the natural environment and meeting the targets;
- require government to review the plan periodically, to consider progress and whether further or different steps are needed to improve the natural environment and meet the targets, and if appropriate revise the plan;
- require government to collect and publish data used to measure progress in improving the natural environment and

meeting the targets;

- require the publication of a policy statement on environmental principles setting out how environmental principles specified under the Bill are to be interpreted and applied by Ministers of the Crown during the policymaking process;
- create a new, statutory and independent environmental body, the Office for Environmental Protection (OEP), to hold government to account on environmental law and its Environmental Improvement Plan now that the UK has left the EU;
- define the scrutiny, complaints and enforcement functions of the OEP and their scope;
- establish an OEP enforcement process of environmental review
- define the nature of the OEP, including considerations of membership, remuneration, staffing, powers, reporting, funding, accounts and other issues;
- require the government to publish a report on the impact of all new environmental primary legislation; and
- require the government to undertake a

report on environmental legislation across the world on a two yearly basis.

5 The Environmental Governance: Northern Ireland Part of the Environment Bill (Part 2) includes provisions to:

- extend the application of the OEP to Northern Ireland, and make separate provision for Environmental Improvement Plans and environmental principles in Northern Ireland.

6 The Waste and Resource Efficiency Part of the Environment Bill (Part 3) includes provisions to:

- require producers to pay the full net cost of managing their products at end of life to incentivise more sustainable use of resources;
- allow deposit return schemes to be established, whereby a deposit is included in the price of an in-scope item (such as a drink in a bottle or can) which is redeemed when the item is returned to a designated point;
- enable producer responsibility obligations to be applied at all levels of the waste hierarchy to, for example, facilitate the prevention of food waste and increase the redistribution of food

surplus;

- enable charges to be applied to specified single-use plastic items;
- require local authorities in England to collect the same range of materials for recycling from households;
- ensure households have a weekly separate food waste collection;
- ensure businesses and public bodies in England present recyclable materials for separate collection and arrange for its separate collection;
- enable government to set resource efficient product standards and information and labelling requirements, to drive a shift in the market towards durable, repairable and recyclable products;
- improve the proportionality and fairness of litter enforcement, by issuing statutory guidance on the use of enforcement powers and extending an existing power to set out conditions to be met by all those carrying out enforcement activity;
- improve the management of waste, by enabling the Secretary of State to make regulations in relation to waste tracking digitally;

- improve the regulators' effectiveness in tackling waste crime, reducing the cost of that criminal activity on the wider economy, environment and society;
- allow the Environment Agency to be more flexible and responsive in managing exempt waste sites and ensure proportionate controls are in place to avoid environmental harm or illegal activity as waste market practices change;
- fill a gap in existing powers to ensure that waste can be collected and disposed of when normal processes fail;
- enable the Secretary of State to make regulations to amend the permitted range of penalties for existing Fixed Penalty Notices; and
- enable the Secretary of State to regulate the import, export or transit of waste for export, and hazardous waste.

7 The Air Quality and Environmental Recall Part of the Environment Bill (Part 4) includes provisions to:

- amend Part 4 of the Environment Act 1995 (which creates the Local Air Quality Management Framework) to strengthen the requirements in respect of the

National Air Quality Strategy, including a requirement for it to be regularly reviewed;

- amend the Local Air Quality Management Framework to clarify duties and enable greater cooperation between different levels of local government, and other relevant public bodies, in the preparation of Local Air Quality Action Plans;
- amend Part 3 of the Clean Air Act 1993 to enable quicker, simpler and more proportionate enforcement of Smoke Control Areas, a key means by which local authorities can control pollution from domestic solid fuel burning; and
- provide for mandatory recall notices for vehicles and equipment that do not comply with relevant environmental standards and for fines to be issued when a minimum recall rate is not met.

8 The Water Part of the Environment Bill (Part 5) includes provisions to:

- change the procedural requirements for Water Resources Management Plans, and enable increased collaboration between different water undertakers to better manage water resources;

- require the preparation of Drainage and Sewerage Management Plans by sewerage undertakers, to better plan for the management of waste water;
- modernise the process for modification of water and sewerage undertaker licence conditions by the Water Services Regulation Authority ("Ofwat") to bring it in line with other utilities, and to strengthen Ofwat's ability to improve water and sewerage undertakers' operations;
- change the circumstances in which a licence to abstract water from the environment can be revoked or varied without paying compensation, to prevent damage to the environment;
- enable future updates to the lists of priority substances in water quality legislation, and enable the reallocation of regulatory responsibilities in the Solway Tweed river basin district; and
- enable updates to be made to the valuation calculations relevant to the apportionment of internal drainage board (IDB) charges in secondary legislation, allowing for the creation of new or expansion of existing IDBs where there is a local desire to do so.

9 The Nature and Biodiversity Part of the Environment Bill (Part 6) includes provisions to:

- amend section 40 of the Natural Environment and Rural Communities Act 2006 to strengthen and improve the duty on public bodies to conserve and enhance biodiversity, in accordance with the proper exercise of their functions;
- mandate net gain in biodiversity through the planning system, requiring a 10% increase in biodiversity after development, compared to the level of biodiversity prior to the development taking place, as measured by a metric set out by Defra;
- require the preparation and publication of Local Nature Recovery Strategies, a tool to direct action for nature, and place an emphasis on supporting local leadership of nature improvement;
- provide for Species Conservation and Protected Site Strategies to improve the conservation and protection of our most vulnerable species and habitats;
- provide greater enforcement powers to the Forestry Commission to reduce illegal tree felling, and require local

authorities to consult local residents prior to the felling of street trees; and

- address illegal deforestation in supply chains by placing requirements on larger businesses operating in the UK to establish, implement and report on a due diligence system to ensure illegally produced forest risk commodities do not enter their supply chain, and by prohibiting the use of forest risk commodities that have not been produced in accordance with local laws relating to land use and land ownership.

10 The Conservation Covenants Part of the Environment Bill (Part 7) includes provisions to:

- provide for Conservation Covenants: voluntary, legally binding private agreements between landowners and responsible bodies, designated by the Secretary of State, which conserve the natural or heritage features of the land, enabling long-term conservation.

11 The Miscellaneous and General Provisions Part of the Environment Bill (Part 8) includes provision to:

- amend two pieces of retained European Union law relating to the regulation of

chemicals.

- allow for consequential provision; regulations; commencement and transitional or saving provision; and
- set out the position in relation to Crown application; financial provisions; and the extent and the short title of the Bill, which may be cited as the Environment Act 2021.

12 The Environment Bill was carried over into the current Parliamentary session due to the exceptional pressure placed on the Parliamentary timetable by the COVID-19 pandemic. In the 2019-2021 session the Bill reached the second day of Report Stage in the House of Commons. The money resolution and ways and means resolution for the Bill, approved by the House in the last session, continue to apply to the Bill.

13 Since the Environment Bill was first introduced, a number of government amendments have been made to the Bill, these are:

- Amendment to clause 6 to clarify that 'England', for the purposes of the clause 6 environmental targets review provisions, includes England's inshore and offshore areas as originally

intended. Amendment to clause 6 to clarify that ‘England’, for the purposes of the clause 6 environmental targets review provisions, includes England’s inshore and offshore areas.

- Amendments to clause 28 and Schedule 3, plus the addition of a new clause to bring climate change legislation into the enforcement remit of the OEP, and ensure both the OEP and Committee on Climate Change are able to effectively undertake their separate and important roles.
- Amendments to clauses 22, 34, 35, 37, 38, and Schedule 3 to clarify the OEP’s enforcement function and provide that environmental review will take place in the High Court. Government has also tabled a new clause which provides that the Secretary of State may issue guidance to the OEP on its enforcement policy, and amendments aligning the clauses relating to the OEP’s devolved enforcement functions in Northern Ireland (Schedule 3) with the amendments under Part 1 of the Bill for England.
- A correction to clause 73, the provision which allows for the mandatory recall of

environmentally non-compliant vehicles.

- Amendments to the nature chapter introducing new clauses to enable a strategic, district-level approach to licensing of protected species (clause 104) and include a strategic approach to protected species and sites (clause 102 and clause 103).
- Powers to impose due diligence obligations for forest risk commodities in a new clause (clause 107) and schedule (Schedule 16).
- Government has also made a number of minor and/or technical updates to the drafting of the Bill, including:
    - a technical correction to clause 44 and Schedule 2 to confirm that 'environmental protection' includes assessment of environmental protection.
    - a technical correction to Schedule 8 confirming the role of the scheme administrator for a deposit return scheme in relation to Scotland;
    - updates to clauses 59 and 62 to take account of the Waste and Environmental Permitting etc. (Legislative Functions and

Amendment etc.) (EU Exit) Regulations 2020;

- clarifying, in Part 7 of the Bill, which Schedule to the Infrastructure Act 2015 the Environment Bill refers to;
- a technical correction, in Schedule 14, to allow exemptions to biodiversity net gain for permitted development rights to be set in secondary legislation rather than primary;
- clarifying, in Schedule 17, the provision of conservation covenants to demesne land, land subject to escheat to the Crown, and land vested in the Crown as bona vacantia (forms of land which pass to the Crown, for example where the land is disclaimed by a trustee in a bankruptcy);
- a change to the Bill's land drainage clause (clause 91), to reflect the replacement of other legislation which is referred to by the Bill, following Royal Assent of the Sentencing Act 2020;
- 'Welsh Assembly' has been updated to 'Senedd Cymru' throughout.

14 Since the Environment Bill was first introduced the following publications have been made in relation to the Bill, these are:

- A draft Environmental Principles Policy Statement was published for consultation on 10 March 2021. The consultation will close on 2 June 2021. The Policy Statement will guide ministers across Government in applying the principles.
- More detail on the objectives for targets that are being developed to be set under the Bill's framework was published on 19 August 2020. This includes the possibility of setting a range of targets in each category if that is what is needed to deliver 'significant improvement'.
- On 24 March 2021, consultations on two of the key resources and waste measures in the Bill were launched. The consultations on deposit return schemes for drinks containers and extended producer responsibility for packaging will run until 4 June 2021. These are the second consultations on these schemes, and focus on the detail of how they should be implemented, in order to inform secondary legislation.

Policy background

Exiting the European Union (EU)

15 On 1 January 1973, the UK joined the European Economic Community, now the European Union.

16 On 17 December 2015, the European Union Referendum Act 2015 received Royal Assent. The Act made provision for holding a referendum in the UK and Gibraltar on whether the UK should remain a member of the EU. The referendum was held on 23 June 2016. More than 33.5m people, some 72 per cent of registered voters, voted in the referendum and 52 per cent of those who voted, voted to leave the EU.

17 The European Union (Notification of Withdrawal) Act 2017 received Royal Assent on 16 March 2017. On 29 March 2017, the then Prime Minister Theresa May gave notification of withdrawal of the UK from the EU under Article 50(2) of the Treaty on European Union. The European Union (Withdrawal) Act 2018 received Royal Assent on 26 June 2018. Its purpose was to give effect to withdrawal and to provide a functioning statute book upon the UK's departure from the EU. Section 16 of the Withdrawal Act required the Secretary of State to publish a draft Bill to make provision

for a new environmental governance body and a requirement for Ministers of the Crown to have regard to a new policy statement on environmental principles when making policy following the UK's withdrawal from the EU.

18 The Withdrawal Agreement negotiated by Prime Minister Boris Johnson was agreed by European leaders at the European Council on 17 October 2019. In addition, the government made a unilateral declaration concerning the operation of the 'Democratic consent in Northern Ireland' provision of the Protocol on Ireland/Northern Ireland, which was published on the same day. The European Union (Withdrawal Agreement) Act 2020 received Royal Assent on 23 January 2020, ratifying the EU-UK Withdrawal Agreement. The principal purpose of the Act was to implement the Withdrawal Agreement, the separation agreement between the UK and the EEA EFTA countries (EEA EFTA Separation Agreement) and the Swiss Citizens' Rights Agreement.

19 On 31 January 2020, the UK left the European Union and the Withdrawal Agreement concluded with the EU entered into force.

20 On 2 March 2020, the first round of negotiations began. A EU-UK Trade and

Cooperation Agreement was agreed by the UK and EU on 24 December 2020. The European Union (Future Relationship) Act 2020 received Royal Assent on 30 December 2020. The Transition Period provided for in the Withdrawal Agreement ended at 11pm on 31 December 2020.

Part 1: Environmental Governance

21 The Draft Environment (Principles and Governance) Bill 2018 was published for parliamentary pre-legislative scrutiny on 19 December 2018, fulfilling requirements for publication of a draft Bill under section 16 of the European Union (Withdrawal) Act 2018. Part 1 of this Bill updates that Draft Bill in light of pre-legislative scrutiny reports by the Environment, Food and Rural Affairs Select Committee and Environmental Audit Committee in the previous parliament, which were published on 30 April 2019 and 24 April 2019 respectively. The government of the day responded to these reports when it introduced its Environment Bill, which the current Bill largely takes forward, in October 2019.

22 Most of the UK's environmental law and policy has derived from the EU, and EU structures and processes have provided for oversight and enforcement. The Bill sets out

the measures needed to ensure that there is no environmental governance gap now we have left the EU. The Bill will require the setting of long-term, legally binding and joined-up targets tailored to England, embed consideration of environmental principles in future policy making and establish the independent Office for Environmental Protection.

23 The Bill places a statutory requirement for government to prepare and maintain an Environmental Improvement Plan (EIP), the first being the 25 Year Environment Plan published in January 2018, and creates a new statutory cycle of monitoring, planning and reporting to ensure continuing improvement to the environment. It also establishes a new framework for setting long-term, legally binding and joined-up targets (covering at least air quality, resource efficiency and waste reduction, water and biodiversity). As part of the framework for setting targets, the Bill will include a specific duty to set a target for annual mean concentrations in ambient air of the air pollutant of greatest harm to human health: fine particulate matter ($PM_{2.5}$).

24 The Bill legislates for environmental principles to protect the environment from

damage by making environmental considerations central to the policy development process across government. The principles work together to legally oblige policy-makers to consider choosing policy options which cause the least environmental harm. The Statement on Environmental Principles will set out how the principles should be interpreted and applied by policy makers.

25 The Bill also creates a new public body – the Office for Environmental Protection (OEP) – as a domestic independent body that will be responsible for taking action in relation to serious breaches of environmental law. Through its scrutiny and advice functions, the OEP will monitor progress in improving the natural environment in accordance with the government's domestic environmental improvement plans and targets. It will be able to provide government with written advice on any proposed changes to environmental law. Through its complaints and enforcement mechanisms, the OEP will take a proportionate approach to managing compliance issues relating to environmental law.

26 Ministers will be required to make a statement to Parliament setting out the effect

of new primary environmental legislation on existing levels of environmental protection provided for by environmental law. These statements will be published and open to scrutiny by Parliament, environmental stakeholders and the broader public as the proposed new primary environmental legislation passes through Parliament.

27 The Bill also includes a commitment to review the biggest developments in environmental legislation from around the world every other year and use the findings when considering the UK's own environmental plans.

Part 2: Environmental Governance: Northern Ireland

28 Under the Northern Ireland Act 1998, the Northern Ireland Assembly has legislative competence for a number of areas of law. The Bill allows the Office for Environmental Protection (OEP) to exercise its functions in Northern Ireland, subject to the approval of the Northern Ireland Assembly.

29 The Environment Bill sets out measures that would provide the OEP with equivalent powers in England and Northern Ireland, and ensure that operationally it can function across both administrations. In some cases, this has meant providing for slightly different

processes that reflect the different legal and policy frameworks. In others, it has meant ensuring appropriate Northern Ireland representation, for example on the board of the OEP.

Part 3: Waste and Resource Efficiency

30 In the 25 Year Environment Plan, government committed to using resources from nature more sustainably and efficiently, and to minimising waste. In December 2018, the previous government published its Resources and Waste strategy, *Our Waste, Our Resources: A strategy for England*, to help move towards a more sustainable, circular economy. Waste management is based on a 'waste hierarchy', which sets a priority order when shaping waste policy and managing waste. It gives top priority to preventing waste in the first place. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (for example, landfill). The Bill will provide the legislative framework needed to deliver on many of the commitments in the Resources and Waste Strategy, by introducing new powers and amending existing legislation such as the Environment Act 1995 and Environmental Protection Act 1990.

31 New powers in this Bill allow for obligations to be placed on producers in relation to the re-use, redistribution, recovery and recycling of products. These powers replace and update producer responsibility measures in sections 93 to 95 of the Environment Act 1995 and Producer Responsibility Obligations (Northern Ireland) Order 1998, which are repealed by the Bill. These changes also clarify that producer responsibility obligations can include prevention of waste and redistribution, making it clear that action can be taken on food waste. Producer responsibility schemes are already in place for four waste streams (including packaging waste), putting a level of financial responsibility on producers for their goods at end of life. The Bill also allows government to require producers to pay the full net cost of managing their products at end of life to incentivise them to design their products with sustainability in mind, with the aim of ultimately reducing consumption of raw materials. The previous government consulted from 18 February to 13 May 2019 on reforming the UK packaging producer responsibility system and received 679 responses. *Reforming the UK packaging producer responsibility system: summary of responses and next steps* was published on

23 July 2019.

32 The Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019 amended the Ecodesign for Energy-Related Products Regulations 2010 on IP completion day to allow for mandatory product standards (which may relate to energy efficiency and resource efficiency) to be set by the government for energy-related products. The Bill complements these provisions by enabling resource efficiency standards to be set for non-energy-related products. The Bill will also allow for clear labelling to enable consumers to identify products that are more durable, repairable and recyclable. These measures are aimed at reducing consumption of materials.

33 The Climate Change Act 2008 makes provision for charging for the supply of single-use carrier bags. The introduction of a 5p plastic bag charge in England in 2015 has resulted in a 90% decrease in plastic bag sales by main supermarket retailers. The Bill allows for the introduction of charges for any single-use plastic item.

34 The Environmental Protection Act 1990 underpins local authorities' duty to collect household waste in England from domestic

properties. Current arrangements ensure that every local authority collects some recyclable materials. Local authorities, however, do not all collect the same range of materials, which has caused confusion as to what can be recycled. The Bill stipulates a consistent set of materials that must generally be collected individually separated from all households and businesses, including food waste. The previous government consulted from 18 February to 13 May 2019 on consistency in household and business recycling collections in England and received 1713 responses. *Consistency in recycling collections in England: executive summary and government response* was published on 23 July 2019.

35 The Bill also allows for the introduction of deposit return schemes where consumers pay an up-front deposit when they buy an item (such as a drink in a bottle or can), which is then redeemed on return of the used item. These schemes can increase recycling and reuse, and reduce littering. The previous government consulted from 18 February to 13 May 2019 on introducing a Deposit Return Scheme for drinks containers in England, Wales and Northern Ireland and received a total of 208,269 responses. *Introducing a Deposit Return Scheme (DRS) in England,*

Wales and Northern Ireland: summary of responses was published on 23 July 2019.

36 The rules for transporting, storing or disposing of waste include the general requirement to have an environmental permit if disposing of or recovering waste and the requirement for carriers, brokers of or dealers in waste to register with the Environment Agency. Illegal waste activity was estimated to have cost the English economy over £600 million in 2015. The Bill will help prevent waste crime by modernising the regulatory framework; deter waste crime by ensuring regulators can take effective enforcement action; and detect waste crime by allowing for electronic waste tracking.

37 The Bill also contains measures to improve the proportionality and fairness of enforcement against littering, as part of the continued delivery of the *Litter Strategy for England*.

Part 4: Air Quality and Environmental Recall

38 The UK has legally binding targets to reduce overall national emissions of five air pollutants (fine particulate matter, ammonia, nitrogen oxides, sulphur dioxide, and non-methane volatile compounds) by 2020 and 2030. The previous government committed to delivering clean air in the 25

Year Environment Plan, and consulted on a draft Clean Air Strategy (CAS) in May 2018, which received 711 responses. The final CAS was published in January 2019. It sets out the comprehensive actions required across all parts of government to improve air quality, at both the national and local levels, including by setting new and ambitious goals, bringing forward targeted legislation, investment and policies. This Bill implements key proposals outlined in the Strategy, enabling greater local level action on air pollution, to tackle key sources of pollutants, which will help the UK achieve its overall national emission obligations.

39 The Environment Act 1995, the Clean Air Act 1993 and the Environmental Protection Act 1990 establish frameworks for local authorities to address air quality. In its manifesto, the government committed to introducing strict new laws on air quality, and introducing new environmental targets, including for air quality.

40 The Environment Act 1995 establishes the Local Air Quality Management Framework, under which local authorities have obligations to assess and manage the quality of the air in their areas. Where specified standards and objectives are not being met, authorities are

required to declare Air Quality Management Areas and then prepare action plans. Amendments made to this Act by the Bill will strengthen these duties by giving greater clarity on the requirements of action plans enabling greater collaboration between local authorities and all tiers of local government, as well as with Relevant Public Authorities, in the creation and delivery of those plans. It will also require the Secretary of State to regularly review the National Air Quality Strategy, which specifies the standards and objectives that local authorities need to achieve.

41 Part 3 of the Clean Air Act 1993 is the UK's main legislative framework for the control of pollution from domestic solid fuel burning, the single biggest source of fine particulate matter emissions in the UK. It gives local authorities the power to make an order designating parts of their area as Smoke Control Areas (SCAs), in which it is an offence to emit smoke from chimneys of buildings and chimneys that serve the furnace of any fixed boiler or industrial plant. The amendments through the Bill will enable local authorities to issue civil financial penalties instead of criminal prosecutions, making enforcement quicker, simpler and more proportionate. It will strengthen the

existing penalties for the sale of controlled solid fuels in SCAs, and ensure consumers are aware that it is an offence to buy these fuels for use in SCAs. It will also give authorities the power to broaden the scope of their SCAs to include moored inland waterway vessels.

42 Part 3 of the Environmental Protection Act 1990 stipulates what can constitute a statutory nuisance. This includes smoke from premises, except private dwellings in SCAs which are exempt. The amendment of this Act by the Bill will remove this exemption in England so that a local authority will be able to pursue somebody who emits smoke from private dwellings in SCAs where it is prejudicial to human health or causing a nuisance.

43 Measures in this Part will also enable the Secretary of State to compel manufacturers of vehicles, vehicle components and Non-Road Mobile Machinery (NRMM) to recall their products for reasons of environmental failure.

44 In late 2015, government became aware that vehicles on the road in the UK were emitting more NOx (a controlled pollutant) than their emission test results would suggest. This was a result of software fitted

to the vehicles. The situation highlighted the limits of the government's powers to compel a recall of vehicles or engines for NRMM for reasons of environmental non-conformity or failure. This is in contrast to the government's power to compel a recall of any product (including road vehicles and NRMM) on the basis that it is a "dangerous product" (or "not a safe product") pursuant to the General Product Safety Regulations 2005 (2005/1803).

Part 5: Water

45 The water industry was privatised in 1989 pursuant to the Water Act 1989. The regulatory regime for the privatised water industry is principally set out in the Water Industry Act 1991, and amendments made to that Act (notably in 2003 and 2014). Water abstraction licensing was introduced in the 1960s; the licensing regime is principally set out in the Water Resources Act 1991 and enables regulators to act to protect the environment and the needs of water users. The legislative regime providing for flood risk management by the government and other public authorities is set out in various pieces of legislation; the principal primary legislation relating to the powers and duties of internal drainage boards is the Land Drainage Act

1991.

46 Government committed to delivering clean and plentiful water and reduced risk of harm from environmental hazards in the 25 Year Environment Plan. To contribute towards this, the previous government launched a consultation (*Improving our Management of Water in the Environment*), which ran between 15 January and 12 March 2019. The consultation received 298 responses. *Improving our management of water in the environment: summary of responses and government response* was published on 23 July 2019.

47 The Bill sets out measures to provide for policy outcomes for water resources, drainage and flood management through:

- improved water resources planning, which facilitates collaborative regional planning and considers the needs of all sectors of water users, including the environment;
- placing on a statutory footing drainage and wastewater planning to assess risks to sewerage networks and network capacity;
- modernising water regulation by reforming elements of the abstraction

licensing regime to link it more tightly to the government's objectives for the water environment; and

- enabling updates to be made to the valuation calculations relevant to the apportionment of internal drainage board (IDB) charges in secondary legislation, allowing for the creation of new or expansion of existing IDBs where there is a local desire to do so.

48 It also includes measures to protect water quality in our surface and groundwater, by enabling updates to the lists of priority substances that pose a threat to water bodies in line with the latest scientific knowledge, in the absence of powers under section 2(2) of the European Communities Act 1972.

Part 6: Nature and Biodiversity

49 Nature is in decline, much of England's wildlife is deteriorating, and many ecosystems are degraded.[1] The UK has a number of international and legislative commitments to take urgent and effective action to halt the loss of nature or

[1] JNCC. 2019. Sixth National Report to the United Nations Convention on Biological Diversity: United Kingdom of Great Britain and Northern Ireland. JNCC, Peterborough. Available at http://archive.jncc.gov.uk/pdf/UK_CBD_6NR_v2.pdf.

biodiversity.

50 Since the 25 Year Environment Plan set the ambition towards embedding a broad ‘environmental net gain’ principle in the planning system, government has focussed on embedding the principle of biodiversity net gain. In July 2018, the revised National Planning Policy Framework strengthened planning policy on biodiversity net gain by making it clearer that all development in scope should deliver biodiversity net gains. From December 2018 to February 2019, government consulted on whether biodiversity net gain should be made mandatory and received 470 responses. In March 2019, in response to strong support at consultation, the previous government committed to mandating biodiversity net gain in the Environment Bill. The government committed in its manifesto to increasing biodiversity whilst continuing progress towards a target of 300,000 new homes a year by the mid-2020s.

51 Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 requires all public authorities carrying out functions in England (together with HMRC in Wales also) to have regard to conserving biodiversity when delivering their functions.

The existing wording does not adequately reflect the ambition or language of the 25 Year Environment Plan. Shifting the focus of the duty to an active requirement to seek the further conservation and enhancement of nature should better align public authorities' action on biodiversity with government's ambition.

52 A Species Conservation Strategy is a new mechanism to safeguard the future of species at greatest risk. By undertaking surveying, planning and zoning, and developing measures to mitigate or compensate for any impact on the species up front, local populations can be secured. A Protected Site Strategy will seek to achieve a similar purpose in respect of protected sites. There will be a variety of solutions that a strategic approach can lead to, depending on the factors affecting the site's condition and the local circumstances. These Strategies will improve the protection and conservation of our most vulnerable species and habitats, whilst also reducing delays to development.

53 Spatial plans enable the public, private and charity sectors to direct investment in nature to where it can best benefit the natural environment, and have an important role to

play in delivering the government's commitment to nature recovery. Although such plans do exist in some areas of England, they are often produced by a variety of bodies working at different spatial scales. Local Nature Recovery Strategies (LNRSs) will put spatial planning for nature on a statutory footing, and will support local action by consistently mapping important existing habitats and opportunities to create or restore habitat. For example, the biodiversity net gain consultation identified a need for local plans for nature to target biodiversity increases. Developed through a collaborative approach, LNRSs will also support the delivery of a Nature Recovery Network by acting as a key tool to help local partners better direct investment and action that improves, creates and conserves wildlife-rich habitat.

54 To tackle deforestation in supply chains, new provisions will place requirements on larger businesses operating in the UK that use agricultural commodities associated with wide-scale deforestation, referred to as 'forest risk' commodities. These new provisions will prohibit businesses in scope from using forest risk commodities that were produced on land that was illegally occupied or used.

They will also require regulated businesses to establish, implement, and report annually on a due diligence system that assesses and mitigates the risk of illegally produced commodities entering their supply chain. The Secretary of State will have powers to enforce these requirements, and will be required to report to Parliament every two years on the law's effectiveness and any steps they intend to take to ensure that this policy is delivering as intended.

55 This Bill also includes measures covering forestry and street trees, including amendments to the Forestry Act 1967 to tackle illegal felling, and measures requiring local highway authorities to consult the public before felling any street trees. Current regulation on tree felling include felling licences in the Forestry Act 1967, provisions in the Highways Act 1980, Tree Preservation Orders (TPOs) under the Town and Country Planning Act 1990. On 30 December 2018, the previous government announced a public consultation on protecting and enhancing England's trees and woodlands which received 4671 responses.

Part 7: Conservation Covenants

56 This Part addresses the absence of a

simple legal tool that landowners can use to secure conservation benefits when land is sold or passed on. Conservation covenants are private, voluntary agreements between a landowner and responsible body, such as a conservation charity or public body. They provide for the conservation of the natural environment and heritage assets for the public good. They can bind subsequent owners of the land, so have the potential to deliver long-lasting conservation benefits.

57 In the 25 Year Environment Plan, government set out its ambition of recovering nature. Individual landowners can play an important role in conservation efforts, but under the current law it is difficult to ensure that legal obligations for conservation survive once the land has been sold or passed on. As a result, conservation opportunities are missed or fail to secure long-term, sustainable outcomes. Complex legal workarounds have sometimes been used but these can be costly and do not always appeal to landowners. Conservation covenants are used in other countries including New Zealand, the USA, Canada and Scotland.

58 The Law Commission examined the need for conservation covenants and concluded that legislation should be introduced,

preparing a draft Bill in 2014. The previous government consulted on the Law Commission proposals in February and March 2019. There was broad support for conservation covenants from the 112 responses across a range of stakeholders. The previous government committed to include provisions for conservation covenants in the Environment Bill in its consultation response published on 23 July 2019. The key change to the Law Commission Bill is to allow for-profit bodies to apply to become responsible bodies.

Part 8: Miscellaneous and General Provisions

59 The use of chemicals in the EU is regulated by Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (the “REACH Regulation”). The REACH Regulation forms part of retained EU law by virtue of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). The REACH Enforcement Regulations 2008 provide for the contravention of various provisions of the REACH Regulation to be a criminal offence, and set out which domestic bodies enforce those offences. Part 8 and Schedule 20 give

the Secretary of State the power to amend the REACH Regulation and the REACH Enforcement Regulations 2008 as they apply in the UK at the end of the transition period, in order to keep them up to date and respond to emerging needs or ambitions for the effective management of chemicals.

Legal background

60 A large proportion of UK environmental law has been derived from the EU, and its implementation was monitored and enforced by EU mechanisms and institutions, mainly the European Commission until 31 December 2020. This Bill will provide for a new policy statement setting out the environmental principles that will guide environmental policy-making and legislation, in a similar way to EU principles. The Bill will also provide for a domestic replacement for the scrutiny and enforcement function of the European Commission.

61 The European Union (Withdrawal) Act 2018 provided for legislation derived from the EU to form part of retained EU law upon the UK's departure from the EU. The European Union (Withdrawal Agreement) Act 2020 made provision for the conversion of EU law into retained EU law to take place at the end of

the transition period rather than on exit day. The Bill provides powers to amend retained EU law in relation to several areas, including the regulation of chemicals and water quality.

62 The Bill also makes provision for new domestic policy to improve air quality, conserve and enhance nature, improve the management of resources and waste and modernise water regulation. The following significant domestic legislation is referenced or amended by this Bill:

- Forestry Act 1967
- Highways Act 1980
- Environmental Protection Act 1990
- Town and Country Planning Act 1990
- Land Drainage Act 1991
- Water Industry Act 1991
- Clean Air Act 1993
- Environment Act 1995
- Pollution Prevention and Control Act 1999
- Water Act 2003
- Natural Environment and Rural Communities Act 2006
- Climate Change Act 2008

- Water Act 2014

Territorial extent and application

63 Clause 136 sets out the territorial extent of the clauses in the Bill. The extent of a Bill is the legal jurisdiction where it forms part of the law. The extent of a Bill can be different from its application. Application refers to where it has practical effect.

64 Subject to a small number of exceptions, the Bill forms part of the law of England and Wales and applies to England. Around half of the Bill's provisions extend and apply to Wales with a significant number of provisions having Great Britain, UK or England, Wales and Northern Ireland extent. Clauses 47, 58, 60, 64, 66, 70, 85 and Schedule 2 form part of the law of Northern Ireland and apply to Northern Ireland only. Clauses 84 and 89 apply to Wales only.

65 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The following clauses touch on matters that are devolved to Scotland or Wales or transferred to Northern Ireland. Where legislative

consent has not yet been received, this is being sought in relation to these/them: clause 47 (improving the natural environment: Northern Ireland); clause 48 (the Office for Environmental Protection: Northern Ireland); clause 49 (producer responsibility obligations); clause 50 (producer responsibility for disposal costs); clause 51 (resource efficiency information); clause 52 (resource efficiency requirements); clause 53 (deposit schemes); clause 54 (charges for single use plastic items); clause 55 (charges for carrier bags); clause 57 (electronic waste tracking: Great Britain); clause 58 (electronic waste tracking: Northern Ireland); clause 59 (hazardous waste: England and Wales); clause 60 (hazardous waste: Northern Ireland); clause 62 (regulations under the Environmental Protection Act 1990); clause 63 (powers to make charging schemes); clause 64 (waste charging: Northern Ireland); clause 65 (enforcement powers); clause 66 (enforcement powers: Northern Ireland); clause 67 (littering enforcement); clause 68 (fixed penalty notices); clause 69 (regulation of polluting activities); clause 70 (waste regulation: amendment of Northern Ireland Order); clause 71 (local air quality management framework); clause 72 (smoke control areas: amendments of the Clean Air

Act 1993); clause 77 (water resources management plans, drought plans and joint proposals); clause 78 (drainage and sewerage management plans); clause 79 (authority's power to require information); clause 81 (electronic service of documents); clause 83 (water quality: powers of Secretary of State); clause 84 (water quality: powers of Welsh Ministers); clause 85 (water quality: powers of Northern Ireland department); clause 86 (Solway Tweed river basin district: power to transfer functions); clause 87 (water quality: interpretation); clause 89 (valuation of other land in drainage district: Wales); clause 90 (valuation of agricultural land in drainage district: England and Wales); clause 91 (disclosure of Revenue and Customs information); clause 107 (use of forest risk commodities in commercial activity); clause 131 (amendment of REACH legislation); Schedule 2 (Improving the natural environment: Northern Ireland); Schedule 3 (The Office for Environmental Protection: Northern Ireland); Schedule 4 (Producer responsibility obligations); Schedule 5 (Producer responsibility for disposal costs); Schedule 6 (Resource efficiency information); Schedule 7 (Resource efficiency requirements); Schedule 8 (Deposit schemes); Schedule 9 (Charges for

single use plastic items); Schedule 10 (Enforcement powers); Schedule 11 (Local air quality management framework); Schedule 12 (Smoke control in England and Wales); Schedule 16 (use of forest risk commodities in commercial activity); and Schedule 20 (amendment of REACH legislation).

66 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: Environmental Governance

Chapter 1: Improving the natural environment

Clause 1: Environmental targets

67 Clause 1 provides a power for the Secretary of State to set long-term targets by regulation.

68 Subsection (1) provides the Secretary of State with a power to set long-term targets in relation to the natural environment or people's enjoyment of it. The natural environment is defined in clause 43 (meaning of “natural environment”). This definition includes living and non-living elements of the environment, such as plants, wildlife, their habitats, air, water and land, natural systems and processes through which organisms interact with their surroundings. As such, the definition extends to the marine environment, as well as the terrestrial and water environments. Targets relating to people’s enjoyment of the natural environment may relate to its use, access to natural areas or a measure of public views about the environment. Among other initiatives, enjoyment may be increased through

education and public awareness of the natural environment both past and present.

69 Subsection (2) requires the Secretary of State to set at least one long-term target in each of four priority areas. More than one long-term target could be set within a given priority area; however, one is the minimum. Subsection (3) defines those priority areas as air quality, water, biodiversity, and resource efficiency and waste reduction. Clause 3(9) requires that a draft statutory instrument (or instruments) satisfying the requirement in subsection (2) must be laid before Parliament by 31 October 2022.

70 Subsection (4) requires all long-term targets set under this clause to specify an objectively measurable standard to be achieved and a date by which this standard must be achieved.

71 A specified standard might be the exposure of a certain area to damaging levels of ammonia in the atmosphere, for example. The method for objective measurement should be clear and repeatable, with results reproducible within reason. The process of setting targets will necessarily involve some choices as to how a target will be measured. Subsection (5) provides that regulations made under this clause may make provision

specifying how a target will be measured.

72 Subsection (6) provides that long-term targets must have a minimum duration of 15 years.

73 Subsection (7) clarifies that a target is initially set once the regulations setting it come into force. This is relevant to calculating the specified date (that is, the duration) of long-term targets under this clause. Subsection (8) provides that, in Part 1, the terms “specified standard” and “specified date” mean the standard and date specified in subsection (4).

74 By virtue of clause 2(6), subsections (4) to (9) also apply to the $PM_{2.5}$ air quality target set under clause 2.

75 This clause, and clauses 2 to 6, extend to England and Wales. Subsection (9) prevents the Secretary of State from making provision in regulations made under this clause that could be made in an Act of Senedd Cymru. The regulations made under this clause can therefore make provision relating to the natural environment in England (including the English inshore area), as well as in the offshore area (to the extent that Her Majesty’s Government has functions).

Clause 2: Environmental targets: particulate matter

76 Subsection (1) introduces a requirement for the Secretary of State to set a target for an annual mean concentration level of fine particulate matter ($PM_{2.5}$) in ambient air, in secondary legislation by regulations. These regulations will be made having obtained expert advice as to the date that the target can be achieved and having considered the full economic analysis in line with clause 3(1).

77 Subsection (2) provides clarification that the fine particulate matter target is not required to be set for 15 years in the future, and therefore may not be a long-term target as defined in clause 1. This could be the case if the independent expert advice is that the target could be achieved more quickly.

78 Subsection (3) defines fine particulate matter ($PM_{2.5}$).

79 Subsection (4) specifies that regulations setting the target can also define “ambient air”.

80 Subsection (5) clarifies the duty to set a target for fine particulate matter in this clause does not discharge the duty on the Secretary of State to set a further long-term target for air quality under clause 1.

81 Subsection (6) clarifies the elements of the environmental targets framework set in

clause 1 that apply to the fine particulate matter target. These elements include the provisions that specify that the target will be set by secondary legislation that will specify the standard to be achieved and the date by which it will be achieved, as well as the details regarding how the target will be measured.

82 Subsection (7) defines the "$PM_{2.5}$ air quality target" as being the target set under subsection (1).

Clause 3: Environmental targets: process

83 Clause 3 sets out the process that must be followed by the Secretary of State before setting and amending any target.

84 Subsection (1) requires the Secretary of State to seek advice from independent experts before making any regulations under clauses 1 and 2. This could involve consulting expert individuals or bodies, with the purpose of advising the Secretary of State on setting appropriate targets.

85 Subsection (2) specifies that, when setting or amending a target, the Secretary of State must be satisfied that the target, or the amended target, can be met.

86 Subsections (3) to (6) set out the process for amending a target so as to lower or

revoke it. Lowering a target is defined in subsection (5) as a lowering of the standard to be achieved or an extension of the specified date for achieving the target. For example, where a target requires an increase in standard based on a numerical value, a reduction in that numerical value would constitute a lowering of the target.

87 Subsection (3) provides that a target may only be lowered or revoked where the Secretary of State is satisfied that meeting the target would have no significant benefit as compared to not meeting it or meeting a lower target, or that because of a change in circumstances, the costs of meeting the target would be disproportionate to the benefits. Those costs might be of an environmental, social, economic, or other nature.

88 Meeting a target may have no significant benefit – for example, if meeting it was anticipated to generate a health benefit, and new scientific evidence has now demonstrated that the same health benefit is achievable through meeting a revised or entirely new target.

89 A change in circumstances may, for example, occur as a result of an event, such as a significant wild fire or major flood, taking

place after the target is set. The financial costs, for example, of meeting the target may, following this change of circumstance, then be disproportionate to the benefits gained by meeting the target.

90 Subsection (4) requires that, before lowering or revoking a target, the Secretary of State must publish and lay before Parliament a statement that explains why the Secretary of State is satisfied that one of the grounds in subsection (3) has been met.

91 Subsection (6) prevents the Secretary of State from using the processes set out in this clause to revoke the $PM_{2.5}$ air quality target; however, the target may otherwise be amended in line with this clause.

92 Subsection (7) provides that, for the purposes of Part 1, a target is met where the specified standard is met by the specified date.

93 Subsection (8) specifies that the regulations made under clauses 1 and 2 are subject to the affirmative procedure.

94 Subsection (9) requires that a draft statutory instrument (or instruments) containing regulations setting the long-term targets for the priority areas required under clause 1(2) and the $PM_{2.5}$ air quality target

set under clause 2 must be laid before Parliament by 31 October 2022.

Clause 4: Environmental targets: effect

95 Clause 4 provides that the Secretary of State has a duty to ensure that the long-term targets set under clause 1 and the $PM_{2.5}$ air quality target set under clause 2 are met.

96 The environmental improvement plan (EIP) provisions under clauses 8, 11 and 14 set requirements for consideration of the progress made towards meeting targets, and for consideration of the need to introduce new measures to meet targets, when reviewing and renewing EIPs.

Clause 5: Environmental targets: reporting duties

97 Clause 5 sets out the reporting duties that must be fulfilled when a long-term target set under clause 1 or the $PM_{2.5}$ air quality target set under clause 2 ends.

98 Subsection (1) requires that all regulations setting targets under clauses 1 and 2 contain a reporting date. This is the date used to determine the timescales for producing the statements under clause 5.

99 Subsections (2) and (3) require the Secretary of State to prepare a statement confirming whether or not each target has been met. Alternatively, the statement may

provide that the Secretary of State is currently unable to make that confirmation. The statement must be published, and laid before Parliament, by the relevant reporting date set under subsection (1).

100 Subsections (4) and (5) set out the process the Secretary of State must follow in the event that the statement made under subsection (2) confirms that the target has not been met. The Secretary of State must prepare a report explaining why the target has not been met and setting out the steps taken, or intended to be taken, to achieve the required standard as soon as reasonably practicable. That report must be published, and laid before Parliament, within twelve months of the statement being laid.

101 Subsection (3)(c) provides that, where the Secretary of State is unable to confirm whether or not a target has been met, the statement made under subsection (2) must explain why and set out the steps the Secretary of State intends to take in order to be able to make that determination. In these cases, subsection (6) provides that the Secretary of State must prepare a further subsection (2) statement within six months of the initial statement being laid. There may be cases when the data needed to assess

whether a target has been met is not yet available, and the Secretary of State is therefore unable to confirm target achievement on the reporting date. Subsection (7) provides that, where further statements are needed pursuant to subsection (6), the requirements of subsections (3) to (6) apply equally to those statements.

Clause 6: Environmental targets: review

102 Clause 6 sets out the procedure for the Secretary of State to conduct a periodic review of all targets set under clauses 1 and 2.

103 Subsection (1) sets out the requirement for the Secretary of State to conduct the review. Subsection (2) clarifies that the purpose of the review is to consider whether the significant improvement test is met.

104 Subsection (3) explains that the significant improvement test is met where meeting the targets set under clauses 1 and 2, and any other environmental targets that the Secretary of State considers appropriate to consider, would bring about a significant improvement in the natural environment in England. Subsection (8) sets out certain requirements that those other environmental targets must meet to be capable of

consideration.

105 Subsection (4) provides that, following the conclusion of the review, the Secretary of State must publish, and lay before Parliament, a report confirming whether the Secretary of State considers that the significant improvement test has been met. Where the Secretary of State considers that the test has not been met, the report must set out the steps the Secretary of State proposes to take, using the powers in clauses 1 and 2, to ensure that it is met. In addition to identifying potential new targets, the report might also acknowledge, for example, the need for more research in a particular policy area in order to examine the possibility of developing a target in future.

106 Subsection (5) sets out that the Secretary of State must complete the first significant improvement test review by 31 January 2023.

107 Subsection (6) provides that, following the first review, future reviews must be conducted at intervals of no more than five years. Subsection (7) confirms that a review is completed when the Secretary of State publishes, and lays before Parliament, a report under subsection (4).

108 Subsection (8) sets out the conditions that

a target set otherwise than under clauses 1 and 2 must meet in order to be capable of consideration by the Secretary of State under subsection (3)(b). In broad terms, those targets must meet the same standards as targets set under clauses 1 and 2. These conditions include the need for a target to have an objectively measurable standard to be achieved by a specific date.

109 The National Emission Ceilings Regulations 2018 targets are examples of those that may be taken into consideration under the conditions set out in subsection (8). These targets relate to reductions in total anthropogenic emissions of five key air pollutants in the UK by 2030.

110 Subsection (9) provides that "England", for the purposes of clause 6, includes the English inshore region and the English offshore region (each as defined in section 322 of the Marine and Coastal Access Act 2009).

Clause 7: Environmental improvement plans

111 Clause 7 introduces a duty on the Secretary of State to prepare a plan for significantly improving the natural environment (an "environmental improvement plan" (EIP)). It sets requirements for what an EIP must contain.

The 25 Year Environment Plan, as published on 11 January 2018, will become the first EIP.

112 Subsection (1) introduces the requirement for the Secretary of State to prepare an EIP.

113 Subsection (2) clarifies that an EIP is a plan for significantly improving the natural environment in the period it covers. The natural environment is defined in clause 43 (meaning of “natural environment”). This definition includes living and non-living elements of the environment, such as plants, wildlife, their habitats, air, water and land, natural systems and processes through which organisms interact with their surroundings. As such, the definition extends to the marine environment, as well as the terrestrial and water environments.

114 Subsection (3) specifies that the period of each EIP must be at least 15 years. Long-term EIPs are needed because some aspects of the natural environment change slowly and require continuity in how they are managed. The current 25 Year Environment Plan covers a period of 25 years, but a future government may prefer to set an EIP for a different period. Clause 9 requires the government to review and revise EIPs at least every five years. A period of 15 years

allows for an EIP to be introduced, reviewed and revised twice before its end. This will allow its effectiveness to be assessed, and meaningful corrective action taken if necessary.

115 Subsection (4) specifies that the EIP must set out the steps the government will take to improve the natural environment during the lifetime of the EIP.

116 Subsection (5) allows EIPs to contain steps the Government will take to improve people's enjoyment of the natural environment. Steps relating to people's enjoyment of the natural environment may relate to its use, access to natural areas or a measure of public views about the environment. Amongst other initiatives, enjoyment may be increased through education and public awareness of the natural environment both past and present, natural systems and processes through which organisms interact with their surroundings. For example, the current 25 Year Environment Plan makes major new commitments to connect people with the environment to improve health and wellbeing, such as through the cross-governmental green social prescribing project. This project will test how to help connect more people to

nature-based activities to improve their mental health. One of the ten goals of the 25 Year Environment Plan also commits to "Enhancing beauty, heritage and engagement with the natural environment". We anticipate that the current 25 Year Environment Plan, including the approach the Government took on people's enjoyment of the natural environment and heritage, will set the benchmark for future EIPs.

117 This clause and clauses 8 to 14, 15, and 27 extend to England and Wales. Subsection (6) provides that the Secretary of State's functions in relation to EIPs are not exercisable in relation to the natural environment in Wales. The policy areas covered by EIPs therefore could cover the natural environment in England (including the English inshore area), as well as in the offshore area (to the extent that Her Majesty's Government has functions) and to Her Majesty's Government's international policy (including to the Overseas Territories where Her Majesty's Government has functions: Gibraltar and the British Virgin Islands, for example).

118 Subsection (7) confirms that the current 25 Year Environment Plan must be treated as an EIP. Furthermore, subsection (8)

specifies that references to the first EIP are to that document, and that references to the current plan refer to the plan that is in effect at the time.

Clause 8: Annual reports on environmental improvement plans

119 Clause 8 establishes a duty on the Secretary of State to produce annual reports on the implementation of the environmental improvement plan (EIP) and on whether the natural environment is improving. It explains when and how these reports should be published. Given clause 7(6), this clause applies only in relation to England.

120 Subsection (1) requires the Secretary of State prepare annual reports on the implementation of EIPs. These reports must be published (subsection (8)) and laid before Parliament (subsection (7)).

121 Subsection (2) requires that annual reports must describe what has been done to implement the EIP, and consider whether the natural environment (or particular aspects of it) has improved, during the period to which the report relates. Consideration of whether the environment has improved must have regard to information gathered under clause 15.

122 Subsection (3) provides that, when considering whether the natural environment (or aspects of it) has improved, the Secretary of State must consider the progress that has been made towards achieving the targets (or any relevant targets) set under clauses 1 and 2, and the interim targets (or any relevant interim targets) set under clauses 10 and 13.

123 Subsection (4) explains that the first annual report on the current EIP may cover any 12 month period that includes the day on which clause 8 comes into force. Government has already committed to producing annual reports on the implementation of the 25 Year Environment Plan. The first report was published on 16 May 2019, and covers the period from the EIP being launched until March 2019. The intention of this subsection is to allow the timing of the first statutory report to be aligned with the preceding non-statutory reports.

124 Subsection (5) states that, following the replacement of the current EIP, the first annual report should relate to the first 12 months of that EIP.

125 Subsection (6) states that all other annual reports should relate to the 12 month period immediately following the previous reporting

period. This ensures that there is a continuous timeline of annual reports relating to consecutive 12 month periods for the duration of each EIP.

126 Subsection (7) requires the Secretary of State to lay each annual report before Parliament within four months of the end of the 12 month period on which it reports. For example, an annual report assessing the period 1st April 2020 to 31st March 2021 must be laid before Parliament by 31 July 2021. Subsection (8) requires the Secretary of State to publish all annual reports laid before Parliament under this clause.

Clause 9: Reviewing and revising environmental improvement plans

127 Clause 9 provides for the review and revision of EIPs. It establishes a duty on the Secretary of State to review the EIP, and timeline in which to complete a review and, if appropriate, revise the plan. Given clause 7(6), this clause applies only in relation to England.

128 Subsection (1) establishes the duty on the Secretary of State to review the EIP and, if the Secretary of State is required to revise the plan under clause 10, or considers it appropriate to revise the plan as a result of the review, to produce a revised plan. It is

expected that revisions will be appropriate when each EIP is reviewed, but this clause does allow the Secretary of State to decide that no revision is appropriate following a review of the EIP.

129 Subsection (2) specifies that a revised plan will cover the remaining time period of the existing plan. The current EIP runs until 2043; any revisions to this plan will also be required to cover the period up to 2043. Furthermore, when an EIP for a future time period is produced in line with clause 12, the time period will be specified in that EIP and any revisions to it must retain the same end date.

130 Subsection (3) specifies that the first EIP (the 25 Year Environment Plan) must be reviewed by the end of January 2023. This is just over five years from its publication. This is considered to be sufficient time for some progress to be made against the EIP, for the monitoring of the environment to assess improvement established, and for early results to be obtained. This time also allows for weaknesses and gaps in the EIP and policy changes to be identified that may require a revision to the EIP.

131 Subsection (4) applies to future EIPs, and ensures that they too are first reviewed within

five years of taking effect.

132 Subsection (5) provides that, following the first review of an EIP, further reviews must be undertaken within every five year period for the duration of the EIP. In accordance with this, the 25 Year Environment Plan must be reviewed for a second time before 31 January 2028.

133 Subsection (6) requires that when the Secretary of State has completed a review and determined it appropriate to revise the plan, then this revised plan must be laid before Parliament along with a statement explaining what revisions have been made and why. This statement may be part of the same document as the revised plan or a separate document.

134 Subsection (7) requires that, if the Secretary of State completes a review but does not consider it appropriate to revise the EIP, then the Secretary of State must lay before Parliament a statement to this effect and the reasons for this. Whilst the Secretary of State is required to complete a review within the five year timeline there is no duty to revise the EIP if a revision is not appropriate. (However, the Secretary of State must revise the EIP if so required under clause 10.) This allows for a revision to the EIP to be delayed

if the Secretary of State considers it appropriate, but such a decision must be justified to Parliament.

135 Subsection (8) requires the Secretary of State to publish any documents laid before Parliament following a review of an EIP. These will be the revised plan and reasoning as in subsection (6), or the statement as to why no revision is considered appropriate as in subsection (7).

136 Subsection (9) specifies that a review is to be considered completed when documents have both been laid before Parliament and published. This is the completion date for the purpose of meeting the requirement to complete a review within five years of an EIP being published or previous review. It also becomes the start date for the next five-year time period for completing the subsequent review.

137 Subsection (10) clarifies that, when the EIP is revised in accordance with this clause, the references to an EIP in this Bill refer to the now revised EIP.

Clause 10: Reviewing and revising plans: interim targets

138 Clause 10 provides for interim targets to be included in environmental improvement

plans (EIPs), and sets out the requirements for those interim targets. Given clause 7(6), this clause applies only in relation to England.

139 Subsection (1) requires the Secretary of State, during the first review of the first EIP, to revise the plan so as to include at least one interim target in relation to the targets set under clauses 1 and 2 (for a "relevant matter", see subsection (3)), and to ensure that from the date that the first review is completed (for the "relevant date", see subsection (9)) there is an interim target for each such target for the next five years.

140 Subsection (2) contains an equivalent provision for subsequent reviews of the EIP. It requires the Secretary of State, during each review of the EIP, to make any revisions necessary to include at least one interim target in relation to any targets set under clauses 1 and 2 since the previous review, and to ensure that from the date that the relevant review is completed there is an interim target for each target for the next five years.

141 Subsections (1) and (2) give the Secretary of State the flexibility to set just one interim target for the five year period between EIP reviews, or multiple, shorter interim targets

for this same period.

142 Subsection (3) provides that the term "relevant matter" means any matter where there is a target under clauses 1 or 2.

143 Subsection (4) ensures that the requirement in subsection (2)(b) to maintain an interim target does not apply where the specified end date of the relevant target under clauses 1 or 2 falls within the relevant five-year period. For example, if a long-term target expires four months after the date on which an EIP review is completed, there is no requirement for the Secretary of State to set an interim target because the long-term target expires so quickly.

144 Subsection (5) clarifies that the Secretary of State may revise or replace interim targets during any EIP review, regardless of whether revisions are needed pursuant to subsections (1) and (2).

145 Subsection (6) provides that interim targets must consist of an objectively measurable standard to be achieved across a specified time period. Subsection (7) provides that this time period must be no longer than five years. For the first interim targets, that period starts on the date on which the relevant EIP review is completed. For subsequent interim targets, that period

starts on that date or the date on which the previous interim target expired.

146 Subsection (8) provides that, when setting or revising any interim target, the Secretary of State must be satisfied that meeting it will make an appropriate contribution towards meeting the relevant target under clauses 1 or 2. This will ensure that the Secretary of State takes account of the overall trajectory of environmental improvement required in order to meet those targets.

147 Subsection (9) provides that the term "relevant date" means the date on which a review is completed.

Clause 11: Reviewing and revising plans: other requirements

148 Clause 11 sets out what the Secretary of State must consider when reviewing an environmental improvement plan (EIP). Given clause 7(6), this clause applies only in relation to England.

149 Subsection (1) sets out that the Secretary of State must take the following into consideration when reviewing an EIP:

- what steps the government has taken to implement the EIP since it was published, or (if it has been reviewed before) since it was last reviewed;

- whether the natural environment (or particular aspects of it) has improved during that period; and
- whether the government should take further or different steps compared to those in the plan to improve the natural environment in the remaining period of the EIP.

150 When considering whether the natural environment has improved, the Secretary of State must have regard to data obtained under clause 15 and reports made by the Office of Environmental Protection under clause 27.

151 In addition, subsection (2) requires the Secretary of State, when considering whether the natural environment (or particular aspects of it) has improved, to consider the progress made towards meeting the targets (or any relevant targets) set under clauses 1 and 2, and the interim targets (or any relevant interim targets) set under clauses 10 or 13.

152 Subsection (3) requires the Secretary of State, when considering whether further or different steps should be taken to improve the natural environment, to consider whether further or different steps should be taken to meet those targets.

Clause 12: Renewing environmental improvement plans

153 Clause 12 provides for the Secretary of State to replace the environmental improvement plan (EIP) with a renewed version, and what the Secretary of State must consider as part of this process. Given clause 7(6), this clause applies only in relation to England.

154 Subsection (1) requires the Secretary of State to prepare a new EIP before the end date of the existing EIP.

155 Subsection (2) requires the new EIP to cover a period that starts no later than immediately after the end of an existing EIP, ensuring there is no gap between EIPs.

156 Subsection (3) requires the Secretary of State to publish and lay before Parliament the new EIP on or in advance of the end date of the existing EIP.

157 Subsection (4) specifies when the new EIP begins. At its earliest, this will be when the EIP has been laid before Parliament and published, but it can be later if the period to which the EIP relates begins after this date.

158 The provisions in clauses 12 to 14 allow for plans to be completely replaced (as distinct to clauses 9 to 11, which allow for the

amendment of existing plans). It is anticipated that future governments may choose to renew EIPs before they reach the end of their lifetime to enable them to include longer term actions.

Clause 13: Renewing plans: interim targets

159 Clause 13 provides for interim targets to be included in new environmental improvement plans (EIPs), and sets out the requirements for those interim targets. Given clause 7(6), this clause applies only in relation to England.

160 Subsection (1) requires that a new EIP include at least one interim target in relation to the targets set under clauses 1 and 2 (for a "relevant matter", see subsection (2)), and to ensure that from the date that the new EIP commences for the "relevant date", see subsection (7)) there is an interim target for each such target for the next five years.

161 Subsection (2) provides that the term "relevant matter" means any matter where there is a target under clauses 1 or 2.

162 Subsection (3) ensures that the requirement in subsection (1) to maintain an interim target does not apply where the specified end date of the relevant target under clause 1 or 2 falls within five years of the start of the new plan. For example, if a

long-term target expires four months after the date on which a new EIP period commences, there is no requirement for the Secretary of State to set an interim target because the long-term target will expire so quickly.

163 Subsection (4) provides that interim targets must consist of an objectively measurable standard to be achieved across a specified time period. Subsection (5) provides that this time period must be no longer than five years. For the first interim targets, that period starts on the date on which the new EIP period commences. For subsequent interim targets, that period starts on the date the previous interim target expired.

164 Subsection (6) provides that, when setting any interim target, the Secretary of State must be satisfied that meeting it will make an appropriate contribution towards meeting the relevant target under clause 1 or 2. This will ensure that the Secretary of State takes account of the overall trajectory of environmental improvement required in order to meet those targets.

165 Subsection (7) provides that the term “relevant date” means the date on which the new EIP period commences.

166 Subsection (8) clarifies that references to

a “new plan” are to be read in accordance with the definitions in clause 12(1).

Clause 14: Renewing plans: other requirements

167 Clause 14 sets out what the Secretary of State must consider when renewing an environmental improvement plan (EIP). Given clause 7(6), this clause applies only in relation to England.

168 Subsection (1) sets out that the Secretary of State must take the following into consideration when renewing an EIP:

- what steps the government has taken to implement the old EIP during the period to which it related;
- whether the natural environment has improved since the beginning of the period to which the old plan related; and
- whether the government should take further or different steps (compared to those in the old plan) to improve the natural environment in the period to which the new EIP relates.

169 When considering whether the natural environment has improved, the Secretary of State must have regard to data obtained under clause 15 and reports made by the Office of Environmental Protection under clause 27).

170 In addition, subsection (2) requires the Secretary of State, when considering whether the natural environment has improved, to consider the progress made towards meeting the targets set under clauses 1 and 2, and the interim targets set under clauses 10 or 13.

171 Subsection (3) requires the Secretary of State, when considering whether further or different steps should be taken to improve the natural environment in the new EIP, to consider whether further or different steps should be taken to meet those targets.

172 Subsection (4) clarifies that references to “old plan” and “new plan” are to be read in accordance with the definitions in clause 12.

Clause 15: Environmental monitoring

173 Clause 15 establishes a duty on the Secretary of State to obtain and publish data for the purpose of monitoring environmental improvement. This data would be used to measure outcomes achieved through the implementation of the actions set out in the environmental improvement plan (EIP) and inform updates to it. The data will also allow the progress being made towards meeting targets to be monitored. Given clause 7(6), this clause applies only in relation to England.

174 A suite of indicators was first published by government, in May 2019, as *Measuring environmental change: outcome indicator framework for the 25 Year Environment Plan*. Outcome indicator framework data are updated annually on gov.uk.

175 Subsection (1) requires the Secretary of State to obtain data about the natural environment appropriate for monitoring whether the natural environment (or particular aspects of it) is improving in accordance with the EIP, and for monitoring progress towards meeting any targets set under clauses 1 and 2 and any interim targets set under clauses 10 and 13.

176 Subsection (2) requires the Secretary of State to specify in a statement what kinds of data will be obtained, and to lay this statement before Parliament and publish it. This statement will provide the details of how the environment is to be monitored to determine whether there has been an improvement in the environment in accordance with the EIP and progress towards meeting targets.

177 Subsection (3) specifies that the first statement on monitoring data must be laid before Parliament within four months of this clause coming into force.

178 Subsection (4) allows for the Secretary of State to revise the statement on monitoring data at any time. This may be necessary if it becomes clear that additional data is needed, or that current measures do not adequately assess environmental improvement or target progress. Such a revised statement must also be laid before Parliament and published (subsection (2)).

179 Subsection (5) requires that data collected under the clause must be published.

Clause 16: Policy statement on environmental principles

180 Clause 16(1) requires the Secretary of State to prepare a policy statement on the environmental principles set out in subsection (5).

181 Subsection (2) provides specific information on what the environmental principles policy statement must include. The policy statement will explain how Ministers of the Crown should interpret and proportionately apply the environmental principles when developing policies. Proportionate application means ensuring that action taken on the basis of the principles balances the potential for environmental benefit against other benefits and costs associated with the action. This

means that a policy where there is the potential for high environmental damage would require more stringent action than a policy where the potential environmental damage is low. This consideration of the principles policy statement throughout the policy-making process may be carried out by policy-makers on behalf of Ministers of the Crown, though Ministers will retain the responsibility to have due regard to the policy statement.

182 Subsection (3) sets out that the Secretary of State may explain in the statement how other considerations should be taken into account by Ministers of the Crown when they are interpreting and applying environmental principles. For example, it may be necessary to balance the application of a specific environmental principle against other considerations, such as economic and social benefits, whilst taking care to ensure that these do not supersede environmental benefit but are considered alongside.

183 Subsection (4) details two aims that the Secretary of State must be satisfied that the statement will contribute to. These are:

- The improvement of environmental protection. This means being satisfied that the policy statement will be used to

shape policies in a way that protects the environment. It underpins the interpretation and application of the environmental principles. This consideration is to be taken in line with other necessary considerations in these clauses, such as in subsection (3).

- Sustainable development. Sustainable development can be summarised as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It involves trying to achieve environmental benefit alongside economic growth and social progress. Therefore, the Secretary of State must be satisfied that, when using the policy statement, Ministers of the Crown will consider the needs of future generations. This means that Ministers should consider the environmental impact of their policies together with the economic and social factors and, as much as possible, ensure policy achieves all three aims.

184 Subsection (5) sets out the list of environmental principles the policy statement will cover. These principles are drawn from a number of sources, including, for example,

the *Rio Declaration on Environment and Development* (1992).

185 There is no single agreed definition of the environmental principles. The policy statement will explain in more detail how these are to be interpreted, and provide information as to how they should be applied.

186 The meaning of the individual environmental principles is as follows:

- The principle that environmental protection must be integrated into the making of policy: environmental protection must be embedded in the making of policies.
- The principle of preventative action to avert environmental damage: preventive action should be taken to avert environmental damage.
- The precautionary principle so far as relating to the environment: where there are threats of serious irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. This applies to issues regarding the natural environment and includes where human changes to the

natural environment impacts upon human health, such as air quality.

- The principle that environmental damage should as a priority be rectified at source: environmental damage should as a priority be rectified by targeting its original cause and taking preventive action at source.
- The ‘polluter pays’ principle: the costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large.

187 Further direction on these environmental principles will be set out in the policy statement. These principles cannot be changed without primary legislation.

Clause 17: Policy statement on environmental principles: process

188 Clause 17 establishes the process by which the Secretary of State will develop and publish the environmental principles policy statement.

189 Subsection (1) sets out the duty for the Secretary of State to prepare a draft policy statement. This will be an initial version of the statement before public and parliamentary scrutiny.

190 Subsection (2) requires the Secretary of

State to conduct a public consultation.

191 Subsection (3) requires that a draft must be produced and laid before Parliament for its consideration. This must take place before the policy statement is finalised.

192 Subsection (4) includes provisions for cases where Parliament chooses to respond to the draft policy statement, either by passing a resolution in respect of the draft policy statement, or recommending changes to the statement, within the period of 21 sitting days after the draft statement has been laid. The Secretary of State is required to lay a response to any resolution passed or recommendations made by Parliament.

193 Subsection (5) requires the final policy statement to be presented to Parliament before being published. The Secretary of State must not publish the final statement before laying a response if required under subsection (4) or, otherwise, before a period of 21 sitting days has passed since the draft statement is laid. This is intended to allow Parliament sufficient time to scrutinise the draft policy statement.

194 Subsection (6) provides that the final policy statement comes into force when laid before Parliament, at which point the Secretary of State is required to publish it

(subsection (7)).

195 Subsection (10) enables the requirements in subsections (1) and (2) as to preparation of the statement and consultation to be met prior to the coming into force of the relevant provisions of the Bill.

196 Subsection (11) allows the Department to revise the policy statement at any time and requires the process set out in sub-paragraphs (1) to (9) to be followed each time that the policy statement is revised.

Clause 18: Policy statement on environmental principles: effect

197 Clause 18 sets out the legal duty on Ministers of the Crown in using the environmental principles policy statement. It also details the relevant exemptions to the duty to have due regard to the policy statement.

198 Subsection (1) requires Ministers to have due regard to the environmental principles policy statement when making policies included in the scope of the duty (in other words, policy that is not excluded). This means that, when making policy, Ministers of the Crown must have the correct level of regard to the content of the environmental principles policy statement.

199 Subsection (2) sets out that the policy statement does not require Ministers to take, or refrain from taking, any action that would have no significant environmental benefit, or if the environmental benefit would be disproportionate when compared to other factors.

200 In this context:

- “Significant” is to be understood as meaning ‘not negligible’. This means that the policy statement does not need to be used to change a policy direction, if the environmental impact would be negligible.
- “Disproportionate” indicates situations in which action would not be reflective of the benefit or costs, environmental or otherwise. Action taken must reflect the potential for environmental benefit, as well as other costs and benefits. For example, there is no need for a Minister to change a policy in light of the principles policy statement if the cost of this change would be very high and the benefit to the environment would be very low. Equally, if the potential environmental benefit is high, then it is proportionate to take a more significant action based on the policy statement.

201 Subsection (3) sets out which policies are excluded from the duty to have due regard to the policy statement. The three areas covered are set out in paragraphs (a) to (c).

202 The exclusion in subsection (3)(a) refers to armed forces, defence and national security policy. For example, policies that would be excluded include:

- Armed Forces policies relating to the Royal Navy, the Royal Marines, the Army, and the Royal Air Force; and
- national security policies, such as the National Security Strategy and Strategic Defence and Security Review.

203 In subsection (3)(b), “taxation” refers to taxes in a legal sense, and therefore does not include other regulatory schemes which involve fees and charges for purposes other than taxation, such as the plastic bag charge or the imposition of fees to cover the cost of a regulatory regime. “Spending or the allocation of resources within government” refers to decisions about how money and resources are allocated to or between government departments or agencies, including at fiscal events such as Budgets and Spending Reviews. It does not refer to individual policies on which government funds could be spent. For example, in

decisions on which departments should receive funds and how much, the policy statement will not apply. However, it would apply to policies which relate to spending this allocated funding which are decided by a Minister of the Crown, such as when setting up a new innovation scheme.

204 Subsection (3)(c) sets out that the duty in subsection (1) does not apply to policy relating to or applying in Wales.

Clause 19: Statements about Bills containing new environmental law

205 This clause requires that, where a Bill introduced into either House of Parliament contains a provision that, if enacted, would be environmental law, the Minister in charge of the Bill must make a statement to that House. The statement must set out that the Minister is of the view that the Bill does not have the effect of reducing the level of protection provided by any existing environmental law, or that the Minister cannot make such a statement but wishes the House to proceed with the Bill. The requirement does not apply to the wider planning regime, other than explicit environmental legislation such as Environmental Impact Assessments and Strategic Environmental Assessments.

206 Subsection (1) sets out that the provisions apply where a Minister in charge of a relevant Bill is of the view that the Bill contains a provision that, if enacted, would be environmental law.

207 Subsection (2) outlines that the Minister must make a statement, before Second Reading of the Bill in the House, that in the Minister's view the Bill contains a provision that, if enacted, would be environmental law. In addition, the Minister must make a statement under subsection (3) or (4).

208 Subsection (3) is applicable where a Minister is able to make a statement that in the Minister's view the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law. Subsection (4) is applicable where a Minister is unable to make that statement but wants to confirm that they still wish to proceed with the Bill – for example, where an existing UK environmental protection is no longer justified by new scientific evidence.

209 Subsection (5) sets out that, in making a statement under subsection (3), the Minister may in particular take into account that the same or greater levels of environmental protection might be provided by provisions

that are different to those contained in existing environmental law – that is, to allow for different mechanisms for achieving the same or better environmental outcomes.

210 Subsection (6)(a) provides that a Minister, in considering whether they can make a statement under subsection (3), must consider any protection provided for under powers conferred by the existing environmental law even if those powers have not been used. Subsection (6)(b) makes similar provision in enabling a Minister to take into account any new powers conferred by the Bill to provide for any environmental protection.

211 Subsection (7) requires all statements made under this clause to be in writing and to be published in such manner as the Minister considers appropriate.

212 Subsection (8) provides for two definitions for the purpose of this clause. Firstly, “environmental protection” is defined as:

- protection of the natural environment from the effects of human activity;
- protection of people from the effects of human activity on the environment;
- maintenance, restoration or enhancement of the natural

environment; or

- monitoring, assessing, considering or reporting on anything in relation to the previous bullets.

213 Secondly, “existing environmental law” is defined as environmental law existing at the time that the Bill to which the statement relates is introduced into the House, whether or not the environmental law is in force.

214 Clause 45 provides the definition of environmental law for the purposes of this clause.

Clause 20: Reports on international environmental protection legislation

215 This clause places an obligation on the Secretary of State to produce a report on significant developments in international environmental protection legislation.

216 The report will cover significant developments in the environmental protection legislation of particular countries or territories outside the UK or international organisations.

217 The scope and content of the report will be determined by the Secretary of State – see subsection (5). However, in a given reporting period it could cover: significant developments in the legislation of other

countries that are mainly concerned with seeking to protect the natural environment from the effects of human activity or protecting people from the effects of human activity on the environment; legislation on the maintenance, restoration or enhancement of the natural environment; or legislative provisions around monitoring, assessing, considering and reporting and monitoring on these matters. The report will not extend to reviewing or considering the planning systems of other countries.

218 Subsections (3), (4) and (6) require a report to be prepared every two years and to be published and laid before both Houses of Parliament as soon as reasonably practicable after the end of the reporting period.

Chapter 2: The Office for Environmental Protection

Clause 21: The Office for Environmental Protection

219 Clause 21 provides for the establishment of a new body called the Office for Environmental Protection (OEP), and introduces Schedule 1 which makes further provision about this independent Non-Departmental Public Body.

Clause 22: Principal objective of the OEP and exercise of its functions

220 Clause 22 sets out the strategic framework for the OEP, making provision for how it will carry out its functions and establish its independence from government and other bodies. The clause requires the OEP to take an objective and impartial approach to the delivery of its functions, and requires it to set out how it will exercise its functions in a strategy that takes into account where extensive governance already exists, for example in the planning system.

221 Subsection (1) establishes that, when exercising its functions, the OEP's principal objective is to contribute to two aims. These are:

- Environmental protection.
- The improvement of the natural environment.

222 The term "principal objective" is used to emphasise that it is a key objective for the OEP, but not the only one it has to consider when exercising its functions. The principal objective should also guide the OEP when exercising its discretionary powers.

223 Subsection (2)(a) requires the OEP to act objectively and impartially, thereby ensuring

it is capable of holding government to account. Subsection (2)(b) provides that the OEP must have regard to the need to act proportionately and transparently, helping to ensure balance and accountability in the body's exercise of its statutory functions. The term "have regard to" is used here because an absolute legal duty would not allow for the OEP to exercise its judgement in individual circumstances. For example, in the interest of transparency, the OEP would normally make information about its work publicly available; however, there may be certain situations where it is inappropriate for it to do so at an early stage, such as during the investigation of a complaint. The OEP will consider proportionality when balancing the need to improve and protect the natural environment against other considerations, such as the protection of the historic environment.

224 Under subsection (3), the OEP is required to prepare a strategy setting out its approach towards exercising its functions; the process for revising and reviewing this strategy is set out in clause 23. Paragraphs (a) to (c) of subsection (4) require the OEP to set out in its strategy how it will further its principal objective, how it will act objectively and impartially, and how it will have regard to the

need to act proportionately and in a transparent manner.

225 Subsection (5) provides that the OEP must set out how it intends to avoid any overlap with the Committee on Climate Change in exercising its functions. This is intended to ensure that the OEP does not seek to replicate the role of the Committee on Climate Change under section 57 of the Climate Change Act 2008, or the reporting role of the Committee under section 59 of the Act. In its strategy, the OEP may also seek to explain how it will resolve any potential for duplication of effort with other relevant bodies, such as Natural England and the Joint Nature Conservation Committee. This strategy could be supported by entering into memoranda of understanding with such bodies.

226 Subsection (6) provides that the OEP's strategy must contain an enforcement policy. Paragraphs (a) to (e) describe what this policy must set out.

227 Paragraph (a) requires the OEP to set out in its policy how it will reach decisions about whether a failure to comply with environmental law is "serious", as required in clauses 32(1)(b) and (2)(b), 34(1)(b), 35(1)(b), 37(1)(b), 38(1) and 38(7).

228 Paragraph (b) also requires the OEP to set out in its policy how it intends to judge whether damage to the natural environment or to human health is “serious”, as required in clause 38(2) in order to make an application for judicial review.

229 Paragraph (c) provides that the policy must set out how the OEP intends to exercise its enforcement functions in a way that respects the integrity of other relevant statutory regimes (including appeals processes), meaning where a decision is itself subject to the possibility of intervention by, or appeal to, another body. Statutory regimes could include decision-making functions, complaints, investigation, enforcement or appeals functions, and legal challenges. For example, some decisions made by the Environment Agency, or by a Planning Authority, may be subject to call-in by, or appeal to, the Secretary of State or the Planning Inspectorate. In normal circumstances, it is expected that the OEP would allow the usual regulatory processes to take their course, where they could affect a matter concerning a possible failure to comply with environmental law, before taking enforcement action. This provision therefore requires that the OEP’s strategy should set out how it intends to operate with a view to

effective alignment, and avoidance of conflict or duplication, with such procedures.

230 Paragraph (d) requires the OEP to specify in its policy how it intends to avoid any overlap between its activities in relation to its complaints function and the work of a relevant ombudsman. Subsection (9) sets out that for the purposes of these provisions, the Commission for Local Administration in England (the official body that runs the Local Government and Social Care Ombudsman service) and the Parliamentary Commissioner for Administration (otherwise known as the Parliamentary and Health Service Ombudsman) shall each be considered a relevant ombudsman.

231 Paragraph (e) also requires that the OEP's enforcement policy set out how it will prioritise cases. Further requirements on this point are set out in subsection (7).

232 Subsection (7) sets out certain types of case which the OEP should seek to prioritise when developing and reviewing its enforcement policy. In particular, the OEP must have regard to the particular importance of prioritising cases that it considers have, or may have, national implications. This provision is intended to steer the OEP to act in cases with broader, or

more widespread significance, rather than those of narrow local concern; for example, some individual local planning or environmental permitting decision may not have implications beyond the local area.

233 Other types of cases which the OEP must have regard to the need to prioritise are set out under paragraphs (a) to (c):

- those which concern persistent issues; that is, currently ongoing or recurring problems, or systemic failures;
- those concerning decisions that the OEP considers have caused, or could cause, serious damage in terms of their environmental impacts or effects on human health; and
- cases that deal with points of law of general public importance, such as addressing those that could otherwise set a potentially damaging precedent, or where there is potential for the OEP's intervention to clarify a point of widespread uncertainty.

234 Subsection (8) defines the OEP's enforcement functions as those provided for under clauses 31 to 40.

235 Subsection (9) sets out what is meant by "a relevant ombudsman" for the purposes of

subsection (6)(d) above, and other provisions in this Part.

Clause 23: The OEP's strategy: process

236 Clause 23 sets out the process for publishing and revising the OEP's strategy, which it must prepare under clause 22. The strategy sets out how the OEP will carry out its functions. A number of other public bodies, such as the Equality and Human Rights Commission, have a similar statutory duty to prepare a strategic plan.

237 Subsection (1) requires the strategy (and each subsequent revised strategy) to be laid before Parliament and published. This is intended to provide transparency and clarity to government, Parliament, and other stakeholders on the operational framework and strategic direction of the OEP, which it itself determines.

238 Subsection (2) allows the OEP to revise its strategy at any time. For example, it may need to reprioritise its work programme based on the types of complaint received during a particular period, or to address a newly emerging substantive issue that falls within its remit.

239 Subsection (3) ensures that the strategy remains a live document, which is kept up to date and relevant to the OEP's statutory

remit, by requiring a review of the strategy at least once in every “review period”. Subsection (4) specifies the review period as three years for the first strategy and for each subsequent strategy. The three-year review period is designed to be an appropriate amount of time to ensure that the production of the plan is not overly burdensome, yet to also ensure that it stays up to date.

240 Subsection (5) provides that before producing, revising or reviewing the strategy, the OEP must consult relevant stakeholders as it considers appropriate. This could include government, although ministers or other parties will not have powers to veto any part of the strategy.

Clause 24: Guidance on the OEP’s enforcement policy and functions

241 Subsection (1) of this clause provides that the Secretary of State may issue guidance to the OEP on its enforcement policy, specifically the matters listed under clause 22(6).

242 Subsection (2) requires that the OEP have regard to this guidance in preparing its enforcement policy and in exercising its enforcement functions. As set out in subsection (5), the OEP’s enforcement functions are those provided for under

clauses 31 to 40.

243 Under subsection (3), the Secretary of State may revise this guidance at any time. Subsection (4) requires the Secretary of State to lay before Parliament and publish any guidance (including revised guidance) issued under these provisions.

Clause 25: Memorandum of understanding

244 Subsection (1) of this clause requires that the OEP and the Committee on Climate Change (CCC) must prepare a memorandum of understanding. As specified by subsection (2), this memorandum must set out how the two bodies will cooperate and avoid overlaps in the exercise of their functions.

245 This clause builds upon the provision at clause 22(5), which requires the OEP to set out in its strategy how it will avoid overlap between the exercise of its functions and the exercise by the CCC of its functions. This provision will help to ensure a strong working relationship between the OEP and the CCC, whilst ensuring both bodies are able to effectively undertake their separate and important roles. They each have a statutory duty to prepare the memorandum, but these provisions allow them the discretion to set the terms of their relationship, and to adapt the memorandum as needed in the future.

Clause 26: Co-operation duties of public authorities and the OEP

246 This clause establishes a duty on public authorities to co-operate with the OEP, and provide the OEP such reasonable assistance as it requests, in connection with the exercise of its statutory functions. This includes the provision of information in relation to investigations under clause 32, information notices under clause 34 and decision notices under clause 35, as well as activities that form its scrutiny and advice functions under clauses 27 to 29. The intention of the duty to co-operate is to help the OEP and public authorities resolve issues constructively, and to share relevant information. It applies only to reasonable requests and would not replace the need for the OEP to commission work from public authorities, for which a fee might be payable: for example, if the OEP commissioned the Environment Agency (EA) to analyse data and that analysis was outside the EA's planned work programme.

247 The obligation under subsection (1) is for any person whose functions include functions of a public nature to co-operate with the OEP, and to give the OEP such reasonable assistance (including the provision of information) as the OEP requests. This

reflects the definition of a “public authority” in clause 30(3).

248 Subsection (2) sets out the persons to whom, and circumstances where, the duty to co-operate does not apply. The duty excludes courts and tribunals, Parliament, devolved legislatures, Scottish and Welsh Ministers and Northern Ireland departments, persons exercising parliamentary functions, and persons who exercise only devolved functions. The duty does not apply to any person whose functions are wholly devolved; however, if only some of their functions are devolved, they need only comply with the duty in relation to their non-devolved functions, as set out in subsection (3).

249 Subsection (4) provides that the OEP should consult a devolved environmental governance body if the work it is undertaking would be of relevance to such a body. This could include the OEP consulting the relevant body during an investigation if it became aware of a transboundary environmental issue that may have involved a breach of devolved legislation outside of the OEP’s own remit, but would be within the remit of the devolved environmental governance body. “Devolved environmental governance body” is defined in clause 46.

Clause 27: Monitoring and reporting on environmental improvement plans and targets

250 Clause 27 describes the monitoring and reporting functions of the OEP in relation to the environmental improvement plans and targets. Under this clause, the OEP will monitor and assess environmental statistics and reports on an ongoing basis to ensure that it has an effective knowledge base. This information will then be analysed alongside information published by the government to provide an independent assessment of progress made in improving the natural environment in accordance with the current environmental improvement plan and targets.

251 Subsection (1) provides that the OEP must monitor progress:

- in improving the natural environment in accordance with the government's current environmental improvement plan (the first such plan is known as the 25 Year Environment Plan), as set out in clause 7;
- towards meeting any long-term targets as set under clause 1, and the particulate matter target as set under clause 2; and
- towards meeting any interim targets as

set out in the environmental improvement plan.

252 This monitoring and reporting function will hold government to account on its environmental improvement commitments.

253 Subsection (2) requires the OEP to produce a progress report for each annual reporting period. As set out in subsection (3), the reports will inform on progress made related to improving the natural environment that has occurred within the annual reporting period. This will be measured against the current environmental improvement plan and targets. An annual reporting period is the period for which the Secretary of State must produce a report under clause 8, as set out in subsection (4).

254 When making a progress report, subsection (5) requires the OEP to take into account the annual report made by the Secretary of State on progress against the implementation of the environmental improvement plan and targets for that period, as set out in clause 9. The OEP will also consider the data published under clause 15 for that period, as well as any other documents or information that the OEP believes are relevant. In reporting on progress made in an annual reporting period,

the OEP will undertake any analysis and interpretation it believes is necessary.

255 Subsection (6) specifies that a progress report may advise how the OEP believes progress could be improved – for example, through comparison with other countries, including the devolved administrations. It may also consider the adequacy of data published under clause 15, enabling the OEP to independently determine whether the right information is being collected to evaluate progress in improving the natural environment, and whether it is accurate and sufficiently comprehensive.

256 Subsections (7) and (8) require that the OEP's reports must be laid before Parliament and published. This is intended to provide the OEP with sufficient independence from government when carrying out its reporting functions. The OEP's report must be laid before Parliament within six months of the relevant report under clause 8 being laid. This gives the OEP sufficient time to carry out its scrutiny of the clause 8 report whilst tying it to a fixed reporting deadline.

257 Subsection (9) requires the Secretary of State to respond to the OEP's report, publishing their response and laying it before Parliament. Subsection (10) requires that the

Secretary of State's response must specifically address any recommendations made by the OEP as to how progress with the environmental improvement plan and targets could be improved. This requires the Secretary of State to evidence and justify any decisions whereby the OEP's recommendations will not be taken forward. Subsection (11) specifies that the Secretary of State must lay their response within 12 months of the OEP's report being laid, and may include this response in the Secretary of State's subsequent report made under clause 8. This allows the Secretary of State to include the response to the OEP's progress report as part of the following year's annual report on the environmental improvement plan and targets.

Clause 28: Monitoring and reporting on environmental law

258 Clause 28 requires the OEP to monitor the implementation of environmental law and provides a power to issue reports on any matter to do with the implementation of environmental law.

259 Subsection (1) requires the OEP to monitor the implementation of environmental law. Environmental law is defined in clause 45 of this Bill. An example of environmental

law caught by this duty would be the Habitats Regulations.

260 Subsection (2) allows the OEP, as it deems appropriate, to produce a report on any matter concerned with the implementation of environmental law. This provision would, for example, allow the OEP to produce a report considering the operation of existing environmental legislation, highlighting particular strengths and weaknesses. For example, if the OEP identified a significant issue in the implementation of part of the Marine and Coastal Access Act 2009 relevant to its remit, it may choose to report on this.

261 Subsection (3) ensures that the OEP does not duplicate the work of the Committee on Climate Change by preventing the OEP monitoring or reporting on specific matters which are already within the statutory remit of that Committee. Subsection (4) lists those matters. These subsections do not prevent the OEP from monitoring and reporting on other climate change legislation that falls within its remit.

262 Subsection (5) requires the OEP's reports to be laid before Parliament and published. This reflects the OEP's independence from government when carrying out its reporting

functions.

263 Subsections (6) and (7) require the Secretary of State to lay before Parliament and publish a response to a report issued by the OEP under this clause within three months of that report being laid.

Clause 29: Advising on changes to environmental law etc.

264 Clause 29 sets out the circumstances in which the OEP can give advice to Ministers of the Crown, and how this advice must be published and may be laid before Parliament.

265 Subsections (1), (2) and (4) enable a Minister to require the OEP to provide written advice on proposed changes to environmental law, or on any other matter relating to the natural environment. The OEP must take into consideration any specific matters the Minister outlined in their request when providing this advice, as per subsection (2). The natural environment is defined in this Bill in clause 43. For example, the OEP could be asked by the government to give recommendations on proposals to make amendments to the Natural Environment and Rural Communities Act 2006, or about a proposal to include additional goals in the environmental improvement plan. Subsection (3) provides a power for the OEP to give

written advice to a Minister concerning any proposed changes to environmental law.

266 Subsection (5) requires the OEP to publish its advice, along with details of the specific request and any matters it was required to take into account, if it was asked to provide advice by a Minister. The publication of this information ensures transparency in the relationship between the OEP and any Minister asking it for advice.

267 Subsection (6) provides that the relevant Minister may lay the OEP's advice and any response to it before Parliament. This is a discretionary power to reduce burden on Parliament. For example, where advice has been sought by a Minister regarding a specific technical detail that is apolitical, the Minister can decide not to lay this advice before Parliament.

Clause 30: Failure of public authorities to comply with environmental law

268 This clause sets out definitions for certain terms that are referred to throughout Chapter 2, which concerns the functions of the OEP. Subsection (1) states that clauses 31 to 40 provide for the functions of the OEP relating to failures by public authorities to comply with environmental law. (The term "environmental law" is defined in clause 43.)

269 “Failing to comply with environmental law” is defined in subsection (2) as meaning where an authority is:

- Not taking proper lawful account of environmental law when exercising its functions. For example, as set out in clause 18, a Minister of the Crown must have due regard to the policy statement on environmental principles in making, developing and revising policies. Failure to have due regard to the policy statement where required would therefore constitute a failure to take proper account of environmental law; or
- Unlawfully exercising or failing to exercise functions it may have under environmental law. For example, various authorities are charged with establishing and implementing permitting or other types of regulatory control regimes for different activities that can affect the environment. Failing to meet such requirements, or implementing them in a deficient way (for instance, by omitting certain prescribed activities or applying standards that are less rigorous than the law demands), would also constitute a failure to comply with environmental law. A failure to meet a statutory

environmental quality standard for which a public authority was responsible for ensuring compliance would also be captured by this provision.

270 No restrictions regarding the date of a failing are included in the definition in subsection (2). This means that the OEP will still be able to take action against failings that occurred after the UK's date of exit from the EU but before it was fully established.

271 In subsection (3), a "public authority" is defined as a person carrying out a function of a public nature, that is not a devolved function, a parliamentary function, or a function of one of the bodies specified in paragraphs (a) to (e). This follows a similar approach to section 6(3) of the Human Rights Act 1998. The term "public function" is not defined in the Bill (or in the Human Rights Act 1998), so it will ultimately be for the courts to determine what constitutes a public function. The courts have previously recognised that a body can act in more than one capacity. As such, bodies that undertake some public and some private functions, such as statutory undertakers, will be within scope of the OEP only with regard to the exercise of their public functions. The term "person" means any legal or natural person. For example, a Minister of

the Crown, a government department, non-departmental public body, or local authority would be considered a public authority.

272 Where a person is undertaking a devolved or parliamentary function, they will not fall within this definition. This means that any public authorities implementing devolved functions under environmental law in Scotland, Wales and Northern Ireland will not be covered by the remit of the OEP in respect of devolved matters. Bodies exercising such functions would typically include devolved public bodies such as Scottish Natural Heritage, the Scottish Environment Protection Agency, Natural Resources Wales and the Northern Ireland Environment Agency. “Devolved function” is defined in clause 46.

273 Paragraphs (a) to (e) of subsection (3) also set out certain bodies that are excluded from this definition, including, for the purposes of this Bill, the OEP itself. This exclusion is to avoid the OEP having to consider whether to exercise its statutory complaint and enforcement powers in relation to a complaint made against it; the OEP could still consider complaints about its conduct outside of its statutory functions, or

complaints could be made to the parliamentary ombudsman, as provided for in paragraph 21 of Schedule 1. Among the other excluded bodies are courts and tribunals and both Houses of Parliament. The devolved legislatures, and the Scottish and Welsh Ministers and Northern Ireland departments are also excluded. Any person carrying out a devolved function on behalf of the devolved ministers, such as a devolved public body, is also excluded from the OEP's remit.

Clause 31: Complaints

274 This clause provides that a person may make complaints to the OEP regarding alleged contraventions of environmental law by public authorities. It sets out who may make such complaints, what form they must take, and the time limits within which they should be made. The contraventions and public authorities about which complaints may be considered by the OEP are set out in clause 30, while "environmental law" is defined in clause 45. Figure 1 illustrates the process by which the OEP's management of complaints is expected to operate, as set out in this clause and in clause 32 (investigations).

275 Subsection (1) allows for any legal or

natural person to make a complaint to the OEP if they believe that a public authority has failed to comply with environmental law, subject to the exclusions set out in subsection (4).

276 Subsection (2) sets out that the OEP must prepare and publish a document that sets out the procedure by which complaints can be made, and subsection (3) provides that complaints must be submitted in accordance with the most recently published version of that procedure. This is to allow the OEP to specify the means by which it will accept complaints. The OEP may or may not allow, for example, complaints in writing, by telephone or through an online complaints portal. Complaints that are not submitted in accordance with the procedure do not have to be considered by the OEP.

277 Under subsection (4), public authorities themselves are excluded from complaining to the OEP, as this would amount to one arm of government or the public sector complaining about another.

278 Subsection (5) requires that the complainant must have exhausted all internal complaints procedures of the allegedly offending body before they submit the complaint to the OEP. A wide range of bodies

including the Environment Agency, Natural England and the Planning Inspectorate, for instance, operate complaints procedures that will apply to their functions, which are concerned with the implementation of environmental law. This provision is intended to give the public authority in question the opportunity to consider and seek to resolve the matter through its own procedures before it is considered by the OEP.

279 Subsection (6) makes provision regarding the timing of making a complaint to the OEP. The complaint must be submitted no later than one year after the last occurrence of the alleged breach of environmental law (paragraph (a)), or three months after the conclusion of any internal complaints procedures (paragraph (b)), whichever is later. This is intended to encourage complainants to bring their complaints in a timely manner, whilst also allowing a reasonable time period for people to bring complaints. An open-ended ability to complain long after the event in question could lead to uncertainty over certain decisions, particularly given that it could lead to enforcement action.

280 The provision in subsection (7) means that the OEP will not be entirely precluded from

investigating serious matters on the basis of a complaint being late. Subsection (7) allows the OEP to waive the time limit in subsection (6) if there are exceptional reasons for doing so. This judgement will be a matter for the OEP's discretion, and as such it could cover a number of circumstances, although it can be used only where there is an exceptional reason to disapply the normal time limit. It is possible that the OEP may wish to use this provision in a case where, for example, environmental harm resulting from a failure to comply with the law has taken some time to materialise and therefore for that failure to be identified, or where details of a decision only came to light long after it was taken.

281 The time limits specified in subsection (6) set out the periods after which complaints will not normally be accepted by the OEP, but do not affect its wider ability to investigate or take enforcement action (which may be prompted by triggers other than a complaint) under subsequent clauses.

282 It should be noted that no provision is made to grant the OEP the power to impose charges in relation to its receipt and handling of complaints. As such, the complaints system will be free of charge to all complainants.

283 A summary of the procedure for handling complaints is provided in figure 1.

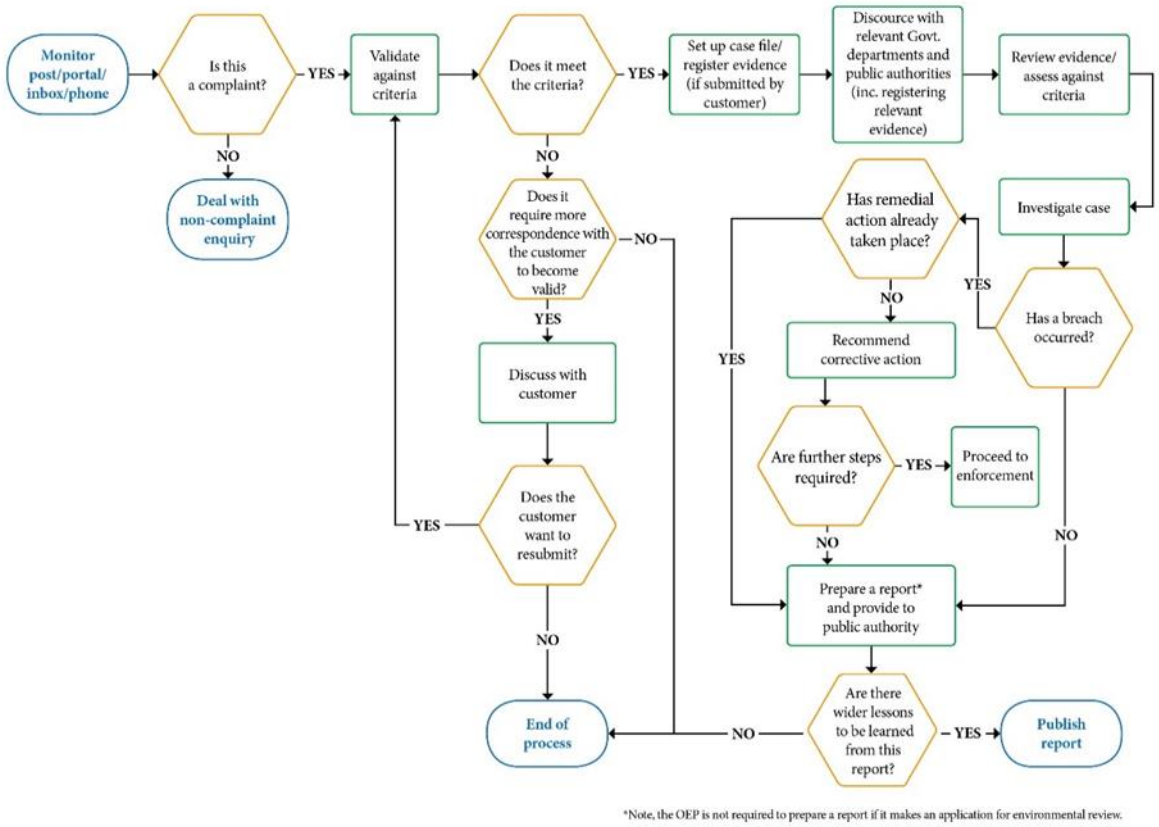


Figure 1: Summary of complaints handling procedures

Clause 32: Investigations

284 This clause deals with the investigation of complaints, and potential breaches of environmental law coming to the OEP's attention by other means.

285 Subsection (1) provides that the OEP may undertake an investigation on the basis of a complaint received under clause 31 if it considers that the complaint indicates that a public authority may be responsible for a

serious failure to comply with environmental law.

286 Subsection (2) provides that the OEP may also undertake an investigation under this clause without having received a complaint, if it has information obtained by other means that in its view indicates a public authority may have committed a serious failure to comply with environmental law.

287 The OEP's enforcement policy will set out how the OEP intends to determine seriousness for the purpose of subsection (2)(b). The OEP is not obliged to investigate all complaints, and provisions in subsections (1) and (2) allow the OEP to exercise discretion regarding the potential breaches that it investigates. The OEP's approach to prioritising cases will also be set out in its enforcement policy, in which it must have regard to the considerations set out in clause 22(7). If the OEP chooses not to investigate a complaint, the complainant must be informed under the requirements of clause 33.

288 Subsection (3) sets out the purpose of the investigation, which should focus on establishing whether a public authority has failed to comply with environmental law. Under subsection (4), at the start of an investigation the OEP is required to notify the

public authority being investigated, although in practice it also has discretion to contact the public authority informally in advance of commencing an investigation. Subsection (10) also provides that, if the authority is not a Minister, the OEP must additionally notify the "relevant Minister". Subsection (11) provides that the relevant Minister should be the Minister of the Crown that the OEP considers appropriate, having regard to the nature of the public authority and the nature of the failure (that is, the Minister whose department is responsible for the policy area). For example, in the case of an investigation into a potential infringement relating to environmental permitting, a Minister from the Department for Environment, Food and Rural Affairs should likely be informed where the Environment Agency had issued the permit in question. If an investigation relates to environmental impact assessment, which is a policy area predominantly owned by the Ministry for Housing, Communities and Local Government, a Minister from this department should likely be informed, where a local authority was responsible for the alleged failure. The intention of these subsections is to ensure that central government departments remain informed of

investigations related to their subject areas, and are therefore able to contribute, even if an alleged infringement does not involve a lack of compliance on the part of the department or Ministers themselves. This definition of the “relevant Minister” also applies to other clauses in this Part.

289 Similarly, when an investigation is concluded, subsection (5) requires that the OEP provide a report to the relevant public authority, copied to the relevant Minister if necessary under subsection (10). The OEP may publish the report in full or part under subsection (9).

290 Subsection (6) allows the OEP the flexibility to delay the preparation of this report if it considers that it may take further enforcement action (for instance, the service of an information or decision notice, or application for environmental review under clause 37) in relation to the alleged failure. This is intended to ensure that the OEP is not required to prepare and release reports concerning an investigation while it is still considering or intending to take further enforcement action. However, should the OEP publish a report and further information subsequently comes to light, it will not be precluded from taking further enforcement

steps in relation to the failure as a result of having already published a report.

291 Under subsection (7), if the OEP has applied for an environmental review, judicial review, or statutory review it is not required to prepare a report.

292 The required contents of this report are set out in subsection (8). A report must state whether the OEP considers that a public authority has failed to comply with environmental law, the reasons the OEP came to these conclusions, and any recommendations the OEP may have for the relevant Minister, the public authority in question and any other authorities.

293 The OEP has discretion over whether to publish the report (in whole, in part or at all), in view of the possibility that some investigations may conclude that there is nothing of value to put in the public domain, while other investigations may involve matters of significant confidentiality or sensitivity. The OEP will exercise this discretion consistently with its duty to have regard to the need to act transparently (see clause 22(2)(b)). Information that the OEP chooses not to proactively report and publish will still be open to requests for disclosure and will need to be considered under the

applicable legislation dealing with such requests.

Clause 33: Duty to keep complainants informed

294 This clause deals with the procedure for the OEP to inform complainants about whether an investigation following a complaint will be carried out and the progress of the investigation.

295 The OEP must inform the complainant if the complaint will not be considered for further investigation on the basis that it is not a valid complaint. For example, the complaint may not be concerned with a valid matter (a breach of environmental law by a public authority), it may not have been submitted in accordance with the specified procedure, or it may have been submitted after the time limit without any exceptional basis for the OEP to reasonably accept it. This is covered in subsection (2)(a) of this clause.

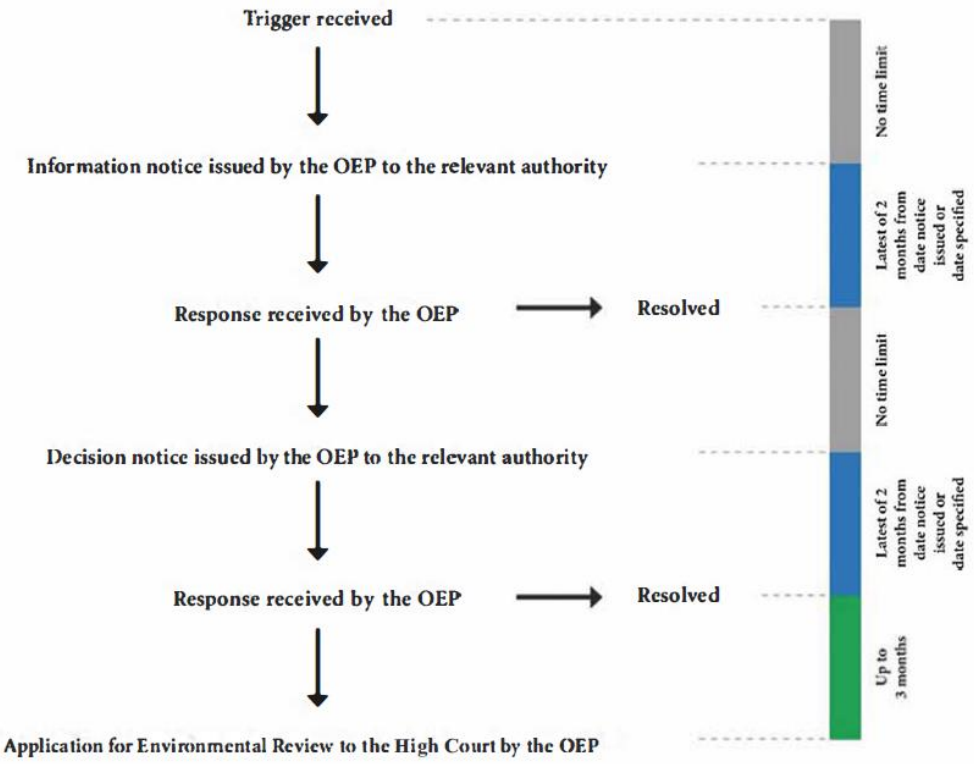
296 Where a complaint has been made in accordance with clause 31, the OEP must inform the complainant about whether or not an investigation into that complaint will be carried out; this is covered in subsections (2)(b) and (c). This reflects the fact that the OEP has discretion in choosing which cases to investigate, prioritising cases in line with its enforcement policy.

297 When a report on an investigation under clause 32(5) has been provided to the public authority in question, paragraph (d)(i) requires that the OEP must inform the complainant of this, although it is not obliged to disclose that report to the complainant at that stage unless it has been published under clause 32(9).

298 Where the OEP applies for an environmental review, or for permission to apply for a judicial review, or statutory review in relation to the failure that was the subject of the complaint, paragraph (d)(ii) requires the OEP to inform the complainant.

299 Where the OEP publishes a report following the investigation of a complaint, it must provide the complainant with a copy of that report as published in full or in part, as required by paragraph (e). This could be done by electronic means, or by referring the complaint to a published report that is available online, rather than necessarily requiring a hard copy of the report to be provided in every case.

Figure 2: Summary of investigation and enforcement



Clause 34: Information notices

300 This clause provides that the OEP can take enforcement action in the form of "information notices" in cases where it reasonably suspects a public authority may be responsible for a serious breach of environmental law. This action may follow the investigation of a complaint, but the OEP can also take enforcement action if it has other grounds for suspecting there has been a serious breach (for example, based on information presented in a report on the implementation of a law, or arising from a

parliamentary inquiry or other source), whether arising from an investigation under clause 30 or not.

301 This clause, and those that follow it, reflects the intended enforcement function and process of the OEP. Figure 2 illustrates the process that is expected to operate in the OEP's management of enforcement activities under these clauses.

302 Under subsection (1), the OEP may issue an information notice if it has reasonable grounds (whether or not this information arises from an investigation under clause 32) for suspecting that a public authority has failed to comply with environmental law, and it considers that the failure is serious. The seriousness of a failure will be determined by the OEP in accordance with its own, published enforcement policy (see clause 22). The OEP therefore may not serve an information notice in relation to trivial matters, or serve a speculative information notice if it does not have any reasonable basis to believe an authority is failing to comply with environmental law.

303 Information notices are a means by which the OEP can formally request information from the public authority concerned in relation to a suspected failure. Subsection (2)

states that an information notice is to describe the alleged failure, the reasons why the OEP considers that the alleged failure, if it occurred, would be serious, and the information that the OEP requests in relation to it. Subsection (3) requires the relevant public authority to respond in writing to an information notice within a fixed time period as specified in subsection (4), and subsection (5) sets out what information should be included in such responses.

304 Subsection (4) specifies that responses must be provided within two months from the date on which the notice was issued, or such later date as specified by the OEP. This means that, although the OEP can specify a response date that gives a public authority longer than the standard period of two months to respond if it sees fit (for example, if it accepts that the matter is exceptionally complex, or if the ability of the public authority to respond is constrained by an election period), it must allow notice recipients at least this amount of time.

305 Under subsection (6), the OEP may withdraw an information notice or issue multiple information notices in relation to the same suspected infringement.

306 Under subsection (7), where the OEP

plans to issue an information notice in relation to an alleged failure to comply with environmental law relating to greenhouse gas emissions, the OEP must first notify the Committee on Climate Change and provide it with appropriate information. “Emissions of greenhouse gases” is defined in the Climate Change Act 2008.

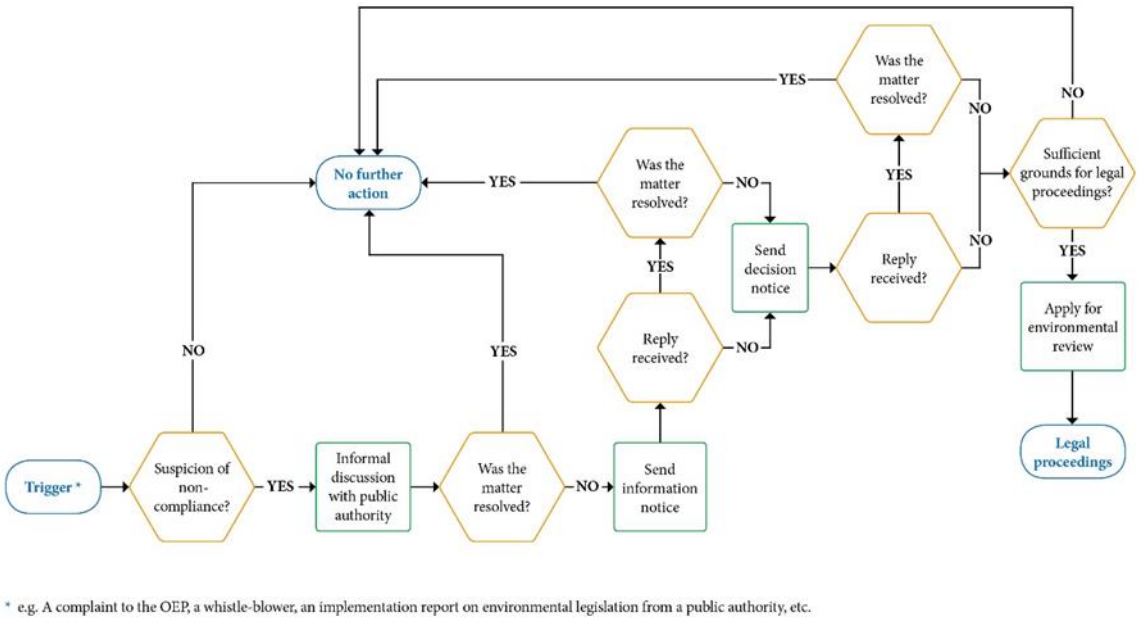


Figure 3: Summary of enforcement process

Clause 35: Decision notices

307 This clause provides for the OEP to take further enforcement action in the form of a “decision notice”.

308 The OEP may issue a decision notice

under subsection (1) if it is satisfied, on the balance of probabilities, that the public authority has failed to comply with environmental law, and it considers that the failure is serious. As with an information notice, the question of seriousness will be one for the OEP to consider on the basis of its own, published complaints and enforcement policy (see clause 22). The "balance of probabilities" test means that the OEP must consider it more likely than not that a public authority has failed to comply with environmental law. Note that this test relates to the question of when the OEP is permitted to serve a decision notice, and does not create a requirement to issue such a notice in any particular case where the test is satisfied.

309 As defined in subsection (2), decision notices are a means by which the OEP can take action against the public authority failing to comply with environmental law, by setting out the failure, its reasons for considering that the failure is serious, and the suggested steps for the public authority to take in relation to the failure. The potential actions that the OEP can request will be specific to each case. For instance, the OEP could recommend that the public authority prepare a new, or updated strategy, or undertake

remedial action in the event that environmental harm has been done. Other possible steps could include asking an authority to cancel, amend or re-take a decision (for example, to designate a certain area as a protected site), or take steps to pursue a particular environmental quality standard or other environmental outcome as required. Subsection (2) does not constrain the types of steps that the OEP can specify, and provides expressly that they may include steps designed to remedy, mitigate or prevent reoccurrence of the failure.

310 The public authority that receives a decision notice is not under a legal duty to carry out the steps detailed in the notice. Under subsection (3), the public authority is required to respond to a decision notice either two months after the notice was given, or by a date specified in the notice, whichever is later. The written response from the public authority must state whether the public authority agrees that there has been a failure to comply with the law, and whether the steps set out in the notice will be followed, as specified in subsection (4). This subsection also requires the public authority to specify any other alternative steps that will be taken in relation to the alleged failure described in the notice. This reflects the

possibility that the public authority might accept that it had failed to comply with environmental law, but might wish to propose alternative or additional steps to remedy, mitigate or prevent reoccurrence of the failure, compared to those specified in the OEP's decision notice.

311 Subsection (5) provides that the OEP may withdraw a decision notice after it has been issued (paragraph (b)), and also requires that the OEP must have previously issued at least one information notice relating to the alleged failure of the public authority to comply with environmental law before a decision notice is issued (paragraph (a)). The OEP may withdraw a decision notice if, for example, it has served such a notice where it considers there has been a failure to comply with the law but later considers that there had been no such failure. In this case, it would be desirable to withdraw the notice rather than require a public authority to respond to a notice that the OEP no longer considers is relevant or necessary.

Clause 36: Linked notices

312 This clause deals with the scenario in which the OEP considers that a notice should be issued to more than one public authority concerning the same or similar breaches of

environmental law. In such a scenario, the OEP could issue information or decision notices in parallel to both (or all) parties, and determine that these are “linked” under subsection (1). Public authorities may make joint or separate responses to linked notices.

313 The OEP may wish to issue linked notices in various circumstances, including for example:

- If a serious breach occurred for which a local authority was immediately responsible in the local area, but in relation to which a Secretary of State also had national duties, it might be appropriate for the OEP to commence enforcement proceedings (via notices) against both the local authority in question and the Secretary of State.
- If a cross-boundary incident occurred where two or more local authorities failed to properly carry out their obligations under environmental law, the OEP might wish to issue linked notices to both or all of the authorities in question. For instance, if during the course of a major, cross-boundary development project it was found that two or more local authorities had neglected their responsibilities under Part IIA of the

Environmental Protection Act 1990 to identify contaminated land and serve remediation notices where appropriate, leading to improper development of the site with potential implications for human health and the environment, it may be appropriate for the OEP to take action against both/all authorities in parallel using linked notices.

314 Subsection (2) provides that the relevant Minister may also request that the OEP designates information or decision notices as linked, and that the OEP must have regard to such a request. This does not mean that the OEP is obliged to comply with the Minister's request, but it must be able to demonstrate it has appropriately considered it. The meaning of "the relevant minister" is as defined in clause 32(11).

315 Subsection (3) sets out that the OEP must provide the public authority receiving an information or decision notice (which is referred to as a "principal notice") with a copy of every notice which is linked to it. It also sets out that such notices shall be referred to in this clause as "linked notices".

316 Subsection (4) provides that the OEP must provide the recipient of a principal notice with a copy of any relevant

correspondence which relates to a linked notice between the OEP and the recipient of that notice. What constitutes “relevant” correspondence is defined in subsection (8).

317 Subsection (5) provides that the OEP must also provide the recipient of a principal notice with a copy of any relevant correspondence between the OEP and the relevant Minister that relates to a linked notice. (The “relevant Minister” has the meaning given in clause 32(11).) However, subsection (6) provides that subsection (5) does not apply where the recipient of either the principal notice or the linked notice is themselves a Minister of the Crown.

318 Subsection (7) provides that the obligations set out under this clause to provide copies of notices or correspondence will not apply where the OEP considers that to do so would not be in the public interest. For instance, where correspondence regarding a notice contained information pertaining to matters of national security, it may not be in the public interest to share this with other parties.

319 Subsection (8) sets out what will be considered as “relevant” correspondence for the purposes of this clause. Correspondence is considered relevant if:

- as required by paragraph (a), it is not connected with an environmental review or any other legal proceedings, which would include judicial or statutory review; and
- as required by paragraph (b), it is not sent to fulfil the requirements of clause 39(1)(a) or 39(1)(b).

Clause 37: Environmental review

320 This clause provides for the OEP to bring legal proceedings against a public authority regarding an alleged breach of environmental law. These proceedings are through a mechanism in the High Court called "environmental review". This is a bespoke form of legal proceedings which applies solely to cases brought by the OEP, and it is based on the normal standards and principles of judicial review.

321 Subsection (1) sets out that the OEP may apply to the court for an environmental review regarding an alleged breach where it has given a decision notice to a public authority. The OEP therefore cannot bring such a review unless it has gone through this earlier notice stage, which in turn must be preceded by the service of an information notice (see clause 34). This process is intended to ensure that cases dealt with

through this bespoke process necessarily involve substantial pre-litigation stages, with a view to resolving cases without legal proceedings where possible. This subsection also specifies that the OEP may only apply for an environmental review if it is satisfied on the balance of probabilities that the public authority has failed to comply with environmental law, and it considers that the failure in question is serious. This is the same test that the OEP must apply in deciding whether or not it may issue a decision notice. The OEP must remain satisfied, after considering any response to its decision notice, that the failure in question is serious. It cannot apply for an environmental review if the response leads it to conclude that there was in fact no serious failure.

322 Subsection (2) defines an environmental review as a review of the conduct described in a decision notice as a failure to comply with environmental law. It is not a review of whether the public authority has complied with any recommendations that may be included in a decision notice, or whether a public authority has acted unreasonably in failing to follow the views of the OEP, given that decision notices are not binding. The OEP does not have powers to make binding findings as whether there has been a breach

of environmental law; that is the role of the Courts and the purpose of environmental review.

323 Subsection (3) sets restrictions for when an application for an environmental review may be made. Subsection (3)(a) sets out that the OEP may not make an application for environmental review before the earlier of: (i) the end of the period within which the public authority in question is required to respond to a decision notice under clause 35(3); and (ii) the date on which the OEP receives the authority's response. This means that the OEP is not obliged to wait until the end of the period specified in its decision notice if the public authority responds sooner, whilst ensuring that the OEP is able to consider the authority's response to the decision notice before deciding whether to proceed to applying for an environmental review.

324 Subsection (3)(b) provides that the OEP may not apply for an environmental review before the expiry of any time limit in which legal proceedings (judicial review or other similar legal proceedings) in relation to the same conduct could be initiated. This is to ensure that environmental review does not pre-empt other legal proceedings. The timescales for the OEP's enforcement

process mean that the period within which judicial review or similar legal proceedings can be brought will normally have passed before the OEP can apply for an environmental review. For example, where a decision is challenged through judicial review, the application for review must be made promptly and within six weeks for planning cases and three months in other cases. The applicable legislation provides a margin of discretion for the courts to accept judicial review applications outside these time limits in exceptional circumstances. However, the provision in subsection (3)(b) necessarily only captures any specific time limit expressed in law, rather than any time limits that have been extended by the discretion of the court in an individual case.

325 Subsection (4) provides that any restriction in other legislation on questioning the conduct of a public authority in legal proceedings does not apply to an environmental review. This provision is made to ensure that the OEP's route of challenge can exist alongside other pre-existing routes of challenge. In some cases, the relevant legislation may provide that the courts can only entertain challenges against those decisions in the form of a judicial review – for example, section 13 of the Planning Act

2008. Furthermore, some existing statutory routes of challenge specifically exclude any other route of challenge – for example, section 284(1)(b) of the Town and Country Planning Act 1990. However, the intention is that these restrictions should not preclude the OEP bringing a challenge.

326 Subsection (5) establishes what the court must determine in an environmental review, namely whether the public authority in question has failed to comply with environmental law. The subsection specifically provides that the court must determine whether there has been a failure applying judicial review principles. As such, this question is to be determined on standard public law grounds. This means that the court will consider whether the decision maker has made an error in law, whether the decision was reasonable, and whether the process was fair. This reflects the intention of this clause that public authorities be afforded the normal margin of discretion to take reasonable decisions in accordance with their functions, as they would in a judicial review.

327 Subsection (6) provides that, if the court finds on an environmental review that a public authority has failed to comply with

environmental law, it must make a statement confirming this, referred to as a “statement of non-compliance”.

328 Subsection (7) sets out that, whilst the statement of non-compliance confirms that the court has found that the public authority in question has failed to comply with environmental law, it does not in itself invalidate the decision of the public authority in question. For example, if the grant of a planning permission is challenged through environmental review and the court finds it to be unlawful and makes a statement of non-compliance, the planning permission granted would nevertheless remain valid. This is the case unless the court decides that it is appropriate to impose further remedies such as a quashing order, and the conditions for doing so were met.

329 Where the court issues a statement of non-compliance, this would not prevent or oblige the Secretary of State, or other relevant decision-maker, from using existing discretionary powers in relation to that decision (that is, to modify or revoke their original decision).

330 Subsection (8) provides that, if the court makes a statement of non-compliance, it will have the full suite of remedies, other than

damages, available to it as on a judicial review, but only if it is satisfied that granting such a remedy would have neither of the effects described in paragraphs (a) and (b). These remedies include a declaration, quashing, prohibiting and mandatory orders, and injunctions. Damages are not available in environmental reviews because the OEP, as the only applicant, would have no cause to seek compensation for damages personally suffered where the claimant in a traditional judicial review might. As such, this remedy is unnecessary.

331 The provision that the court may only grant a remedy if it is satisfied that neither of the effects described in paragraphs (a) or (b) would occur as a result, recognises the fact that the environmental review will take place after the expiry of judicial review time limits and that prejudice may result from quashing the decision at this later date. This provision allows third parties reliant on decisions involving the application of environmental law to have confidence that those decisions will not be quashed or other judicial review relief granted outside the normal judicial review time limits, if substantial prejudice, substantial hardship or detriment to good administration would be likely to result. If these effects are likely to result from the

granting of the proposed remedy, the court may not grant the remedy.

332 Paragraph (a) of subsection (8) requires the court to be satisfied that a remedy would not be likely to substantially prejudice or cause substantial hardship to a third party (a person other than the public authority defendant) before granting it. Expenditure already spent in reliance of the decision in question may be relevant to the question of substantial prejudice or hardship, along with potentially the recoverability of the sums and the financial means of the third party.

333 Paragraph (b) of subsection (8) requires that the court also be satisfied that a remedy it grants would not be detrimental to good administration. This provision recognises the need to protect the orderly implementation of properly-reached decisions, and recognises that finality in decision-making is important for both public authorities and the public.

334 Subsection (9) sets out that the court, subject to the conditions set out in subsection (8), must apply the usual principles applied in a judicial review when considering whether to grant a remedy in an environmental review. It also clarifies that section 31(2A) of the Senior Courts Act 1981 does not apply, a provision under which the court could not grant a

remedy in circumstances where it appears highly likely that the outcome for the applicant would not have been substantially different if the breach under consideration had not occurred. The OEP will be the only possible applicant for an environmental review and will never be directly affected by the decisions it may be challenging. By making clear that this provision of the Senior Courts Act 1981 does not apply, subsection (9) therefore ensures the court is able to grant remedies subject to the provisions of subsection (8). If the court does decide to impose a remedy, should the public authority fail to comply with any resulting court order it could be subject to contempt of court proceedings brought by the OEP.

335 Subsection (10) requires a public authority that has been the subject of an environmental review in which a statement of non-compliance has been issued by the court (and not overturned on appeal) to publish a statement. This statement should describe any steps the authority intends to take based on the outcome of these proceedings. For example, if the court were to agree with the conclusions outlined by the OEP in its decision notice, and make an order granting a statement of non-compliance and specified remedies, the public authority's statement

could include details of how it intends to ensure the remedies are given effect, and/or details of how it will ensure future breaches are avoided. Where a statement of non-compliance is not issued, the public authority is not required to publish a statement, but would not be prevented from doing so if it so wished.

336 Subsection (11) sets out that a statement under subsection (10) must be published within two months of the conclusion of the review proceedings. This means that the statement should be published after the final disposal of proceedings, meaning after judgment has been delivered on the final issue in the case, including any subsequent appeal proceedings.

337 Subsection (12) defines several terms used in this clause.

Clause 38: Judicial review: powers to apply in urgent cases and to intervene

338 This clause makes provision for the OEP to apply for judicial or statutory review in specific circumstances and to intervene in third party judicial reviews and statutory reviews where appropriate.

339 Subsection (1) provides that the OEP may apply for judicial review, or a statutory review

(a legal challenge procedure similar to judicial review, but under specific legislation – for instance, the Town and Country Planning Act 1990 procedure by which an applicant may challenge a decision of the Secretary of State), of a public authority's conduct, whether or not it has issued an information or decision notice, if it considers that the public authority in question has committed a serious breach of environmental law, and if what is referred to as "the urgency condition" is met.

340 Subsection (2) defines the urgency condition. The effect of these provisions is that the OEP could only make an application for judicial review (or statutory review), rather than proceeding according to its normal enforcement procedure (information notice; decision notice; environmental review), if it is "necessary" to do so in order to prevent or mitigate serious damage to the natural environment or human health. This could be the case if, for example, the serious damage would have already happened by the time that the normal enforcement procedure reached the court and a more urgent court judgment was needed. To give all parties certainty, the OEP will be required to set how it intends to determine whether damage is serious for the purpose of this clause in its

enforcement policy, as part of its strategy (see clause 22(6)(b)). Subsection (3) disapplies section 31(2A), (3C) and (3D) of the Senior Courts Act 1981 in relation to judicial review applications under subsection (1) of this clause in England and Wales, which limit the granting of permission for judicial review, or relief "if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred". This is because it is highly likely that the outcome for the OEP itself would not have been different if the public authority had behaved differently.

341 Subsection (4) provides that a public authority which was the subject of a judicial review, or statutory review, commenced by the OEP under this clause must publish a statement within two months of the conclusion of proceedings (including any appeal). This statement must set out any steps the public authority intends to take as a result of the proceedings.

342 Subsection (5) requires a public authority to publish the statement as provided for in subsection (4) within two months of the day that proceedings, including any appeal, conclude.

343 Subsections (6) and (7) provide that the OEP may apply to participate in third party judicial review or statutory review proceedings (including appeal proceedings) against a public authority concerning an alleged failure to comply with environmental law, as defined under clause 45, as long as the OEP considers that the alleged failure, if it occurred, would be serious. This could include scenarios where the OEP agrees that the public authority has failed to comply with environmental law, but also where it may disagree that this is the case; the OEP may have useful expertise to contribute in each case.

344 Subsection (8)(a) provides that, other than in clause 37, in Part 1 of the Bill reference to "an application for judicial review" includes an application to the High Court, or the Court of Session in Scotland.

345 Subsection (8)(b) provides that in this clause a "statutory review" means a claim for such a review under the provisions set out in sub-paragraphs (i) to (iv).

Clause 39: Duty of the OEP to involve the relevant Minister

346 This clause deals with how the OEP should operate in situations where the subject of an information or decision notice

under clauses 34 and 35 respectively, or of an application for environmental review under clause 37, is not a Minister of the Crown.

347 Where the recipient of an information or decision notice is not a Minister of the Crown, subsection (1)(a) requires the OEP to provide a copy of the notice to the relevant Minister, as well as a copy of any correspondence between the OEP and the public authority concerned that relates to the notice. This is to ensure that the government remains informed about the matter and is able to contribute if appropriate. Paragraph (b) of this subsection also requires that the OEP must provide the recipient of a notice with a copy of any correspondence it has with the relevant Minister regarding the notice. In each case, the OEP is not required to share correspondence which is sent as part of these requirements. (In other words, it would not be required to share copies of copies of notices, or of correspondence which relates to notices by virtue of this clause.)

348 Subsection (2) provides that obligations to provide copies of notices or correspondence under subsection (1) will not apply where the OEP considers that to do so would not be in the public interest.

349 Where the OEP makes an application for environmental review, judicial review, or statutory review against a public authority that is not a Minister of the Crown, subsection (3)(a) provides that the OEP must provide the relevant Minister with a copy of the application. Subsection (3)(b) additionally requires the OEP to provide the Minister with a statement which sets out whether the OEP considers the Minister should participate in the review proceedings, for example as an interested party. The OEP may consider such Ministerial involvement appropriate in particular cases, even where the Minister is not the defendant (that is, the party responsible for compliance with the environmental law in question), for various reasons. For instance, delivery bodies may adopt an approach to implementation influenced by factors or messaging emanating from central government. To this extent, it may be helpful for Ministers to provide input to the proceedings.

350 Ministerial involvement in proceedings where appropriate would have similarities to EU infraction cases, where the action is brought against the UK or other Member State government regardless of which particular public authority is at fault. Subsection (3)(b) essentially therefore

provides for the OEP to offer a formal statement of its view as to the desirability of the Minister's participation, for the Minister's consideration. The OEP cannot require the Minister's participation under this clause. Further details concerning the addition of parties to legal proceedings in environmental reviews brought by the OEP will be a matter for the Civil Procedure Rules.

351 Throughout this clause, "the relevant Minister" has the meaning given in clause 32(11).

Clause 40: Public statements

352 This clause deals with requirements on the OEP to publish statements when it takes certain enforcement actions.

353 Subsection (1) provides that the OEP must publish a statement, for example in the form of a press release, whenever it serves an information or decision notice, applies for environmental review, judicial review, or statutory review, or applies to intervene in judicial review. This subsection also sets out the information that this statement must contain.

354 Subsection (2) provides that the OEP does not need to publish a statement if it considers that it would not be in the public interest to do so. For example, the OEP

might judge it to be not in the public interest to publish a statement about its enforcement activities that would prejudice the protection of personal or confidential data.

355 The provisions of this clause are intended to provide an appropriate degree of transparency as regards the enforcement action that the OEP is taking and against whom. The European Commission also publishes press statements at key stages of the infraction process, although this is not a legal requirement on the European Commission as it will be for the OEP.

Clause 41: Disclosures to the OEP

356 To assist the OEP in carrying out its investigatory functions, subsection (1) of this clause enables persons whose functions include functions of a public nature to provide information to the OEP notwithstanding any obligation of secrecy, either statutory or otherwise, when that information is in connection with an investigation under clause 32, an information notice or a decision notice.

357 Subsection (2) provides for particular circumstances in which a person is not required to provide the OEP with information.

358 This disapplication of obligations of secrecy is limited: it applies only to the provision of information to the OEP, and not

to anyone else, and it applies only under the conditions set out in subsection (1).

359 Subsection (3) makes similar provision for a relevant ombudsman. The meaning of a "relevant ombudsman" is set out in clause 22(9).

360 Subsection (4) excludes data protection legislation from the provisions in this Part of the Bill. This includes any disclosure of information that takes place under Clause 42 and requires it to be compliant with data protection law.

361 Subsection (5) defines what is meant by "the data protection legislation".

Clause 42: Confidentiality of proceedings

362 This clause deals with the circumstances in which the OEP and public authorities may or may not disclose information regarding an investigation whilst the OEP is carrying out enforcement proceedings. The provisions have been designed to provide adequate protection of confidential information during those enforcement proceedings, whilst ensuring compliance with the pillar of the Aarhus Convention that is concerned with access to environmental information, and with Council Directive 2003/4/EC on public access to environmental information. The Directive is implemented in England, Wales

and Northern Ireland by the Environmental Information Regulations 2004 (EIR) and in Scotland by the Environmental Information (Scotland) Regulations 2004.

363 Subsection (1)(a) sets out that the OEP must not disclose information which has been provided by a public authority as a response to a request for information from the OEP in an information notice (as provided for in clause 34(3)(b)), or otherwise obtained by the OEP on the basis of the duty on public authorities to co-operate, provided for in clause 26(1)). Under paragraph (b) of this subsection, the OEP cannot disclose any correspondence between the OEP and the recipients of information or decision notices that relates to those particular notices, including the information and decision notices themselves. Circumstances where provisions in subsection (1) do not apply, and the OEP is able to disclose the information, are covered under subsection (2). For example, once the OEP has concluded a case has been closed and that it intends to take no further steps, then the information barred from disclosure under 40(1) can be disclosed.

364 Under subsection (3), a public authority in receipt of an information or a decision notice

may not disclose the notice or any correspondence between the OEP and that, or any other, public authority relating to that notice. Subsection (4) sets out the circumstances where the restriction in subsection (3) does not apply to a disclosure. This relates to cases such as where consent has been obtained, where the disclosure is required for the purposes of an investigation under clause 32, where disclosure is required to be able to respond to an information or decision notice, or where it is connected to an environmental review or judicial review proceedings.

365 Subsection (5) sets out that the OEP can only give its consent for disclosure of an information or a decision notice when it has concluded it intends to take no further steps under this Chapter.

366 Subsection (6) ensures that, if consent has been requested by a public authority, the OEP cannot withhold that consent for disclosure of correspondence if it has concluded it intends to take no further steps under this Chapter.

367 Subsection (7) provides that when information referred to in subsection (1) and held by the OEP, or subsection (3) and held by a public authority, is “environmental

information” in accordance with the Environmental Information Regulations (EIR) it is held, for the purposes of these regulations, in connection with confidential proceedings. Whilst enforcement proceedings by the OEP are ongoing, the information referred to in subsection (1) and (3) will be capable of attracting an exception in the EIR that provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.

368 This clause does not override the EIR which will still apply to the OEP and other public bodies. The OEP will be required to consider requests for disclosure of information made under the EIR on a case by case basis, including assessing whether any appropriate exception will apply.

369 This clause will also not override or disapply other existing legislative provision on public access to information such as the Freedom of Information Act 2000 or Data Protection Act 2018. The OEP will therefore be subject to requirements set out in existing law which govern access to, and protection of, information. This will include the ability to

rely on exemptions in existing legislation where appropriate and necessary.

370 This clause should also not act as a barrier to the transfer of information, whether by the OEP or other bodies, to The National Archives under the Public Records Act 1958 in accordance with the existing statutory scheme. The OEP may seek to ensure the efficient transfer of information by preparing a joint working protocol with The National Archives.

Chapter 3: Interpretation of Part 1

371 There is no universal definition of “the environment”. Although a diverse array of definitions exists, each has been designed to describe the environment in a particular context, or from a specific perspective. A clear definition, therefore, is needed to determine the scope of the OEP. Clauses 43 to 45 define the “natural environment”, “environmental protection” and “environmental law” for the primary purpose of determining the range of legislation that falls within the remit of the OEP, and with respect to which the OEP can exercise its scrutiny, advice, complaints and enforcement functions, and for the purposes of other provisions in Part 1 of the Bill. The definitions in clauses 43 to 45 are not intended to have

any application beyond the interpretation of this Bill.

372 The definition of the “natural environment” is also relevant to the minimum scope of the environmental improvement plans.

Clause 43: Meaning of “natural environment”

373 In setting out the matters that are each considered to be environmental protection, clause 44 uses the term “natural environment”. The definition provided in the clause includes living elements of the environment, namely plants, wild animals, other living organisms, and their habitats – both terrestrial and marine. However, it is not intended to include domesticated animals such as livestock and pets. The definition also includes non-living elements, namely air, water and land. This includes both the marine and terrestrial environments. “Water” will include seawater, freshwater and other forms of water, while “air” will include the atmosphere (including, for example, the ozone layer) and “land” will include soil, geological strata and other features. In addition, “land”, as defined in the Interpretation Act 1978, includes “land covered with water” and therefore will include the sea bed. Buildings and other structures are excluded from the meaning of “land”,

however water and air are included regardless of whether they are outside or inside a building or other structure.

374 The clause also sets out that systems, cycles and processes through which the elements listed above interact are also included within this definition of the natural environment. This therefore includes ecosystems, and hydrological and geomorphological processes.

Clause 44: Meaning of “environmental protection”

375 This clause defines what is meant by “environmental protection”. This definition applies throughout this Part.

376 Paragraphs (a) to (d) set out a list of matters which are each considered to be “environmental protection”. When reading this list, reference should be made to the definition of the “natural environment” in clause 43.

377 Environmental protection is defined as any of the following: (a) protecting the natural environment from the effects of human activity; (b) protecting people from these effects; (c) maintaining, restoring or enhancing the environment; and (d) monitoring, assessing, considering, advising or reporting on the above points.

Clause 45: Meaning of “environmental law”

378 This clause deals specifically with the definition of “environmental law”, and therefore the scope of the OEP’s functions that depend upon this definition.

379 Subsection (1) defines “environmental law”, for the purposes of this Part, as any legislative provision to the extent that the provision is mainly concerned with environmental protection as defined in clause 42 and is not explicitly excluded under subsection (2).

380 Subsection (1) uses the term “legislative provision”, which is a reference to UK legislation, and can cover specific sections or subsections of an Act, regulations or other forms of legislation. As such, the effect of this subsection is that the OEP will not have a statutory function to assess compliance with purely international environmental law. Rather, its remit will be limited to enforcing UK legislation that falls under the definition of environmental law, including legislation that implements international commitments.

381 The definition of environmental law applies at the level of legislative provisions (that is, the whole or any element of an Act or regulations). This means that, even if most of an Act or set of regulations does not meet

these conditions, to the extent that any specific provisions in the Act or regulations do meet the conditions they should be considered as “environmental law”.

382 The only matters explicitly and expressly excluded from the definition of environmental law are those which are concerned with an excluded matter listed under subsection (2) and those excluded by subsection (3). Subsection (3) provides that, other than for the purposes of clause 19, devolved legislative provisions as defined in subsection (4) are excluded from the definition of environmental law. Unless so expressly excluded, any other law can be considered to determine whether individual legislative provisions are “mainly concerned” with environmental protection. This does mean that within broadly environmental policy areas, whilst many provisions may meet these criteria, there may be certain provisions that will not be mainly concerned with environmental protection, and therefore not constitute environmental law.

383 For example, the Forestry Act 1967 contains examples of provisions that would be considered to be mainly concerned with environmental protection, and therefore constitute environmental law, as well as

provisions which would not. Section 1(3A) of the Forestry Act 1967, for instance, places a duty on the appropriate authority to endeavour to achieve a balance between its functions in relation to afforestation and timber supply and production, and "the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest". As this places a duty on a public authority concerning the conservation of the natural environment, this provision would fall within scope. However, some other provisions within this Act would not, such as section 1(2), which charges the appropriate forestry authority "with the general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products". This provision is mainly concerned with the promotion of the forestry sector and the production and supply of timber, rather than an element of environmental protection as listed in clause 44, and as such would not be considered to fall within the definition of environmental law.

384 Another example is planning legislation. Whilst provisions concerning environmental impact assessment and strategic environmental assessment are clearly

concerned with environmental protection as set out in clause 44, and therefore will fall within the definition of environmental law, most other areas of planning legislation are not mainly concerned with environmental protection, and therefore will not fall within the definition.

385 It will be for the OEP to assess whether or not it considers a legislative provision to fall under the definition on a case by case basis when determining whether or not it has legal powers to act in that area. In most cases, it is expected that the answer to this question will be clear, and agreed by all parties. However, there may be cases of uncertainty or disagreement, and in these instances it may ultimately be for the courts to decide whether a specific provision falls within the definition or not.

386 Subsection (2) sets out matters that are explicitly excluded from the definition of environmental law:

- Disclosure of or access to information. These matters are excluded under paragraph (a) in order to avoid overlap between the remit of the OEP and that of the Information Commissioner's Office, which oversees and where necessary takes action to enforce public authorities'

compliance with the Environmental Information Regulations.

- The armed forces or national security (paragraph (b)).
- Legal provisions concerning taxation (paragraph (c)). The term “taxation” in this context refers to taxes in a legal sense, and therefore does not include other regulatory schemes that involve fees and charges for purposes other than taxation, such as the plastic bag charge or the imposition of fees to cover the cost of a regulatory regime. Such schemes are not automatically excluded from the Bill’s definition of “environmental law”.
- Paragraph (c) also excludes provisions concerning spending or the allocation of resources within government from the definition of “environmental law”. As such, all finance acts are excluded.

387 Subsection (4) defines what is meant by “devolved legislative provision” as any provision which is contained in or created by legislation of the three devolved Assemblies and Parliaments, or which otherwise falls within their legislative competence.

388 Subsection (5) provides that the Secretary

of State may use secondary legislation to specify legislative provisions which do or do not fall within the definition of "environmental law" in subsection (1). Provision in this way could be used if necessary in the light of experience for instance to resolve an ambiguity about how the definition applies to particular legislation. Subsection (6) requires that the Secretary of State must consult the OEP, and any other persons the Secretary of State considers appropriate, before using this power to specify provisions.

389 Subsection (7) provides that any such provision made under subsection (5) would be made through a statutory instrument subject to the affirmative resolution procedure. This means it must be laid before and approved by a resolution of each House of Parliament.

Clause 46: Interpretation of Part 1: general

390 This clause defines various terms used throughout Part 1.

Part 2: Environmental Governance: Northern Ireland

Clause 47: Improving the natural environment: Northern Ireland

391 Clause 47 introduces Schedule 2, which includes provision for environmental

improvement plans and policy statements on environmental principles in Northern Ireland.

Clause 48: The Office for Environmental Protection: Northern Ireland

392 Clause 48 introduces Schedule 3, which makes provision for the functions of the OEP in terms of its activities in Northern Ireland, as well as amendments to this Bill to reflect those functions.

Part 3: Waste and Resource Efficiency

Clause 49: Producer responsibility obligations

393 Clause 49 introduces Schedule 4, which allows the relevant national authority to make regulations about producer responsibility obligations and the enforcement of those regulations.

394 Subsections (2) and (3) set out who the "relevant national authority" is. This is the Secretary of State in relation to England, the Scottish Ministers in relation to Scotland, the Welsh Minsters in relation to Wales, and the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland. The Secretary of State may make regulations on behalf of Wales, Scotland, or Northern Ireland, but only with the relevant Minister's or Department's consent.

395 Subsections (4) and (5) make provision for

regulations made under this Schedule to be subject to the affirmative resolution procedure, unless the regulations contain only provision for, or in connection with, varying targets, in which case they are subject to the negative resolution procedure.

396 Subsection (6) repeals the current primary legislation that deals with producer responsibility in Great Britain and Northern Ireland. That legislation is replaced by this clause and Schedule 4.

Clause 50: Producer responsibility for disposal costs

397 Clause 50 introduces Schedule 5, which allows the relevant national authority to make regulations that require those involved in manufacturing, processing, distributing or supplying products or materials to meet, or contribute to, the disposal costs of those products.

398 Subsections (2) and (3) sets out who the "relevant national authority" is. This is the Secretary of State in relation to England, the Scottish Ministers in relation to Scotland, the Welsh Minsters in relation to Wales, and the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland. The Secretary of State may make regulations on behalf of Wales, Scotland, or Northern

Ireland, but only with the relevant Minister's or Department's consent.

399 Subsection (4) makes provision for regulations made under Schedule 5 to be subject to the affirmative resolution procedure.

Clause 51: Resource efficiency information

400 This clause gives effect to Schedule 6, which gives the relevant national authority the power to make regulations that set requirements for manufacturers and producers to provide information about the resource efficiency of their products. The purpose of the power is to enable the regulation of products that have a significant impact on natural resources at any stage of their lifecycle, with the object of reducing that impact primarily through ensuring consumers are supplied with information about the resource efficiency of those products in order to drive more sustainable consumption. Regulations may impose requirements on any person connected with a product's supply chain, and in relation to any type of product other than some specified exceptions.

401 Subsection (1) sets out that the Schedule is divided into two parts. Part 1 gives power to the relevant national authority to make

regulations about requiring resource efficiency information. Part 2 gives the relevant national authority power to make regulations about the enforcement of these information requirements.

402 Subsection (2) defines the “relevant national authority” in each territory.

403 Subsection (3) makes clear that regulations made under Schedule 6 by either Welsh Ministers, Scottish Ministers or Department of Agriculture, Environment and Rural Affairs can only contain provisions that are within their legislative competence.

404 Subsection (4) makes clear that the Secretary of State must obtain the consent of the appropriate national authority before making provisions in regulations that fall under the legislative competence of another national authority.

405 Subsection (5) states that regulations under Schedule 6 are subject to affirmative procedure.

406 This clause and Schedule 6 extend and apply to England and Wales, Scotland and Northern Ireland.

Clause 52: Resource efficiency requirements

407 This clause gives effect to Schedule 7, which gives the relevant national authority

the power to make regulations that set resource efficiency requirements that products are required to meet. The purpose of the power is to enable the regulation of products that have a significant impact on natural resources at any stage of their lifecycle, with the object of reducing that impact primarily through setting requirements relating to durability, reparability and recyclability, and the recycled content of products and materials. Regulations may impose requirements on any person connected with a product's supply chain, and in relation to any type of product other than some specified exceptions.

408 Subsection (1) sets out that the Schedule is divided into two Parts. Part 1 gives power to the relevant national authority to make regulations about resource efficiency standards. Part 2 will give the relevant national authority power to make regulations about the enforcement of these standards.

409 Subsection (2) defines the "relevant national authority" in the same way as in clause 49.

410 Subsection (3) makes clear that regulations made under this Schedule by either Welsh Ministers, Scottish Ministers or the Department of Agriculture, Environment

and Rural Affairs can only contain provisions that are within their legislative competence.

411 Subsection (4) makes clear that the Secretary of State must obtain the consent of the appropriate national authority before making provisions in regulations that fall under the legislative competence of another national authority.

412 Subsection (5) states that regulations made under this Schedule are subject to the affirmative procedure.

413 This clause and Schedule 7 extend and apply to England and Wales, Scotland and Northern Ireland.

Clause 53: Deposit schemes

414 Clause 53 and Schedule 8 enable the relevant national authority – namely, the Secretary of State, in relation to England, Welsh Ministers, in relation to Wales, and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, in relation to Northern Ireland – to make regulations establishing deposit schemes. Subsections (3) and (4) allow the Secretary of State to make regulations on behalf of Wales and Northern Ireland, subject to their consent. Subsections (5) and (6) outline the parliamentary procedure for regulations establishing a deposit scheme. Regulations

are subject to the negative resolution procedure, except in the below cases when they are subject to the affirmative resolution procedure:

- the regulations establish a deposit scheme for the first time;
- the regulations are the first to provide for enforcement of a deposit scheme;
- the regulations create a criminal offence;
- the regulations provide for new civil sanctions; or
- the regulations increase the amount or the maximum amount of a fine or monetary penalty, or change the basis on which an amount of maximum amount of a fine or monetary penalty is to be determined.

415 Subsection (7) and paragraph 1(2) of the Schedule set out what a deposit scheme is. This is a scheme under which a person supplied with a deposit item by a scheme supplier (this might be a producer, retailer or distributor) by way of sale or in connection with the supply of goods or services pays the supplier an amount (the deposit) and a person who gives a deposit item to a scheme collector (this might be a retailer or other return point) is entitled to be paid a refund in

respect of that item. This subsection and paragraph 4(2) of the Schedule describe the functions of a deposit scheme administrator, including the powers for a scheme administrator to interact, engage and make payments to a scheme administrator established for a deposit scheme in Scotland.

Clause 54: Charges for single use plastic items

416 This clause introduces Schedule 9 and allows for the making of regulations about charges for single use plastic items.

417 Subsection (2) defines who the relevant national authority is for the purposes of making regulations under the Schedule; this is the Secretary of State, in relation to England, Welsh Ministers, in relation to Wales and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, in relation to Northern Ireland.

418 Subsection (3) sets out the circumstances in which the affirmative procedure applies to the making of regulations (namely, where the first set of regulations is made by the relevant national authority under the Schedule, where the regulations contain provision about charging for a new item, where the regulations contain provisions imposing or providing for the imposition of new civil sanctions, or where the regulations increase

the maximum amount of a monetary penalty or change the basis on which it is to be determined.) Otherwise, regulations under the Schedule are subject to the negative resolution procedure.

Clause 55: Charges for carrier bags

419 This clause amends Schedule 6 to the Climate Change Act 2008 ("the 2008 Act") by inserting a new paragraph 6A. New paragraph 6A makes provision for regulations made under Schedule 6 by the Secretary of State in relation to England, and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland in relation to Northern Ireland, to require sellers of single use carrier bags to register with an administrator. The regulations may also make provision about applications for registration, the period of registration, the cancellation of registration, and the payment of registration fees, including the amount.

420 Schedule 6 to the 2008 Act contains enabling powers conferred on the relevant national authority to make regulations about charges for single use carrier bags. Section 77(3) of the 2008 Act defines the "relevant national authority" as the Secretary of State in relation to England, the Welsh Ministers in relation to Wales, and the Department of the

Environment in Northern Ireland in relation to Northern Ireland. However, new paragraph 6A does not apply to regulations made by Welsh Ministers in relation to Wales.

Clause 56: Separation of waste

421 Clause 56 concerns the separation of waste for recycling. It amends the Environmental Protection Act 1990, in particular replacing the current section 45A and inserting new sections 45AZA to 45AZG. It also amends sections 41 (powers to make charging schemes) and 108 (powers of entry) of the Environment Act 1995.

422 Subsection (2) inserts a new subsection (4A) with additional definitions into section 30 (definitions of authorities) of the Environmental Protection Act 1990. These define “English waste disposal authority” and “English waste collection authority” as those whose area is in England. A waste collection authority is defined in section 30(3) of the Environmental Protection Act 1990. Given the section 45A duties apply to arrangements made by English waste collection authorities only, this has the effect of limiting the changes in the new section 45A of the Environmental Protection Act 1990 to waste collection authorities in England.

423 Subsection (3) amends section 33ZA of

the Environmental Protection Act 1990, which relates to fixed penalty notices, to omit the definition of “English waste collection authority”. This is because the definition is now provided in the amended section 30 of the Environmental Protection Act 1990.

424 Subsection (4) amends the Environment Protection Act 1990 to provide for separate collection of recyclable waste in England. It replaces section 45A with new sections 45A to 45AZG.

New section 45A England: separate collection of household waste

425 New section 45A concerns separate collection arrangements for household waste for English waste collection authorities. It only applies where a waste collection authority is required to collect household waste in its area under section 45(1)(a) of the Environmental Protection Act 1990. It does not apply if new section 45AZA applies, which relates to the collection of household waste from non-domestic properties.

426 Subsection (2) states that arrangements for the collection of household waste must meet the conditions in subsections (3) to (8), unless there is a relevant exemption in regulations made under new section 45AZC. These first two conditions (set out in

subsections (3) and (4)) require that recyclable household waste must be collected separately from other household waste for recycling or composting. In other words, recyclable waste must be separated from waste that it is destined for incineration or landfill so that the separately collected waste can be recycled or composted. The third condition (set out in subsection (5)) requires that the different recyclable waste streams are collected separately from each other unless subsection (6) applies.

427 Subsection (6) explains that two or more recyclable waste streams may be collected together if it is not technically or economically practicable to collect them separately from each other, or if collecting the waste separately has no significant environmental benefit. In other words, different recyclable waste streams may be collected together where one of the conditions in paragraph (a) or (b) is met.

428 Subsection (7) makes clear that under no circumstances may the dry recyclable waste streams (glass, metal, plastic, paper and card) be mixed with the other recyclable waste streams (food and garden waste). This is to minimise or prevent contamination of dry recyclable materials by food or garden waste.

429 Subsection (8) stipulates that food waste must be collected from households at least once a week by waste collection authorities.

430 Subsection (9) inserts a new definition of "recyclable household waste". This is defined as household waste (as defined in section 75(5) of the Environmental Protection Act 1990) that falls within any of the recyclable waste streams stated in subsection (10) and as described in regulations. The regulations will provide further detail about what materials within a recyclable waste stream are suitable for recycling. Some materials may on the face of it fall within a subsection (10) waste stream, but will not in fact be suitable for recycling or composting.

431 Subsection (10) states that the recyclable waste streams to be collected separately from other household waste are glass, metal, plastic, paper and card, food waste and garden waste.

New section 45AZA England: separate collection of household waste from relevant non-domestic premises

432 Subsection (1) states that new section 45AZA applies to arrangements to collect household waste from certain non-domestic premises either by persons acting in the

course of business, such as a commercial waste collector, or by persons exercising a public function, such as a waste collection authority acting under section 45(1)(a) of the Environmental Protection Act 1990. Non-domestic premises are defined in subsection (11) (see below).

433 Subsection (2) sets out that the arrangements must meet the conditions in subsections (3) to (7) unless there is a relevant exemption in regulations made under new section 45AZC. The first two conditions (set out in subsections (3) and (4)) require that recyclable household waste must be collected separately from other household waste for recycling or composting. In other words, recyclable waste must be separated from waste that it is destined for incineration or landfill with the intention of it being recycled or composted. The third condition in subsection (5) requires that the different recyclable waste streams are collected separately unless subsection (6) applies.

434 Subsection (6) sets out that two or more recyclable waste streams may be collected together if it is not technically or economically practicable to collect them separately from each other, or if collecting the waste separately has no significant environmental

benefit. In other words, different recyclable waste streams may be collected together where one of the conditions in paragraph (a) or (b) are met.

435 Subsection (7) makes clear that under no circumstances may certain dry waste streams (glass, metal, plastic, paper and card) be collected mixed with the other recyclable waste streams (food waste). This is to minimise or prevent contamination of dry recyclable materials by food waste.

436 Subsection (8) clarifies that persons who present waste for collection must present it in accordance with this section. This means that there is a duty on the persons presenting the waste for collection as well as the persons collecting the waste. However, subsection (8) does not apply where that person is already subject to an equivalent duty as a result of a notice served under section 46 of the Environmental Protection Act 1990 regarding receptacles for household waste.

437 Subsection (9) inserts a definition of “recyclable household waste”. This is defined as household waste (as defined in section 75(5) of the Environmental Protection Act 1990) that falls within one of the recyclable waste streams set out in subsection (10),

which is of a description specified in regulations. The regulations will provide further detail about what materials within a recyclable waste stream are suitable for recycling. Some materials may on the face of it fall within a subsection (10) waste stream, but in fact not be suitable for recycling or composting.

438 Subsection (10) states that the recyclable waste streams to be collected separately from other household waste are glass, metal, plastic, paper and card, and food waste.

439 Subsection (11) adds a definition of "relevant non-domestic premises". This is defined to include residential homes, schools, universities or other places of education and hospitals and nursing homes. Subsection (11)(d) gives the Secretary of State the powers to specify additional types of relevant non-domestic premises in regulations. However, subsection (12) states that such regulations must not define domestic properties as relevant non-domestic premises.

New section 45AZB England: separate collection of industrial or commercial waste

440 Subsection (1) states that new section 45AZB applies to arrangements for collecting industrial or commercial waste from premises

in England, either by persons acting in the course of business, such as a commercial waste collector, or by persons exercising a public function, such as a waste collection authority.

441 Subsection (2) defines “relevant waste” as waste that is similar in nature and composition to household waste. Where waste is relevant waste, the collection arrangements must meet the conditions in subsections (3) to (7) unless there is a relevant exemption in regulations made under this section. The first two conditions (set out in subsections (3) and (4)) require that recyclable relevant waste is collected separately from other waste for the purpose of recycling or composting. In other words, recyclable relevant waste must be separated from waste that it is destined for incineration or landfill with the intention of it being recycled or composted. The third condition (set out in subsection (5)) requires that the different recyclable waste streams are collected separately, unless subsection (6) applies or unless an exemption applies in regulations made under this section.

442 Subsection (6) explains that two or more recyclable waste streams may be collected together if it is not technically or economically

practicable to collect them separately from each other, or if collecting the waste separately has no significant environmental benefit. In other words, different recyclable waste streams may be collected together where one of the conditions in paragraph (a) or (b) are met.

443 Subsection (7) makes clear that under no circumstances may certain dry waste streams (glass, metal, plastic, paper and card) be collected mixed with other recyclable waste streams (food waste). This is to minimise or prevent contamination of dry recyclable materials by food waste.

444 Subsection (8) states that the persons who present waste for collection must present it in accordance with the arrangements and conditions set out in this section. This means that there is a duty on the persons presenting the waste for collection as well as the persons collecting the waste. However, subsection (8) does not apply where that person is already subject to an equivalent duty as a result of a notice served under section 47 of the Environmental Protection Act 1990 regarding receptacles for commercial or industrial waste.

445 Subsection (9) inserts a definition of “recyclable relevant waste”. This is defined

as relevant waste that falls within one of the recyclable waste streams set out in subsection (10) and is also of a description specified in regulations. The regulations will provide further detail about what materials within a recyclable waste stream are suitable for recycling.

446 Subsection (10) defines “recyclable waste streams” as glass, metal, plastic, paper and card and food waste.

New section 45AZC Sections 45A to 45AZB: powers to exempt and extend

447 New section 45AZC concerns powers for the Secretary of State to make regulations exempting duty holders from certain separate collection duties. It also allows the Secretary of State, if certain conditions are met, to extend the duties to additional recyclable waste streams, for example separate collection of textiles.

448 Subsection (1)(a) allows the Secretary of State to make regulations to create exemptions from the requirement to collect all recyclable waste streams separately from each other under new sections 45A to 45AZB. In other words, the Secretary of State can make regulations so that specific recyclable waste streams (such as plastics and metal) can always be collected together,

without the requirement to consider the specific technical or economic practicability or environmental benefit in subsection (6) of the relevant section.

449 Subsection (1)(b) allows the Secretary of State to make regulations to create exemptions from the application of the whole of new section 45AZA (separate collection of recyclable household waste from non-domestic premises) or 45AZB (separate collection of recyclable relevant waste). This is to enable the Secretary of State to exempt certain categories of persons from having to comply with these conditions, either at all or for a set period of time.

450 Subsection (1)(c) also allows the Secretary of State to make regulations to create exemptions from the application of new section 45AZA or new section 45AZB in relation to specific recyclable waste streams. This is to enable the Secretary of State to exempt certain categories of persons from having to comply with the conditions set out in new section 45AZA or new section 45AZB in respect of a particular recyclable waste stream such as food waste.

451 Subsection (2) sets a condition that the Secretary of State may exercise powers under subsection (1)(a) only if satisfied that

collecting two or more materials together would not significantly reduce the potential for the recyclable household waste or relevant recyclable waste to be recycled. This is to ensure mixed collections are only used where there is no impact on the ability to recycle the materials concerned. For example, collecting glass together with paper can impact on the recycling of paper, as very fine glass shards cannot currently be readily separated from the paper fibres and can lead to damage of paper recycling machinery.

452 Subsection (3)(a) allows the Secretary of State to amend new sections 45A to 45AZB by regulations, in order to add further recyclable waste streams to subsection (10) of those sections. This is so that, as recycling technology improves, it may be possible to recycle items that are not widely recycled now. There are further conditions that must be satisfied so that the Secretary of State can exercise this power. These are set out in subsection (4) below.

453 Subsection (3)(b) allows the Secretary of State to set out in regulations the extent to which these additional recyclable waste streams need to be collected separately or are able to be collected together with other recyclable waste streams. This is because it

may be appropriate to collect an additional recyclable waste together with some of the existing recyclable waste streams or, alternatively, entirely separately. The regulations would be able to specify this.

454 Subsection (4) sets out that the Secretary of State may only exercise the power to add further recyclable waste streams to new sections 45A(10), 45AZA(10) or 45AZB(10) if they are satisfied that the waste is suitable for recycling or composting, there will be an environmental benefit to recycling or composting it, that all English waste collection authorities are able to make arrangements to collect that new recyclable waste stream, and that it will be possible for the new recyclable waste stream to be sold on for recycling after its collection.

455 Subsection (5) contains statutory consultation requirements. Before making regulations under this section to add further recyclable waste streams, the Secretary of State must consult the organisations named. These are the Environment Agency, local authorities, and anyone else the Secretary of State considers appropriate. This is a non-exhaustive list.

New section 45AZD Sections 45A to 45AZB: duties of waste collectors

456 New section 45AZD introduces additional duties on persons who collect household waste, or commercial and industrial waste that is like household waste in nature and composition.

457 Under subsection (1), where any person collects or proposes to collect waste under arrangements in new sections 45A to 45AZB, and they will be collecting two or more of the recyclable waste streams co-mingled rather than individually separated, on the basis that it would not be technically or economically practicable to collect individually separated or that there would be no significant environmental benefit in collecting it individually separated, then they will need to carry out a written assessment under subsection (2) of why they have relied on new section 45A(6), 45AZA(6) or 45AZB(6).

New section 45AZE Sections 45 to 45AZD: guidance

458 Subsection (1) allows the Secretary of State to issue guidance about the duties imposed by sections 45 to 45AZD.

459 Subsection (2) is a non-exhaustive list of what the Secretary of State's guidance may contain. This includes guidance on when it may not be technically or economically practicable to collect recyclable household

waste or recyclable relevant waste streams separately, or where that separate collection may have no significant environmental benefit; how often household waste other than food waste should be collected; the kinds of waste which are relevant waste for the purposes of new section 45AZB (separate collection of industrial or commercial waste); and assessments made under new section 45AZD (duties of waste collectors).

460 Subsection (3) states that the guidance may make different provision in relation to new sections 45A to 45AZB. This is to enable the Secretary of State to take account of the fact that there might be different circumstances depending on whether it is household waste from domestic properties, household waste from non-domestic premises, or industrial and commercial waste being collected.

461 Subsection (4) contains statutory consultation requirements. Before issuing guidance, the Secretary of State must consult the organisations listed. The list includes the Environment Agency, English waste collection authorities (local authorities), and others that the Secretary of State considers appropriate. It is a

non-exhaustive list.

462 Subsection (5) requires that waste collection authorities, and any party to arrangements regarding the collection of recyclable waste under these sections, must have regard to the guidance.

New section 45AZF Sections 45AZA and 45AZB: compliance notices

463 New section 45AZF concerns compliance notices that the Environment Agency may issue in relation to the duties in new sections 45AZA and 45AZB.

464 Subsection (1) concerns the Environment Agency issuing compliance notices to persons, other than waste collection authorities, who are parties to the arrangements to collect household waste from non-domestic premises (new section 45AZA duties). This will include hospitals, schools, universities and nursing homes. Compliance notices can also be issued to persons, other than waste collection authorities, who are parties to arrangements to collect industrial and commercial waste that is similar in nature and composition to household waste (new section 45AZB duties). The Environment Agency may issue a compliance notice where a person is failing to comply with their duties in relation to the

collection of waste under new sections 45AZA or 45AZB.

465 Subsection (2) allows the Environment Agency to issue a compliance notice requiring specified steps to rectify the failure within a specified time. This is so that the person in receipt of the notice can take the action detailed in the notice, so that the failure does not carry on.

466 Subsection (3) sets out what the compliance notice must include in order to be valid. This includes the specific failures to comply with new section 45AZA (household waste from non-domestic premises) or new section 45AZB (industrial and commercial waste), the specific steps to be taken to sort out the failure, the time period within which these steps must be taken, and information on the rights of appeal.

467 Subsection (4) sets out that if a person fails to comply with a compliance notice, they are committing an offence. Under subsection (5), a person who commits such an offence will have to pay a fine if convicted.

New section 45AZG Sections 45AZA and 45AZB: appeals against compliance notices

468 New section 45AZG concerns appeals against compliance notices (for which see

above).

469 Subsection (1) sets out that a person who is given a compliance notice may appeal to the First-tier Tribunal against the notice, or any requirement in the notice.

470 Subsection (2) clarifies that the notice will take effect unless a tribunal decides otherwise. This means that the compliance notice will still have effect, even if the person appeals, until the tribunal quashes or varies the notice or otherwise decides that the notice should not have effect.

471 Subsection (3) lists the steps that the tribunal may take in relation to a compliance notice that has been appealed. The tribunal may quash, confirm or vary the notice or requirement. The tribunal may take any steps the Environment Agency could take in relation to the failure giving rise to the notice or requirement. The tribunal may also send any matter relating to the notice or requirement to the Environment Agency.

472 Subsection (5) of clause 56 amends section 46(2) of the Environmental Protection Act 1990, which relates to receptacles for household waste. This allows Welsh collection authorities to require persons to use separate bins (or compartments) for waste that will be recycled and for waste that

will not be recycled. It also allows English waste collection authorities to require persons to use separate bins (or compartments) to help that authority to comply with its duties under new sections 45A or 45AZA.

473 Subsection (6) of clause 56 inserts additional wording into section 47(3) of the Environmental Protection Act 1990, which relates to receptacles for commercial or industrial waste. This wording enables an English waste collection authority to require separate bins or bins with separate compartments in order to comply with the separate collection requirements set out in new section 45AZB relating to commercial and industrial waste.

474 Subsection (7) of clause 56 inserts an additional entry relating to regulations made under new section 45AZC into the table set out in subsection (2) of new section 160A of the Environment Protection Act 1990. New section 160A deals with parliamentary procedure for orders and regulations made under that Act. The effect of the amendment is that any regulations made under new section 45AZC will be subject to the affirmative parliamentary procedure.

475 Subsection (8) of clause 56 inserts some

additional wording into section 41(1) of the Environment Act 1995. The effect is that the Environment Agency can create a charging scheme to recover its costs in performing duties relating to new sections 45A to 45AZB of the Environmental Protection Act 1990.

476 Subsection (9) of clause 56 amends section 108(15) of the Environment Act 1995 to clarify that the new duties under new sections 45A to 45AZB of the Environmental Protection Act 1990 are not included in the definition of pollution control functions for the purposes of section 108 Environmental Act 1995 powers of entry. The effect of this amendment is that powers of entry and seizure cannot be used in relation to these new duties.

Clause 57: Electronic waste tracking: Great Britain

477 Clause 57 amends the Environmental Protection Act 1990 to create powers to introduce electronic (digital) waste tracking in England, Wales and Scotland, and to establish an electronic system for that purpose by regulations.

478 Subsection (1) introduces amendments that will be made to the Environmental Protection Act 1990 by subsections (2) and (3).

479 Subsection (2) inserts new sections 34CA

and 34CB into the Environmental Protection Act 1990. The effect of these two new sections is detailed below.

New section 34CA Electronic waste tracking

480 Subsection (1) introduces a power to make regulations, exercisable by the relevant national authority (the Secretary of State in England, Welsh Ministers in Wales and Scottish Ministers in Scotland), in order to track certain types of waste, including establishing an electronic waste tracking system.

481 Subsection (2) allows the regulations to impose requirements on relevant waste controllers (as defined in subsection (12)) in relation to waste tracking. The regulations may also impose requirements on the Environment Agency, Natural Resources Wales or the Scottish Environment Protection Agency. The requirements may include ensuring that specified information about waste and the tracking or regulation of that waste is entered onto the electronic system established under the regulations.

482 Subsection (3) contains non-exhaustive examples of the information that the regulations can require persons subject to the regulations to enter onto the electronic system. Those examples include information

about how waste is processed or treated, where waste has moved to and to whom waste has transferred. It also includes the same information in relation to material that has been produced as a result of the processing or treatment of waste ("relevant waste products") and information about relevant waste controllers.

483 Subsection (4) allows the relevant regulations to require persons in control or in possession of waste to ensure waste that is on or is going to be on the system can be physically identified – for example, by tracking waste tyres using radio-frequency identification.

484 Subsection (5) allows the regulations to make provision for third parties, rather than those in possession or control of the waste, to carry out their duties under the regulations. The regulations may impose requirements on such third parties where those in possession or control of the waste make such arrangements with third parties.

485 Subsection (6) contains a duty on the relevant national authority that regulations made in relation to electronic waste tracking must include exemptions from the duties under the regulations for digitally excluded persons. These are persons who, either for

religious or practical reasons – for example, age, disability or location – cannot use the electronic system. The regulations may impose alternative requirements on such persons.

486 Subsection (7) allows the regulations to appoint someone else to set up, administer, or maintain the electronic system. The regulations may also give functions to that person.

487 Subsection (8) allows the regulations to determine how information about the relevant waste on the system is used, who may access it and what limits should be placed on how that information is used by those who have been given access to it.

488 Subsection (9) allows for the introduction of fees or charges on anyone subject to the regulations. The regulations may state to whom the fee should be paid.

489 Subsection (10) allows for those fees or charges to reflect the costs of establishing, operating or maintaining the waste tracking system, or any other cost associated with tracking relevant waste incurred by the person designated to establish, operate or maintain the system.

490 Subsection (11) allows the relevant

national authority to provide a grant or loan to the person chosen to set up, maintain or run the waste tracking system.

491 Subsection (12) provides definitions of “digitally excluded person”, “extractive waste”, “relevant national authority” and “relevant waste”. A “digitally excluded person” is defined as a person who, either for religious or practical reasons – for example, age, disability or location – cannot use the electronic system “Extractive waste” is defined as having the meaning given to it in section 29(13) of the Environmental Protection Act 1990 in England and Wales, and in the Management of Extractive Waste (Scotland) Regulations 2010 in Scotland. “Relevant national authority” is defined as the Secretary of State in England, Welsh Minsters in Wales, and Scottish Ministers in Scotland. “Relevant waste” is defined as controlled or extractive waste (and controlled waste is defined in section 75(4) of the Environmental Protection Act 1990).

492 Subsection (12) also provides definitions of “relevant waste controller”, “specified” and “waste processing product.” “Relevant waste controller” is defined as a person who is subject to section 34(1) of the Environmental Protection Act 1990 or a person who imports,

produces, keeps, treats, manages or disposes of extractive waste or acts as a broker of or dealer in such waste. The relevant waste controller definition also includes persons who export controlled waste or extractive waste. “Specified” is defined as meaning specified or described in the regulations. “Waste processing product” is defined as any product (including material that is not waste) that results from processing controlled waste or extractive waste.

New section 34CB Further provision about regulations under section 34CA

493 Subsection (1) allows the regulations made under new section 34CA to specify how the requirements imposed by the regulations will be enforced.

494 Subsection (2) contains further detail about the enforcement provisions. Subsection (2) allows the regulations to create criminal offences for failing to comply with the regulations. The maximum penalty the regulations can specify for committing such an offence is a fine.

495 Subsection (3) contains further detail about civil sanctions. Subsection (3) allows regulations to enable an enforcing authority to impose civil sanctions on persons for failing to comply with the regulations. The

regulations may specify a fixed penalty amount or allow the enforcement authority to determine the amount of civil sanction. The regulations may also include details of any appeals process against a civil sanction imposed under the regulations.

496 Subsection (4) defines “Civil Sanction” as a type of sanction in Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

497 Subsection (5) makes further provision about civil sanctions. It states that the regulations may impose civil sanctions in cases where the conduct that has led to the sanction need not be an offence. The regulations may impose civil sanctions even if the person imposing them is not a “regulator” within the meaning of the Regulatory Reform and Sanctions Act 2008. The regulations may also impose civil sanctions whether or not the Secretary of State, Welsh Ministers or Scottish Ministers could make provision for such sanctions to be imposed under Part 3 of that Act.

498 Subsection (6) allows the regulations to make different provisions for different purposes, which might include exempting certain categories of waste controllers or placing different duties on certain categories of waste controllers depending on their

circumstances.

499 Subsection (7) provides the power to make consequential, transitional and similar amendments to legislation, including a power to make such amendments to primary legislation and retained direct EU legislation, by regulations.

500 Subsection (8) provides definitions of "enforcement authority" and "primary legislation" for the purposes of new section 34CB. "Enforcement authority" is defined as the Environment Agency in England, Natural Resources Wales in Wales, or a waste collection authority for an area in England or Wales. "Primary legislation" is defined as an Act of Parliament in relation to regulations made by the Secretary of State, an Act of Parliament or Act or Measure of Senedd Cymru in relation to regulations made by Welsh Ministers, and an Act of Parliament or an Act of the Scottish Parliament in relation to regulations made by Scottish Ministers.

501 Subsection (3) of clause 57 amends the table in section 160A(2) of the Environmental Protection Act 1990, as inserted into that act by this Bill. The purpose of the table is to detail the circumstances in which instruments made under those powers are subject to the affirmative procedure. The amendments

mean the affirmative parliamentary procedure must be used for the first set of regulations made by the relevant national authority, where the regulations create a criminal offence, increase the maximum penalty for a criminal offence, create a civil sanction or amend primary legislation or retained direct principal EU legislation.

502 Subsection (4) of clause 57 amends section 41(1) of the Environment Act 1995 in relation to the powers of the Environment Agency, Natural Resources Wales and the Scottish Environment Protection Agency to make charging schemes. The amendment inserts paragraph (da) into section 41(1) of the 1995 Act. The effect of that amendment is that the Environment Agency, Natural Resources Wales and the Scottish Environment Protection Agency can make a charging scheme to recover costs incurred when performing their functions in relation to functions given to them by the electronic waste tracking regulations.

503 Clause 57 extends and applies to Great Britain.

Clause 58: Electronic waste tracking: Northern Ireland

504 Clause 58 amends the Waste and Contaminated Land (Northern Ireland) Order

1997 to create powers to introduce electronic (digital) waste tracking in Northern Ireland, and to create associated criminal offences (punishable by a fine) and civil penalties.

505 Subsection (2) inserts new Articles 5G and 5H into the Waste and Contaminated Land (Northern Ireland) Order 1997 after Article 5F. The effect of these two new Articles is detailed below.

New article 5G Electronic waste tracking

506 Paragraph (1) introduces a power to make regulations, exercisable by the Department of Agriculture, Environment and Rural Affairs ("the Department"), in order to track certain types of waste, including establishing an electronic waste tracking system.

507 Paragraph (2) allows the regulations to impose requirements on relevant waste controllers (as defined in paragraph (12)) in relation to waste tracking. The regulations may also impose requirements on the Department or the Northern Ireland Environment Agency. The requirements include ensuring that specified information about the tracking or regulation of waste is entered onto the electronic system established under the regulations.

508 Paragraph (3) contains non-exhaustive

examples of the information that the regulations can require people to enter onto the electronic system. Those examples include information about how waste is processed or treated, where waste has moved to and to whom waste has transferred. It also includes the same information in relation to material that has been produced as a result of the processing or treatment of waste ("relevant waste products") and information about relevant waste controllers.

509 Paragraph (4) allows the relevant regulations to require persons in control or in possession of waste to ensure waste that is on or is going to be on the system can be physically identified – for example, tracking waste tyres through radio-frequency identification.

510 Paragraph (5) allows the regulations to make provision for third parties, rather than those in possession or control of the waste, to carry out their duties under the regulations. The regulations may impose requirements on such third parties.

511 Paragraph (6) contains a duty on the Department that regulations made in relation to electronic waste tracking must include exemptions from the duties under the

regulations for digitally excluded persons, as defined in paragraph (12). These are persons who, either for religious or practical reasons – for example, age, disability or location – cannot use the electronic system. The regulations may impose alternative requirements on such persons.

512 Paragraph (7) allows the regulations to appoint someone else to set up, administer or maintain the electronic system. The regulations may also give functions to that person.

513 Paragraph (8) allows the regulations to determine how information about the relevant waste on the system is used, who may access it, and what limits should be placed on how that information is used by those who have been given access to it.

514 Paragraph (9) allows for the introduction of fees or charges on anyone subject to the regulations. The regulations may state to whom the fee should be paid.

515 Paragraph (10) allows for those fees or charges to reflect the costs of establishing, operating or maintaining the waste tracking system, or any other cost associated with tracking relevant waste incurred by the person designated to establish, operate or maintain the system.

516 Paragraph (11) allows the Department to provide a grant or loan to the person chosen to set up, run or maintain the waste tracking system.

517 Paragraph (12) provides definitions of “digitally excluded person”, “extractive waste”, “relevant waste”, “relevant waste controller”, “specified”, and “waste processing product”.

New article 5H Further provision about regulations under Article 5G

518 Paragraph (1) allows the regulations to make provision about the enforcement of requirements imposed by or under the regulations.

519 Paragraph (2) allows the creation of criminal offences, including the detail of such offences, for failing to comply with the regulations which can result in a fine.

520 Paragraph (3) allows the regulations to enable the Department to impose civil sanctions, to determine the amount of a civil sanction if a payment is required under it, to set out what factors should be taken into account when determining the amount, and to include any appeals process.

521 Paragraph (4) defines “civil sanction” as a sanction for which provision may be made

under Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

522 Paragraph (5) clarifies that the regulations allow for the imposition of sanctions whether or not the conduct constitutes an offence.

523 Paragraph (6) provides the power to make consequential and similar amendments to a number of regulations and consequential amendments to primary legislation by regulations.

524 Subsection (3) of clause 58 amends Article 82 of the Waste and Contaminated Land (Northern Ireland) Order 1997. This inserts paragraphs (1B) and (1C) after paragraph (1A) into Article 82. These paragraphs clarify the Assembly procedure to be used in relation to the new powers contained in new Article 5G. Paragraph (1B) clarifies that paragraph (1) does not apply to regulations mentioned in that paragraph. In such cases paragraph (1C) applies. The effect of this is that the regulations mentioned in paragraph (1B) are subject to the affirmative Assembly procedure as per paragraph (1C). Paragraph (1B) states the types of regulations that are subject to affirmative Assembly procedure. These affirmative triggers are the first set of regulations made under new Article 5G, the

creation of a criminal offence, increasing the maximum penalty for a criminal offence, the creation of a new civil sanction, and amending primary legislation or retained direct principal EU legislation.

525 Clause 58 extends and applies to Northern Ireland.

Clause 59: Hazardous waste: England and Wales

526 Subsection (1) introduces amendments that will be made to the Environmental Protection Act 1990 by subsections (2) to (4).

527 Subsection (2) inserts new section 62ZA into the Environmental Protection Act 1990.

New section 62ZA Special provision with respect to hazardous waste in England and Wales

528 Subsection (1) contains a power to make regulations to make provision about, or connected with, the regulation of hazardous waste.

529 Subsection (2) contains further details about the provision that can be made under the power in subsection (1). This includes prohibitions or restrictions on what can be done with hazardous waste, requirements on how such waste may be kept, the registration of persons in control of hazardous waste, and the keeping and inspection of records related

to hazardous waste. Such regulations may also impose civil sanctions or create criminal offences in relation to contraventions of the regulations.

530 Subsection (3) states the maximum penalty that regulations made under this section can impose in relation to criminal offences. That maximum penalty is two years' imprisonment.

531 Subsection (4) introduces a definition of "civil sanctions". This is defined as the type of sanction in Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

532 Subsection (5) makes further provision about civil sanctions. It states that the regulations may impose civil sanctions in cases where the conduct which has led to the sanction need not be an offence. The regulations may impose civil sanctions, even if the person imposing them is not a "regulator" within the meaning of the Regulatory Enforcement and Sanctions Act 2008.

533 Subsection (6) contains further details as to what the regulations may provide for. This includes waste regulation authorities (the Environment Agency in England and Natural Resources Wales in Wales) supervising activities authorised under the regulations as

well as the persons who carry out those activities. The regulations may also make provision about those regulators maintaining records (including registers), the regulator or person carrying out an activity in relation to hazardous waste recovering certain expenses or charges, and appeals to the Secretary of State or Welsh Ministers against the decisions of the Environment Agency and Natural Resources Wales respectively.

534 Subsection (7) clarifies that this section is subject to section 114 of the Environment Act 1995. This means that the Secretary of State or Welsh Ministers can appoint another person to determine appeals on certain matters listed in section 114.

535 Subsection (8) allows the regulations to confer functions on the Secretary of State, Welsh Ministers, the Environment Agency or Natural Resources Wales in relation to hazardous waste.

536 Subsection (9) is a power to make incidental, consequential and transitional provision, and to allow different provision for different purposes.

537 Subsection (10) inserts a definition of “mixing.” This is to ensure that any hazardous waste that is mixed or diluted (perhaps to the extent that it is no longer

hazardous waste) can still be regulated under regulations made under this section.

538 Subsection (11) introduces definitions of "activity", "hazardous waste controller", "relevant national authority", and "specified". "Activity" is defined in relation to hazardous waste. The effect of the definition of "activity" is that anything defined as an activity can be regulated under the new power in relation to hazardous waste. "Activity" includes (among other activities) producing, keeping, treating, transporting, disposing and classifying hazardous waste, and directing and supervising others carrying out such an activity in relation to hazardous waste. "Hazardous waste controller" is defined as any person who carries out an activity (as defined above) in relation to hazardous waste. "Relevant national authority" is defined as the Secretary of State in England and Welsh Ministers in Wales. "Specified" is defined as specified in the regulations made under this section.

539 Subsection (3) of clause 59 amends section 75 of the Environmental Protection Act 1990 to insert a new definition of "hazardous waste" and "waste list". The new hazardous waste definition is inserted into section 75 of the Environmental Protection

Act 1990 in a new subsection (8A). Hazardous waste is defined to include any waste listed in the waste list as hazardous, waste listed in regulations made under section 62A(2) of the Environmental Protection Act 1990, and waste treated as hazardous for the purposes of regulations made under section 62ZA of that Act or the Hazardous Waste (England and Wales) Regulations 2005 or the Hazardous Waste (Wales) Regulations 2005. The new waste list definition is inserted into section 75 of the Environmental Protection Act 1990 in a new subsection (8B). It is defined as EU Decision 2000/532 (establishing a list of wastes) as it has effect in England and Wales.

540 Subsection (4) of clause 59 amends the table in section 160A(2) of the Environmental Protection Act 1990, as inserted into that Act by this Bill. The changes require the affirmative parliamentary procedure to be used where the regulations made under the new section 62ZA create criminal offences, increase the maximum penalty for a criminal offence, or create civil sanctions.

541 Subsection (5) of clause 59 amends section 41 of the Environment Act 1995. The effect of this amendment is to enable the Environment Agency and Natural Resources

Wales to make charging schemes as a means of recovering costs incurred in performing their functions under any regulations made under new section 62ZA of the Environmental Protection Act.

542 Subsection (6) of clause 59 amends section 114 of the Environment Act 1995, so that the Secretary of State can appoint an appropriate person to determine appeals under new section 62ZA of the Environmental Protection Act.

Clause 60: Hazardous waste: Northern Ireland

543 Clause 60 amends Articles 30 and 82 of the Waste and Contaminated Land (Northern Ireland) Order 1997.

544 Subsection (2) amends Article 30 of that Order, which provides for the making of regulations to control the management of special waste (referred to as “hazardous waste” in Article 30(1) of that Order) in Northern Ireland.

545 Subsection (2)(a) substitutes a new paragraph into Article 30(1) of that Order which incorporates a revised and expanded power to make regulations that make provision for, about, or connected with, the regulation of “hazardous waste”, which it defines as controlled waste that is or may be dangerous or difficult to treat.

546 Subsection (2)(b) amends Article 30(2) of that Order by inserting new sub-paragraph (za) before sub-paragraph (a) and new sub-paragraph (h) after sub-paragraph (g). New sub-paragraph (za) expands the power in Article 30(1) to allow the regulations to prohibit or restrict the treatment, keeping or disposal of hazardous waste or any other activity in relation to such waste. New sub-paragraph (h) expands the power in Article 30(1) to allow the regulations to contain provision for, about, or connected with the imposition of civil sanctions.

547 Subsection (2)(c) inserts new paragraphs (2A) and (2B) into Article 30 of that Order. New paragraph (2A) introduces a definition of civil sanctions for the purposes of Article 30. “Civil sanctions” are defined as a type of sanction for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008. New paragraph (2B) makes further provision about civil sanctions. New paragraph (2B) states that regulations made under Article 30 may include civil sanctions even if the conduct leading to the sanction is not an offence or the person imposing them is not a “regulator” within the meaning of Part 3 of the the Regulatory Enforcement and Sanctions Act 2008. New paragraph (2B) allows the Department of

Agriculture, Environment and Rural Affairs to make regulations that impose civil sanctions even if the Department cannot make provision for the imposition of civil sanctions under Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

548 Subsection (2)(d) inserts new paragraphs (3A) into Article 30 of that Order after paragraph (3). Paragraph (3A) enables any regulations made under the power in Article 30 to make consequential, supplementary, incidental, transitional, transitory or saving provision.

549 Subsection (3) amends Article 82 of that Order. This inserts new paragraphs (1D) and (1E) after paragraph (1C) (as inserted by this Bill). These new paragraphs clarify the Assembly procedure to be used in relation to the new powers contained in Article 30. New paragraph (1D) clarifies that Article 82(1) does not apply to regulations made under Article 30 that create a new civil sanction. This means that the creation of a new civil sanction under Article 30 is subject to the affirmative Assembly procedure. New paragraph (1E) states that where Article 82(1) does not apply given Article 82(1D), the affirmative Assembly procedure must be used.

Clause 61: Transfrontier shipments of waste

550 Clause 61 amends section 141 of the Environmental Protection Act 1990. Section 141 of that Act contains a power to make regulations to prohibit or restrict waste imports and exports. This clause amends that section to allow regulations to be made to regulate waste imports or exports or the transit of waste for export.

551 Subsection (1) introduces amendments that will be made to section 141 of the Environmental Protection Act 1990 by subsections (2) to (8).

552 Subsection (2) amends the heading of section 141. Paragraph (a) replaces the words “prohibit or restrict” with “regulate”. Paragraph (b) adds “the transit of waste for export” to the heading of the section.

553 Subsection (3) replaces the existing subsection (1) and adds new subsections (1A) and (1B) to section 141. New subsection (1) gives a power to the Secretary of State to make regulations about, or in connection with, the regulation of waste imports and exports and the transit of waste for export. New subsection (1A) gives further detail on the provision that can be made by those regulations. This includes banning or restricting waste imports and exports, the

landing and loading of waste in the UK, loading waste for export, or the transit of waste for export. New subsection (1B) clarifies that regulations can include matters relating to the intended final destination of the waste or the places the waste will travel through (before reaching its final destination).

554 Subsection (4) substitutes subsection (3) of section 141 with a new subsection (3). This allows the regulations made under section 141 to confer functions on the Secretary of State, the Environment Agency, Natural Resources Wales the Scottish Environment Protection Agency, or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. Those functions may include functions related to the enforcement of the regulations. The regulations may give those bodies discretion as to how they exercise the functions given to them.

555 Subsection (5) omits subsection (4) of section 141, because it is redundant given the new subsection (3). New subsection (3) can now be used to confer functions on the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency, or the Department of Agriculture, Environment and Rural Affairs in Northern

Ireland.

556 Subsection (6)(a) omits paragraph (a) of section 141(5). As with subsection (4), which this clause also omits, new subsection (3) means that this paragraph is no longer needed.

557 Subsection (6)(b) inserts new paragraph (aa) after omitted paragraph (a) of section 141(5). New paragraph (aa) allows the regulations made under this section to allow the Secretary of State to issue directions regarding how the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland exercise their functions when regulating waste imports and exports and the transit of waste for export.

558 Subsection (6)(c) omits “prescribed in or under the regulations” from paragraph (b) of section 141(5).

559 Subsection (6)(d) inserts new paragraphs (ba) and (bb) after paragraph (b) of section 141(5). New paragraph (ba) allows the regulations to include provisions about fees or charges to the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency or the

Department of Agriculture, Environment and Rural Affairs in Northern Ireland. Such fees and charges are to be paid by persons involved in the import or export of waste, or the transit of waste for export. New paragraph (bb) contains further provision in relation to those fees and charges. This states that the regulations may provide for the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland to use those fees or charges to meet the costs they have incurred when regulating waste imports and exports and the transit of waste for export.

560 Subsection (6)(e) amends paragraph (d) of section 141(5). Subsection (5)(e) substitutes the reference to section 69(3) of the Environmental Protection Act 1990 with a reference to section 108(4) of the Environment Act 1995. This is because section 108(4) of the 1995 Act is a similar provision (conferring similar powers) to section 69(3) of the 1990 Act, and section 69 of the 1990 Act has been repealed. This follows the approach taken in section 140 of the Environmental Protection Act 1990. This amendment allows the regulations to confer powers of entry and seizure in relation to the

enforcement of the regulations.

561 Subsection (6)(f) amends paragraph (e) of section 141(5) and replaces the words “authorities under the regulations” with “waste regulation authorities”. This is to make clear that the reference to “authorities” is to “waste regulation authorities”, as defined in the Environmental Protection Act 1990 (as read with section 141(7)).

562 Subsection (6)(g) inserts new paragraphs (fa) and (fb) into section 141(5). New paragraph (fa) allows the regulations to make provision allowing HMRC to disclose information to the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. New paragraph (fb) allows the regulations to confer functions on customs officials (designated under the Borders, Citizenship and Immigration Act 2009) in relation to seizing or detaining waste that has arrived at or entered into the UK or will go out of the UK.

563 Subsection (6)(h) inserts new paragraph (h) into section 141(5). New paragraph (h) allows the regulations to make provision about, or connected with the imposition of

civil sanctions.

564 Subsection (7) inserts new subsections (5B) to (5E) into section 141 after subsection (5A).

565 New subsection (5B) introduces a definition of “civil sanctions”. This is defined as a type of sanction in Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

566 New subsection (5C) makes further provision about civil sanctions. It states that the regulations may impose civil sanctions in cases where the conduct which has led to the sanction need not be an offence. The regulations may impose civil sanctions, even if the person imposing them is not a “regulator” within the meaning of the Regulatory Enforcement and Sanctions Act 2008.

567 New subsection (5D) clarifies where regulations made under section 141 can apply. The regulations can make provision in relation to the sea or seabed within the UK Continental Shelf (designated under the Continental Shelf Act 1964) or the exclusive economic zone (designated under the Marine and Coastal Access Act 2009).

568 New subsection (5E) is a power to make

incidental, consequential, supplementary and transitional provision. This includes a power to make such amendments to primary legislation or retained direct EU legislation.

569 Subsection (8) inserts various definitions into subsection (6) of section 141. Definitions are inserted for “importation”, “exportation”, “primary legislation” and “transit of waste for export”. “Exportation” and “importation” is defined as waste that leaves the UK or waste that arrives at or enters into the UK respectively. “Primary legislation” is defined as an Act of Parliament, a Measure or Act of Senedd Cymru, an Act of the Scottish Parliament, or Northern Ireland legislation (as defined in section 24(5) of the Interpretation Act 1978). “Transit of waste for export” is defined as moving or keeping waste that has arrived in the UK in order to facilitate it leaving the UK.

570 Subsection (9) amends the table in section 160A(2) of the Environmental Protection Act 1990, as inserted into that Act by this Bill. The purpose of the table is to detail the circumstances in which instruments made under those powers are subject to the affirmative parliamentary procedure. The amendments mean that the affirmative parliamentary procedure must be used where

regulations under section 141 confer new powers of entry, seizure or detention, provide for new fees or charges to be paid, create a criminal offence, increase the maximum penalty for a criminal offence, or create civil sanctions. The affirmative procedure must also be used where section 141 regulations amend primary legislation or retained direct principal EU legislation.

571 Subsection (10) amends section 41 of the Environment Act 1995. Under section 41, the Environment Agency, Natural Resources Wales and the Scottish Environment Protection Agency can make charging schemes in relation to particular matters. Paragraph (a) substitutes paragraph (d) of section 41 of the 1995 Act with a new paragraph (d). This will allow the Environment Agency, Natural Resources Wales and the Scottish Environment Protection Agency to create a charging scheme to recover their costs in performing their functions in relation to the import or export of waste, or the transit of waste for export. Paragraph (b) inserts a new subsection after subsection (1) of section 41 of the Environment Act 1995. This inserts new definitions of “importation”, “exportation”, “transit of waste for export” and “waste” for the purposes of section 41(1)(d) of the 1995

Act. Those terms have the same definitions as in section 141 of the Environmental Protection Act 1990 (as inserted by this clause).

572 Subsection (11) amends the Transfrontier Shipment of Waste Regulations 2007. It omits paragraph (1) of regulation 46. This is because the amendments in regulation 46(1) relate to fees, and are no longer needed given the amendment made by subsection (9) above in relation to charging schemes.

Clause 62: Regulations made under the Environmental Protection Act 1990

573 Clause 62 amends the Environmental Protection Act 1990 by inserting new section 160A, and making consequential amendments to other sections of the Act. These changes consolidate the parliamentary procedure requirements for regulations and orders under the Act, including for regulations and orders made under new powers in the Environment Bill.

574 Subsection (1) of clause 62 introduces amendments that will be made to the Environmental Protection Act 1990 by subsections (2) to (6).

575 Subsection (2) of clause 62 inserts new section 160A into the Environmental

Protection Act 1990.

New section 160A Regulations and orders

576 Subsection (1) of new section 160A sets out that regulations and orders under the Act are subject to the negative resolution procedure, subject to the exemptions listed in subsections (1)(a) to (d).

577 Subsection (1)(a) sets out that regulations and orders listed in subsection (2) are subject to the affirmative resolution procedure. Subsection (1)(b) sets out that regulations made by a Northern Ireland Department under section 156 of the Act are not subject to the negative resolution procedure. Those regulations are instead subject to the procedure listed in section 156(4) of the Act. Subsections (1)(c) and (d) set out that neither commencement orders nor orders under paragraph 4 of Schedule 3 to the Act (statutory nuisance) are subject to the negative resolution procedure. Such orders are not subject to any parliamentary procedure.

578 Subsection (2) of new section 160A provides a table detailing which regulations and orders made under the Act are subject to the affirmative resolution procedure. Regulations or orders made under a section listed in the first column of the table that also

meet the description listed in the second column of that table are subject to the affirmative resolution procedure.

579 Any regulations made under section 34D (prohibition on disposal of food waste to sewer: Wales), 45AA(10) (separate collection of waste: Wales), 79(1ZA) (statutory nuisance) and 80ZA(11) (fixed penalty notices) are subject to the affirmative procedure. Any regulations made under section 88A (litter from vehicles: England) that set the amount of fixed penalties, detail how that penalty amount will be determined, or amend Part 4 of the Environmental Protection Act 1990 or Part 2 of the London Local Authorities Act 2007 are also subject to the affirmative procedure. Further, any orders made under section 78M(4) (offences of not complying with a remediation notice) are subject to the affirmative procedure.Subsection (3) of new section 160A sets out that when the Secretary of State or Welsh Ministers make regulations or orders under the Environmental Protection Act 1990, those regulations or orders must be made by statutory instrument. However, orders under paragraph 4 of Schedule 3 to the Act do not need to be made by statutory instrument.

580 Subsection (4) of new section 160A sets out the parliamentary procedure requirements for regulations and orders made or to be made by the Secretary of State. Where regulations or orders made by the Secretary of State Under are subject to the negative resolution procedure, they are subject to annulment in pursuance of a resolution of either House of Parliament. Where such regulations or orders are subject to the affirmative resolution procedure, a draft of the regulation or order must be laid before Parliament and approved by a resolution of each House of Parliament. Subsections (5) and (6) of new section 160A contain equivalent provision for regulations and orders made by Welsh Ministers and Scottish Ministers respectively.

581 Subsection (7) of new section 160A allows for regulations or orders that can be made under the Environmental Protection Act 1990 that are subject to the negative resolution procedure to be made subject to the affirmative resolution procedure instead. Provision in regulations and orders that would otherwise be subject to the negative procedure can be included in affirmative regulations or orders.

582 The remaining subsections ((3) to (6)) of

clause 62 make further amendments to the Environmental Protection Act 1990, as a consequence of new section 160A.

583 Subsection (3) of clause 62 deletes section 45B(3). Section 45B(3) is no longer needed, because new section 160A(1) applies to orders made under section 45B.

584 Subsection (4) of clause 62 deletes section 62A(4). Section 62A(4) is no longer needed, because new section 160A(1) applies to regulations made under section 62(A)(2).

585 Subsection (5) of clause 62 deletes section 78M(7). Section 78M(7) states that orders under section 78M(4) are subject to the affirmative resolution procedure. As section 78M(4) is included in the table in section 160A(2), section 78M(7) is no longer needed.

586 Subsection (6) of clause 62 amends section 161 of the Environmental Protection Act 1990. Paragraph (a) changes the heading from “regulations, orders and directions” to “Directions”. Paragraph (b) removes subsections (1) to (4) from section 161. The effect of this is that section 161, as amended, only deals with directions under the Act, and not regulations and orders. Regulations and orders under the Act are

instead dealt with in new section 160A, as inserted by this clause.

Clause 63: Powers to make charging schemes

587 Clause 63 makes amendments to sections 41 and 56 of the Environment Act 1995 to supplement existing charging powers available to the Environment Agency, Natural Resources Wales, and the Scottish Environment Protection Agency ("the Agencies"). These amendments relate to charging schemes and environmental licences for producer responsibility schemes.

588 Subsection (2) inserts five new paragraphs into section 41(1) of the Environment Act 1995, which creates powers to make charging schemes. Each of these powers is conferred on some or all of the Agencies. New paragraph (n) creates a power to create a charging scheme relating to producer responsibility schemes established under Schedule 4 of this Bill. It allows the Agencies to require payment of charges to them as a means of recovering costs they have incurred in performing the functions conferred on them. New paragraphs (o) and (p) create the same powers as new paragraph (n) but in relation to the End of Life Vehicles (Producer Responsibility) Regulations 2005 and the

Waste Electrical and Electronic Equipment Regulations 2013, respectively. New paragraphs (q) and (r) create a power to create charging schemes to recover costs incurred by the Environment Agency and Natural Resources Wales when performing functions in relation to section 33(1) of the Environmental Protection Act 1990 (preventing the unauthorised or harmful deposit, treatment or disposal etc. of waste) or functions relating to a regulated waste operation under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016. This would allow fees to be charged to site operators for interventions at unpermitted waste sites or those in breach of a permit.

589 Subsection (3)(a)(i) extends the interpretation of the definition of "environmental licence" in section 56(1)(j) in relation to England and Wales. Currently that environmental licence definition only includes Waste Electrical and Electronic Equipment (WEEE) operation with a registered exemption under Schedule 2 to the Environmental Permitting (England and Wales) Regulations 2016. The definition will be amended to include any waste operation (not only a WEEE operation) with a registered exemption under the same

regulations. Defining registered waste exemptions as environmental licences allows for charges to be prescribed for them under section 41(2) of the Environment Act 1995.

590 Subsection (3)(a)(ii) deletes section 56(1)(l) to (o) as it makes reference to WEEE. This is because the definition of "environmental licence" in paragraphs (l) to (o) was used as a way of creating a charging scheme, which is now done by new section 41(1)(p). The same deletions are made in relation to Scotland by subsection 3(b).

591 Subsection (4) makes provision about how new section 41(1)(n) of the Environment Act 1995 has effect prior to the repeal of section 93 of that Act. This ensures that the power to create a charging scheme in new section 41(1)(n) of the Environment Act 1995 can apply to functions conferred by regulations made under section 93 of the Environment Act 1995, as well as functions conferred by regulations made under Schedule 4 to this Bill, until the repeal of section 93 of the Environment Act 1995 by this Bill is fully in force.

Clause 64: Waste charging: Northern Ireland

592 Clause 64 amends the Waste and Contaminated Land (Northern Ireland) Order 1997 and the Waste Management Licensing

Regulations (Northern Ireland) 2003 to supplement existing charging powers available to the Department of Agriculture, Environment and Rural Affairs.

593 Subsection (1) adds new Article 76A to the Waste and Contaminated Land (Northern Ireland) Order 1997 to provide the Department of Agriculture, Environment and Rural Affairs with a power to prescribe charges to be paid to it in relation to costs incurred by it in performing the functions referred to in paragraph (2) of that Article. These functions are functions set out in a number of pieces of subordinate legislation, including Article 4(1) of that Order (Prohibition on unauthorised or harmful deposit, treatment or disposal etc., of waste) and regulation 18(1) of the Waste Management Licensing Regulations (Northern Ireland) 2003. This would allow for fees to be charged for interventions at unlicensed waste sites or those in breach of a licence.

594 Other functions referred to in Article 76A(2) relate to extended producer responsibility. These are functions conferred by regulations made under Schedule 4 to this Bill, the End-of-Life Vehicles Regulations 2003, the End-of-Life Vehicles (Producer

Responsibility) Regulations 2005, the Waste Batteries and Accumulators Regulations 2009, and the Waste Electrical and Electronic Equipment Regulations 2013. These functions allow the Department to levy fees in relation to its prescribed requirements in existing and future producer responsibility regimes.

595 Any charging scheme made under the powers that Article 76A will provide must describe who is liable to pay specified charges, and the Department of Agriculture, Environment and Rural Affairs must consult such persons as it considers to be appropriate before making any charging scheme under the Article.

596 Subsection (2) makes provision about how Article 76A(2)(c) of the Waste and Contaminated Land (Northern Ireland) Order 1997 has effect prior to the repeal of Article 3 of the Producer Responsibility Obligations (Northern Ireland) Order 1998 ("the 1998 Order"). This ensures that the power to create a charging scheme in new Article 76A(2)(c) of the Waste and Contaminated Land (Northern Ireland) Order 1997 can apply to functions conferred by regulations made under Article 3 of the 1998 Order, as well as functions conferred by regulations

made under Schedule 4 to this Bill, until the repeal of Article 3 of the 1998 Order by this Bill is fully in force.

597 Subsection (4) amends regulation 17 (exemptions from waste management licensing) of the Waste Management Licensing Regulations (Northern Ireland) 2003 to require that the fee required under new regulation 20B (which is being inserted by subsection (6) of this clause) for an application for an exemption from waste management licensing requirements has to be paid in order for an exemption to apply.

598 Subsection (5) amends regulation 18 (registration in connection with exempt activities) of the Waste Management Licensing Regulations (Northern Ireland) 2003 to ensure that any notice provided by an establishment or undertaking in respect of the registration of an exemption is to be accompanied by payment of the appropriate fee as may be required under regulation 20B. Subsection (5) further amends regulation 18, adding to the list of exemptions which apply for only one year in paragraph (9), omitting paragraph (12) which lists the current charges payable for exempt activities, and updating the reference in paragraph (11)(b) so that it refers to new regulation 20B (which

is being inserted by subsection (6) of this clause) instead of paragraph (12).

599 Subsection (6) creates new regulation 20B in the Waste Management Licensing Regulations (Northern Ireland) 2003, which provides the Department of Agriculture, Environment and Rural Affairs with power to make a charging scheme in respect of fees and charges for registration in connection with exempt activities. New regulation 20B requires that fees and charges, which may be provided for by the scheme, for applications for registering and renewing an exemption and in respect of the subsistence of registrations, are paid to the Department. New regulation 20B further allows for the scheme to provide for different fees depending on the nature of the activities, to set out the times and manners in which payments of fees and charges are to be made, and to provide for reductions in fees where an applicant is applying for multiple exemptions and specified conditions are met. The charging scheme may also specify charges in respect of the subsistence of registrations.

Clause 65: Enforcement powers

600 Clause 65 introduces Schedule 10 to amend legislation relating to enforcement

powers for waste and other environmental matters.

Clause 66: Enforcement powers: Northern Ireland

601 Subsection (1) amends Article 27 of the Waste and Contaminated Land (Northern Ireland) Order 1997.

602 Subsection (2) amends paragraph (2) of Article 27 to account for circumstances in which waste might be taken to an appropriate storage site in the first instance, or otherwise not directly treated or disposed of.

603 Subsection (3) inserts new paragraph (2A) after paragraph (2) of Article 27. Sub-paragraph (a) allows the Department to direct a registered carrier of controlled waste to collect specified waste and deliver it to a specified site. Sub-paragraph (b) allows the Department to direct a keeper of controlled waste, or the owner or occupier of the land on which the waste is being kept, to facilitate the collection of the waste by the specified waste carrier.

604 Subsection (5) amends paragraph (4) of Article 27 to reflect the amendment to paragraph (2) of that Article.

605 Subsection (6) inserts new paragraph (4A) after paragraph (4) of Article 27. Sub-paragraph (a) allows the Department to

direct the keeper of the controlled waste or the owner or occupier of the land on which the waste is being kept to pay the waste carrier's reasonable costs. Sub-paragraph (b) allows the Department to direct the keeper of the controlled waste or the owner or occupier of the land on which the waste is being kept to pay the reasonable costs of the person the waste is delivered to.

606 Subsections (4), (7) and (8) amend paragraphs (3), (5) and (6) of Article 27 respectively, to make these provisions relevant to all of Article 27.

607 Subsection (9) amends paragraph (7) of Article 27 to clarify that the Department may choose to pay the reasonable costs incurred by the registered carrier of controlled waste or the specified person to whom the waste is delivered under paragraph (4) or new paragraph (4A).

608 Subsection (10) amends paragraph (8) of Article 27 so as to make the definition of "specified" relevant to all of Article 27.

Clause 67: Littering enforcement

609 Clause 67 amends Part 4 of the Environmental Protection Act 1990 ("the 1990 Act") in relation to enforcement against litter, and other offences of littering from a vehicle and the unauthorised distribution of

free printed material.

610 Under section 88 of the 1990 Act, litter authorities (as defined under section 88(9) of the 1990 Act) may authorise members of their staff, or contractors operating on their behalf, to issue fixed penalty notices in lieu of prosecution for these offences. The income from fixed penalty notices is (in most cases) retained by the litter authority, and must be used for functions under Part 4 of the 1990 Act. Section 88(11) of the 1990 Act allows the appropriate person to make regulations which "prescribe conditions to be satisfied by a person before a parish or community council may authorise him in writing for the purpose of giving [fixed penalty notices for littering]". The "appropriate person" is the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

611 Subsection (2) replaces existing subsection (11) of section 88 of the 1990 Act with new subsections (11) to (13). New subsection (11) confers a power for the appropriate person to prescribe conditions by regulations that must be met by an authorised officer operating on behalf of a litter authority, and to make provision requiring a litter authority to revoke an officer's authorisation if that officer fails to

meet the prescribed conditions. Regulations under new subsection (11) will be subject to the negative resolution procedure. New subsection (12) clarifies that different provision can be made for different cases – for example, to enable transitional arrangements for existing authorised officers to be made when new conditions are prescribed. New subsection (13) requires the appropriate person to consult such persons as the appropriate person considers appropriate before making regulations under new subsection (11).

612 Subsection (3) inserts new section 88B into the 1990 Act. This new section contains a power for the appropriate person to issue statutory guidance to litter authorities on the exercise of “littering enforcement functions” by them and their authorised officers. New section 88B(2) requires litter authorities to have regard to any such guidance when exercising those functions (including when exercising control over the way in which their authorised officers carry out those functions on the authority’s behalf). New section 88B(4) requires the appropriate person to consult such persons as the appropriate person considers appropriate before issuing guidance. This is likely to mean litter authorities, authorised officers, and the

public. New section 88B(5) contains definitions of “littering enforcement function”, making clear that the scope of the guidance may cover enforcement functions related to any of the three offences in Part 4 of the 1990 Act, as well as connected purposes. These functions include:

- setting fixed penalty levels;
- authorising enforcement officers;
- issuing penalty notices;
- collecting and processing payments;
- initiating and pursuing prosecutions; and
- designating land (for the purposes of Schedule 3A to the 1990 Act).

613 Subsection (4) amends section 98(1A)(b) of the 1990 Act. Section 98(1A) defines “appropriate person” for the purposes of Part 4 of the 1990 Act, and the amendment updates this section by replacing “National Assembly for Wales” with “Welsh Ministers”.

Clause 68: Fixed penalty notices

614 Clause 68 amends sections 33ZA, 33ZB, 34ZA and 34ZB of the Environmental Protection Act 1990 to allow the level of fixed penalty notices (FPNs) under those sections, and the time period under which a less amount may be treated as payment of the

fixed penalty, to be varied. This could, for example, be to reflect inflation, changes to the cost of waste disposal, or changing waste management practices. The exact level of fixed penalty notices are set by local authorities to reflect local needs, within a range prescribed in legislation. The Environment Agency and Natural Resources Wales can also set levels for penalties issued by them under sections 34ZA and 34ZB, within a range prescribed in legislation. An FPN is a financial penalty that gives a person the chance to pay a fixed amount of money by a set date. If the penalty is paid by the set time, that person is no longer criminally liable for that offence and no further action will be taken.

615 Subsections (2) and (3) amend sections 33ZA (fixed penalty notices relating to unauthorised depositing, treatment of disposal of waste: England) and 33ZB (fixed penalty notices relating to unauthorised depositing, treatment of disposal of waste: Wales) respectively. Subsections (2)(a) and 3(a) remove the specified ten-day early payment period in which an English or Welsh waste collection authority may choose to offer a discounted penalty, and allows that period to be specified by the authority instead. Subsections (2)(b) and 3(b) allow for

the Secretary of State and Welsh Ministers to amend by regulations any of the penalty amounts currently specified in subsections (9) and (10) of sections 33ZA and 33ZB.

616 Subsections (4) and (5) amend sections 34ZA (FPNs relating to transfer of household waste by the occupier of a domestic property: England) and 34ZB (FPNs relating to transfer of household waste by the occupier of a domestic property: Wales) respectively. Subsections (4)(a) and (5)(a) remove the specified ten-day period an enforcement authority in England or Wales may choose to allow a lesser payment for, and allow that period to be specified by the authority. Subsections (4)(b) and (5)(b) allow for the Secretary of State and Welsh Ministers to amend by regulations any of the penalty amounts currently specified in subsections (7), (8) and (9) of section 34ZA, and the standard and lesser penalty amounts currently specified in subsections (7) and (8) of section 34ZB.

617 Clause 68 forms part of the law of England and Wales and extends to England and Wales.

Clause 69: Regulation of polluting activities

618 Clause 69 amends Schedule 1 to the Pollution Prevention and Control Act 1999,

which sets out the purposes for which the Secretary of State can make regulations under Section 2 of that Act. The current purpose set out in paragraph 4 of Schedule 1 relates to the prohibition of operating an installation or plant of a specified description without a permit. In other words, under paragraph 4 of Schedule 1, the Secretary of State is able to make regulations relating to permits and also exemptions from permits.

619 Subsection (2) inserts a new sub-paragraph into paragraph 4 of Schedule 1, setting out a new purpose for which regulations can be made. This allows the Secretary of State to prohibit an activity unless it meets conditions determined by the Environment Agency and/or Natural Resources Wales in accordance with the regulations. This enables the Environment Agency and/or Natural Resources Wales to set conditions for exempt activities, which do not require a permit, but only relating to activities specified by the Secretary of State in regulations and only within the confines specified by the Secretary of State in regulations. This new purpose sits in addition to the existing purpose in paragraph 4 set out above.

620 Clause 69 forms part of the law of England

and Wales.

Clause 70: Waste regulation: amendment of Northern Ireland Order

621 Subsection (1) amends Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 to reflect departmental changes in the Northern Ireland Executive. The Department of Agriculture, Environment and Rural Affairs has taken over the relevant responsibilities under the 1997 Order from the previous Department of the Environment.

622 Subsection (2) makes the necessary transitional provision.

Part 4: Air Quality and Environmental Recall

Clause 71: Local air quality management framework

623 This clause enacts Schedule 11, which amends Part 4 of the Environment Act 1995. Part 4 creates the Local Air Quality Management Framework. The amendments will require the Secretary of State to review the Air Quality Strategy, which sets out policies for the assessment or management of the quality of air, at least every five years; and to report annually to Parliament on progress to deliver air quality objectives and standards (set out in the Strategy) in relation to England, and the steps the Secretary of

State has taken in that year to support the meeting of those objectives and standards.

624 Amendments will also strengthen the requirements for local authorities under the Framework. When an Air Quality Management Area is declared by local authorities because they have assessed local air and determined that it exceeds, or is likely to exceed, air quality objectives and standards (as set by the Secretary of State in the National Strategy and enacted in secondary legislation), local authorities will be required to prepare actions plans that will need to set out how the local authority will exercise its functions to ensure that air quality standards are achieved and maintained. All tiers of local government, and neighbouring local authorities where relevant, will be required to co-operate in the development of those action plans. The Secretary of State will have power to designate, following consultation, relevant public authorities as air quality partners who would also be required to co-operate with the development of action plans, and to take proportionate action to improve air quality where necessary. These amendments will ensure responsibility for tackling air pollution is shared across relevant parties.

Clause 72: Smoke control areas: amendments of the Clean Air Act 1993

625 This clause enacts Schedule 12, which amends the Clean Air Act 1993. The amendments will give local authorities the power to impose financial penalties for the emission of smoke in smoke control areas (SCAs) in England. This means that the emission of smoke from a chimney of a building or a chimney (not being a chimney of a building) that serves the furnace of any fixed boiler or industrial plant in an SCA in England will change from being a criminal offence to instead being subject to a civil penalty notice (a fine). The change will remove the current statutory defences that are making enforcement by local authorities very challenging, and reduce the burden and cost associated with enforcing SCAs. Additionally, the amendments remove the exemption in the Environmental Protection Act 1990 so that smoke emitted from a private dwelling in a Smoke Control Area can be enforced by local authorities in England as a statutory nuisance.

626 The amendments will also remove the limit on the fine for the offence of selling controlled solid fuels for delivery (leaving it to the discretion of the Magistrate's Court), and

create a new duty on retailers to notify customers of the law regarding the acquisition of controlled solid fuels in England. This is intended to help raise consumer awareness and improve compliance.

627 They will also enable a local authority to extend the scope of an SCA in England to cover moored vessels, subject to local consultation. This means that if a local authority amends its smoke control order to include vessels, smoke emissions from the chimney of such vessels could be liable to a financial penalty.

628 Schedule 12 also amends, for Wales, the procedure for declaring a fuel to be authorised or fireplace to be exempt for the purposes of Part 3 of the Clean Air Act 1993, by enabling Welsh Ministers to publish a list of these fuels and fireplaces and to update this list as needed.

Clause 73: Environmental recall of motor vehicles etc.

629 Subsection (1) provides for the Secretary of State to make regulations making provision for the recall of relevant products that do not meet relevant environmental standards.

630 Subsections (2) and (3) clarify that the specification or description of a “relevant product” will be set out in secondary legislation, but set constraints on the types of product that may be specified or described.

631 Subsections (4), (5) and (6) provide definitions for “relevant environmental standard”, “enactment” and “environmental impact”.

632 Subsection (7) provides that regulations made under subsection (1) will be subject to negative procedure.

633 Subsection (8) provides that subsequent clauses 74 to 76 will make further provision for regulations made under subsection (1).

Clause 74: Compulsory recall notices

634 Subsection (1) provides that regulations made under clause 73(1) can confer a power on the Secretary of State to issue a “compulsory recall notice”.

635 Subsection (2) provides a definition for “compulsory recall notice”.

636 Subsection (3) provides that the Secretary of State must have reasonable grounds for believing that a relevant product does not meet a relevant environmental standard prior to issuing a “compulsory recall notice”.

637 Subsection (4) specifies that where a

relevant product forms part of another product, a notice may require the return of the entire product.

638 Subsections (5) and (6) provide that a notice, or a supplementary notice, may impose supplementary requirements on a recipient.

639 Subsection (7) provides a non-exhaustive list of supplementary requirements that may be imposed pursuant to subsections (5) and (6), including requirements to publicise the recall, to achieve a minimum recall rate, to pay compensation, or to prevent any relevant products being sold while subject to a notice.

640 Subsection (8) provides a definition for "specified".

641 Subsection (9) provides that the Secretary of State may in the regulations provide for an appeal mechanism or for a means of withdrawing a notice or supplementary notice.

Clause 75: Further provision about regulations under section 73

642 Subsection (1) provides that regulations made under clause 73(1) may impose a duty on both manufacturers and distributors to notify the Secretary of State if they consider that a relevant product does not meet an

environmental standard.

643 Subsection (2) provides that the Secretary of State may in the regulations confer investigative and information gathering powers on themselves for the purposes of deciding whether to issue a compulsory recall notice.

644 Subsections (3) to (5) provide that the Secretary of State may in the regulations make provision about enforcement of the regulations, including about the designation of an enforcement authority, the imposition of financial penalties, powers of entry to take documents and samples where there are reasonable grounds for suspecting a manufacturer or distributor has failed to comply with a requirement imposed by or under the regulations, and for appeals against the imposition of a financial penalty.

Clause 76: Interpretation of sections 73 to 75

645 This clause defines terms used in this Part of the Bill.

Part 5: Water

Clause 77: Water resources management plans, drought plans and joint proposals

646 Subsection (1) provides that the following subsections will amend Chapter 1 of Part 3 of the Water Industry Act 1991.

647 Subsection (2) makes a number of changes to section 37A of the Act. Subsection (2)(a) amends the heading of section 37A to remove the words “preparation and review”. The procedure for the preparation and review of water resources management plans will now be set out in regulations and directions made under new sections 39F and 39G of the Act. Subsection (2)(b) removes from primary legislation the reference to water undertakers taking account of water introduced into their area of appointment by water supply licensees. This requirement will instead be addressed in secondary legislation. Subsections (2)(c) to (f) make some amendments in light of the fact that the procedure for preparing and publishing water resources management plans will be set out in secondary legislation. Cross-references to section 37B are also removed, as this section will be replaced by the new powers to make secondary legislation as to procedure.

648 Subsection (3) omits section 37B of the Act, which contains the current requirements for the publication of a draft and final water resources management plan and the handling of consultation responses on the draft plan, and section 37C, which contains the current requirements for water supply

licensees to provide information to water undertakers. These provisions will be replaced by the provisions in regulations and directions made under new sections 39F and 39G.

649 Subsection (4) makes amendments to section 37D to remove references to section 37B and section 37C, since those sections have been omitted by subsection (3).

650 Subsection (5) makes amendments to section 39B, which relates to the procedure for preparing and revising drought plans, to change those provisions that rely on and refer to the water resources management plan provisions amended in the previous subsections.

651 Subsection (6) omits section 39C, which relates to information sharing in the context of drought plan preparation, since regulations made under new section 39F will provide for the process of information sharing in relation to drought plans.

652 Subsection (7) inserts new sections 39E, 39F and 39G into the Water Industry Act 1991.

New section 39E Joint proposals

653 Subsection (1) introduces a new power for the Secretary of State or Welsh Ministers to

direct water undertakers to prepare and publish joint proposals.

654 Subsection (2) provides that a joint proposal is a proposal identifying measures that may be taken jointly by the undertakers for the purpose of improving the management and development of water resources. Such proposals are currently being developed on a voluntary basis by water undertakers working together in regional groups. Such directions can require those joint proposals to include measures to support the achievement of relevant environmental objectives.

655 Subsection (3) clarifies that a water undertaker must not prepare a joint proposal that includes measures that prevent water undertakers meeting their obligations under Part 3 of the Water Industry Act 1991. Part 3 includes, in particular, water undertakers' water supply duties.

656 Subsection (4) provides that the Minister may specify the form that the joint proposals must take, any specified matter they must address, a particular area they should cover, any specific criteria they should address, and any planning assumptions they must be based upon. The directions are likely to require matters that change over time and

location are addressed, for example, population, climate change or drought projections.

657 Subsection (5) provides that any directions must be set out in writing. This is consistent with the approach to other powers in the Water Industry Act 1991 under which the relevant Minister may direct water undertakers as to certain matters.

658 Subsection (6) provides that each undertaker to whom a direction applies must comply with the direction.

659 Subsection (7) provides that a direction under this subsection would be enforceable by the Minister under Section 18 of the Water Industry Act 1991. This is consistent with the current approach to water resources management plan and drought plan directions.

660 Subsection (8) provides that the power to make directions under new section 39E is conferred on the Secretary of State for water undertakers whose areas are wholly or mainly in England and Welsh Ministers in relation to water undertakers whose areas are wholly or mainly in Wales.

661 Subsection (9) provides that, where new section 39E refers to matters “specified”, this

means specified in a direction under that section.

New section 39F Plans and joint proposals: regulations about procedure

662 Subsection (1) provides powers under which the Secretary of State or Welsh Ministers may make regulations setting the procedure for preparing and publishing joint proposals, water resources management plans and drought plans. It is likely that the regulations will largely cover similar requirements as the existing regulations for water resources planning (the Water Resources Management Plan Regulations 2007) and drought planning (the Drought Plan Regulations 2005). The existing regulations set out publication requirements and how responses to the consultations should be considered, as well as procedural requirements for inquires or hearings. It is also likely that the new regulations may also include provisions that permit the use of modern consultation platforms and improve the existing requirements for the sharing of information and the handling of confidential information.

663 Subsection (2) provides that the regulations may include requirements for the sharing information, including requirements

that water supply licensees must share with water undertakers such information as the water undertaker may reasonably request.

664 Subsection (3) provides that the regulations may include requirements on how water undertakers should consult with other bodies, who they should consult, the timing of any consultation and the publication of statements relating to any consultation.

665 Subsection (4) provides that the regulations may include the procedures for preparing and circulating drafts, including provision for the Minister to require changes to a draft plan or proposal.

666 Subsection (5) provides that the regulations may include requirements to ensure that people likely to be affected by the plan or proposal have a reasonable opportunity to make representations to the Minister.

667 Subsection (6) provides that the regulations may include requirements about how water undertakers should handle the responses they receive and that the Secretary of State or Welsh Ministers may cause a public local inquiry or other hearing to be held in connection with a water resources management plan or drought plan.

668 Subsection (7) provides that the regulations may include requirements about how water undertakers should handle commercially confidential information.

669 Subsection (8) provides that references to the Minister in that section, including the power to make regulations, is conferred on the Secretary of State for water undertakers whose areas are wholly or mainly in England and Welsh Ministers in relation to water undertakers whose areas are wholly or mainly in Wales.

New section 39G Regulations under section 39F: directions

670 Subsection (1) provides that regulations made under new section 39F may also confer on the Secretary of State or Welsh Ministers a power to make directions. This power is required because some administrative requirements – for example, around the timetables for preparation, revision and publication – are likely to change from planning round to planning round. The Secretary of State or Welsh Ministers may also need to be able to direct specific water undertakers on when and how water resources management plans, drought plans and joint proposals should be prepared and revised. Under the existing legislation relating

to water resources management plans and drought plans, the Secretary of State can give such directions to water undertakers and those directions are not subject to parliamentary procedure.

671 Subsection (2) provides that the directions must be set out in writing.

672 Subsection (3) provides that a direction could apply generally to all water undertakers or to one or more undertakers.

673 Subsection (4) provides that each water undertaker must comply with a direction.

674 Subsection (5) provides that the directions would be enforceable by the Secretary of State or Welsh Ministers under the section 18 of the Water Industry Act 1991.

675 Subsection (6) provides that “Minister” has the same meaning as in new section 39F, with the effect that the power to make directions under new section 39G is conferred on the Secretary of State for water undertakers whose areas are wholly or mainly in England, and Welsh Ministers in relation to water undertakers whose areas are wholly or mainly in Wales.

New section 39H Regulations under section 39F: supplementary

676 Subsection (1) provides that regulations

under new section 39F are to be made by statutory instrument.

677 Subsection (2) provides that regulations are subject to the a negative resolution procedure subject to annulment by either House of Parliament, in relation to regulations made by the Secretary of State, or Senedd Cymru, in the case of regulations made by the Welsh Ministers.

678 Subsections (3) and (4) provide that, where regulations are made by both the Secretary of State and Welsh Ministers and either legislature votes to annul those regulations, the regulations will have no further effect.

679 Subsection (5) provides that section 213(2) to (2B) of the Water Industry Act 1991 applies to regulations made by Welsh Ministers under new section 39F as they would apply the Secretary of State under new section 39F. This means that regulations made by Welsh Ministers may, for example, include provision for the determination of questions of fact and law which may arise in giving effect to the regulations or provision as to awarding costs or expenses of proceedings in any determination, among other things.

Clause 78: Drainage and sewerage management plans

680 Clause 78 inserts five new sections into the Water Industry Act 1991.

New section 94A Drainage and sewerage management plans: preparation and review

681 New section 94A introduces a new duty on sewerage undertakers in England and Wales regarding drainage and sewerage management plans.

682 Subsection (1) sets out the requirement for each sewerage undertaker to prepare, publish and maintain a plan.

683 Subsection (2) defines the plan with reference to Part 4 of the Water Industry Act 1991. This Part includes section 94 of the Water Industry Act 1991, which is the duty on the sewerage undertakers to provide, maintain and extend a system of public sewers to ensure that their area of operation is and continues to be "effectually drained". The production of the plan will demonstrate how a sewerage company will meet its duties under Part 4 of the Water Industry Act 1991 including section 94.

684 Subsection (3) sets out the specific matters the plan must address, namely an assessment of the sewerage undertaker's

drainage and sewerage system capacity, current and future demand, and resilience. The sewerage undertaker is required to set out in the plan what it intends to do to maintain an effective system of sewerage and drainage, and when those actions are likely to be taken. Any relevant risks to the environment and mitigation measures should be recorded in the plan. Relevant environmental risks will include storm overflows and their impact on water quality. Should other factors become relevant, the Minister (defined in subsection (10) as the Secretary of State or Welsh Ministers) may make directions specifying additional matters that must be addressed by the plan.

685 Subsection (4) points to section 94C, which makes provision for the preparation and publication of a plan.

686 Subsection (5) sets out that the sewerage undertaker must review its plan on an annual basis and share the conclusions of that review with the Minister.

687 Subsection (6) specifies the circumstances in which a sewerage undertaker must produce a revised plan. This must occur within 5 years of publication of the last plan, or earlier if an annual review indicated a material change of circumstances

or if the Minister gives directions that a revised plan is needed.

688 Subsection (7) sets out that the Minister can give directions to sewerage companies regarding the form of, or the time period covered by, the plan. The intention is that the planning period is long-term, in the region of around 25 years.

689 Subsection (8) refers to enforcement powers at section 18 of the Water Industry Act 1991.

690 Subsection (9) defines “drainage system” and “sewerage system” as used in the preceding subsections. Section 114A of the Water Industry Act 1991 defines a “drainage system” as a structure designed to receive rainwater and other surface water, other than a natural watercourse. Section 17BA of the Water Industry Act 1991 defines the “sewerage system” of a sewerage undertaker as the system comprising (a) the system of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that the undertaker is required to provide by section 94 of the Water Industry Act 1991, and (b) the lateral drains that the undertaker is required to maintain by section 94 of the

Water Industry Act 1991. A sewerage system is defined in the Water Industry Act 1991 in a way that covers all relevant aspects of wastewater, including facilities to empty public sewers, wastewater treatment works and pumping stations. Therefore, a Drainage and Sewerage Management Plan must cover all relevant aspects of wastewater, including public sewers and wastewater treatment works.

691 Subsection (10) defines “Minister”, as used in the preceding subsections, as meaning the Secretary of State or Welsh Ministers in relation to English and Welsh sewerage undertakers respectively.

New section 94B Drainage and sewerage management plans: power to amend period

692 New section 94B sets out the powers available to the Minister to amend the five-year time period specified at new section 94A(6)(c).

693 Subsection (1) sets out that the time period must be amended by statutory instrument.

694 Subsection (2) defines “Minister” as used in this section with the same meaning as new section 94A(10).

695 Subsection (3) sets out that statutory

instruments made under this section are subject to negative resolution procedure.

696 Subsection (4) sets out that subsection (5) applies to orders made by both the Secretary of State and Welsh Ministers.

697 Subsection (5) describes how the negative resolution procedure can lead to revocation of the statutory instrument.

New section 94C Drainage and sewerage management plans: regulations about procedure

698 Subsection (1) allows the Minister to make regulations that set out how a plan should be prepared and published.

699 Subsection (2) sets out that the regulations made under this section can describe how information should be shared in the development of a plan, including requiring sewerage licensees to provide information to sewerage undertakers.

700 Subsection (3) sets out that the regulations made under this section can set out how a sewerage undertaker should consult on their plans, including who should be consulted, the frequency and timing of consultation and the publication of consultation results.

701 Subsection (4) sets out that the regulations made under this section can make provision for how plans are prepared and circulated.

702 Subsection (5) sets out that the regulation made under this section can be used to make sure that appropriate representations are made in the preparation of the plan.

703 Subsection (6) sets out how representations made under subsection (5) are dealt with.

704 Subsection (7) sets out that the regulation made under this section can provide details on handling of commercially confidential information.

705 Subsection (8) sets out that the regulation made under this section can be used to give the Secretary of State/Welsh Ministers direction making powers.

706 Subsection (9) defines “Minister” as used in this section with the same meaning as new section 94A(10).

New section 94D Regulations under section 94C: supplementary

707 Subsection (1) sets out that regulations made under new section 94C are made by statutory instrument.

708 Subsection (2) sets out that regulations made under new section 94C are subject to negative resolution procedure.

709 Subsection (3) sets out that subsection (4) applies to regulations made under new section 94C by both the Secretary of State and Welsh Ministers.

710 Subsection (4) describes how the negative resolution procedure can lead to revocation of regulations made under new section 94C.

711 Subsection (5) defines how other sections apply to regulations made under new section 94C by the Secretary of State and Welsh Ministers.

New section 94E Drainage and sewerage management plans: direction

712 New section 94E defines directions with reference to preceding sections.

713 Subsection (1) defines directions as those given in new section 94A or regulations under new section 94C.

714 Subsection (2) specifies that directions must be given in writing.

715 Subsection (3) specifies that directions may be given to all sewerage undertakers or can be specific to one or more sewerage

undertaker.

716 Subsection (4) confirms that sewerage undertakers have a duty to comply with directions.

717 Subsection (5) sets out that the duties under this section are enforceable under section 18 of the Water Industry Act 1991.

718 This clause forms part of the law of England and Wales and applies to England and Wales.

Clause 79: Authority's power to require information

719 Clause 79 inserts new section 27ZA into the Water Industry Act 1991.

New Section 27ZA: Power to require information for purpose of monitoring

720 This new section provides the Water Services Regulation Authority ("Ofwat") with a strengthened information gathering power when performing its duties under section 27(1) (reviewing water and sewerage company and water supply and sewerage licensees performance of duties) and section 27(2) (collecting information on company and licensees activities under their licences to operate) of that Act.

721 Subsection (1) enables Ofwat to issue a notice to a water or sewerage undertaker or

licensee requesting information in relation to its functions under section 27(1) and section 27(2). Ofwat has duties under the Water Industry Act 1991 to (a) keep under review the manner in which water and sewerage undertakers and licensees carry out their functions and activities (under section 27(1)); and (b) collect information with respect to the manner in which water and sewerage undertakers and licensees carry out their functions and activities, so as to enable Ofwat to become aware of matters relating to its statutory powers or duties (under section 27(2)).

722 Subsection (2) defines the notice as a notice which requires a person to produce specified documents by a particular time, to a particular location, or to provide specified information in a specific manner and form at a particular time and place.

723 Subsection (3) provides that the duties in this section are enforceable by Ofwat using the procedure set out under section 18 of the Water Industry Act 1991.

724 Subsection (4) provides clarification that nothing in this section requires a contravention of the data protection legislation.

725 Subsection (5) imports the “data

protection legislation" definition in section 3(9) of the Data Protection Act 2018. That section currently defines the "data protection legislation" as the UK General Data Protection Regulation (UK GDPR); the Data Protection Act 2018 and regulations made under it, and other key legislation.

726 This clause forms part of the law of England and Wales and applies to England and Wales.

Clause 80: Water and sewerage undertakers in England: modifying appointments

727 Subsection (1) amends Part 2 (appointment and regulation of undertakers) of the Water Industry Act 1991, where the current provision for modification of appointment conditions of water and sewerage undertakers by agreement (section 13) is located.

728 Subsection (2) inserts nine new sections into the Water Industry Act 1991, setting out the new process for modification of appointment conditions.

New section 12A Modification by the Authority

729 Subsection (1) explains that new sections 12B to 12I apply to water and sewerage undertakers whose areas are wholly or mainly in England. The process for the

modification of licence conditions of undertakers whose areas are wholly or mainly in Wales will remain unchanged by this Bill.

730 Subsection (2) of new section 12A contains a power for the Water Services Regulation Authority (“Ofwat”) to make modifications to appointment conditions.

731 Subsection (3) requires Ofwat to consult on any proposed modifications to appointment conditions. The consultation should set out that Ofwat proposes to make changes to a licence, set out the proposed changes, the effect of the changes, why the changes are being proposed, and when the consultation will close.

732 Subsection (4) requires that the consultation period under subsection (3) must be at least 42 days in length, starting from the date the notice is published.

733 Subsection (5) sets out who must be given notice of the consultation. Paragraph (a) requires Ofwat to publish notice in a way that ensures those affected by the modifications will be able to see it; paragraph (b) requires Ofwat to send a copy of the notice to each water or sewerage undertaker whose conditions Ofwat proposes to change, any undertaker or will be affected by the

modifications, to the Secretary of State, and to the Consumer Council for Water.

734 Subsection (6) requires Ofwat to consider any responses received to the consultation within the time limit.

735 Subsection (7) enables the Secretary of State to direct Ofwat not to make a change or changes, during the period of the consultation.

736 Subsection (8) explains that subsections (9) to (11) will apply where Ofwat has undertaken the process under subsections (3) to (6) and decides to proceed with the change to the licence following consultation.

737 Subsection (9) requires Ofwat to publish its decision and proposed changes following consultation, including explaining the effect of the changes, how it considered consultation responses, and how the final decision differs (if at all) from the original proposal.

738 Subsections (10) and (11) require Ofwat to state the date on which each change will take effect, which must be at least 56 days after publication of the decision to make the change in question.

New section 12B Modification of conditions of appointment: early effective date

739 This new section allows for proposed

modifications to licence conditions to be made sooner than 56 days if Ofwat considers an earlier date is necessary and has undertaken a consultation explaining its intention to do this. Ofwat's consultation must have explained the proposed earlier effective date, the reasons for the earlier date, and why an earlier date would not have a material negative impact on undertakers.

New section 12C Modification of conditions under section 12A: supplementary

740 This new section enables Ofwat to make consequential amendments to other conditions where it is necessary or expedient as a consequence of the original modification. Paragraph 2 of new Schedule 2ZA allows the CMA to direct that, where the modification is appealed, the modification can be suspended from coming into effect, in full or in part, pending the outcome of the appeal, and will not come into effect until the appeal has been determined.

New section 12D Appeal to the CMA

741 Subsection (1) allows an appeal to be made to the CMA against a decision to modify a condition of an appointment.

742 Subsection (2) sets out the bodies that can bring an appeal: the affected undertaker;

any other undertaker or licensee also affected by the change; the representative body of undertakers and licensees (currently a position held by Water UK); or the Consumer Council for Water.

743 Subsection (3) provides that the CMA must agree to an appeal being brought.

744 Subsection (4) enables the CMA to refuse permission to appeal on three specific grounds: where the appeal is brought by an undertaker or licensee whose interests are not materially affected by the decision being appealed; where the interests of undertakers or licensees that are represented (by the industry or consumer body) are not materially affected; or where the appeal is vexatious, is trivial or does not have a reasonable prospect of success.

New section 12E Procedure on appeal to CMA

745 This new section provides for the legal effect of new Schedule 2ZA. That Schedule sets out the process for appeals to CMA.

New section 12F Determination by CMA of appeal

746 Subsection (1) sets out that the process in this section applies to all appeals brought under new section 12D.

747 Subsection (2) requires CMA to have

regard to Ofwat's duties as set out in section 2 of the Water Industry Act 1991 and the strategic priorities set out in any Strategic Policy Statement issued to Ofwat by Defra Secretary of State under section 2A of that Act. Ofwat's duties under section 2 include duties to further the consumer objective; secure that the functions of water and sewerage undertakers are properly carried out across Wales and England; secure that undertakers are able to finance the proper carrying out of their functions; secure that the activities authorised by the licence of a licensed water supplier and any statutory functions imposed on it in consequence of the licence are properly carried out; and to further the resilience objective.

748 Subsection (3) allows the CMA to consider any matter that Ofwat did not consider, provided Ofwat would have been entitled to do so, such as more recent company data. The CMA must not consider any matter Ofwat would not have been entitled to consider.

749 Subsection (4) sets out the grounds on which the CMA can allow an appeal: that Ofwat did not take proper account of its duties under the Water Industry Act 1991 or its strategic priorities; that Ofwat's decision

was based on a factual error; that the modifications do not achieve what Ofwat contended they achieve; that Ofwat did not follow the statutory procedure for making modifications; or that the decision was legally wrong.

750 Subsection (5) sets out that, where the appeal is not allowed, the CMA must confirm Ofwat's original decision.

New section 12G CMA's powers on allowing an appeal

751 Subsection (1) allows for the CMA, where it allows an appeal (in full or in part), to quash Ofwat's licence modification decision and/or send the proposed modification back to Ofwat to reconsider and make a new decision based on any CMA direction.

752 Subsection (2) allows CMA only to direct Ofwat to do something that it has the power to do.

753 Subsection (3) requires Ofwat to comply with a direction.

New section 12H Time limits for CMA to determine an appeal

754 This new section sets the time limits for the CMA to determine appeals.

755 Subsection (1) sets out that there will be a

four-month time limit for the CMA to determine an appeal, running from the date on which it gave permission for the appeal to proceed, unless certain conditions apply.

756 Subsections (2), (3) and (4) allow the CMA to extend the time limit to five months, if a party to an appeal asks them to and the CMA is satisfied that there are good reasons why the appeal cannot be determined within four months. If the CMA extends time, it must inform the parties to the appeal, and publish the revised time limit so that it is brought to the attention of any persons that it considers will be affected by the determination.

757 Subsection (5) provides that the permission date is the date the CMA gave permission to bring the appeal under new section 12D(3).

758 Subsection (6) explains that the definition for “a party” to an appeal in new sections 12H and 12I is that set out in new Schedule 2ZA: that is, “a party” to an appeal means either the appellant or Ofwat.

New section 12I Determination of appeal by CMA: supplementary

759 Subsection (1) sets out how the CMA must set out the determination of an appeal (in an order), what should be included in it,

when and how it should be published, and whom the CMA must notify.

760 Subsection (2) allows the CMA not to publish any commercial information that could harm the business interests of an undertaking to which the determination relates, or any information that relates to an individual and could harm their interests.

761 Subsection (3) requires Ofwat to take any steps needed to comply with an order issued by the CMA.

762 Subsection (4) provides that Ofwat must comply with any order issued by the CMA by the time specified in the order or, if no time is specified, within a reasonable time.

763 Subsection (5) provides that new section 12C, under which a consequential change to other conditions linked with the original change could be made, applies as it applies where a condition of a licence is modified under new section 12A. Under new section 12G, Ofwat may be required to reconsider and redetermine a licence modification decision if an appeal is allowed by the CMA.

764 Subsection (3) of clause 80 inserts a new heading before section 13 of the Water Industry Act 1991 to read “Modification of appointment conditions: Wales”. This clarifies

that, following the amendments made by this Bill, sections 13 to 16B of the Water Industry Act 1991 will apply solely to undertakers whose appointments areas are wholly or mainly in Wales. The current process for modification of licence conditions by agreement will effectively continue for Wales only.

765 Subsection (4) of clause 80 inserts a new subsection (A1) into section 13 of the Water Industry Act 1991, clarifying that that sections 13 to 16B apply only to undertakers whose areas of appointment are wholly or mainly in Wales.

766 Subsection (5) of clause 80 inserts a new heading before section 17 of the Water Industry Act 1991 to clarify that section 17 applies to the modification of conditions in both England and Wales.

767 Subsection (6) of clause 80 inserts a new Schedule 2ZA into the Water Industry Act 1991, which details the procedure for appeals made under section 12D of the Water Industry Act 1991.

768 Members of the CMA Panel will consider appeals made to the CMA in respect of water and sewerage undertaker licence modification decisions. Subsection (7) makes a consequential amendment to the CMA

Panels provision in Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (paragraph 35(3)), to ensure that appeals to the CMA under new section 12D of the Water Industry Act 1991 will meet the definition of a "specialist utility function" in the Enterprise and Regulatory Reform Act 2013. This will ensure that CMA panel experts are able to carry out new section 12D functions.

Clause 81: Electronic service of documents

769 Clause 81 inserts new subsections into section 216 (service of documents) of the Water Industry Act 1991, enabling the electronic service of documents served under that Act.

770 Subsection (4A) allows any document required or permitted to be served under the Water Industry Act 1991 to be served by electronic means.

771 Subsection (4B) provides that where the document is to be served on a consumer, it can only be served electronically where (a) a person has consented in writing to receiving documents electronically and has not withdrawn that consent, and (b) the document is sent electronically to the electronic address that the consumer has most recently provided to the sender.

772 Subsection (4C) defines the meaning of

"consumer", as a person liable to pay charges in respect of (a) the supply of water any premises, or (b) the provision of sewerage services in respect of any premises, excluding any water or sewerage undertaker, water supply or sewerage licensee, or Ofwat (the Authority).

773 This clause forms part of the law of England and Wales and applies to England and Wales.

Clause 82: Water abstraction: no compensation for certain licence modifications

774 Clause 80 inserts new sections 61ZA and 61ZB into the Water Resources Act 1991, and makes consequential modifications to section 27 of the Water Act 2003 and Schedule 8 to the Water Act 2014. The purpose of the two new sections is to allow permanent licences in England to be varied or revoked on or after 1 January 2028 where the change is necessary to protect the environment or to remove excess headroom.

775 Subsection (1) inserts two new sections 61ZA and 61ZB after section 61 of the Water Resources Act 1991.

New section 61ZA No compensation where modification to protect environment: England

776 New section 61ZA provides that

permanent abstraction licences in England only can be varied or revoked on or after 1 January 2028 without the payment of compensation if the Secretary of State is satisfied that the revocation or variation is necessary having regard to a relevant environmental objective; or to otherwise protect the water environment from damage. This section extends the circumstances in which a permanent abstraction licence can be varied or revoked without the payment of compensation to protect the environment beyond the current law. Currently, section 27 of the Water Act 2003 permits the revocation or variation of a licence in order to protect from “serious damage” to the water environment.

777 Subsection (1) sets out the circumstances where the section applies. Paragraph (a) sets out that the section applies to licences that are revoked or varied on or after 1 January 2028 pursuant to a direction made by the Secretary of State following a licence change proposal by the Environment Agency (section 54) or the owner of a fishing right affected by the licence (section 56). This date will allow time for the catchment-based approach to water resources to embed and produce solutions. (Defra proposed a stronger catchment focus following the catchment

based approach in its Water Abstraction Plan, which involves working with abstractors and other local stakeholders to develop solutions to abstraction issues at a catchment level.) Paragraph (b) sets out the environmental reasons why a licence may be varied or revoked without paying compensation. These are that the Secretary of State is satisfied the change is needed in relation to “a relevant environmental objective” or “to otherwise protect the water environment from damage”. The reference to ‘damage’ includes damage caused by low flow levels in a river due to unsustainable abstraction. Low flow levels could be a factor taken into account in a decision to revoke or vary an abstraction licence. (Subsections (2), (4) and (5) define the terms “relevant licence”, “water environment” and “relevant environmental objective” respectively.)

778 Subsection (2) defines the term “relevant licence” used in subsection (1)(a). A relevant licence is a licence (a) that allows abstraction in England only, and (b) that does not have a time-limit – that is, one that would remain in force indefinitely unless revoked, commonly known as a permanent licence. As a result, licences that allow abstraction in Wales and licences with a time-limit are not affected by the provisions.

779 Subsection (3) provides that, where a licence is changed under this section, no compensation is payable under section 61 to the licence holder.

780 Subsection (4) defines the term “water environment” used in subsection (1)(b)(ii). The water environment is any inland waters (including lakes, ponds, rivers or other watercourses with dry bottoms, channels or beds); any water contained in rocks underground (commonly known as groundwater); and the underground rocks themselves (commonly known as aquifers). It includes both natural and man-made features. It also refers to the plants and animals that are dependent on any of this water or these physical features.

781 Subsection (5) defines the term “relevant environmental objective” used in subsection (1)(b)(i). A relevant environmental objective is an environmental objective as defined in the regulations that implement the Water Framework Directive in England. In England, environmental objectives are set in relation to each water body in a river basin district by the Environment Agency, after public consultation, and approved by the Secretary of State. Environmental objectives include achieving compliance with protected area

objectives, preventing any deterioration in the status of water bodies; and protecting, enhancing or restoring water bodies with the aim of achieving “good status”. There are three pieces of secondary legislation that implement the Water Framework Directive in England. There are separate regulations for the Solway Tweed River Basin District and the Northumbria River Basin District, which both span England and Scotland, and a further statutory instrument for all other River Basin Districts in England and Wales.

New section 61ZB No compensation where variation to remove excess headroom: England

782 New section 61ZB provides that permanent abstraction licences in England can be varied on or after 1 January 2028 without the payment of compensation where at least 25% of the licence volume remains unused for at least 12 years before the date the Environment Agency makes a proposal to vary or revoke the licence, as long as the Secretary of State is satisfied that the variation or revocation does not reduce the quantity of water the licence holder is authorised to abstract to a level below that which the holder reasonably requires.

783 Subsection (1) sets out that the section only applies to relevant licences that are

varied or revoked on or after 1 January 2028 pursuant to a direction made by the Secretary of State under section 54, following a licence change proposal by the Environment Agency.

784 Subsection (2) defines the term “relevant licence” used in subsection (1). A relevant licence is a licence (a) that allows abstraction in England only, and (b) that does not have a time-limit – that is, one that would remain in force indefinitely unless revoked, commonly known as a permanent licence. As a result, licences that allow abstraction in Wales and licences with a time-limit are not affected by the provisions.

785 Subsection (3) provides that no compensation is payable under section 61 to the licence holder, if (a) the licence holder has abstracted 75% or less of the annual licensed volume in each of the 12 years preceding the relevant date, and (b) the Secretary of State is satisfied that the variation would not reduce the quantity of water that the licence holder reasonably needs.

786 Subsection (4) defines the term “relevant date” used in subsection (3). The relevant date is the date when the Environment Agency serves notice on the licence holder

that it proposes to change the licence. It is the end of the 12-year period used to calculate under-use.

787 Subsection (2) of clause 78 amends section 27 of the Water Act 2003 so that on or after 1 January 2028 it will only apply to licences that fall within the definition of a relevant licence as defined in new section 61ZA(2) of the Water Resources Act 1991 – that is, permanent licences that authorise abstraction in England. Section 27 will not apply to relevant licences on or after 1 January 2028, but will continue to apply to relevant licences up to and including 31 December 2027.

788 Subsection (3) of clause 78 omits paragraph 30(4) of Schedule 8 to the Water Act 2014, so that the legislative changes introduced in this Bill can be incorporated into the new Environmental Permitting Regulations regime. In future, it is intended that the water abstraction licensing regime will be moved into to the Environmental Permitting Regulations regime under the Environmental Permitting (England and Wales) Regulations 2016. Making this change should ensure that the abstraction licensing regime is consistent with the regulation of other activities affecting the

environment. The powers under which the regulations will be made include Schedule 8 to the Water Act 2014.

Clause 83: Water quality: powers of Secretary of State

789 Subsection (1) provides a regulation–making power for the Secretary of State to make provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies. This will enable updates to the substances and standards currently used in that process, for example those set out in the list of priority substances and priority hazardous substances for surface waters in the domestic legislation which implements the Environmental Quality Standards Directive. The power can only be used to amend or modify the existing water quality legislation relevant to chemical status, listed in subsection (2).

790 Subsection (1)(a) would allow an entirely new substance to be included in the legislation, or the removal of an existing substance. Subsection (1)(b) allows the environmental quality standard (EQS) to be

set for a substance, or for an existing EQS to be modified.

791 Subsection (3) enables additional provision that may need to be introduced as a result of exercising the powers under subsection (1). This may include, for example, specifying a date by which a standard for a specific substance must be achieved, changes to monitoring regimes to cover newly specified substances, or new measures to be introduced into river basin management plans in respect of such substances.

792 Subsection (4) establishes that the Secretary of State can only exercise the powers in this section to make provision that could be made by the Welsh Ministers or Northern Ireland Department of Agriculture, Environment and Rural Affairs under their own powers in clauses 84 and 85 respectively with their consent.

793 Subsection (5) establishes that the Secretary of State cannot exercise the powers in this section to make provisions which would fall within the Scottish Parliament's devolved competency, given effect by powers under an Act of that Parliament, with the exception of parts of the cross border river basin districts lying in

Scotland, where the Secretary of State could exercise the powers to make provisions but only with Scottish Ministers' consent.

794 Subsection (6) establishes the consultation requirements attached to the exercise of the powers. Paragraph (a) requires the Secretary of State, regarding regulations applying to England, to consult with the Environment Agency, which provides expert scientific opinion. Paragraph (b) requires the Secretary of State to consult with Welsh Ministers when making regulations applying to an England and Wales cross-border River Basin District (RBD) that lies in England, and when the Welsh Ministers' consent is not required under subsection (4). This would mean consultation is only required if the provision being made is only for the English part and does not apply to the part in Wales. Paragraph (c) places the same consultation requirements on the Secretary of State in relation to the cross-border RBDs shared with Scotland.

Clause 84: Water quality: powers of Welsh Ministers

795 Clause 84 confers a regulation, broadly comparable to that in clause 83, on the Welsh Ministers in relation to Wales. Subsection (4) requires consultation with the

Natural Resources Body for Wales, other interested persons or bodies, and with the Secretary of State when exercising the power in relation to the Welsh part of a cross-border RBD.

Clause 85: Water quality: powers of Northern Ireland department

796 Clause 85 confers the same power on the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland.

Clause 86: Solway Tweed river basin district: power to transfer functions

797 Clause 86 confers a power to be exercised by the Secretary of State to amend the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 ("the Solway Tweed Regulations") to allow future changes to the exercise of functions in the Solway Tweed River Basin District.

798 Subsection (3) enables regulations to be made that provide for functions under the Solway Tweed Regulations to be exercised in a different manner. For example, it would enable changes to functions that are currently joint between the Secretary of State and Scottish Ministers for the whole of the river basin district.

799 Subsection (4) would allow amendments to the functions of the Environment Agency and Scottish Environment Protection Agency. These could be split to enable, for example, monitoring of English water bodies by the Environment Agency alone.

800 Subsection (5) allows for changes to the geographical area in which the functions can be exercised. For example, the functions could be amended so that in future they are exercised by the Secretary of State alone in relation to the English part, and the Scottish Ministers alone in the Scottish part.

801 Subsection (6) would enable requirements to be imposed on such functions so that they are exercisable with the consent of the Secretary of State or the Scottish Ministers, or after consultation.

802 Subsection (7) requires the consent of the Scottish Ministers for any regulations under this clause.

803 Subsection (8) states that regulations made under this clause are subject to the negative procedure.

804 Subsection (9) provides a definition.

805 This clause forms part of the law of England and Wales and Scotland, and applies to the area of the Solway Tweed river

basin district which is partly in England and partly in Scotland.

Clause 87: Water quality: interpretation

806 This clause contains definitions used in the clauses on water quality.

Clause 88: Valuation of other land in drainage district: England

807 Clause 88 amends section 37 of the Land Drainage Act 1991 (“the LDA”), enabling the Secretary of State to make regulations, by the affirmative procedure, that establish the valuation calculation for the value of other land in an internal drainage district in England. Subsection (3) makes the main changes by inserting new subsections (5ZA) to (5ZH) into the LDA.

808 Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter and, accordingly, it is anticipated that these details will need to be updated again in future. By enabling the technical implementation of this policy to be set out in secondary legislation, future governments will be better able to make any future necessary updates in a timely manner.

809 New subsection (5ZA) provides the power

for the Secretary of State to make such regulations.

810 New subsection (5ZB) sets out the provisions that the regulations may include when setting out the new valuation calculation. Paragraphs (a) to (g) detail the different components of calculations for the different types of land that comprise other land under the LDA, ensuring that the Secretary of State has the necessary powers to stipulate a comprehensive valuation calculation in secondary legislation.

811 New subsection (5ZC) sets out which internal drainage boards (IDBs) the Secretary of State can decide to apply the regulations to. Linked to this, new subsection (5ZD) enables the regulations to allow for an IDB to elect that the regulations apply to them, and for the regulations to specify a procedure for that election. These provisions mean that, where an issue associated with the existing valuation calculation only affects certain IDBs in England, the Secretary of State may provide an alternative calculation that other IDBs may elect to make use of, if they so choose. This is currently necessary because certain data referred to within existing subsection (5) is either missing or incomplete in some areas. However, the provisions also

reflect the fact that, in future, the calculation may need to be updated for all IDBs (were an issue within the calculation to affect all IDBs). New subsection (5ZC) therefore enables a calculation stipulated in secondary legislation to be applied to all English IDBs in such cases.

812 Subsection (5ZE)(b) enables the Secretary of State to make changes, as a consequence of these new provisions being added to the LDA. This includes amending, repealing or revoking provisions in primary legislation (pursuant to new subsection (5ZF)).

813 New subsection (5ZG) places a duty on the Secretary of State to consult such persons (if any) as are considered appropriate, taking into account the extent to which the regulations are likely to affect the valuation of other land.

Clause 89: Valuation of other land in drainage district: Wales

814 Section 83 of the Environment (Wales) Act 2016 conferred powers on Welsh Ministers to make regulations which establish a valuation calculation for other land in respect of internal drainage districts in Wales. These powers are similar to those conferred on the Secretary of State in England under clause

88 above.

815 Clause 89 makes minor amendments to section 83 of that Act, with one key substantive amendment set out below.

816 Subsection (2)(b)(iii) inserts new subsection (5D) into section 37 of the Land Drainage Act 1991, which places a new duty on Welsh Ministers to consult such persons (if any) as are considered appropriate, taking into account the extent to which the regulations are likely to affect the valuation of other land. The existing subsection (5D) is renumbered as new subsection (5E).

Clause 90: Valuation of agricultural land in drainage district: England and Wales

817 Clause 90 inserts new section 41A into the Land Drainage Act 1991 ("the LDA"), which enables the appropriate national authorities (the Secretary of State in respect of internal drainage districts in England, and Welsh Ministers in respect of internal drainage districts in Wales) to make regulations that establish the valuation calculation for the value of chargeable property (agricultural land and buildings) in an internal drainage district.

New section 41A Alternative method of calculating annual value of agricultural land and buildings

818 Subsection (1) provides the power for the appropriate national authorities to make such regulations.

819 Subsections (3) and (4) set out the provisions the regulations may include when setting out the new valuation calculation. These provisions detail the different components of the calculation to assess the value of “chargeable property” under the LDA. This ensures that the appropriate national authority has the necessary powers to stipulate a comprehensive valuation calculation in secondary legislation in respect of the territories of England and Wales.

820 Subsections (7) and (8) set out which IDBs the appropriate national authority can decide to apply the regulations to. Linked to this, subsection (9) enables the regulations to allow for an IDB to elect that the regulations apply to them, and for the regulations to specify a procedure for that election. These provisions mean that, where an issue associated with the existing valuation calculation only affects certain IDBs, the appropriate national authority may provide an alternative calculation which other IDBs may

elect to make use of, if they so choose. However, the provisions also reflect the fact that, in the future, the calculation may need to be updated for all IDBs (were an issue within the calculation to affect all IDBs). Subsections (7) and (8) therefore enable the appropriate national authority to stipulate in secondary legislation that a calculation can be applied to all IDBs in such cases.

821 Subsection (10)(b) enables the appropriate national authority to make changes, as a consequence of these new provisions being added to the LDA. This includes amending, repealing or revoking provisions in primary legislation (pursuant to subsection (11)).

822 Subsection (12) places a duty on the appropriate national authority to consult such persons (if any) as are considered appropriate, taking into account the extent to which the regulations are likely to affect the valuation of any chargeable properties.

Clause 91: Disclosure of Revenue and Customs information

823 Clause 91 inserts new sections 37A to 37C into the Land Drainage Act 1991 (“the LDA”).

New section 37A Disclosure of Revenue and Customs information

824 New section 37A deals with the disclosure of revenue and customs information.

825 Subsection (1) provides a power to the Valuation Office Agency (VOA) to disclose Revenue and Customs information to certain "qualifying persons" for a "qualifying purpose". IDBs will require certain data to enable them to discharge their statutory duties and complete the valuation calculations referred to above. The data it is envisaged qualifying persons will need is the council tax valuation list and the non-domestic rating list, both of which are compiled and maintained by the VOA and are not otherwise publicly available.

826 Subsection (3) lists the qualifying persons. These are the bodies that will need access to the certain VOA data as they are involved in completing the valuation calculations for other land or chargeable property referred to above. The list includes IDBs, the Environment Agency and the Natural Resources Body for Wales. Paragraph (h) enables the appropriate national authority, via regulations, to name any other person as a qualifying person.

827 Subsection (4) lists the qualifying

purposes: mainly to carry out any functions under Chapter 1 or 2 of the LDA, or section 75 of the Local Government Finance Act 1988. This definition captures the key purpose of the statutory gateway, being that qualifying persons are able to carry out the valuations calculations referred to above.

828 Subsection (5) stipulates that regulations, under subsection (3)(h), can only be made with the consent of the Commissioners for Her Majesty's Revenue and Customs.

New section 37B Restrictions on onward disclosure of Revenue and Customs information

829 New section 37B deals with the restrictions on the onward disclosure of Revenue and Customs information.

830 Subsection (1) sets out when the onward disclosure of information may be permitted. This will enable one qualifying person to share the data with another qualifying person (such as those under new section 37A(3)(d) and (e)) for a qualifying purpose, to enable one person to complete the valuation calculation on behalf of another.

831 Subsection (2) requires, in certain circumstances, the consent of the Commissioners for Her Majesty's Revenue

and Customs before the onward disclosure of information is allowed.

832 Subsection (4) makes it an offence to disclose Revenue and Customs information relating to a person whose identity is specified in the disclosure or can be deduced from it; subsection (5) provides a defence, in certain circumstances, if a person is charged; and subsection (6) sets out the criminal sanctions if such a person is found guilty.

New section 37C Further provisions about disclosure under section 37A or 37B

833 New section 37C includes provisions stipulating how the disclosure of information permissible under new sections 37A and 37B relate to certain existing legislation. In particular, subsections (4) and (5) confirm that certain information disclosed under new sections 37A and 37B is exempt from disclosure under the Freedom of Information Act 2000.

Part 6: Nature and Biodiversity

Clause 92: Biodiversity gain as condition of planning permission

834 Clause 92 refers to Schedule 14, which applies a new general condition to all planning permissions granted in England, subject to exceptions. This condition requires

that a biodiversity gain plan must be submitted and approved before development may lawfully commence.

Clause 93: Biodiversity gain site register

835 Subsections (1) to (3) make provisions for a public biodiversity gains sites register. They define some of the eligibility criteria for land to be included on the register, including that it must be maintained for at least 30 years after the completion of enhancement works, and set out how the benefits of habitat on the register might be allocated to a development. The register is intended to provide transparency in offsite enhancements for developers, planning authorities and others, and to help parties to confirm that any offsite biodiversity gains are only allocated to a single development and that the necessary agreements to deliver biodiversity gains are in place. The intention is that the register will also facilitate monitoring of biodiversity gain delivery and its outcomes by indicating what outcomes are expected where.

836 Subsections (4) to (6) set out what regulations under this section are likely to provide for, including details of the procedure for registering land in the biodiversity gains site register, the criteria that must be satisfied for the enhancement of land to be registered,

and the arrangements for amending or removing land on the register. Subsection (5) also allows provisions under subsection (4)(c) to guide the process of making and determining applications to register land as biodiversity gain sites and to provide for financial penalties that could be incurred by providing false or misleading information when registering a biodiversity gain site. Subsection (6) sets out further information requirements which will be fundamental to the register, such as the location and area of land and who will be responsible for carrying out the works to enhance biodiversity. Subsection (6) also explicitly references the allocation of biodiversity enhancement to a particular development, which will be important in preventing the 'double-counting' of a given enhancement (or the units that it creates).

837 Subsections (7) to (9) set out procedures for making these regulations, and align definitions of some terms with those set out in Schedule 7A to the Town and Country Planning Act 1990.

Clause 94: Biodiversity credits

838 Subsections (1) to (5) make provision for the Secretary of State to set up a system to sell a supply of statutory biodiversity credits

to the habitat compensation market. The provision of statutory credits will be made in England only. The sold credits will be equivalent to a specified gain in biodiversity value, which will be eligible for inclusion in a biodiversity gain plan. Subsection (3) sets out the arrangements that may be made for the scheme and the operation of the scheme. Subsection (4) requires the Secretary of State, in considering the price of a biodiversity credit, to set this at a level that does not discourage the development of local market schemes and non-credit habitat creation projects. The government intends to conduct a further review of the price of units, following engagement with stakeholders, before setting a price. The intention is that the price of biodiversity credits will be higher than prices for equivalent biodiversity gain on the market. Subsection (5) will require the Secretary of State to make information on the price of the units and their operation publicly available.

839 Subsection (6) sets the framework that the Secretary of State must consider when handling the proceeds of the credits. Proceeds from the sale of credits will contribute to strategic ecological networks and provide long term environmental benefits, and would be additional to existing

requirements. This framework includes a provision that funds collected via this mechanism must be used for the purpose of securing biodiversity gain. Subsection (7) makes provision to exclude works to enhance habitat from the system where there is an existing requirement for the Secretary of State to act – for example, where land is subject to alternative legislative requirements such as where a public body manages a Site of Special Scientific Interest. Through the Wildlife and Countryside Act 1981 (as amended), public bodies have a duty to take reasonable steps to further the conservation and enhancement of the special features of Sites of Special Scientific Interest.

840 Subsections (8) to (10) require the Secretary of State to report on the operation of the biodiversity credit system on an annual basis. This includes setting out the total funding received and how this has been spent in securing habitat enhancement, which should include an assessment of the value of created habitats in terms of biodiversity units.

Clause 95: General duty to conserve and enhance biodiversity

841 Section 40 of the Natural Environment and Rural Communities Act 2006 (“the NERC

Act") places a duty on public authorities to have regard for the conservation of biodiversity when delivering their functions. This clause makes textual amendments to section 40 of that Act, to avoid repeating definitions. The revisions make more explicit the requirement for public authorities to assess how they can take action to conserve and enhance biodiversity, and then take these actions. This clause also sets out how public authorities should abide by the revised duty.

842 Subsection (2) adds to the heading of the biodiversity duty in the NERC Act, setting out that this duty is changing from "conserving" to "conserving and enhancing" biodiversity.

843 Subsection (3) replaces existing subsections (A1) and (1) of the NERC Act with new subsections (A1) to (1F).

844 New subsection (A1) defines the term "general biodiversity objective", which is used in section 40 to direct the activity taken by public authorities under this duty. This extends the duty of public authorities beyond the original NERC Act, which referred only to conservation, so that it includes the enhancement of biodiversity in England. The aim is to provide for the enhancement or improvement of biodiversity, not just its

maintenance in its current state.

845 New subsection (1) sets out that, in order to comply with the revised biodiversity duty, a public authority must periodically consider the opportunities available to improve biodiversity, across the full range of its functions. This represents a proactive, strategic assessment of a public authority's functions, rather than considering each function in isolation as required by the original section 40 duty.

846 New subsection (1A) sets out the process that the public authority must undertake following the strategic assessment. It may decide there is no action it can reasonably take that is consistent with the proper exercise of its functions. For example, it may decide a particular action is not possible within existing budget constraints, not good value for money or conflicts with other priorities. If there is action it can take, however, then paragraph (a) sets out that it must decide how that action can be put into effect, through appropriate policies and objectives. Paragraph (b) then requires the public authority to take the action.

847 New subsection (1B) provides further detail on those activities considered to be contributing to the general biodiversity

objective. It establishes that the duty can be satisfied by adjusting existing policies and objectives, rather than requiring public authorities to introduce new policies or undertake new projects.

848 New subsections (1C) to (1E) establish the frequency with which the public authority should consider how it can improve biodiversity and then take action. New subsection (1C) provides that the initial assessment must be completed within one year of the amended duty coming into force. New subsection (1D) sets out that subsequent assessments to determine whether there is action it can reasonably take, and what that action should be, must take place at least every five years. New subsection (1E) requires that the decisions around which policies and objectives can be used to further the biodiversity objective, as required by subsection (1A)(a), should then follow as soon as is practically possible.

849 New subsection (1F) explains that, although the requirement is to evaluate opportunities to fulfil the general biodiversity objectives “from time to time”, a public authority is free both to carry out a strategic assessment of its policies and specific objectives and to take action for biodiversity

at any interval, as long as this consideration takes place frequently enough to satisfy new subsections (1C) and (1D).

850 Subsection (4) of clause 95 amends an existing reference in section 40(2) of the NERC Act to ensure it refers to new subsections (1) and (1A) of the same section.

851 Subsection (5) of clause 95 requires that public authorities must have regard to any relevant Local Nature Recovery Strategies (LNRSs), Species Conservation Strategies and Protected Site Strategies as part of their strategic assessment of their functions, establishing the relationship between the measures. LNRSs map existing important areas for nature and show the opportunities that exist in an area to recover and enhance nature. LNRSs will support public authorities in deciding the most appropriate and effective action to take to further the biodiversity objective under new section 40(1A) of the NERC Act, and in turn subsection (5) will support the implementation of LNRSs. Species Conservation Strategies and Protected Site Strategies (introduced in clauses 102 and 103) are more targeted measures intended to address a range of impacts on species and protected sites. They will also support public

authorities in determining the most appropriate and effective action to take in those areas where such a strategy is in operation.

852 Subsection (6) updates the existing explanation of “conserving biodiversity” by directing public authorities to give particular focus to the conservation, restoration and enhancement of species and habitats when deciding the actions to take under the biodiversity objective. This particular emphasis on species and habitats reflects their significance within biodiversity overall, and the wider benefits for nature and society that can be accrued through actions for species and habitats.

853 Subsection (7) provides that in the case of HMRC, the duty does not apply to its functions in England alone, but also extends to its functions in Wales. This is to maintain the amendment made to section 40 by the Environment (Wales) Act 2016. This subsection also clarifies the spatial extent of the general biodiversity duty, establishing that the territorial sea adjacent to England falls under the duty.

854 Subsection (8) amends section 41 of the NERC Act so that its references to section 40 correctly reflect the amendments made by

this Bill. It also adds a reference to enhancing biodiversity to section 41(1) of that Act. This reflects the increased level of ambition set out in the Bill, for not only conserving the existing biodiversity of England but also enhancing biodiversity, where appropriate.

Clause 96: Biodiversity reports

855 This clause adds new section 40A to the NERC Act, which creates a power for the Secretary of State to designate public authorities who are required to report on the action they have taken under the biodiversity objective set out in clause 95. It also defines, at a high level, the content of the biodiversity reports and their frequency. These reports will capture how public authorities with significant landholdings have sought to conserve and enhance biodiversity, and will contribute to the improvement of information on protected sites, priority habitats and priority species.

New section 40A Biodiversity reports

856 Subsection (1) sets out the public authorities to which new section 40A applies. The scope of this reporting requirement is limited in comparison to the general biodiversity duty, as the latter applies to all public authorities. All local authorities and local planning authorities, excluding parish

councils, will be required to produce biodiversity reports. It would not be reasonable to require other public authorities with few or no landholdings to produce reports, and so additional public bodies that must report will be designated by the Secretary of State in subsequent regulations as stipulated in subsection (8)(a).

857 Subsection (2) requires the public authorities identified in subsection (1) to produce biodiversity reports.

858 Subsections (3) and (4) specify the required content of a biodiversity report. In subsection (3), paragraphs (a) and (b) set out that this report will both reflect on the action the public authority has taken under the duty over the reporting period, and look forward to the actions it will take in the subsequent five-year reporting period. This qualitative information will be accompanied by quantitative data, as provided by paragraph (c). The specific data required will be stipulated in regulations issued by the Secretary of State; it could, for example, include the proportion of local wildlife sites in favourable condition. In addition to the required qualitative and quantitative information, paragraph (d) sets out that the public authority is free to include any other

information it considers relevant. Subsection (4) specifies additional reporting requirements for local planning authorities – namely, the provision of information on biodiversity net gain. Local planning authorities must give a qualitative summary of the action they have taken to comply with mandatory biodiversity net gain, and any gains within their jurisdiction.

859 Subsections (5) to (7) set out the timing and frequency of reporting. Under subsection (5), the report must be published within 12 weeks after the end of the period that it covers, in order to ensure that the information shared is up-to-date and relevant upon publication. Subsection (6) sets out that a public authority must publish its first biodiversity report within three years of being designated as required to report, although it is at liberty to decide when to publish within this window. This applies both in cases when the public authority is designated on the introduction of clause 96 and when the public authority is brought into scope at a later point. After the first report, subsection (7) establishes that the public authority must publish subsequent reports at least every five years, though again it can choose when to publish within this window.

860 Subsection (8) creates a power for the Secretary of State to issue regulations that designate public authorities as required to report, and to further define what data must be included in the biodiversity report. This will ensure key quantitative data is reported in a consistent fashion across all reports, thereby making comparisons across the reports easier. Having such data defined in regulations will also allow for it to be updated in the future as required.

861 Subsection (9) clarifies that the reporting requirement will not apply to public authorities that do not exercise functions in England.

862 Subsections (10) and (11) establish that the regulations should be issued through a statutory instrument subject to the negative resolution procedure in Parliament.

863 Subsection (12) clarifies that the definitions within this section are the same as used in the wider section 40 duty and in clause 95.

Clause 97: Local nature recovery strategies for England

864 This clause provides for the creation of Local Nature Recovery Strategies (LNRSs) in England, for how the geographical coverage

of each LNRS will be determined, and for the relationship between LNRSs and the biodiversity duty under the NERC Act.

865 Subsections (1) and (2) set out that the requirement for LNRSs applies to England and that, taken together, all areas of England will be covered by an LNRS.

866 Subsection (3) sets out that the area covered by each LNRS will be determined by the Secretary of State. This approach allows flexibility to make sure that the area covered by each LNRS balances the potentially competing needs to be ecologically meaningful (that is, based on the common geographic, geological, topographical or other physical features that help define the ecology of an area, and of sufficient scale to include a range of habitats and land uses) and align with existing administrative boundaries. It will also allow alignment of boundaries between neighbouring LNRS areas to avoid gaps or overlap. It is anticipated that the area covered by each LNRS will be approximately county-scale, but with the potential to vary to best accommodate differing local circumstances.

867 Establishment of the area covered by an LNRS is closely linked to agreement on the identity of the responsible authority, which

will lead on the production of the LNRS. The process for doing this is set out in clause 98.

868 Subsection (4) states that the area of a local authority, other than a county council, may not be split between different LNRSs. This requirement reflects the importance of local authorities in producing and implementing the LNRS, and is intended to make it easier for individual local authorities to do so by making each LNRS area an aggregate of local authority areas. This requirement will also facilitate the agreement of individual LNRS boundaries, and make sure they operate at scales most relevant to local authorities.

869 The bodies included within the definition of "local authority" are listed in clause 101(2). County councils are exempted from the general prohibition in splitting local authorities between LNRSs because of their larger size, and the potential that not doing so would result in a *de facto* requirement that LNRSs conform to county boundaries, irrespective of ecological or other practical considerations. Whilst in many cases there may be good reason for LNRS and county council boundaries to align, it is reasonable to anticipate situations where this would not be the case.

870 Subsection (5) highlights the relationship between LNRSs and the duty to conserve biodiversity under section 40 of the NERC Act. The existing duty is modified by this clause to require that all public authorities must have regard to any relevant LNRS in the proper exercise of their functions.

Clause 98: Preparation of local nature recovery strategies

871 This clause sets out the process by which LNRSs are to be prepared, published, reviewed and republished. It also provides a power for the Secretary of State to make regulations regarding this process.

872 Subsection (1) sets out that each LNRS will be prepared and published by a "responsible authority". The requirement to publish the LNRS is to ensure that the LNRS is a publicly available document.

873 Subsection (2) states that the Secretary of State will appoint the responsible authority for each LNRS, and lists the authorities who may potentially be appointed. In addition to those local authorities listed at clause 101(2), the Secretary of State may appoint a mayoral authority, national park (including the Broads Authority) or Natural England.

874 It is intended that the appointment of the

responsible authority will be by mutual agreement between the Secretary of State and the authority. Where the LNRS area corresponds with county or mayoral boundaries, it may be that the county council or mayoral authority would be well-placed to act as responsible authority. Where this is not the case, it would be preferable for the responsible authority to be another local authority, mayoral authority or national park to foster strong links between the LNRS and the land-use planning system and to benefit from existing local democratic mechanisms. Alternatively, Natural England would act as responsible authority.

875 Subsection (3) requires that the LNRS is reviewed and republished from time to time to ensure it remains current, relevant and forward-looking. Updates may be periodic or triggered by the Secretary of State publishing an updated national habitat map under clause 100(3). Regulations made under subsection (5) may introduce specific requirements regarding the timings for reviewing and republishing of LNRSs. Information collected and published under the NERC reporting duty is expected to provide an important resource when reviewing and republishing the LNRS.

876 Subsection (4) provides that the Secretary of State can make regulations to introduce further requirements regarding how LNRSs must be prepared and published; both in the first instance and in later versions. Subsection (5) provides a non-exhaustive list of some specific aspects of this process that regulations may provide for. These are:

- provision of information by a local authority that is not the responsible authority;
- agreement of the LNRS by all local authorities within the LNRS area;
- the procedure for reaching agreement and resolving disagreements;
- consultation requirements; and
- timings for reviewing and re-publishing of the LNRS.

877 These regulations provide a mechanism for creating consistency and maintaining standards between LNRSs and for encouraging a broad, collaborative approach to producing LNRSs, involving a wide range of stakeholders from public, private and voluntary sectors. Regulations allow for a greater level of detail than would be appropriate in primary legislation, and can be updated more easily to reflect experience of

good practice.

878 Subsection (6) sets out that regulations made under subsection (4) will be by statutory instrument subject to the negative resolution process.

Clause 99: Content of local nature recovery strategies

879 This clause defines the required content of an LNRS, setting out the general nature of the documents that each LNRS must comprise and the information that these documents must contain. It also provides for the Secretary of State to issue statutory guidance to provide further detail.

880 Subsection (1) provides that each LNRS must include (a) a statement of biodiversity priorities for the plan area and (b) a local habitat map for the full extent of the area under the plan, either through one or multiple maps.

881 Subsection (2) specifies what the statement of biodiversity priorities referred to under subsection (1)(a) must include. The required elements are:

- a description of the plan area and its biodiversity;
- a description of the opportunities for recovering or enhancing biodiversity;

- the priorities for recovering or enhancing biodiversity; and
- proposals of potential measures relating to those priorities.

882 In combination these elements are intended to provide a comprehensive vision of the current and future potential biodiversity value of the plan area, and some proposed practical steps that different bodies may choose to support to help make improvements.

883 Subsection (3) specifies what the local habitat map referred to under subsection (1)(b) must include. The required elements are:

- national conservation sites;
- local nature reserves (as designated under section 21 of the National Parks and Access to the Countryside Act 1949); and
- other areas that, in the opinion of the responsible authority, are or could become of particular importance for biodiversity, or where the recovery or enhancement of biodiversity could make a particular contribution to other environmental benefits.

884 The term “national conservation sites” is

defined in clause 101(3). National conservation sites and local nature reserves are treated separately because information on them will be made available to the responsible authority via different mechanisms. Clause 100 creates a duty on the Secretary of State to provide responsible authorities with mapped information on national conservation sites, whilst information on local nature reserves is held by local authorities. Where a local authority is not the responsible authority, a requirement for them to provide information on local nature reserves to the responsible authority could be introduced via regulations made under clause 98(4) to make sure that this forms part of the LNRS.

885 Subsection (3)(c)(i) is what is sometimes referred to as 'biodiversity opportunity mapping'. Government is aware of more than a dozen different examples of biodiversity opportunity maps that have been produced by local authorities or on their behalf – such as Surrey Nature Partnership's *Biodiversity Opportunity Areas: the basis for realising Surrey's ecological network*. It is intended that LNRSs will build on and seek to accommodate existing best practice.

886 Subsection (3)(c)(ii) allows for the

opportunities included in the local habitat map to consider other environmental benefits alongside recovering and enhancing biodiversity. For example, planting a new area of woodland for biodiversity would also sequester carbon, and potentially reduce the likelihood of flooding downstream. Intentionally targeting such multiple benefits may prove more cost-efficient and, in turn, such proposals may be more likely to be acted upon. Statutory guidance made under subsection (5) provides a mechanism by which approaches to including multiple environmental objectives could be applied consistently across all LNRSs.

887 Subsection (4) establishes that a local habitat map that only partially covers the area within the plan must correlate to the area of at least one of the local authorities within the plan area. This is intended to avoid an individual local authority, other than potentially a county council, from having to contribute to and consider more than one local habitat map.

888 Subsection (5) allows the Secretary of State to issue guidance on the information that an LNRS must include, in relation to the biodiversity priorities, the local habitat map or any other matter. Guidance is intended to

assist responsible authorities in preparing an LNRS and to promote consistency between LNRSs.

889 Subsection (6) sets out that when the responsible authority is preparing an LNRS, it must have regard to any guidance that has been issued by the Secretary of State under subsection (5). This gives the guidance issued under subsection (5) greater standing and effect in achieving its purpose. The issuing of new or revised guidance would not require a responsible authority to revisit an LNRS that has already been published.

Clause 100: Information to be provided by the Secretary of State

890 This clause introduces a new duty on the Secretary of State to make available certain information to the responsible authority to assist with the production of the LNRS.

891 Subsection (1) requires the Secretary of State to prepare and publish a national habitat map for England.

892 Subsection (2) specifies that the national habitat map must contain:

- national conservation sites; and
- other areas that the Secretary of State considers to be of particular importance for biodiversity.

893 The term “national conservation sites” is defined in clause 101(3). Information on these sites is held by central government. Other areas of particular importance for biodiversity might include locations of scarce habitats or habitats upon which scarce species depend outside of existing protected sites.

894 Subsection (3) allows for the Secretary of State to review and republish the national habitat map from time to time. The distribution of different habitat types can be expected to change over time, and it is anticipated that technology, such as satellite imaging, may present new options for habitat mapping. Publication of an updated national habitat map may potentially trigger a responsible authority to review and republish its LNRS, as provided for in clause 98(3).

895 Subsections (4) and (5) require the Secretary of State to inform the responsible authority of any areas in the authority’s strategy area that the Secretary of State considers could both:

- be of greater importance for biodiversity, or where the recovery or enhancement of biodiversity could contribute to other environmental benefits; and
- contribute to establishing a network of

areas for recovery and enhancement of biodiversity across England as a whole.

896 This provision is similar to that in clause 99(3)(c), which specifies that such areas are a required component of local habitat maps. Whilst the intention is that the large majority of such “biodiversity opportunities” are identified locally by the responsible authority through an open collaborative approach, subsections (4) and (5) are intended to also allow the Secretary of State to propose national priorities for an area. This might theoretically include future landscape-scale biodiversity projects.

897 Similarly to clause 99(3)(c)(ii), subsection (5)(a) allows for the opportunities identified by the Secretary of State to consider other environmental benefits alongside recovering and enhancing biodiversity. Thus, areas might include those identified for other environmental reasons that could also have a biodiversity benefit, such as forestry creation.

898 The requirement at subsection (5)(b) that the Secretary of State should consider that the areas identified could contribute to establishing a network of areas for recovery and enhancement of biodiversity reflects the intention that LNRSs should not exist in isolation but should aggregate together.

Government has recognised the need for coordinated action to address biodiversity decline through, amongst other policies, the commitment to create a national nature recovery network in the 25 Year Environment Plan (which this Bill will make the first statutory environmental improvement plan). The information provided by the Secretary of State under this provision is intended to help individual responsible authorities develop LNRSs that can form the basis of an England-wide network for the recovery and enhancement of biodiversity.

899 Subsection (6) extends the duty on the Secretary of State to provide the responsible authority with information to anything else that the Secretary of State holds that the Secretary of State considers would assist in the preparation of an LNRS. Examples of such information might include other mapped information, like climate change assessments, soils, geology or topography that the Secretary of State considers might help the responsible authority assess the potential of a location for recovering biodiversity.

Clause 101: Interpretation

900 This clause offers clarification on the definition of the terms used in the preceding

clauses on LNRSs.

901 Subsection (1) sets out that these interpretations apply to the entirety of this section on LNRSs.

902 Subsection (2) defines the term “local authority”, setting out the different classifications of local government to which these clauses apply.

903 Subsection (3) defines the term “national conservation site”, setting out the types of sites that must be included. This definition applies at both the local level for the responsible authority in developing the local habitat map that makes up the LNRS, and also at the national level for the Secretary of State in providing information to the responsible authority through the national habitat baseline map.

Clause 102: Species conservation strategies

904 This clause establishes species conservation strategies, which may be prepared by Natural England with the purpose of improving the conservation status of a specified species. It further requires local planning authorities, and any other public authority specified in regulations by the Secretary of State, to cooperate with Natural England in preparing and implementing a strategy. It then establishes that these

authorities must consider any relevant strategy as they carry out their functions.

905 Natural England has already developed such a strategic approach in relation to licensing activity impacting on great crested newts. Evidence from this existing scheme will be used to inform aspects of the development of future strategies for other species.

906 In the areas of the country where species conservation strategies are put into effect, the measures they include will be integrated into the relevant Local Nature Recovery Strategies. This will allow them to form part of a wider landscape-scale plan for nature.

907 Subsection (1) specifies that a strategy may be prepared by Natural England, and that Natural England should publish it. It further defines the overall purpose of the strategy as improving the conservation status of any species of flora or fauna. This is to ensure that Natural England can prepare a strategy for any species where it is beneficial, without being constrained to any specific list of endangered or threatened species.

908 Subsection (2) establishes the name of the new type of strategy.

909 Subsection (3) sets out that a strategy

should apply to a specific area, which can consist of England or any part of England. This allows Natural England to define the area to best suit the needs of the population of the species to which the strategy applies.

910 Subsection (4) lists elements that may form part of a strategy. The list is not definitive, as each strategy will be prepared to best support the conservation needs of a particular species and those needs will vary.

911 Paragraphs (a) and (b) of subsection (4) establish that a strategy may identify areas or features in the strategy area that are important for the protection of the species (such as key habitat) and set out priorities for where habitat can be created or improved so as to improve the species' conservation status. Paragraphs (c) and (d) further specify that the strategy may include Natural England's proposal for improving the conservation status of the species and Natural England's advice to other decision making bodies, for example about conditions relating to the species that should attach to any approval given. Finally, paragraph (e) specifies that the strategy may set out how the mitigation hierarchy (avoid, mitigate, compensate) should be applied to addressing impacts on the strategy area from

activity such as development.

912 Subsection (5) gives Natural England a power to periodically amend a strategy. This will allow strategies to be updated as evidence emerges showing how effective they are in improving the conservation status of the species.

913 Subsection (6) places a duty on local planning authorities and other prescribed authorities (as established by the Secretary of State through regulations as set out in subsection (9)) to cooperate with Natural England in preparing and implementing a strategy. The duty only applies if the cooperation required is relevant to the functions of the authority. This duty is a proportionate way to ensure Natural England has the data and support required to efficiently and effectively establish and lead a strategy.

914 Subsection (7) provides a power for the Secretary of State to produce guidance for authorities setting out what is required by the duty to cooperate in subsection (6). The power allows bespoke guidance to be prepared for each strategy, as the cooperation required will vary for different species and strategy areas.

915 Subsection (8) requires authorities to

consider any relevant strategies as they carry out their functions. This will have the effect that strategies are considered when local plans are developed or authorities carry out any other relevant functions which might impact on the conservation status of the species in the strategy area.

916 Subsection (9) defines some terms used throughout the section. It clarifies that the scope of the strategies extends to the territorial sea adjacent to England, but not the sea adjacent to Wales or Scotland as the legislation only applies to England. It further defines “local planning authority” as the definition used in the Town and Country Planning Act 1990.

917 Subsection (9) also gives the Secretary of State a power to specify in regulations other prescribed public authorities in addition to local planning authorities that may be required to cooperate with natural England in preparing and operating a strategy. While cooperation will largely be required only from local planning authorities, a specific strategy might require cooperation from other public authorities such as a marine management organisation or the Environment Agency.

918 Subsection (10) establish that the regulations in subsection (9) should be

issued through a statutory instrument subject to the negative resolution procedure in Parliament.

Clause 103: Protected Site Strategies

919 This clause establishes Protected Site Strategies, which may be prepared by Natural England with the purpose of improving the conservation and management of a protected site, and managing the impact of activity, such as off-site development, on those sites. It requires local planning authorities and other appropriate public bodies to cooperate with Natural England in preparing a strategy. It then establishes that public bodies must consider any relevant strategy as they carry out their functions.

920 Suitable Alternative Natural Green spaces (SANGs) in the Thames Basin Heaths are an example of a strategic approach established by Natural England in cooperation with local planning authorities and other appropriate public bodies. The clause will place Protected Site Strategies prepared by Natural England on a legislative footing.

921 In the areas of the country where Protected Site Strategies are put into effect, the measures they include will be integrated into the relevant Local Nature Recovery Strategies. This will allow them to form part of

a wider landscape-scale plan for nature.

922 Subsection (1) specifies that a strategy may be prepared by Natural England, and that Natural England should publish it. It further defines the overall purpose of the strategy as improving the conservation and management of a protected site. This is to ensure that Natural England can prepare a strategy for any protected site where it is beneficial.

923 Subsection (2) establishes the name of the new type of strategy.

924 Subsection (3) sets out the definition of a protected site for which a strategy can be prepared within England and its adjacent territorial sea.

925 Subsection (4) lists elements that may form part of a strategy. The list is not definitive as each strategy will be prepared to best support the conservation and management of a protected site, and those needs will vary.

926 Paragraph (a) of subsection (4) establishes that a strategy may include an impact assessment of development on the conservation or management of the protected site. Paragraph (b) establishes that a strategy may also include Natural

England's advice on how the mitigation hierarchy (avoid, mitigate or compensate) should be applied to address adverse impacts identified by the impact assessment. Paragraphs (c) and (d) further specify that a strategy may include any measures that Natural England considers necessary for the conservation or management of a protected site.

927 Subsection (5) sets out the bodies that Natural England must consult in preparing a strategy. These include local planning authorities, the Secretary of State and any other public bodies for whom the strategy may be of relevance. It ensures strategies are prepared with input from key stakeholders.

928 Subsection (6) defines the term "an adverse impact on the conservation or management of a protected site" for the different types of protected sites. The definitions align with existing legislation for consistency.

929 Subsection (7) places a duty on local planning authorities and others (listed in subsection (5)) to cooperate with Natural England in preparing a strategy. The duty only applies if the cooperation required is relevant to the functions of the authority. This

duty is a proportionate way to ensure Natural England has the data and support required to efficiently and effectively establish and lead development of a strategy.

930 Subsection (8) provides a power for the Secretary of State to produce guidance for authorities setting out what is required by the duty to cooperate in subsection (7). The power allows bespoke guidance to be prepared for each strategy, as the cooperation required will vary for different protected sites.

931 Subsection (9) requires bodies to consider the strategies as they carry out their duties under protected sites legislation. This will ensure that strategies are taken into account when local plans are developed, or when authorities carry out any other functions which might impact on the conservation or management of a protected site.

932 Subsection (10) gives Natural England a power to periodically amend a protected site strategy. This will allow strategies to be updated as evidence emerges showing how effective they are in improving the conservation or management of a protected site.

933 Subsection (11) places a duty on Natural England to consult with relevant local

authorities and others (listed in subsection (5)) when amending a strategy (under subsection (10)) to the extent that those amendments are relevant to the authorities' functions.

934 Subsection (12) defines some terms used throughout the section. The definitions align with other relevant legislation for consistency. It clarifies that the scope of the strategies extends to the territorial sea adjacent to England, but not the sea adjacent to Wales or Scotland as the legislation only applies to England. It further defines "local planning authority" as the definition used in the Town and Country Planning Act 1990.

Clause 104: Wildlife conservation: licences

935 Many wild animals and their habitats are protected under the Wildlife and Countryside Act 1981 ("the 1981 Act") and the Conservation of Habitats and Species Regulations 2017 ("the 2017 Regulations"). A licence may be required for activities that might otherwise be offences under the legislation, such as demolishing an unsafe derelict building that contains a bat roost. This clause removes inconsistencies between the licensing provisions in the 1981 Act and the 2017 Regulations, particularly those that may impede species conservation

strategies. It enables licences to be issued under section 16(3) of the 1981 Act for reasons of overriding public interest. It also ensures that no licence may be issued unless there is no other satisfactory solution and the granting of the licence is not detrimental to the survival of any population of the species concerned. It will also extend the maximum period for which a licence may be issued by Natural England from two to five years.

936 Subsection (1) establishes that, if a licence has been granted by Natural England under the 2017 Regulations for an activity, the licence will provide a defence in relation to carrying out that same activity under the 1981 Act. This will clarify that Natural England only needs to issue one licence to cover an activity in relation to a particular species.

937 Subsection (2) sets out that protected species licences can be issued for “reasons of overriding public interest” in England under the 1981 Act. An equivalent licensing purpose is currently set out in the 2017 Regulations, but not in the 1981 Act, which can lead to uncertainty about how activities should be licensed for species that are covered by both pieces of legislation. Removing this uncertainty will ensure a

legally consistent approach to licensing under the 1981 Act and the 2017 Regulations, and will also help to clarify that Natural England only needs to issue one licence to cover an activity for a particular species. This will not weaken the strict protections that are in place for our most vulnerable species.

938 Subsection (3) specifies that no licence may be issued under section 16(3) of the 1981 Act unless there is no other satisfactory solution and the granting of the licence is not detrimental to the survival of any population of the species concerned. These additional safeguards will apply to all species licences issued under section 16(3), not just those granted under the new “overriding public interest” purpose. The first safeguard will require applicants to demonstrate that there is no suitable alternative to undertaking an activity under licence. The second will ensure that licences will only be granted after full consideration of the impact of an activity and where this will not be detrimental to populations of the protected species at local, regional or national levels.

939 Subsection (4) establishes that licences granted by Natural England under section 16(3) of the 1981 Act can be for a period of

up to five years instead of up to two years. The availability of a longer licensing period will support Species Conservation Strategies which aim to achieve the best long-term outcomes for the species concerned. It may also be beneficial in other circumstances where longer licences pose no risk to the conservation status of the species concerned. It will therefore provide Natural England with the discretion to set a longer licence period when that is appropriate.

940 Subsection (5) ensures that the definition of “appropriate authority” includes the “relevant conservation body” for the purposes of section 16(3) of the 1981 Act and applies to the new licensing purpose established by subsection (2). The relevant conservation body will be Natural England.

941 Subsection (6) establishes that licences granted by Natural England under regulation 55 of the Conservation of Habitats and Species Regulations 2017 can be for a period of up to five years instead of up to two years, in a similar way and for similar reasons to subsection (4).

Clause 105: Controlling the felling of trees in England

942 Clause 105 introduces Schedule 15, which enables the Commission to create a

local land charge where illegal felling has taken place or a licence has not been complied with. A local land charge is a public record and the buyer will take the land subject to the charge.

Clause 106: Local highway authorities in England to consult before felling street trees

943 Clause 106 inserts new section 96A into the Highways Act 1980.

New section 96A Duty of local highway authorities in England to consult before felling street trees

944 Subsection (1) requires local highway authorities to consult the public before felling any street trees. Defra has used the definition of highway authority as set out in section 1 of the Highways Act 1980. This includes the council of a county or metropolitan district, Transport for London as the highway authority for major roads in London, and the council of a London borough for other London roads. Roads managed by other highway authorities that are not local highway authorities – such as trunk roads managed by the Secretary of State through Highways England – are out of scope. Only trees on land legally adopted as a highway, and therefore in scope of local highway

authorities powers/duties, are in scope.

945 Local highway authorities must consult on all street trees they are considering felling, unless the tree is exempt. If appropriate, several street trees can be consulted on at once.

946 Subsection (2) lays out the requirement for local highway authorities to consider any guidance released by the Secretary of State. Government intends to publish guidance to cover how this duty should be applied and the process that should be used.

947 Subsection (3) sets out trees that are exempt from the consultation required in this duty. This means that any tree meeting the criteria as laid out in this subsection would not require a consultation before being felled. Further explanation of some of the exemptions have been provided below:

- The tree size exemption used in paragraph (a) is consistent with the standard tree size definitions used by the British Tree Nursery sector.
- The tree is required to be felled under the Plant Health Act 1967. Under this Act, statutory plant health notices can be issued that require the owner or manager to eradicate or contain

notifiable pests and diseases. This can include felling a tree and failure to comply can result in enforcement action and prosecution.

- The tree is required to be felled under any enactment on the basis that the tree is dangerous. This covers trees that need to be felled urgently because they present an immediate danger to life or property.
- The tree is required to be felled in order to comply with section 20 or 29 of the Equality Act 2010 because the tree is causing an obstruction. This means that a tree can be felled where it is blocking, or otherwise making the pavement a danger for disabled people to use. This would result in the footway being unusable for people with a disability.
- The tree is required to be felled as part of development authorised either by a granted planning permission or by an outlining planning permission as defined by the Town and Country Planning Act 1990. Specific sections of this are specified in the clauses.

948 “Street trees” are those situated on urban roads as defined under subsection (4).

- Subsection (1)(a) references section 81 of the Road Traffic Regulation Act 1984, which specifies a general speed limit for restricted roads. It states that a restricted road is one where a speed limit of 30 miles per hour is in place.
- Subsection (1)(b) references roads that would otherwise have a 30 miles per hour speed limit but have their speed limit increased to 40 miles per hour. These roads will also be in scope of the duty to consult.
- Subsection (1)(c) brings into scope urban streets excluded by the above definitions, for example because the road, although urban, has a higher speed limit.

Clause 107: Use of forest risk commodities in commercial activity

949 Clause 107 introduces Schedule 16, which sets out requirements on prescribed businesses using forest risk commodities in their commercial activities to tackle illegal deforestation in their supply chains. ‘Forest risk commodities’ are defined in Schedule 16 as agricultural commodities whose production is associated with wide-scale conversion of forest.

950 Subsection (1) of this clause lays out what each part of Schedule 16 makes provision for. Part 1 of the Schedule makes provision on the use of forest risk commodities in commercial activity, Part 2 contains enforcement provisions, and Part 3 contains a requirement to review the effectiveness of the Schedule, and definitions of terms used in the Schedule.

951 Subsection (2) specifies which regulations made under Schedule 16 are subject to the affirmative procedure. These are regulation specifying the commodities in scope, additional categories of relevant local law, regulated persons in scope, setting exemption thresholds, and details on enforcement provisions.

952 Subsection (3) specifies which regulations made under Schedule 16 are subject to the negative procedure. These are details on the due diligence system and annual report, as well as information required when giving a notice for exemption to the enforcement authority.

Part 7: Conservation Covenants

Clause 108: Conservation covenant agreements

953 Subsection (1) defines a conservation covenant agreement. It is a voluntary, private

agreement between a landowner and a "responsible body" (as defined in clause 110), in writing signed by the parties, and containing provision which meets specified conditions as set out in subsection (1)(a). These conditions are that the provision is of "a qualifying kind", has a "conservation purpose", and is intended by the parties to be for the public good. The meaning of "qualifying kind" is covered in subsection (2). Subsection (3) defines "conservation purpose" and the meaning of "conserving" is dealt with in subsection (4).

954 Subsection (1) also states that for the agreement to be a conservation covenant it must be apparent from the agreement that the parties intend to create a conservation covenant. No particular wording is specified for that purpose. The intention of that requirement is to ensure that agreements do not take effect as conservation covenants contrary to the wishes of the parties.

955 Subsection (2) states that a provision of a "qualifying kind" is of one of two kinds. First, it may require the landowner to do, or not to do, something on specified land in England, or require the landowner to allow the responsible body to do something on such land. Second, it may require the responsible

body to do something on such land.

956 Subsection (2) also provides that the landowner must hold a “qualifying estate” in the land to which the provision in question relates and this must be specified in the agreement. As set out in subsection (4), a “qualifying estate” is a freehold, or a leasehold estate of more than seven years; subsection (4)(b) provides that a conservation covenant can only be created by a lessee during the fixed term of the lease, and not during any subsequent period of statutory continuation of the lease (for example, under section 24(1) of the Landlord and Tenant Act 1954).

957 Subsection (3) sets out what qualifies as a conservation purpose. It extends to the natural environment of the land, such as plants and animals and their habitats; the land’s natural resources, such as water on the land; the land as a place of archaeological, architectural, artistic, cultural or historic interest; and the setting of the land. The reference to setting provides for the protection of land around a conservation site, which may affect its conservation status. For example, the architectural or artistic value of a country house could derive in part from the landscape in which it is set.

Clause 109: Conservation covenants

958 Clause 109 defines a conservation covenant. It is that part of a conservation covenant agreement that is given statutory effect by this clause.

959 This clause gives statutory effect to any provision contained in a conservation covenant agreement which is of a qualifying kind, has a conservation purpose, and is intended by the parties to be for the public good – the conditions specified in clause 108(1)(a).

960 This clause also gives statutory effect to any provision in a conservation covenant agreement that is ancillary to a provision that meets those conditions. An “ancillary provision” is a provision that does not itself meet the conditions in clause 108(1)(a), but is related to the performance of a provision that does – for example, provision for payment for work done on the land, or provision relating to the way in which work is to be performed. Ancillary provisions may not themselves have a conservation purpose or, taken in isolation, be intended to be for the public good; they are nevertheless closely linked with provision of the agreement that does meet the relevant conditions, and so are given statutory effect along with them.

961 This clause also provides that provision for public access to land that is the subject of a conservation covenant is to be treated as ancillary to provision given statutory effect by the clause. Provision for public access to land may not itself meet the conditions specified in clause 108(1)(a) because it may not itself have a conservation purpose. By treating such provision as ancillary provision, subsection (3) makes sure that the public access provision is given statutory effect.

962 Both types of provisions of conservation covenant agreements given statutory effect by this clause (those that meet the conditions specified in clause 108(1)(a) and ancillary provisions) are referred to in the rest of Part 7 as obligations under a conservation covenant (subsection (4)(a)).

Clause 110: Responsible bodies

963 As above, a conservation covenant is an agreement between a landowner and a responsible body. The responsible body is able to enforce compliance with the landowner's obligations under the conservation covenant (see clause 113). It may or may not also be made subject to obligations under the conservation covenant.

964 Clause 110 defines "responsible bodies" as, on the one hand, the Secretary of State

and, on the other hand, bodies which are designated by the Secretary of State. Bodies will need to apply to be designated (subsection (2)). An application from a local authority in England will need to satisfy the Secretary of State that it is suitable to be a responsible body, and other bodies will, additionally, have to satisfy the Secretary of State that at least some of its main purposes, functions or activities relate to conservation (subsections (3), (4) and (5)).

965 Subsection (6) allows the Secretary of State to revoke a designation by notice in certain circumstances, including if the relevant body no longer meets the conditions for designation.

966 The Secretary of State must publish and keep up to date a document setting out the criteria which will be applied to determine if an applicant body is suitable to be or to remain a responsible body, which may stipulate that applicants should have a connection with the United Kingdom (subsections (7) and (8)). The Secretary of State must also publish and keep up to date a list of designated responsible bodies.

967 Subsection (9) defines “charity”, “conservation” and “local authority” for the purposes of clause 110.

Clause 111: Local land charge

968 Subsection (1) provides that a conservation covenant is a local land charge.

969 As a result, section 5(2) of the Local Land Charges Act 1975 applies. This imposes a duty upon the responsible body to apply for registration of the conservation covenant as a local land charge.

970 Subsection (3) amends the application of section 2 of the Local Land Charges Act 1975 so as to ensure that a conservation covenant between a lessor and a lessee is not excluded from being a local land charge.

971 Subsection (4) modifies section 10(1) of the Local Land Charges Act 1975 in its application to conservation covenants. The modifications reflect the fact that a conservation covenant is effective against subsequent owners of the land only once it has been registered as a local land charge (see clause 113(5)(b)). This differs from the general position where the enforceability of a local land charge is unaffected by whether or not it is registered. Accordingly, the registering authority cannot incur liability for non-registration. However, liability for a defective search result remains in the usual way.

Clause 112: Duration of obligation under conservation covenant

972 This clause provides that each obligation in a conservation covenant has a specified duration, either as a result of this clause or as a result of an explicit provision in the agreement.

973 The parties can specify the duration of an obligation under a conservation covenant. If they do not do so, an obligation under a conservation covenant has effect for the "default period" which is:

- a period of indefinite duration where the relevant qualifying estate is a freehold estate; or
- the remainder of the term where the relevant qualifying estate is a leasehold estate.

974 Accordingly, a conservation covenant created by a freeholder will be of indefinite duration if the parties do not specify a shorter duration. The duration of a conservation covenant created by a leaseholder cannot exceed the remainder of the term of the lease but, again, the parties may specify a shorter term.

Clause 113: Benefit and burden of obligation of landowner

975 This clause sets out who is responsible for complying with an obligation under a conservation covenant entered into by a landowner and, therefore, the person against whom any enforcement action can be taken in the event of breach. It also spells out who may take such action (that is, the person to whom the obligation is owed).

976 Subsection (1) provides that an obligation under a conservation covenant is owed by a landowner to the responsible body under the conservation covenant.

977 Subsection (2) has the effect that a conservation covenant will bind the landowner who created it (referred to in these notes as “the original covenantor”), and burden the estate in land which enabled the landowner to create it (“the qualifying estate”). A conservation covenant will bind any successors of the original covenantor – that is, anyone who acquires the original covenantor’s estate in the land (or part of that land) or who holds an estate derived from that estate (for example, a lease of the whole or part of the land) – unless one of the exceptions in subsection (5) applies.

978 A conservation covenant will not bind anyone whose interest in the land predates the conservation covenant. If a freeholder

grants a lease, and then enters into a conservation covenant relating to the land which is the subject of the lease, and the lessee is not a party to the conservation covenant, the lessee will not be bound by any obligation of the landowner under the conservation covenant. On the other hand, where a freeholder enters into a conservation covenant of indefinite duration and then grants a lease of the land then, unless one of the exceptions in subsection (5) applies, the leaseholder will be bound by the conservation covenant throughout the term of the lease.

979 Subsection (4) provides that a landowner's liability in respect of an obligation under a conservation covenant comes to an end on parting with the whole of the estate by virtue of which he or she is bound by the obligation, or if the land is no longer bound by the conservation covenant. If the landowner ceases to own only part of the land, he or she will continue to be bound by the obligation but only in relation to the retained land. If an obligation is partially discharged, the application of subsection (2)(b) is correspondingly reduced because the land to which the obligation relates diminishes. In the case of modification, the obligation continues, but needs to be read as

modified as respects the land to which the modification relates.

980 Subsection (5) provides for three situations in which a successor will not be bound by the conservation covenant:

981 Subsection (5)(a) provides that a lessee under a lease granted for seven years or less is not bound by positive obligations under a conservation covenant. Accordingly, where a freeholder creates a conservation covenant which is registered as a local land charge (as set out in subsection (5)(b)), and then grants a periodic tenancy (e.g. one which lasts from week to week or month to month), the lessee will be bound by negative obligations in the conservation covenant but not by positive ones. The same result follows if a lessee with a lease of more than seven years (see clause 100(4) and the definition of “qualifying estate”) creates a conservation covenant and then grants a sub-lease of seven years or less, or a periodic tenancy.

982 Subsection (5)(b) provides that a successor will only be bound by a conservation covenant if it was registered as a local land charge at the time they acquired the land. An estate in land is “acquired” for these purpose at the time of the disposition (for example, a sale, a gift, a grant of a lease)

even if that disposition is required to be completed by registration at the Land Registry (subsection (7)).

983 Subsection (5)(c) provides that a successor will not be bound by a conservation covenant if their immediate predecessor was not bound. This could arise in the context of the discharge of a conservation covenant in respect of part of the land to which it related or where a conservation covenant is registered late. For example, a landowner, A, and a responsible body enter into a conservation covenant agreement. Before the responsible body registers the conservation covenant as a local land charge, A transfers part of the land to B, who later transfers it to C. Even if the conservation covenant is subsequently registered as a local land charge, C will not be bound by it because B was not bound by it at the time B transferred it to C. “Immediate predecessor” is defined by subsections (8) and (9).

984 Subsection (6) deals with the fact that the changes made to the system of local land charges registers by Schedule 5 of the Infrastructure Act 2015 are being introduced incrementally. The changes in question are the replacement of the system where local

authorities maintain their own separate local land charges register by a system where a unified local charges register is maintained by HM Land Registry.

Clause 114: Benefit of obligation of responsible body

985 This clause sets out who is owed an obligation of the responsible body under a conservation covenant and who can, therefore, enforce it.

986 It provides that such an obligation is owed to the landowner with whom the responsible body entered into the conservation covenant (referred to in these notes as “the original covenantor”) and anyone who later holds either the relevant qualifying estate or an estate in land derived from this. For example, a transferee of the land, or a lessee, can enforce the responsible body’s obligations. However, the original covenantor or a successor can only do so while he or she holds the relevant estate (subsections (3)(b) and (3)(c)).

987 Subsection (4) ensures that if a successor to the original covenantor is not bound by certain obligations – in particular, by positive obligations because he or she holds a lease for seven years or less – then the responsible body will not owe the successor any

obligations that are ancillary to the obligations that do not bind the successor.

Clause 115: Breach of obligation

988 Subsections (1) and (2) set out what amounts to a breach of negative and positive obligations, respectively. Where a landowner undertakes a negative obligation, they must not breach or allow others to breach it. Where they take on a positive obligation there is a responsibility to ensure that it is performed. These will be relevant considerations where the landowner grants a lease of the land after the creation of the covenant.

Clause 116: Enforcement of obligation

989 Clause 116 sets out the remedies that are available in proceedings for the enforcement of an obligation under a conservation covenant. It also provides that when considering, in the context of an application for equitable relief, what remedy is appropriate, the court must take into account any public interest in the performance of the obligation concerned.

990 Contract principles apply to awards of damages (subsection (3)), and in particular the rules that determine remoteness of damage. Contractual damages compensate the claimant for loss; and, in most cases, the

direct loss to the responsible body as a result of breach of an obligation in a conservation covenant may be insignificant. For that reason, it is expected that in most cases the remedy sought will be an injunction, or an order for specific performance of the obligation. In considering claims for an injunction, the court has discretion to award damages instead, and in that context it is expected that a consideration of the public interest will be particularly significant.

991 Subsection (4) enables the court to award exemplary damages where a landowner has breached obligations. This is to ensure that a landowner is not able to profit from a breach of an obligation in a conservation covenant – for example, by developing the land in contravention of the covenant in circumstances where compensatory damages may be very small. In such circumstances, the court can make an award of damages that will strip the landowner of any profit from the beach of covenant.

992 Subsection (5) provides that the limitation period in respect of an action for breach of an obligation under a conservation covenant is the same as the limitation period under section 5 of the Limitation Act 1980 for an action founded on simple contract. This

means that any proceedings in respect of a conservation covenant cannot generally be brought after the expiration of six years from the date on which the cause of action accrued.

Clause 117: Defences to breach of obligation

993 Clause 117 sets out defences to proceedings for breach of an obligation under a conservation covenant. These are: where the breach occurred because of something beyond the defendant's control (subsection (1)(a)), as a result of something done in an emergency to prevent loss of life or injury (for example, to control flood water)(subsection (1)(b)), or in circumstances where it is not possible to comply with an obligation under a conservation covenant without breaching a statutory control applying as a result of the designation of the land for a public purpose (subsection (1)(c)).

994 The latter defence will only be available if the land was designated for a public purpose after the conservation covenant was created (subsection (3)) and, in the event that the defence is relied on only because of a failure to obtain authorisation that would have enabled compliance with the obligation, the defendant can show that he or she took all reasonable steps to obtain such an

authorisation (subsection (2)).

995 For example, land may be subject to a conservation covenant which requires the landowner to carry out specified works, and the land, or part of it, may be subsequently designated as a Site of Special Scientific Interest (SSSI). The works specified in the conservation covenant are likely to damage the special interest features for the site and cannot be done without the consent of Natural England. Natural England refuses consent. If the landowner carries out the works required by the conservation covenant he or she will commit an offence under section 28P of the Wildlife and Countryside Act 1981. In these circumstances the landowner could rely on this latter defence.

996 Subsection (4) provides that the defence of statutory authority applies to conservation covenants. The intention is that when a public body such as a local authority acquires, and uses, land in accordance with its statutory powers it can override a conservation covenant that binds the land, in the same way that it can override an easement affecting the land.

Clause 118: Discharge of obligation of landowner by agreement

997 This clause provides that the responsible

body under a conservation covenant and a landowner bound by (or having the benefit of) a conservation covenant can by agreement discharge any of the relevant land from the obligation (insofar as it relates to the landowner's estate). An agreement to do this must be in writing signed by the parties and identify the relevant land, obligation and qualifying estate.

998 If the whole of the land to which an obligation of the landowner under the conservation covenant relates is discharged from the obligation, the effect is to modify the covenant or, if it is the only obligation under the covenant, to discharge it entirely. Rules 8(1) and (2) of the Local Land Charges Rules 1977 require details to be given to the registering authority in relation to the Local Land Charges Register following the modification or discharge of a registered charge.

999 If an area of land is discharged from an obligation of the landowner under the conservation covenant, the effect will be that the obligation relates to a smaller area of land because some land will have been freed from the obligation. Clause 118(4)(a) ensures that a landowner is no longer bound by an obligation in respect of land which has been

discharged from it.

Clause 119: Discharge of obligation of responsible body by agreement

1000 This clause provides that a person to whom a responsible body owes an obligation under a conservation covenant may agree with the responsible body to discharge the obligation in respect of the estate in land by virtue of which that person is owed the obligation. This can be done in respect of part or all of the relevant land.

1001 If the responsible body under a conservation covenant is released from an obligation under the covenant, that is a modification of the covenant for the purposes of rules 8(1) and (2) of the Local Land Charges Rules 1977. As above, the details of the modification have to be given to the registering authority in relation to the Local Land Charges Register.

Clause 120: Modification of obligation by agreement

1002 Subsection (1) creates a means of modifying an obligation by agreement between the responsible body and a landowner bound by (or having the benefit of) an obligation under a conservation covenant. The power can be exercised in relation to any

of the land in respect of which the landowner is bound by, or entitled to the benefit of, the obligation under the conservation covenant.

1003 Subsection (2) means that an obligation under a conservation covenant cannot be modified such that, had the relevant provision (as modified) been included in the original agreement, it would not have met the qualifying conditions for having effect as a provision of a conservation covenant (that is, the conditions in clause 108(1)(a)). For example, an obligation could not be modified so that it does not serve a conservation purpose.

1004 Subsection (3) sets out the requirements for the form and content of the agreement, and subsection (4) provides that any modification will bind the parties to the agreement and their successors in respect of any of the land to which the modification relates.

1005 For example, X enters into a conservation covenant and then transfers part of the land to Y, leases another part to Z, and retains part of the land. The original obligation may, following devolution of parts of the original landowner's interest, bind X, Y and Z. X then enters into an agreement with the responsible body to modify the obligation.

This particular modification will only bind X. It will not bind Y and Z as they are not parties to the modification agreement. In the case of X (and his or her successors), the obligation under the conservation covenant is then read with the modification. In the case of Y and Z (and their successors), the obligation under the covenant has effect without modification.

1006 Rules 8(1) and (2) of the Local Land Charges Rules 1977 require details to be given to the registering authority in relation to the Local Land Charges Register following the modification of a registered charge.

Clause 121: Discharge or modification of obligation by Upper Tribunal

1007 Clause 121 gives effect to Schedule 17, which makes provision about the discharge or modification of an obligation under a conservation covenant on application to the Upper Tribunal.

1008 An application for discharge or modification may, in some circumstances, be found useful as a response to proceedings brought to enforce an obligation under a conservation covenant. Subsection (2) gives a person who is the subject of enforcement proceedings the right to apply to the High Court or the county court for an order giving permission to apply to the Upper Tribunal

and suspending the enforcement proceedings in the meantime.

1009 Subsection (3) provides that an application cannot be made under section 84(1) of the Law of Property Act 1925 to discharge or modify an obligation under a conservation covenant. This ensures that obligations under a conservation covenant are modified or discharged by the Lands Chamber of the Upper Tribunal only on the basis designed for conservation covenants.

Clause 122: Power of responsible body to appoint replacement

1010 Subsection (1) enables the responsible body under a conservation covenant ("the appointor") to transfer both the benefit and the burden of its obligations to another responsible body ("the appointee") by appointing it the responsible body under the covenant by agreement in writing signed by the appointor and appointee (subsection (2)). A conservation covenant can exclude the power to do this.

1011 Subsection (3) provides that where the conservation covenant has been registered as a local land charge, the transfer to the appointee only has effect if the appointor gives to the Chief Land Registrar (or, by virtue of subsection (4)(a), in the case of land

in an area in relation to which section 3 of the Local Land Charges Act 1975 (as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015) has not yet taken effect, the authority responsible for the appropriate local land charges register) sufficient information to enable the Registrar (or appropriate authority) to amend the register, as they are required to do by rule 8(2) of the Local Land Charges Rules 1977. In the case of a conservation covenant relating to land in an area in relation to which section 3 of the Local Land Charges Act 1975 has not yet taken effect, subsection (3) does not apply where the appointor is itself the registering authority (which may be the case where the responsible body is a local authority: subsection (4)(b)).

1012 Subsection (5) describes the effect of the appointment. It transfers to the appointee the benefit of every obligation of the landowner under the conservation covenant and the burden of every obligation of the responsible body. This is subject to the qualification in subsection (6) that the transfer of a conservation covenant does not transfer to the appointee any rights or liabilities in respect of an existing breach of an obligation under the conservation covenant. It only has effect in relation to future performance. The

appointee cannot take, or continue, enforcement action in respect of a breach which pre-dates the transfer. If the breach is a continuing one the appointee may be able to take enforcement action in respect of the continuing breach after the transfer.

1013 Subsection (7) requires the appointee to give notice of its appointment to every person who is bound by an obligation of the landowner under a conservation covenant.

Clause 123: Body ceasing to be a responsible body

1014 This clause deals with the situation where the responsible body under a conservation covenant ceases to be a qualifying body or ceases to be designated as a responsible body under clause 110(1)(b) (clause 110(6) sets out the grounds on which the Secretary of State may revoke a designation). There is no specific provision for the situation where a responsible body has itself ceased to exist because in these circumstances it will cease to be a qualifying body and, therefore, automatically be captured by this provision.

1015 Subsection (2) provides that in such circumstances the body will cease to be the responsible body under the covenant.

1016 Subsection (3) describes what happens in these circumstances. The benefit of every

obligation of the landowner under the covenant and the burden of every obligation of the responsible body under the covenant will transfer to the Secretary of State. The transfer does not have effect as regards any rights or liabilities in respect of an existing breach of obligation. It only has effect in relation to future performance (subsection (4)).

1017 Subsection (5) provides that, when the transfer described in subsection (3) takes place, the Secretary of State becomes the custodian of the conservation covenant until either they appoint another responsible body and transfer the conservation covenant to it, or decide to take on the role of responsible body.

1018 Subsection (6) provides that as custodian the Secretary of State may elect to become the responsible body under the conservation covenant by giving written notice to every person who is bound by an obligation of the landowner under the covenant.

1019 Subsection (7) gives the Secretary of State the power as custodian of a conservation covenant to enforce any obligation of the landowner under the covenant in respect of land, and to exercise

any power that was conferred on the responsible body in respect of such land.

1020 Subsection (8) states that no enforcement action can be taken against the Secretary of State during the period for which they are the custodian of a conservation covenant or subsequently in respect of the period of custodianship. The Secretary of State will only become liable to perform the obligations of the responsible body under the conservation covenant if they make an election under subsection (6).

Clause 124: Effect of acquisition or disposal of affected land by responsible body

1021 Generally when land that is burdened by an obligation or interest (for example, a restrictive covenant or an easement), and the land that benefits from that interest, come into the same ownership, the interest comes to an end. If the land subsequently returns to separate ownership, the interest does not revive. This is known as the doctrine of unity of seisin, or unity of ownership.

1022 By contrast, clause 124 provides that where the responsible body under a conservation covenant acquires an estate in land to which an obligation under the covenant relates, this does not extinguish the obligation. The responsible body is bound by

the obligation. When the responsible body disposes of land, the obligation remains in force.

Clause 125: Effect of deemed surrender and re-grant of qualifying estate

1023 Clause 108 requires that a conservation covenant be created by a landowner who holds a “qualifying estate” in the land to which the agreement relates. The qualifying estate must be a freehold, or a lease granted for a term of more than seven years.

1024 Clause 125 sets out what is to happen where the qualifying estate is a lease which is surrendered and re-granted by operation of law. This takes place in circumstances where a radical amendment to its terms is agreed between the lessor and lessee. In particular, where the lessor and lessee agree an extension of the term of the lease, there is a deemed surrender and re-grant. Special provision is needed owing to the role in this Part of the qualifying estate. The position of successors under clauses 113 and 114 depends upon those successors holding the qualifying estate. But the qualifying estate ceases to exist on a surrender and re-grant.

1025 Clause 125 provides that in these, circumstances, clauses 113, 114 and 118 are to be read as if the “qualifying estate” is a

reference to the term of years deemed to be granted by the operation of law. Accordingly, the tenant of the extended lease, and successors, remains liable under the conservation covenant.

1026 However, clause 112 is not affected. The duration of the conservation covenant therefore remains unchanged: it will either be the length of the original lease (that is, the default period under clause 112(2)(b)) or such shorter period as the parties originally agreed (under clause 112(1)).

Clause 126: Declarations about obligations under conservation covenants

1027 Subsection (1) gives the High Court, the county court or the Upper Tribunal, on application of any person interested, the power to make a declaration as to the validity of a conservation covenant, whether land is subject to an obligation under a conservation covenant, who is bound by or has the benefit of such an obligation, and the true construction (that is, meaning) of such an obligation. It will be for the court or the Upper Tribunal to decide whether an applicant has sufficient interest to make an application. The power to make a declaration extends to any agreement or order that modifies a conservation covenant. A person might seek

a declaration under subsection (1) in circumstances where they needed to know the status of a conservation covenant – for example, in order to resist an action enforcing a breach or because the land was wanted for a different use.

1028 Subsection (2) provides that an application cannot be made under section 84(2) of the Law of Property Act 1925 in respect of an obligation under a conservation covenant.

Clause 127: Duty of responsible bodies to make annual return

1029 Clause 127 requires a body designated as a responsible body to make an annual return to the Secretary of State, specifies certain information that the return should contain, and provides the Secretary of State with a power to specify by regulations other information that must be provided as part of the annual return.

1030 Subsections (4) and (5) give the Secretary of State the power to prescribe by regulations the information to be included in an annual return, the twelve-month period to which the return is to relate, and the date by which the return is to be made. In default of regulations making provision as to that period and that date, subsection (6) provides that

the period and date are such period and date as the Secretary of State may direct.

1031 Subsection (10) clarifies that any information to be included in an annual return prescribed in regulations must relate to the responsible body, its activities, its conservation covenants, or the land covered by its conservation covenants.

Clause 128: Crown application

1032 This clause gives effect to Schedule 18, which provides that the provisions on conservation covenants in the Bill apply to Crown land, and modifies those provisions insofar as they apply to Crown land.

Clause 129: Index of defined terms in Part 7

1033 Clause 129 sets out an index of definitions of terms used in this Part.

Clause 130: Consequential amendments relating to Part 7

1034 Clause 130 gives effect to Schedule 19 which makes consequential amendments.

Part 8: Miscellaneous and General Provisions

Clause 131: Amendment of REACH legislation

1035 Clause 131 gives effect to Schedule 20, which gives the Secretary of State the power to amend the Articles of the REACH Regulation, as it applies in the UKamended

by the REACH Exit Statutory Instrument. it applies in the UK.

1036 This will allow the Secretary of State to amend, or add to, the transitional provisions in Title 14A to ensure an effective regulatory transfer of the REACH Regulation into the UK, and facilitate future changes. The provision excludes certain Articles, including those which set out the fundamental aims and principles of REACH. Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals etc. (the REACH Regulation) forms part of retained EU law by virtue of the European Union Withdrawal Act 2018.

1037 The REACH Enforcement Regulations 2008 (the "REACH Enforcement Regulations") were made under section 2(2) of the European Communities Act 1972. Section 1 of the European Union (Withdrawal) Act 2018 repealed the European Communities Act 1972. This means that there is no longer any power to amend the REACH Enforcement Regulations. Clause 131 and paragraph 2 of Schedule 20 give the Secretary of State and the Devolved Administrations the power to amend the REACH Enforcement Regulations.

1038 Clause 131 extends, and applies, to the whole of the United Kingdom.

General provisions

Clause 132: Consequential provision

1039 Clause 132 confers on the Secretary of State a regulation-making power to make further consequential amendments which arise from this Bill or regulations made under it. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure. Equivalent powers are provided for Scottish and Welsh Ministers and for the Department of Agriculture, Environment and Rural Affairs, subject to respective legislative competence.

Clause 133: Regulations

1040 Subsection (1) provides that, where regulations are made under this Bill (apart from Commencement regulations), those regulations may make supplementary, incidental, transitional or saving provision. Subsection (1)(b) also allows regulations to make different provision for different purposes or places.

1041 This clause also provides that regulations made under this Bill are to be made by statutory instrument or statutory rule (Northern Ireland only). Where regulations made by the Secretary of State are subject to the negative resolution procedure, they are subject to annulment in pursuance of a resolution of either House of Parliament. Where such regulations are subject to the affirmative resolution procedure, a draft of the regulations must be laid before Parliament and approved by a resolution of each House of Parliament. The clause contains equivalent provision for regulations made by Welsh Ministers, Scottish Ministers and DAERA.

Clause 134: Crown application

1042 This Bill does not contain any provision to exempt the Crown from its requirements. Subsection (2) of this clause sets out that, where this Bill amends or repeals other legislation, the Crown is bound by that provision to the same extent as in the amended or repealed legislation.

Clause 135: Financial provisions

1043 Costs from the Environment Bill will include, but are not limited to:

- The establishment and running of the Office for Environmental Protection.

- Additional activities for public bodies, such as local authorities; arms-length bodies (for example, Environment Agency and Natural England); other government departments (for example, additional costs for the justice system and additional responsibilities for policymakers across government); and Defra.
- Additional resources to support the delivery of activities, such as enforcement officers and policymakers.
- Infrastructure and other assets, such as estates costs for the Office for Environmental Protection, and enhanced IT systems to deliver certain measures.

Clause 136: Extent

1044 Clause 136 sets out the extent of the Bill. Annex A provides further information.

Clause 137: Commencement

1045 Part 8 of the Bill (Miscellaneous and General Provisions) will come into force on the day this Bill is passed. Subsection (2) sets out those provisions in the Bill which will come into force two months after the day this Bill is passed.

1046 Subsection (3) sets out those provisions which will come into force on such day as the

Secretary of State may by regulations appoint. Corresponding provision is made in respect of Welsh Minsters and Scottish Ministers respectively in subsections (4) and (5).

1047 DAERA also has a corresponding commencement power, the details of which are provided for in subsection (6). Exercise of that power is subject to the consent of the Secretary of State in the cases described in subsection (7). Subsections (8) and (9) provide that exercise of the power is through statutory rule subject to the affirmative procedure.

1048 Subsection (10) allows for commencement regulations or orders to appoint different days for different purposes or places.

Clause 138: Transitional or saving provision

1049 This clause provides that Commencement regulations made under this Bill may also make transitional or saving provision. Subsection (8) allows those regulations to make different provision for different purposes or places. Equivalent powers are provided for Scottish and Welsh Ministers and for DAERA, subject to respective legislative competence.

Clause 139: Short title

1050 This clause confirms the short title of the Bill.

Schedule 1: The Office for Environmental Protection

1051 This Schedule sets out further information on the composition of the OEP, established as a statutory corporation and due to be classified as a Non-Departmental Public Body (NDPB), and prescribes how it is to operate. The provisions in this schedule relate to ministerial oversight; the body's operational independence from government; and the need for transparency and accountability in the body's exercise of its statutory powers and functions.

Membership

1052 Paragraph 1 covers the membership of the Board that governs the OEP. The provisions in this paragraph aim to ensure a balance between ministerial accountability and independence in making appointments to the body, and between non-executive and executive involvement in the governance of the body.

1053 Sub-paragraph (1) provides that the new body will consist of a non-executive Chair and between two and five other non-executive members, and a Chief

Executive (who is to be the Accounting Officer of the body and therefore responsible for accounting for the body's use of public funds) and between one and three other executive members. The make-up of the Board will ensure a balance of non-executive and executive members. Setting the maximum size of the Board at ten members enables the body to have a strategic focus while ensuring that the required expertise can be fully represented across the Board.

1054 Sub-paragraph (3) requires the Secretary of State and the OEP to ensure, so far as practicable, that the number of non-executive members is at all times greater than the number of executive members, in order to ensure effective strategic oversight and ministerial accountability.

Appointment of non-executive members

1055 Paragraph 2 provides for the appointment process of the non-executive members of the board. Provisions in this paragraph aim to ensure a balance between ministerial accountability and having regard to the OEP's independence in making appointments to the body.

1056 Sub-paragraph (1) provides for the non-executive members (including the Chair)

to be appointed by the Secretary of State. This is usual practice for appointments to NDPBs, including other bodies which hold government to account such as the Equality and Human Rights Commission .The appointments process will be in accordance with the Governance Code for Public Appointments. The Code will ensure that members are appointed through a fair and open process. The regulation of appointments against the requirements of this Code is carried out by the Commissioner for Public Appointments.

1057 Sub-paragraph (2) places a duty on the Secretary of State to consult the Chair before appointing the other non-executive members. This ensures that the Chair is involved in the decision. Sub-paragraph (3) places a duty on the Secretary of State to have regard to the desirability of specific expertise being met across all non-executive members of the OEP (including the Chair), when nominating and appointing the non-executive members. This is intended to ensure that the OEP's non-executive members collectively have the expertise required for effective strategic oversight of its statutory functions. Non-executive directors will need to meet a range of essential criteria as part of the public appointments process.

1058 Sub-paragraph (4) clarifies that non-executive members may not also be employees of the OEP, by virtue of their non-executive status. This enables them to hold the executive members to account.

Appointment of executive members

1059 Paragraph 3 provides for the appointment of the executive members of the board.

1060 Sub-paragraph (1) sets out that the chief executive will be appointed by the non-executive members of the OEP, other than the first chief executive who will be appointed by the Chair. This provision is to ensure that the first CEO appointment can be made ahead of other non-executives being appointed, in order to assist with the set up activities of the OEP.

1061 Sub-paragraph (2) provides for the other executive members to be appointed by the OEP.

1062 Sub-paragraph (3) requires that the Secretary of State be consulted on the appointment of the Chief Executive, since the Chief Executive is to be the Accounting Officer of the OEP.

1063 Sub-paragraph (4) clarifies that executive members are employees of the

OEP. The body will be expected to follow the guidance for good practice for corporate governance for public bodies.

Interim chief executive

1064 Paragraph 4 allows the Secretary of State to appoint a Chief Executive for an interim period prior to the first permanent Chief Executive being appointed by the Chair in accordance with paragraph 3(1). Before the board of the OEP has enough members to hold a meeting that is quorate in accordance with paragraph 11(2), the interim Chief Executive appointed by the Secretary of State may undertake matters on behalf of the OEP including incurring expenditure, subject to any directions given by the Secretary of State. Paragraph 4(4) specifies that the interim Chief Executive can be a current civil servant and is not required to be an employee of the OEP. This provision is intended to allow the interim Chief Executive to be recruited from the largest possible pool of candidates across the private and public sectors, ensuring that the right person is selected for the role.

Terms of membership

1065 Paragraph 5 sets out the basis on which members (both non-executive and executive) can be appointed to, and removed from, the

OEP. Appointments will be made in accordance with the Governance Code for Public Appointments.

1066 Sub-paragraph (2) specifies that civil servants may not be appointed as members of the OEP, as a non-Crown entity.

1067 Sub-paragraph (3) requires that non-executive members be appointed for a fixed term of no more than five years.

1068 Sub-paragraph (4) requires the Secretary of State to have regard to the desirability of securing that the appointments of non-executive members expire at different times in order to ensure strategic continuity and to spread the administrative workload of appointing and inducting new board members.

1069 Sub-paragraph (5) provides that non-executive members may be re-appointed once they reach the end of their term of office.

1070 Sub-paragraph (6) explains the terms for termination of a non-executive member's appointment. Sub-paragraph (6)(c) explains the conditions under which the Secretary of State may remove a non-executive member from office.

Remuneration of non-executive members

1071 Paragraph 6 places a duty on the OEP to pay its non-executive members any remuneration, allowances and compensation (for example, in the event of being removed from office) as determined by the Secretary of State in consultation with the Chair.

1072 This will be in accordance with the Corporate Governance Code for Central Departments 2017, which requires non-executive members of public bodies to comply with the guidance for approval of senior pay issued by HM Treasury. This reflects the fact that non-executive members are public appointments by the Secretary of State (paragraph 1(2)), and helps to maintain the relative independence of the non-executive members within the OEP, as the OEP does not make decisions on their remuneration arrangements.

Staffing and remuneration

1073 Paragraph 7 gives the OEP the power to appoint and make other arrangements for staff as it determines; and to pay its staff any remuneration and allowances as it determines. This will also be done in accordance with the public sector pay and terms guidance. This arrangement gives the OEP independence in how it recruits and pays its staff, without approval from

ministers. Sub-paragraph (2) provides for the Chair to determine the terms of the CEO when making the first appointment.

1074 Sub-paragraph (4) places a duty on the OEP to make pensions arrangements for its members and staff with the approval of the Secretary of State.

1075 Sub paragraphs (5) and (6) ensure that the OEP is able to take part in the Civil Service Pension Scheme for its employees.

Powers

1076 Paragraph 8 gives the OEP the power to do anything it thinks appropriate for carrying out its functions without interference or approval from ministers, except for accepting gifts of money, land or other property, or forming, participating in forming, or investing in, a company, partnership, joint venture or other similar form of organisation. This provides the OEP with sufficient independence from government when carrying out its functions.

Committees

1077 Paragraph 9 gives the OEP the power to establish committees to, for example, provide advice or carry out an OEP function. These may include people who are neither board members nor employees. Such committee

members may be paid but may not have a vote on the committee. This will allow the body to gain access to additional specialised expertise to support any of the functions or strategic direction of the body.

Delegation to members, committees and employees

1078 Paragraph 10 gives the OEP the power to delegate any of its functions other than the approval of key documents, reports and advice to Ministers, and key decisions related to the enforcement function. Functions other than these may be delegated to a member, employee or committee, in accordance with a delegation policy that it will determine. This provides the body with adequate independence to delegate functions without interference from ministers and ensures that decisions can be taken at the most appropriate level.

Procedure

1079 Paragraph 11 gives the OEP the power to determine its own procedures, such as arrangements for decision making (other than the meeting quorum set out in sub-paragraph (2)), as part of ensuring its operational independence from government. Sub-paragraph (3) provides that proceedings will not be made invalid by a vacancy in the

membership or the incorrect appointment of any member for example due to conflicts of interest. This ensures that processes and decision-making are not disrupted by situations that may not be within the OEP's control.

Funding

1080 Paragraph 12 places a duty on the Secretary of State to fund the OEP sufficiently to perform its functions, and gives the Secretary of State the power to provide further financial assistance to the body, for example by way of grants to be used for a specific purpose related to operational delivery or achievement of functions. Funding will be provided to the OEP in the form of grant in aid, which will be set out as a separate line in the overall estimate of the Department for Environment, Food and Rural Affairs to ensure adequate transparency.

Annual report

1081 Paragraph 13 places a duty on the OEP to prepare an annual report as soon as possible at the end of each financial year; to arrange for the report to be laid before Parliament; and to publish it. This provides transparency on the performance of the body against its key statutory functions and its strategic plan, helping to ensure

accountability for the exercise of its powers and its use of public funds.

Annual accounts

1082 Paragraph 14 is intended to ensure independent oversight, transparency and ministerial accountability for use of public funds.

1083 Sub-paragraphs (1) to (3) place a duty on the OEP (and the Chief Executive as Accounting Officer) to keep proper accounting records and prepare an annual statement of accounts. The latter includes an assessment of whether the OEP received sufficient funds to carry out its statutory functions in the relevant financial year. This provision is intended to provide further transparency around the funding of the OEP and ensure it is funded sufficiently to carry out its functions.

1084 Sub-paragraph (4) places a duty on the body to send these accounts as soon as reasonably practicable after the end of the relevant financial year to the Secretary of State and the Comptroller and Auditor General. Sub-paragraph (5) requires The Comptroller and Auditor General to certify and report on the accounts, and send the certified statement and report to the Secretary of State and the OEP.

Sub-paragraph (6) mandates that the OEP must then arrange to lay these documents before Parliament.

Meaning of “financial year”

1085 Paragraph 15 defines “financial year” as the year ending 31 March.

Status

1086 Paragraph 16 clarifies that the OEP is not part of the Crown, unlike government departments. This is customary for NDPBs, and is intended to ensure that the body can act independently of government and is capable of properly enforcing against government. The body will be staffed by public servants rather than civil servants.

Independence of the OEP

1087 Paragraph 17 places a duty on ministers to have regard to the need to protect the OEP’s independence when carrying out functions in relation to the OEP.

Disqualification from membership of legislatures

1088 Paragraph 18 subjects OEP members to the House of Commons Disqualification Act 1975, which restricts membership of the House of Commons to certain categories of people. Consequently, people who are members of the OEP board will be disqualified from becoming members of the

House of Commons until they cease to be members of the OEP. This is customary for members of certain bodies, including NDPBs. Paragraph 19 subjects OEP members to the equivalent legal obligation in Northern Ireland, the Northern Ireland Assembly Disqualification Act 1975.

Public records

1089 Paragraph 20 subjects the OEP to the Public Records Act 1958, which governs public records in the UK.

Freedom of information

1090 Paragraph 21 subjects the OEP to the Freedom of Information Act 2000, which governs the public's access to information held by public authorities.

Investigation by the Parliamentary Commissioner

1091 Paragraph 22 requires the OEP to comply with the Parliamentary Commissioner Act 1967, under which the Parliamentary Ombudsman can investigate public authorities' administrative actions.

Public sector equality duty

1092 Paragraph 23 provides for the OEP to be subject to the Equality Act 2010. The OEP will be subject to the public sector equality duty, which requires public bodies and others carrying out public functions to have due

regard to the need to eliminate discrimination, to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.

Schedule 2: Improving the natural environment: Northern Ireland

1093 Whilst significant progress has been made in improving aspects of Northern Ireland's environment in recent times, there remain substantial environmental challenges which must be addressed if the Northern Ireland Executive is to improve Northern Ireland's natural environment."

1094 These challenges include waste management and the development of a circular economy; waste crime; air quality; local environmental quality (for example, litter and dilapidated buildings); biodiversity loss; soil quality; greenhouse gas emissions/ climate change; water quality (including the impact of nitrogen and phosphorus run-off); single use plastic waste; and ammonia emissions.

1095 In order to provide a strategic framework to tackle these challenges and to reaffirm its commitment to protect and improve the environment after the United Kingdom's withdrawal from the European Union, the

Department for Agriculture, Food and Rural Affairs (referred to as “the Department”) commenced preparatory work on a draft ‘Environment Strategy for Northern Ireland’ in March 2018.

1096 The Department’s public discussion on this closed in February 2020, with 2,500 responses received. Subject to the approval of the Northern Ireland Executive and public consultation on the draft Strategy in 2021, it is intended that it will be Northern Ireland’s first environmental improvement plan.

Part 1: Environmental Improvement Plans

1097 The duties included in Schedule 2 provide a statutory basis for future environmental improvement plans relating to Northern Ireland. These duties are intended to work together for the purpose of seeking to significantly improve the natural environment. Specifically, Schedule 2 requires the Department, in consultation with other relevant departments, to: produce and maintain an environmental improvement plan which is reviewed and, if appropriate, updated at least every five years; publish a statement on the data it will obtain to determine whether the natural environment (or elements of it) are improving; and report progress towards environmental

improvement to the Northern Ireland Assembly on an annual basis.

Environmental Improvement Plans

1098 Paragraph 1 introduces a duty on the Department to prepare a plan for significantly improving the natural environment. It states: what the plan must do; what the plan must contain; who must be consulted; and enables the plan to relate to a specified time period or to be of no specified duration.

1099 Sub-paragraphs (1) and (2) introduce the requirement to have an environmental improvement plan for significantly improving the natural environment.

1100 Sub-paragraph (3) enables the environmental improvement plan to relate to a specified time period or to be of no specified duration.

1101 Sub-paragraph (4) specifies that the environmental improvement plan must set out the steps that the Department and other Northern Ireland departments intend to take to improve the natural environment.

1102 Sub-paragraph (5) allows the environmental improvement plan to include measures that any Northern Ireland department intends to take in order to improve people's enjoyment of the natural

environment. Enjoyment may be increased through education and public awareness of the natural environment both past and present, natural systems and processes through which organisms interact with their surroundings.

1103 Sub-paragraph (6) requires the Department to consult with such other Northern Ireland departments as it considers appropriate as part of the process of preparing an environmental improvement plan. These may be departments who are taking steps to improve the environment or those whose policy remits might be impinged upon by those taking steps.

1104 Sub-paragraph (7) requires the Department to publish an environmental improvement plan and lay this in the Northern Ireland Assembly within 12 months of paragraph 1 coming into force.

1105 Sub-paragraph (8) states that all references in Schedule 2 to the current environmental improvement plan are to the environmental improvement plan that is in effect at the time.

Annual reports on environmental improvement plans

1106 Paragraph 2 establishes a duty on the

Department to produce annual reports on the implementation of the environmental improvement plan and on whether the environment is improving. It explains when and how these reports should be published.

1107 Sub-paragraph (1) requires the Department to prepare annual reports on the implementation of the current environmental improvement plan.

1108 Sub-paragraph (2) requires that these reports must describe what has been done to implement the plan and consider whether the natural environment (or aspects of it) is improving during the period to which the report relates. Consideration as to whether the environment (or aspects of it) has improved must have regard to information gathered under paragraph 5.

1109 Sub-paragraph (3) specifies the period of time annual reports on an environmental improvement plan must relate to, which is 12 months.

1110 Sub-paragraph (4) requires the Department to lay each annual report in the Northern Ireland Assembly within four months of the end of the period to which it relates.

1111 Sub-paragraph (5) requires the

Department to publish annual reports laid before the Northern Ireland Assembly under Paragraph 2.

Reviewing and revising environmental improvement plans

1112 Paragraph 3 provides for the review and revision of environmental improvement plans. It establishes a duty on the Department and a timeline to complete a review (and, if appropriate, to revise the plan), in consultation with other relevant departments. It also specifies what must be considered in undertaking this review.

1113 Sub-paragraph (1) establishes a duty on the Department to review the plan and if it considers it appropriate then to revise the plan.

1114 Sub-paragraph (2) specifies that the first review of an environmental improvement plan must be completed within five years of its publication (in respect of the first plan) or its start date (in respect of any other plans). This is considered to be sufficient time for: progress to be made against the plan; the monitoring of the environment to assess improvement; and early results to be obtained. This time should also allow for any weaknesses and gaps in the plan and required policy changes to be identified

which may require a revision to the plan.

1115 Sub-paragraph (3) provides that further reviews of an environmental improvement plan must be undertaken within every five-year period.

1116 Sub-paragraph (4) specifies what the Department must consider when reviewing an environmental improvement plan. These are: the steps that have been taken to deliver the plan; improvements in the natural environment (or aspects of it); and what else should be done to improve the environment. The Department must have regard to the data obtained under paragraph 5 and reports from the Office for Environmental Protection when considering whether the environment (or aspects of it) has improved. The Department will be at liberty to consider other relevant information, reports or commentary in completing its review.

1117 Sub-paragraph (5) requires the Department to consult with such other Northern Ireland departments as it considers appropriate as part of the process of reviewing or revising an environmental improvement plan. These departments may be those who are taking steps to improve the environment or those whose policy remits might be impinged upon by those taking

steps.

1118 Sub-paragraph (6) requires that when the Department has completed a review and determined it appropriate to revise the plan, then this revised plan must be laid in the Northern Ireland Assembly along with a statement explaining what revisions have been made and why.

1119 Sub-paragraph (7) requires that if the Department completes a review but does not consider it appropriate to revise the plan then it must lay in the Northern Ireland Assembly a statement to this effect and the reasons for this. Whilst the Department is required to complete a review within the five-year timeline there is no duty to revise the plan if a revision is not considered appropriate. This allows for a revision to the plan to be delayed if the Department considers it appropriate, but such a decision must be justified to the Northern Ireland Assembly.

1120 Sub-paragraph (8) requires the Department to publish any documents laid in the Northern Ireland Assembly under sub-paragraphs (6) and (7) following a review of an environmental improvement plan.

1121 Sub-paragraph (9) specifies that a review is to be considered completed when the documents prepared under subsections

(6) and (7) have been laid in the Northern Ireland Assembly and published. This is the completion date for the purpose of meeting the requirement to complete a review within five years of a plan being published or previous review. It also becomes the start date for the next five-year time period for completing the subsequent review.

1122 Sub-paragraph (10) clarifies that when the environmental improvement plan is revised in accordance with this paragraph, then references to an environmental improvement plan in this Schedule include the now revised environmental improvement plan.

Renewing environmental improvement plans

1123 Paragraph 4 provides for the Department to, in consultation with other relevant departments, replace the environmental improvement plan with a renewed version in such circumstances where the environmental improvement plan relates to a specified period as stated in the plan itself.

1124 Sub-paragraph (1) specifies that paragraph 4 applies where an environmental improvement plan relates to a period specified in the plan itself.

1125 Sub-paragraph (2) requires the Department to prepare a new environmental

improvement plan before the point at which the current plan comes to an end.

1126 Sub-paragraph (3) requires the new plan to start no later than the end of a previous plan, ensuring there is no gap between plans.

1127 Sub-paragraph (4) sets out what the Department must consider before the current environmental improvement plan can be renewed. These are the steps that have been taken to deliver the current plan; improvements in the natural environment since the beginning of the period to which the old plan relates; and what else should be done to improve the environment after the end of the period to which the previous plan related. The Department must also consult such other Northern Ireland departments as it considers appropriate as part of the renewal process. The Department must have regard to the data obtained under paragraph 5 and reports from the Office for Environmental Protection when considering whether the environment has improved and is at liberty to consider other relevant information, reports or commentary.

1128 Sub-paragraph (5) requires the Department to publish and lay all new environmental improvement plans in the Northern Ireland Assembly at or before the

end of the period to which the previous plan relates.

1129 Sub-paragraph (6) refers to the replacement of the plan and specifies when the previous plan ends and the new plan begins. At its earliest, this will be when the plan has been laid in the Northern Ireland Assembly and published, but if the period to which the new plan relates is specified in the new plan it will be the start of that period. Sub-paragraph (3) requires that the new plan begins no later than the end of the previous plan.

Environmental monitoring

1130 Paragraph 5 establishes a duty on the Department to obtain and publish data for the purpose of environmental improvement. The metrics will measure outcomes achieved through the implementation of the environmental improvement plan and inform updates to the plan.

1131 Sub-paragraph (1) establishes a duty on the Department to ensure that appropriate monitoring data is obtained to assess whether the natural environment (or elements of it) is improving in line with the current environmental improvement plan.

1132 Sub-paragraph (2) requires the Department to publish and lay a statement in

the Northern Ireland Assembly explaining the types of data to be collected for the purposes identified in sub-paragraph (1).

1133 Sub-paragraph (3) requires the first statement under sub-paragraph (2) to be laid within four months of this Paragraph coming into force.

1134 Sub-paragraph (4) allows for changes to be made to the statement at any time. This may be necessary if it becomes clear to the Department that additional data is needed or that current measures do not adequately assess environmental improvement. Such a revised statement must also be published and laid in the Northern Ireland Assembly.

1135 Sub-paragraph (5) requires the Department to publish any data that it obtains under sub-paragraph (1).

Part 2: Policy statement on environmental principles

1136 Part 2 of Schedule 2 makes similar provision for Northern Ireland as clauses 16 to 18 do for England.

Policy statement on environmental principles

1137 Paragraph 6(1) requires the Department of Agriculture, Environment and Rural Affairs ("the Department") to prepare a policy statement on the environmental principles.

This means that the Department must draft the policy statement in line with requirements in paragraphs 6 and 7.

1138 Sub-paragraph (2) provides specific information on what the environmental principles policy statement must include. The policy statement will provide information for Northern Ireland departments and Ministers of the Crown on the interpretation and proportionate application of the environmental principles when developing policies. Proportionate application of the principles means that action taken should be comparable to the potential benefit or risk applying in a specific case.

1139 Sub-paragraph (3) sets out that the Department may explain in the statement how other considerations should be taken into account by Northern Ireland departments and Ministers of the Crown when they are interpreting and applying the environmental principles. For example, it may be necessary to balance the application of a specific environmental principle with other considerations, such as economic and social benefits.

1140 Sub-paragraph (4) details two aims that the Department must be satisfied that the statement will contribute to. These are:

- The improvement of environmental protection. In this context, this means ensuring that the policy statement can be used to shape policies in a way that contributes to protection of the environment.
- Sustainable development. Sustainable development can be summarised as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It involves trying to achieve environmental benefit alongside economic growth and social progress. Therefore, the policy statement will require Northern Ireland departments to consider needs of future generations when developing policies. This means that a Department should consider the environmental impact of their policies together with economic and social factors and, as much as possible, ensure each policy achieves all three aims.

1141 Sub-paragraph (5) sets out the list of environmental principles the policy statement will cover. These principles are drawn from a number of sources, including, for example, the Rio Declaration on Environment and Development (1992). There is no single

agreed definition of the environmental principles. The policy statement will explain in more detail how these are to be interpreted and provide information as to how they should be applied.

1142 The meaning of the individual environmental principles are as follows:

- The principle that environmental protection should be integrated into the making of policy: Environmental protection must be embedded in the making of policies.
- The principle of preventative action to avert environmental damage: Preventive action should be taken to avert environmental damage.
- The precautionary principle, so far as relating to the environment: Where there are threats of serious irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- The principle that environmental damage should as a priority be rectified at source: Environmental damage should as a priority be rectified by targeting its

original cause and taking preventive action at source.

- The polluter pays principle: The costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large.

1143 Further direction on these environmental principles will be set out in the policy statement. These principles cannot be changed without further primary legislation.

Policy statement on environmental principles: process

1144 Paragraph 7 establishes the process by which the Department will develop and publish the environmental principles policy statement.

1145 Sub-paragraph (1) requires the Department to prepare a draft policy statement on environmental principles. This will be an initial version of the statement before public and Northern Ireland Assembly ("the Assembly") scrutiny.

1146 Sub-paragraph (2) requires the Department to undertake a public consultation on the draft policy statement. In particular, the Department is required to consult the other Northern Ireland departments and the Secretary of State for

the Environment, Food and Rural Affairs.

1147 Sub-paragraph (3) requires the draft to be laid before the Assembly for its consideration. This must take place before the policy statement is finalised.

1148 Sub-paragraph (4) sets out provisions for cases where the Assembly chooses to respond to the draft policy statement by passing a resolution in respect of the draft. The Assembly has a period of 21 sitting days after the draft statement has been laid to pass a resolution if it deems this necessary. The Department is required to lay a response to any resolution passed by the Assembly.

1149 Sub-paragraphs (5) to (7) require the final environmental policy statement to be laid before the Assembly and published. If a response is required under sub-paragraph (4), the Department must not lay and publish the final statement before laying this response. Otherwise, the Department must not lay and publish the final statement before a period of 21 sitting days has passed since the draft statement was laid. This is intended to allow the Assembly sufficient time to scrutinise the draft policy statement. The final statement comes into effect when it is laid before the Assembly.

1150 Sub-paragraph (8) provides a definition

for the term “21 day period”.

1151 Sub-paragraph (9) details what a sitting day is in this context.

1152 Sub-paragraph (10) enables the requirements in subsections (1) and (2) as to preparation of the statement and consultation to be met prior to the coming into force of the relevant provisions of the Bill.

1153 Sub-paragraph (11) allows the Department to revise the policy statement at any time, and requires the process set out in sub-paragraphs (1) to (9) to be followed each time that the policy statement is revised.

Policy statement on environmental principles: effect

1154 Paragraph 8 sets out the legal duty on Northern Ireland departments and Ministers of the Crown in respect of the environmental principles policy statement, where the duty applies. It also details the relevant exemptions to the duty to have due regard to the policy statement.

1155 Sub-paragraph (1) requires the Northern Ireland departments to have due regard to the environmental principles policy statement when making policies included in the scope of the duty (that is, policy that is not excluded). This means that when making policy, departments must have the correct

level of regard to the content of the environmental principles policy statement.

1156 Sub-paragraph (2) places the same duty on Ministers of the Crown when they are making policies relating to Northern Ireland.

1157 Sub-paragraph (3) sets out that the policy statement does not require departments or Ministers of the Crown to do, or refrain from doing, anything if doing something (or not doing it) has no significant environmental benefit or would be in any other way disproportionate to the environmental benefit. In this context:

- No significant environmental benefit means that the policy statement does not need to be used to change a policy direction if the environmental impact would be negligible.
- Disproportionate indicates situations in which action would not be reflective of the benefit or costs, environmental or otherwise. Action taken must reflect the potential for environmental benefit as well as other costs and benefits. For example, there is no need for a Department to change a policy in light of the principles policy statement if the cost of this change would be very high and the benefit to the environment would be

very low. Equally, if the potential environmental benefit is high, then it is proportionate to take a more significant action based on the policy statement.

1158 Sub-paragraph (4) sets out which policies are excluded from the requirement to have due regard to the policy statement during the policy-making process. In the equivalent provision for England – clause 18(3) – the armed forces, defence, and national security, taxation, spending and the allocation of resources within government are excluded. These matters are similarly excluded for Ministers of the Crown when making policy in relation to Northern Ireland. However, armed forces, defence, and national security do not need to be specifically excluded for Northern Ireland departments as they are excepted matters and, on that basis, Northern Ireland departments have no powers to make policies relating to these subjects.

Part 3 – Interpretation

1159 Part 3 of Schedule 2 makes similar provision for Northern Ireland as clauses 43 to 46 do for England.

Meaning of “natural environment”, “environmental protection”, and General interpretation

1160 Paragraphs 9 to 11 define the terms

used in the Schedule and cover the application of the Interpretation Act (Northern Ireland) 1954.

Schedule 3: The Office for Environmental Protection: Northern Ireland

1161 The Office for Environmental Protection's (OEP's) functions in Northern Ireland are essentially the same as its functions in England. This is dealt with in the Bill in two ways:

- Substantive Northern Ireland functions of the OEP are provided for in Part 1 of Schedule 3. To a large extent, these provisions mirror those in Part 1 of the Bill.
- Provision about the OEP itself and its general functions is contained in clauses 21 to 42 of Part 1 of the Bill. These apply to Northern Ireland, subject to the amendments made by Part 2 of Schedule 3.

1162 Throughout this Schedule, "the Department" means the Department of Agriculture, Environment and Rural Affairs (DAERA).

Part 1: The OEP's Northern Ireland functions

Monitoring and reporting on the Department's environmental improvement plans

1163 Paragraph 1 describes the monitoring and reporting functions of the OEP in relation to the environmental improvement plans prepared by the Department. Under this paragraph, the OEP will monitor and assess environmental statistics and reports on an ongoing basis to ensure that it has an effective knowledge base. This information will then be analysed alongside information published by the Department to assess progress made in improving the natural environment in accordance with the current environmental improvement plan.

1164 Sub-paragraph (1) provides that the OEP must monitor progress in improving the natural environment in accordance with the Department's environmental improvement plan (the first of which is intended to be the 'Environment Strategy for Northern Ireland'), as set out in Schedule 2. This is intended to hold the Department to account on its environmental commitments.

1165 Sub-paragraph (2) requires the OEP to produce a progress report for each annual reporting period. As set out in sub-paragraph (3), the reports will inform on progress made related to improving the natural environment

that has occurred within the annual reporting period. This will be measured against the current environmental improvement plan. An annual reporting period is the period for which the Department must produce a report under paragraph 2 of Schedule 2 (a "Schedule 2 report"), as set out in sub-paragraph (4).

1166 When making a progress report, sub-paragraph (5) requires the OEP to take into account the report made by the Department on progress against environmental objectives for that period, as set out in paragraph 2 of Schedule 2. The OEP will also consider the data for that period, as required by paragraph 5(1) of Schedule 2, as well as any other documents or information which the OEP believes is relevant.

1167 Sub-paragraph (6) specifies that a progress report may advise how the OEP believes progress could be improved. It may also consider the adequacy of data obtained under paragraph 5(1) of Schedule 2, enabling the OEP to independently determine whether the right information is being collected to evaluate progress in improving the natural environment.

1168 Sub-paragraphs (7) and (8) require that

the OEP's reports must be laid before the Northern Ireland Assembly and published. This is intended to provide the OEP with sufficient independence when carrying out its reporting functions. The OEP's reports must be laid before the Northern Ireland Assembly within six months of the relevant Schedule 2 report being laid. This gives the OEP sufficient time to carry out its scrutiny of the Schedule 2 report whilst tying it to a fixed reporting deadline.

1169 Sub-paragraph (9) requires the Department to respond to the OEP's report, publishing its response and laying it before the Northern Ireland Assembly. Sub-paragraph (10) requires that the Department's response must specifically address any recommendations made by the OEP as to how progress with the environmental improvement plan could be improved. Sub-paragraph (11) specifies that the Department must lay its response within 12 months of the OEP's report being laid; and may include this response in the Department's subsequent report made under paragraph 2 of Schedule 2. This allows the Department to include the response to the OEP's progress report as part of the following year's annual report on the environmental improvement plan.

Monitoring and reporting on environmental law

1170 Paragraph 2 describes how the OEP is to monitor and report on the implementation of Northern Ireland environmental law. This term is defined in paragraph 18(2) of Schedule 3.

1171 Sub-paragraph (1) requires the OEP to monitor the implementation of Northern Ireland environmental law.

1172 Sub-paragraph (2) permits the OEP, as it deems appropriate, to produce a report on any matter concerned with the implementation of Northern Ireland environmental law.

1173 Sub-paragraph (3) ensures that the OEP does not duplicate the work of the Committee on Climate Change by preventing the OEP monitoring or reporting on specific matters already within the statutory remit of that Committee.

1174 Sub-paragraph (4) lists those matters. This provision ensures the OEP does not duplicate the role of the Committee on Climate Change and provides consistency across England and Northern Ireland should the Assembly choose to extend the OEP to devolved matters in Northern Ireland.

1175 Sub-paragraph (5) requires that any

report the OEP produces in line with sub-paragraph (2) must be laid before the Northern Ireland Assembly and published. This ensures the reports are in the public domain and are subject to scrutiny by elected representatives.

1176 Sub-paragraph (6) requires the Department to produce a response to any report issued by the OEP under sub-paragraph (2). The Department must lay the response before the Northern Ireland Assembly and publish it.

1177 Sub-paragraph (7) requires the Department to lay its response before the Assembly within three months of the OEP's report being laid.

Advising on changes to Northern Ireland environmental law etc

1178 Paragraph 3 sets out the circumstances in which the OEP can give advice to a Northern Ireland department. It also makes provision for how this advice must be published and may be laid before the Northern Ireland Assembly.

1179 Sub-paragraphs (1) and (2) enable a Northern Ireland department to require the OEP to provide it with advice on any proposed change to Northern Ireland

environmental law, or on any other matter relating to the natural environment. The department in question can, if it wishes, set out specific matters it requires the OEP to take into consideration when providing this advice. “Natural environment” is defined in this Bill in clause 43 and paragraph 19 of this Schedule.

1180 Sub-paragraph (3) enables the OEP, acting on its own initiative, to give advice to a Northern Ireland department concerning any changes to environmental law being proposed by the department in question.

1181 Sub-paragraph (4) requires any advice given by the OEP to a Northern Ireland department to be given in writing. This applies whether the advice has been requested by the department or whether it has been provided at the OEP’s initiative.

1182 Sub-paragraph (5) requires the OEP to publish its advice. If it was asked to provide the advice by a Northern Ireland department under sub-paragraph (1), it must also publish details of the request and any matters it was required to take into account in line with sub-paragraph (2). The publication of this information ensures transparency in the relationship between the OEP and any Northern Ireland department asking it for

advice.

1183 Sub-paragraph (6) permits (but does not require) the relevant Northern Ireland department to lay the advice it has received from the OEP before the Northern Ireland Assembly. It may also lay any response it has made to that advice.

Failure of relevant public authorities to comply with environmental law

1184 Paragraph 4 defines what is meant by a relevant public authority failing to comply with relevant environmental law.

1185 Sub-paragraph (1) sets out that paragraphs 6 to 15 provide for the functions of the OEP relating to failures by "relevant public authorities" to comply with "relevant environmental law". Both of these terms are defined in paragraph 5.

1186 Sub-paragraph (2) defines what is meant by a relevant public authority failing to comply with relevant environmental law.

Meaning of relevant environmental law, relevant public authority etc

1187 Paragraph 5 defines certain terms referred to in this Part of this Schedule.

1188 Sub-paragraph (2) defines the term "relevant environmental law". This definition

is in two parts:

- Sub-paragraph (2)(a) sets out that for Northern Ireland public authorities (defined in sub-paragraph (4)), “relevant environmental law” means “UK environmental law”, as defined in paragraph 18(1) – which references clause 45 – or “Northern Ireland environmental law”, as defined in paragraph 18(2).
- Sub-paragraph (2)(b) sets out that for any other relevant public authority (meaning those captured under sub-paragraph (3)(b)), “relevant environment law” means “Northern Ireland environmental law”.

1189 The definition is structured in this manner to enable the OEP to carry out enforcement action against Northern Ireland devolved public authorities who are believed to have breached either devolved or reserved environmental legislation, as well as against other public authorities who are believed to have breached devolved legislation when exercising any function in or as regards to Northern Ireland.

1190 Sub-paragraph (3) defines the term “relevant public authority”. This means a Northern Ireland public authority (as defined

in sub-paragraph (4)), or any other legal or natural person carrying out a function of a public nature in or as regards Northern Ireland that is not a parliamentary function, or a function of a body listed under sub-paragraphs (3)(b)(i) to (3)(b)(iv).

1191 Sub-paragraph (4) defines the term "Northern Ireland public authority". This means a legal or natural person carrying out a Northern Ireland devolved function (as defined in sub-paragraph (5)) that is not a function connected with proceedings in the Northern Ireland Assembly, or a function of any of the bodies listed under sub-paragraphs (4)(b)(i) to (4)(b)(iii).

1192 Sub-paragraph (4) makes it clear that the definition of Northern Ireland public authority includes the implementation bodies as defined in section 55 of the Northern Ireland Act 1998 but only insofar as their functions relate to Northern Ireland.

1193 Sub-paragraph (5) defines the term "Northern Ireland devolved function". This means a function that could be conferred by an Act made by the Northern Ireland Assembly under sections 6 to 8 of the Northern Ireland Act 1998.

Complaints about relevant public authorities

1194 Paragraph 6 allows complaints to be

made to the OEP regarding alleged contraventions of relevant environmental law by relevant public authorities. It sets out who may make such complaints, what form they must take, and the time limits within which they should be made. Complaints that are not submitted in accordance with the procedures set out in this paragraph do not have to be considered by the OEP (see paragraph 8(2)(a)). The contraventions and relevant public authorities about which complaints may be considered by the OEP are set out in paragraphs 4 and 5 respectively. Paragraph 5 also defines relevant environmental law.

1195 Sub-paragraph (1) allows for any legal or natural person – other than a person described in sub-paragraph (4) – to make a complaint to the OEP if they believe that a relevant public authority has failed to comply with relevant environmental law.

1196 Sub-paragraph (2) requires the OEP to draw up and publish a complaints procedure and sub-paragraph (3) requires all complaints to the OEP to be submitted in accordance with the most recently published version of that procedure.

1197 Sub-paragraph (4) does not permit public authorities to make complaints to the OEP. This is to prevent one arm of government or

the public sector complaining about another.

1198 Sub-paragraph (5) requires a complainant to have exhausted any internal complaints procedures of the body it wishes to complain about before submitting a complaint to the OEP. This should allow matters to be resolved without formal action being taken where possible.

1199 Sub-paragraph (6) requires a complaint to be submitted to the OEP within a year of the alleged breach of relevant environmental law (sub-paragraph (6)(a)), or within three months of the conclusion of any internal complaints procedures (sub-paragraph (6)(b)), whichever is later. However, sub-paragraph (7) allows the OEP to consider complaints submitted after the expiration of these time limits if it believes that there are exceptional grounds for doing so – for example, if the full impact of environmental harm allegedly caused by a relevant public authority has not become apparent for some time.

Investigations: relevant public authorities

1200 Paragraph 7 deals with the investigation of complaints about relevant public authorities as well as the investigation of potential breaches of relevant environmental law coming to the OEP's attention by other

means.

1201 Sub-paragraph (1) gives the OEP powers to undertake an investigation on the basis of a complaint received under paragraph 6 if it considers that the complaint indicates that a relevant public authority may have committed a serious failure to comply with relevant environmental law.

1202 Sub-paragraph (2) gives the OEP powers to undertake an investigation without having received a complaint if it has information obtained by other means, which in its view indicates a relevant public authority may have committed a serious failure to comply with relevant environmental law.

1203 Sub-paragraph (3) sets out the purpose of the investigation i.e. establishing whether a relevant public authority has failed to comply with relevant environmental law.

1204 Under sub-paragraph (4), at the start of an investigation the OEP is required to notify the relevant public authority that it is being investigated. Under sub-paragraph (10), if that public authority is not a Northern Ireland department, the OEP must also notify the "relevant department". Sub-paragraph (11) defines the relevant department as the Northern Ireland department that the OEP

considers the most appropriate, taking account of the nature of the public authority being investigated and the nature of the failure/alleged failure. In most cases this will mean that the OEP will notify the department responsible for the policy area in question.

1205 Similarly, when an investigation is concluded, sub-paragraph (5) requires the OEP to provide a report to the relevant public authority, copied to the relevant department if necessary under sub-paragraph (10). The OEP may publish the report in full or part under sub-paragraph (9).

1206 Sub-paragraph (6) allows the OEP the flexibility to delay the preparation of its report if it considers that it may take further enforcement action.

1207 Under sub-paragraph (7), if the OEP has made a review application under paragraph 12, or an application for judicial review under paragraph 13(1), in relation to the alleged failure to comply with relevant environmental law, it is not required to prepare a report.

1208 The required contents of the OEP's report are set out in sub-paragraph (8). The report must include information on whether the OEP considers that a relevant public authority has failed to comply with relevant environmental law, the reasons the OEP

came to these conclusions, and any recommendations the OEP may have for the relevant public authority in question and any other authorities.

Duty to keep complainants informed

1209 Paragraph 8 sets out the OEP's duty to inform a complainant about whether an investigation will be carried out following their complaint and, if so, about the progress of the investigation. Under this paragraph:

- The OEP must inform the complainant if their complaint will not be considered for further investigation on the basis that it was not made in accordance with paragraph 6 – see sub-paragraph (2)(a).
- Where a complaint has been made in accordance with paragraph 6, the OEP must advise the complainant whether or not an investigation into that complaint will be carried out – see sub-paragraphs (2)(b) and (2)(c).
- When a report on an investigation under paragraph 7(5) has been provided to the relevant public authority, sub-paragraph (2)(d)(i) requires the OEP to inform the complainant of this, although it is not obliged to disclose the report to the complainant.

- Where the OEP makes a review application in relation to the failure that was the subject of the complaint under paragraph 12, or an application for judicial review under paragraph 13(1), sub-paragraph (2)(d)(ii) requires the OEP to inform the complainant of this.
- Where the OEP publishes a report following the investigation of a complaint, it must provide the complainant with a copy of that report as published in full or in part, as required by sub-paragraph (2)(e).

Information notices

1210 Paragraph 9 enables the OEP to take enforcement action in the form of an "information notice".

1211 Under sub-paragraph (1), the OEP may issue an information notice to a relevant public authority if it has reasonable grounds for suspecting that the authority has failed to comply with relevant environmental law, and it considers that the failure is serious.

1212 Sub-paragraph (2) requires an information notice to describe the alleged failure to comply with relevant environmental law and detail the information that the OEP requires from the relevant public authority in relation to the alleged failure. Sub-paragraph

(2) also requires the OEP to explain in its information notice why the OEP considers that the alleged failure, if it occurred, would be serious.

1213 Sub-paragraph (3) requires the relevant public authority to respond in writing to an information notice, providing, as far as is reasonably practicable, the information requested.

1214 Sub-paragraph (4) specifies that the relevant public authority must respond within two months from the date on which the notice was given, or by any later date as specified by the OEP in the notice.

1215 Sub-paragraph (5) sets out the information that must be included in a response to the OEP including, if applicable, the steps the relevant public authority now intends to take.

1216 Under sub-paragraph (6), the OEP may withdraw an information notice or issue multiple information notices in relation to the same alleged compliance failure.

1217 Under sub-paragraph (7), where the OEP plans to issue an information notice in relation to an alleged failure to comply with relevant environmental law relating to greenhouse gas emissions, the OEP must

first notify the Committee on Climate Change and provide it with appropriate information. "Emissions of greenhouse gases" is defined in the Climate Change Act 2008.

Decision notices

1218 Paragraph 10 enables the OEP to take further enforcement action in the form of a "decision notice".

1219 The OEP may issue a decision notice under sub-paragraph (1) if it is satisfied, on the balance of probabilities, that the relevant public authority has failed to comply with relevant environmental law, and it considers that the failure is serious.

1220 Sub-paragraph (2) requires a decision notice to describe the failure to comply with relevant environmental law and the steps the relevant public authority should take in relation to the failure. Sub-paragraph (2) also requires the decision notice to explain why the OEP considers that the failure is serious.

1221 Under sub-paragraph (3) the relevant public authority is required to respond in writing to a decision notice within two months from the date the notice was given, or by any later date as specified by the OEP in the notice.

1222 Sub-paragraph (4) requires the written

response from the relevant public authority to state whether the authority agrees that there has been a failure to comply with the law and, whether it will take the steps set out in the notice. The response must also specify what other steps (if any) the relevant public authority intends to take in relation to the failure described in the notice.

1223 Sub-paragraph (5) requires the OEP to have issued at least one information notice relating to the compliance failure before it can issue a decision notice (sub-paragraph (5)(a)). It also allows the OEP to withdraw a decision notice (sub-paragraph (5)(b)).

Linked notices

1224 Paragraph 11 deals with the possible scenario in which the OEP considers that a notice should be issued to more than one public authority concerning the same or similar breaches of relevant environmental law.

1225 Sub-paragraph (1) gives the OEP the power to determine that information or decision notices that it has issued to more than one relevant public authority are ”linked notices”.

1226 Sub-paragraph (2) allows the relevant department (i.e. the department responsible for the policy area in question) to ask the

OEP to designate information or decision notices as linked notices and requires the OEP to have regard to such a request.

1227 Sub-paragraph (3) requires the OEP to provide the recipient of an information or decision notice (which is referred to as a "principal notice") with a copy of every notice which is linked to it. It also sets out that such notices shall be referred to in this clause as "linked notices".

1228 Sub-paragraph (4) requires the OEP to provide the recipient of a principal notice with a copy of any relevant correspondence which relates to a linked notice between the OEP and the recipient of that notice. What constitutes "relevant" correspondence is defined in sub-paragraph (10).

1229 Sub-paragraph (5) requires the OEP to provide the recipient of a principal notice with a copy of any relevant correspondence between the OEP and the relevant department that relates to a linked notice. However, sub-paragraph (6) provides that sub-paragraph (5) does not apply where the recipient of either the principal notice or the linked notice is a Northern Ireland department. "Relevant department" is defined in paragraph 7(11).

1230 Sub-paragraph (7) allows the OEP to

designate information and decision notices as notices which are linked to UK information or decision notices issued in relation to identical or similar conduct. Sub-paragraph (8) sets out that in these circumstances, the OEP must provide the recipient of an information or decision notice with a copy of every UK information notice or UK decision notice which is linked to it, and a copy of relevant correspondence relating to those notices between the OEP and the recipient of that notice.

1231 Sub-paragraph (9) provides that the obligations set out under this paragraph do not apply where the OEP considers that to provide this information would not be in the public interest.

1232 Sub-paragraph (10) sets out what will be considered as “relevant” correspondence for the purposes of this paragraph. Correspondence is considered relevant if:

- as required by sub-paragraph (10)(a), it is not connected with a review application (an application to the High Court for judicial review) or any other legal proceedings; and
- as required by sub-paragraph (10)(b), it is not sent to fulfil the requirements of paragraph 14(1)(a) or (b) (that is,

information to be provided by the OEP to the relevant department).

1233 Sub-paragraph (11) defines a UK decision notice and a UK information notice for the purpose of this Part of this Schedule.

Review application

1234 Paragraph 12 enables the OEP to bring legal proceedings against a relevant public authority in specified circumstances.

1235 Sub-paragraph (1) gives the OEP powers to make a review application in relation to the conduct of a relevant public authority, as long as the conduct in question has been described in a decision notice previously issued to the authority in question as a failure to comply with relevant environmental law. This subsection also specifies that the OEP may only make a review application if it is satisfied on the balance of probabilities that the public authority has failed to comply with environmental law, and it considers that the failure in question is serious. This is the same test that the OEP must apply in deciding whether or not it may issue a decision notice. The OEP must remain satisfied, after considering any response to its decision notice, that the failure in question is serious. It cannot make a review application if the

response leads it to conclude that there was in fact no serious failure.

1236 Sub-paragraph (2) defines a “review application” in this paragraph as an application for judicial review in respect of conduct of a relevant public authority, and confirms that any reference to a “review application” in this Part of this Schedule is to an application made by virtue of sub-paragraph (1). This means that the usual judicial review remedies are available to the court e.g. quashing orders and declarations. Sub-paragraph (9) sets out that a “review application” includes an application for permission of the High Court to apply for judicial review.

1237 Sub-paragraph (3) places restrictions on when the OEP can bring a review application. This must not be before either (i) the end of the period within which the relevant public authority is required to respond to a decision notice under paragraph 10, or (ii) the date on which the OEP receives the relevant public authority’s response, whichever is earlier. This means that there will be sufficient time for the relevant public authority to respond to a decision notice and for this response to be taken into consideration by the OEP before it makes a decision on whether to proceed with

making a review application, while ensuring that the OEP is not obliged to wait until the end of the period specified in its decision notice if the public authority responds sooner. Sub-paragraph (4) disapplies the usual time limit for bringing a judicial review application subject to the restrictions as set out in sub-paragraph (3).

1238 Sub-paragraph (5)(a) requires the High Court to be satisfied that a remedy would not substantially prejudice or cause substantial hardship to a third party (a person other than the OEP) before granting it. Sub-paragraph (5)(b) requires that the High Court must also be satisfied that a remedy it granted would not be detrimental to good administration.

1239 Sub-paragraph (6) requires a relevant public authority which has been the subject of a review application to publish a statement upon conclusion of the review proceedings where the High Court makes a finding that the public authority has failed to comply with relevant environmental law – and this finding has not been overturned on appeal. This must set out the future action it plans to take.

1240 Sub-paragraph (7) requires a public authority to publish the statement as provided for in sub-paragraph (6) within two months of the day that proceedings, including

any appeal, conclude.

Judicial review: powers to apply to prevent serious damage and to intervene

1241 Paragraph 13 makes provision for the OEP to make an application for a judicial review in specific circumstances and to intervene in third party judicial reviews where appropriate.

1242 Sub-paragraph (1) provides that the OEP may make an application for judicial review in relation to conduct of a relevant public authority if it considers that there has been a serious failure to comply with relevant environmental law, whether or not it has previously issued an information or decision notice in respect of that conduct, and if what is referred to as “the urgency condition” is met.

1243 Sub-paragraph (2) defines the urgency condition. The effect of this provision is that the OEP could only make an application for judicial review, without proceeding according to its normal enforcement processes – that is, without the need to issue an information notice and a decision notice – if it is “necessary” to do so in order to prevent or mitigate serious damage to the natural environment or human health. This could be the case if, for example, serious

environmental damage would have already happened by the time that its normal enforcement procedure had reached the litigation stage and consequently a more urgent court judgment was needed.

1244 Sub-paragraph (3) requires a relevant public authority that has been the subject of an application for judicial review under sub-paragraph (1) to publish a statement upon conclusion of the review proceedings where the High Court makes a finding that the public authority has failed to comply with relevant environmental law – and this finding has not been overturned on appeal. This must set out the future action it plans to take.

1245 Sub-paragraph (4) requires a public authority to publish the statement as provided for in sub-paragraph (3) within two months of the day that proceedings, including any appeal, conclude.

1246 Sub-paragraphs (5) and (6) permit the OEP to intervene in an application for a relevant judicial review brought by another person or body. They enable the OEP to apply to intervene in a third party judicial review (including appeal proceedings) against a relevant public authority concerning an alleged failure to comply with relevant environmental law, as long as the OEP

considers that the alleged failure, if it occurred, would be serious.

1247 If that test is satisfied, it may apply to intervene whether or not it considers that the relevant authority has in fact failed to comply with relevant environmental law.

Duty of the OEP to involve the relevant department

1248 Paragraph 14 ensures that the relevant department, i.e. the Northern Ireland department with policy responsibility for the area in question (see definition in paragraph 7(11)), is made aware of a relevant information or decision notice or of a review application.

1249 Where the recipient of an information or decision notice is not a Northern Ireland department, sub-paragraph (1)(a) requires the OEP to provide a copy of the notice to the relevant department, as well as a copy of any correspondence between the OEP and the recipient of the notice that relates to the notice. Sub-paragraph (1)(b) requires the OEP to also provide the recipient of a notice with a copy of any correspondence it has with the relevant department regarding the notice.

1250 Sub-paragraph (2) provides that the OEP is not obliged to provide copies of notices or correspondence set out in sub-paragraph (1) if it considers that to do so would not be in the

public interest.

1251 Where the OEP makes a review application under paragraph 12, or an application for judicial review under paragraph 13(1), against a relevant public authority which is not a Northern Ireland department, sub-paragraph (3) requires the OEP to provide the relevant department with a copy of the application and a statement which sets out the OEP's opinion on whether the relevant department should participate in the review proceedings.

Public statements

1252 Paragraph 15 sets out the OEP's duties with respect to public statements such as press releases.

1253 Sub-paragraph (1) requires the OEP to publish a public statement whenever it serves an information or decision notice, makes a review application under paragraph 12 or an application for judicial review under paragraph 13(1), or applies to intervene in a judicial review. This sub-paragraph also sets out the information that this statement must contain.

1254 Sub-paragraph (2) provides that the OEP is not required to publish a statement if it considers that it would not be in the public interest to do so.

Disclosures to the OEP

1255 Paragraph 16 deals with the circumstances in which a person must – and when they are not obliged – to provide information to the OEP.

1256 Sub-paragraph (1) of this paragraph sets out that no obligation of secrecy, whether set out in legislation or not, prevents someone from providing the OEP with information. This sub-paragraph applies if the information is in connection with an investigation (under the powers set out in paragraph 7), an information notice or decision notice or when complying with a request for information in response to an information notice (in accordance with paragraph 9(3)(b)).

1257 Sub-paragraph (2) qualifies sub-paragraph (1), by providing a public authority with an exemption from the requirement to provide information if it would be entitled or required to withhold that information in legal proceedings on the grounds of either legal professional privilege or public interest immunity.

1258 Sub-paragraph (3) provides that no obligation of secrecy, statutory or otherwise, restricts the Northern Ireland Public Services Ombudsman from providing information to the OEP, if this is done for purposes (a)

connected with the exercise of the OEP's functions under paragraph 7, or (b) connected with the co-ordination of the OEP's functions where they relate to investigations under paragraph 7 and the Ombudsman's functions that relate to investigations by the Ombudsman.

1259 Sub-paragraph (4) confirms that nothing in this Part of the Schedule requires or authorises any disclosure of information which would contravene the data protection legislation, even if the disclosure would be in accordance with the provisions in this Part of the Schedule.

1260 Sub-paragraph (5) defines the meaning of the phrase "the data protection legislation" for the purposes of this paragraph and is self-explanatory.

Confidentiality of proceedings

1261 Paragraph 17 deals with the circumstances in which the OEP and relevant public authorities must not disclose information obtained during enforcement proceedings by the OEP.

1262 Sub-paragraph (1)(a) sets out that the OEP cannot disclose information where it has been provided by a relevant public authority as a response to information requested by the OEP in an information

notice (as provided for in paragraph 9(3)(b)). Sub-paragraph (1)(b) provides that the OEP also cannot disclose correspondence between the OEP and the relevant public authority in respect of information or decision notices. This includes the notices themselves.

1263 Circumstances where the prohibition on disclosure does not apply and the OEP is therefore able to disclose the information, are covered under sub-paragraph (2).

1264 Sub-paragraph (3) prohibits a relevant public authority that is in receipt of an information notice or decision notice from disclosing correspondence between it and the OEP in relation to the notice – including the notice itself. This prohibition also applies to correspondence between the OEP and any other relevant public authority in relation to the relevant notice.

1265 Sub-paragraph (4) sets out the circumstances where the prohibition in sub-paragraph (3) does not apply.

1266 Sub-paragraph (5) sets out that that the OEP can only give its consent for disclosure of an information or a decision notice when it has concluded it intends to take no further steps under this Part of this Schedule or under Chapter 2 of Part 1 of this Bill.

Sub-paragraph (6) ensures that, if consent has been requested by a relevant public authority, the OEP cannot withhold that consent for disclosure of correspondence if it has concluded it intends to take no further steps under this Part of this Schedule or Chapter 2 of Part 1 of this Bill.

1267 Sub-paragraph (7) provides that any information which is non-disclosable under this paragraph and which is held by the OEP or relevant public authorities is to be regarded as "environmental information" in accordance with the Environmental Information Regulations 2004 and the Environmental Information (Scotland) Regulations 2004 and held, for the purposes of those regulations, in connection with confidential proceedings.

Meaning of UK environmental law and Northern Ireland environmental law

1268 Paragraph 18 defines "environmental law" for the purpose of determining the range of legislation which falls within the remit of the OEP and with respect to which the OEP can exercise its scrutiny, advice, complaints and enforcement functions in Northern Ireland.

1269 Sub-paragraph (1) defines "UK environmental law" for the purpose of this

Part of this Schedule, as meaning anything which is environmental law for the purposes of Part 1 of this Act (see clause 45), but not anything that is environmental law only for the purpose of clause 19 (statements about Bills containing new environmental law).

1270 Sub-paragraph (2) defines “Northern Ireland environmental law” for the purpose of this Part of this Schedule as meaning any Northern Ireland legislative provision that meets the dual requirement of being mainly concerned with environmental protection (as described in paragraph 10 of Schedule 2) and not being explicitly excluded under sub-paragraph (3). It is important to note that the definition of Northern Ireland environmental law applies to legislative provisions on an individual basis (that is, specific sections or sub-sections of an Act or regulations) rather than entire legal instruments. This means that even if most of an Act or set of regulations does not meet these conditions, any specific provisions in the Act or regulations which do meet the conditions should be considered as Northern Ireland environmental law. For further guidance, see the Explanatory Notes on clause 45.

1271 Sub-paragraph (3) sets out matters

which are explicitly excluded from the definition of Northern Ireland environmental law:

- Disclosure of or access to information. These matters are excluded in order to avoid overlap between the remit of the OEP and that of the Information Commissioner's Office, which oversees and, where necessary, takes action to enforce public authorities' compliance with the Environmental Information Regulations 2004.
- Taxation, spending or the allocation of resources within government.

1272 Sub-paragraph (4) defines "Northern Ireland legislative provision" as any legislative provision contained in, or an instrument made under, Northern Ireland legislation, and any legislative provision not covered by sub-paragraph (4)(a) which would be within the legislative competence of the Northern Ireland Assembly, if contained in an Act of that Assembly made without the Secretary of State's consent.

1273 Sub-paragraph (5) provides that the Department may make regulations specifying Northern Ireland legislative provisions which are, or are not, Northern Ireland environmental law. Provision in this way may

be necessary in the light of experience for instance to resolve an ambiguity about how the definition applies to particular legislation. Before making these regulations, the Department must carry out a consultation process which must include consulting the OEP (sub-paragraph (6)). Sub-paragraph (7) sets out that any regulations made under sub-paragraph (5) will be subject to the affirmative procedure in the Northern Ireland Assembly.

Interpretation of Part 1 of this schedule: general

1274 Paragraph 19 defines terms used in Part 1 of this Schedule and is self-explanatory.

Part 2: Amendments of the OEP's general functions

1275 Part 1 of this Schedule sets out the Northern Ireland-specific provisions with respect to the OEP.

1276 Paragraph 20 clarifies that Part 2 of this Schedule (paragraphs 21 to 29) amends the general OEP provisions in Part 1 of the Bill to reflect the extension of the OEP's geographical coverage to Northern Ireland.

1277 Paragraph 21 amends clause 22 of the Bill, which sets out the principal objective of the OEP and other provisions about its functions. Specifically, sub-paragraphs (2) to

(5) make the changes necessary to reflect the application of the OEP's statutory functions in Northern Ireland. For example, sub-paragraph (4) specifies that the OEP, when prioritising its enforcement cases, should consider whether a case raises a point of environmental law or Northern Ireland environmental law of general public importance.

1278 Paragraph 22 amends clause 23 to require the laying of the OEP's strategy before the Northern Ireland Assembly as well as before Parliament.

1279 Paragraph 23 amends clause 24 to ensure that any guidance issued by the Secretary of State under clause 24 will not apply to the OEP's devolved enforcement functions in Northern Ireland, as set out in Schedule 3.

1280 Paragraph 24 inserts a new clause (clause 24A) to provide that the Department may issue guidance to the OEP on its enforcement policy, specifically the matters listed under clause 22(6) (OEP's enforcement policy) so far as relating to the OEP's devolved enforcement functions in Northern Ireland.

1281 Subsection (2) of this new clause would require that the OEP have regard to this

guidance in preparing its enforcement policy so far as relating to its Northern Ireland enforcement function and in exercising its devolved enforcement functions in Northern Ireland. As set out in subsection (5), the OEP's devolved enforcement functions in Northern Ireland are its functions under paragraphs 6 to 15 of Schedule 3.

1282 Under subsection (3), the Department may revise the guidance at any time. Subsection (4) requires the Department to lay before the Assembly and publish any guidance (including revised guidance) issued under these provisions.

1283 Paragraph 25 extends the duty to co-operate with the OEP as set out in clause 26 of the Act to Northern Ireland public authorities and other public authorities exercising Northern Ireland devolved functions. Specifically, the amendment made by sub-paragraph (2)(a) indicates that Northern Ireland departments are not exempt from the statutory duty on public authorities to co-operate with the OEP. The amendment made by sub-paragraph (2)(b) excludes any person whose only public functions are devolved functions in Northern Ireland from the exemption to co-operate with the OEP. The amendment made by sub-paragraph (4)

makes explicit mention of the implementation bodies as defined in section 55 of the Northern Ireland Act 1998, clarifying that they are only required to co-operate in relation to their functions in Northern Ireland.

1284 Paragraph 26 amends clause 36 of the Bill to enable the OEP to designate notices issued to UK public authorities and relevant public authorities as “linked notices”.

1285 Paragraph 27 amends clause 42 of the Bill (confidentiality of proceedings) to include appropriate provision for Northern Ireland. Specifically, sub-paragraph (2)(b) extends the provision to facilitate the coordination of an investigation between the OEP and the Northern Ireland Public Services Ombudsman.

1286 Paragraph 28 sets out the amendments required to clause 46 of the Bill (interpretation of Part 1 of the Bill) to ensure appropriate provision for Northern Ireland and redefines what is meant by “devolved” to no longer include Northern Ireland.

1287 Paragraph 29 makes various amendments to Schedule 1 (the Office for Environmental Protection) to provide for the inclusion of Northern Ireland in the OEP. This includes making provision for the Department to be jointly responsible for the appointment

of the chair and to be consulted on the appointments of the non-executive members and the chief executive. The amendments provide for a non-executive "Northern Ireland Member" to be appointed to the board by the Department – setting out the experience that member must have – and provides for any resignations or removals from office of non-executive and Northern Ireland members. Paragraph 28 also makes provisions in relation to funding of the OEP and reporting requirements.

1288 Paragraph 30 makes amendments to Schedule 2 (improving the natural environment: Northern Ireland) to reflect the extension of the OEP's geographical coverage to Northern Ireland.

Schedule 4: Producer responsibility obligations

1289 Schedule 4 makes provision for regulations under which producer responsibility obligations can be imposed on specified persons and in relation to specified products or materials. Producer responsibility is a means by which businesses who place in-scope products or materials on the market are obligated to take greater responsibility for those products or materials, including once they have become waste. The Schedule specifies what regulations may make

provision about in relation to the imposed obligations and also the enforcement of those obligations.

Part 1: Requirements

General power

1290 Paragraph 1 sets out the power for the relevant national authority to make regulations to impose producer responsibility obligations on specified persons in respect of specified products or materials.
Sub-paragraph (2) sets out that regulations may only be made for certain purposes. These purposes are preventing, or reducing the amount of, a product or material that becomes waste, and sustaining a minimum level of, or promoting or securing an increase in, the re-use, redistribution, recovery or recycling of products or materials.

1291 Paragraph 1(3) defines “producer responsibility obligations” to mean the steps required to be taken to achieve a purpose in sub-paragraph (2).

Examples of provision that may be made

1292 Paragraph 2 sets out examples of what regulations may make provision about. This includes the persons and products or materials that producer responsibility obligations may apply to, and provisions

about the obligations that are to be imposed. Regulations may also make provision about targets to be achieved as part of a producer responsibility obligation.

1293 Sub-paragraph (3) allows for a producer responsibility obligation to be met in whole or in part by the payment of a sum of money. Such a provision tends to be referred to as a "compliance fee".

Registration of persons subject to producer responsibility obligations

1294 Paragraph 3 allows for regulations to mandate the registration of persons subject to a producer responsibility obligation. Regulations made under this paragraph may make provision about the details of the registration process and for registers to be published or made available for inspection.

Compliance schemes

1295 Paragraph 4 sets out the provisions that the regulations may include relating to the approval, withdrawal of approval, or establishment of compliance schemes. A compliance scheme is an organisation that persons who are subject to a producer responsibility obligation join. The compliance scheme operator then discharges those obligations on their behalf. Persons who are subject to a producer responsibility obligation

may be required to join a compliance scheme, or it could be optional.

Registration of compliance schemes

1296 Paragraph 5 allows for regulations to make provisions in relation to the registration process for compliance schemes. This includes the procedures around appeals against the refusal of, imposition of conditions in connection with, or the cancellation of registration. Sub-paragraph (4) allows for regulations to require registers to be published or made available for inspection.

Power to direct compliance scheme operators

1297 Paragraph 6(1) allows the relevant national authority to direct a compliance scheme not to take an action, if that action would be incompatible with any international agreement to which the United Kingdom is a party. The relevant national authority may also direct a compliance scheme to take any action that is required for the purpose of implementing an international agreement to which the United Kingdom is a party. Sub-paragraph (3)(a) sets out that a direction by a relevant national authority may include consequential, supplementary, incidental, transitional or saving provision. Sub-paragraph (3)(b) sets out the terms by

which a direction may be enforceable.

Certificates of compliance

1298 Paragraph 7 allows for regulations to make provision about certificates of compliance. Sub-paragraph (2) outlines what provisions may be made and sub-paragraph (3) sets out the definition of a “certificate of compliance”. A certificate of compliance is a document that certifies that an obligation has been met by an obligated business. It must be issued by a person who has been approved by an enforcement authority. This may be, for example, a Director of the obligated business. Sub-paragraph (4) allows for an enforcement authority to issue guidance on the issuing of certificates of compliance.

Consultation etc requirements

1299 Paragraph 8 requires the relevant national authority to consult the relevant stakeholders before making regulations under Part 1 of this Schedule.

1300 Paragraph 9(1) specifies conditions that the relevant national authority must be satisfied of before making regulations. The regulations must achieve one or more of the purposes in paragraph 1(2) and produce environmental or economic benefits. Those benefits should be significant compared to

the likely costs and burdens. Any burdens imposed are imposed on persons most able to make a contribution to securing those benefits.

1301 Sub-paragraph (2) makes clear that the relevant national authority can impose obligations on any persons, to the exclusion of any others, even after having been satisfied by sub-paragraph (1)(e)(i). Sub-paragraph (3) specifies that if regulations are being made to implement an international agreement to which the UK is a party, then the relevant national authority does not need to be satisfied by the criteria in sub-paragraph (1).

1302 Paragraph 10 sets out that regulations made under this schedule must not restrict, distort, or prevent competition. If they do, then the effect must be the minimum possible to secure the environmental or economic benefits referred to in paragraph 9(1).

Interpretation

1303 Paragraph 11 defines certain terms used throughout Part 1 of the Schedule.

Part 2: Enforcement

General power

1304 Paragraph 12 introduces a power for the relevant national authority to make

regulations about the enforcement of any requirements imposed by regulations made under Part 1 of this Schedule.

Powers to confer functions and Monitoring compliance

1305 Paragraphs 13 and 14 allow for functions to be conferred on one or more enforcement authorities. These functions may include the exercise of discretion, to monitor compliance with regulations, and to make available guidance about the exercise of its functions. Regulations may also provide for a person to be authorised to exercise functions on behalf of an enforcement authority.

Records and information

1306 Paragraph 15 makes provision for the keeping of records and to whom records or information is to be provided to.

Powers of entry etc

1307 Paragraph 16 allows for regulations to confer on an enforcement authority powers of entry, inspection, examination, search and seizure. Sub-paragraph (2) sets out that regulations may include provision for powers to be exercisable only if a warrant is issued, and about the process of applying for and executing warrants. Warrants are needed to enter premises by force, enter a private

dwelling without the consent of the occupier, and to search and seize material.

Sanctions

1308 Paragraphs 17 and 18 makes provision for penalties for a breach of a requirement in regulations and for the obstruction of or failure to assist an enforcement authority. These can be criminal offences (punishable with a fine) or civil sanctions. Provision for "civil sanction" and criteria around the imposition of sanctions are set out in paragraph 17(3) and paragraph 18, respectively.

Charges

1309 Paragraph 19 makes provision for:

- the payment of a charge to cover enforcement costs incurred by an enforcement authority in performing its functions under the regulations; and
- a court order to include an enforcement authority's costs incurred in relation to the matter the court or tribunal has dealt with.

Consultation requirement

1310 Paragraph 20 requires the relevant national authority to consult relevant stakeholders before making regulations relating to enforcement.

Schedule 5: Producer responsibility for disposal costs

1311 Schedule 5 makes provision for regulations under which those involved in the manufacture, processing, distribution or supply of products or materials may be required to pay for or contribute to the costs of disposing of those items. Part 1 of the Schedule covers disposal costs, and the appointment of one or more administrators and Part 2 covers enforcement and the appointment of one or more regulators.

Part 1: Requirements

General power

1312 Paragraph 1 sets out the power for the relevant national authority to make regulations to require the payment of sums by specified persons relating to the disposal of specified products or materials. Sub-paragraph (2) sets out that only those involved in manufacturing, processing, distributing or supplying the specified products or materials can be required to meet or contribute to such costs.

“Disposal costs” and “disposal”

1313 Paragraph 2 makes provision for determining what disposal costs are. These costs may include the costs of collecting,

transporting, sorting, and treating products or materials for disposal. They may also include the costs of providing the public with information about the disposal of products, for example through communication campaigns. Costs in relation to products or materials that have been disposed of unlawfully may also be included (for example, the costs of clearing up products or materials that have been littered or fly-tipped). Sub-paragraph (2) clarifies that "disposal" includes the re-use, redistribution, recovery, and recycling of products or materials. Sub-paragraph (4) allows for disposal costs to be calculated in accordance with provision made in the regulations.

Calculation of sums payable

1314 Paragraph 3 allows for the amount to be paid to be calculated in accordance with the regulations and for this amount to vary according to the design or composition of a product or materials, or the methods by which they were made. For example, a producer of easily recycled products might pay less, and producers of unrecyclable products might pay more.

Administration

1315 Paragraph 4 provides for the appointment of one or more administrators.

An administrator's role is to manage provision made in relation to disposal costs in the regulations.

Registration

1316 Paragraph 5 makes provision for those who are required to pay disposal costs to register with an administrator and the payment of a registration fee. The administrator may also be required to register with an enforcement authority appointed by regulations made under this Schedule. Provision is also made for the regulations to establish the process for registering with an administrator. The regulations may require any registers that are made to be published or made available for inspection.

Payment of sums

1317 Paragraph 6 outlines the provisions that regulations may make regarding payments of sums to an administrator. This includes how the sums paid are to be held by the administrator. This might be, for example, into a bank account.

Distribution of sums paid

1318 Paragraph 7 makes provision for sums paid to an administrator to be distributed to persons who have incurred disposal costs in relation to the products or materials covered by the regulations. These sums can be

distributed directly by the administrator to whom they have been paid, or to another administrator who then distributes among such persons. For example, an administrator may distribute sums to local authorities who have incurred costs in collecting and disposing of the products to which the regulations apply.

Repayment of sums paid

1319 Paragraph 8 allows for sums paid to an administrator to be paid back, in whole or in part, to the person who paid them. It allows for regulations to set out how the amount to be re-paid is calculated and the conditions under which any repayment may be made. For example, a repayment might be made if a material has been recycled into a high value application.

Charges

1320 Paragraph 9 makes provision for the payment of a charge to administrators to cover the administrator's costs incurred in relation to its functions.

Consultation requirements

1321 Paragraph 10 sets out that the relevant national authority must first consult the relevant stakeholders before making regulations under this Schedule.

Part 2: Enforcement

General power

1322 Paragraph 11 makes provision for the relevant national authority to make regulations for the enforcement of regulations made under Part 1 of this Schedule.

Powers to confer functions and Monitoring compliance

1323 Paragraphs 12 and 13 allow for functions to be conferred on one or more enforcement authority. These functions may include the exercise of discretion, to monitor compliance with regulations, and to provide guidance about the exercise of its functions available. Regulations may also provide for a person to be authorised to exercise functions on behalf of an enforcement authority.

Records and information

1324 Paragraph 14 makes provision for the keeping of records and to whom records or information is to be provided to.

Powers of entry etc

1325 Paragraph 15 allows for regulations to confer on an enforcement authority powers of entry, inspection, examination, search and seizure.

Sanctions

1326 Paragraph 16 makes provision for penalties for a breach of a requirement in regulations. These can be criminal or civil sanctions. A criminal offence (punishable with a fine) can only be imposed for breach of a civil sanction or for the obstruction of or failure to assist an enforcement authority.

Costs

1327 Paragraph 17 makes:

- provision for the payment of a charge to cover enforcement costs incurred by an enforcement authority in performing its functions under the regulations; and
- provision for a court order to include an enforcement authority's costs incurred in relation to the matter the court or tribunal has dealt with.

Consultation requirements.

1328 Paragraph 18 sets out that the relevant national authority must first consult the relevant stakeholders before making regulations under this Schedule.

Schedule 6: Resource efficiency information

Part 1: Requirements

General power

1329 Paragraph 1(1) is a power which enables the relevant national authority, as defined in

clause 51, to make product-specific regulations setting requirements to provide information about a product's resource efficiency.

1330 Sub-paragraph (2) exempts food products, medicinal products and veterinary medicinal products from being subject to regulations made under this measure. These types of products are already extensively regulated and it is not considered appropriate to impose further regulation relating to provision of information about their resource efficiency.

1331 Sub-paragraph (3) allows regulations to be made in relation to the packaging of those products listed in sub-paragraph (2).

Meaning of "information about resource efficiency"

1332 Paragraph 2(1) defines "information about resource efficiency" as any information which is relevant to the product's impact on the natural environment and which falls within sub-paragraph (2) or (3). "Natural environment" has the same meaning as in clause 43.

1333 Sub-paragraphs (2) and (3) together provide an exhaustive list of the types of information about a product which can be required to be provided under these powers. Sub-paragraph (2) includes information

relating to the product's expected life, durability, reparability and upgradeability and the ways in which it can be disposed of at the end of its life. For example, regulations might require information to be given about whether spare parts are available to accommodate repair, the potential to remanufacture the product or whether the materials used in the product are recyclable. Sub-paragraph (3) includes types of information relating to the impact of the product on the natural environment; these include the materials and techniques used in its manufacture, the resources consumed during its production or use, and the pollutants (such as greenhouse gases) released or emitted during production, which includes both the extraction of raw materials and the manufacturing process, as well as use or disposal.

Persons on whom requirements may be imposed

1334 Paragraph 3 sets out the persons who may be subject to requirements under regulations made under this measure. This is limited to persons who are involved in the manufacture, import, distribution, sale or supply of the product. This may include someone who supplies a product by way of hire or lease.

Examples of provision that may be made

1335 Paragraph 4 gives examples of provision that may be made. These include provisions around:

- How information about the product is to be provided. This may, for example, be through affixing a label or through providing information in a manual accompanying the product or on the manufacturer's website.
- Giving certain bodies the authority to determine whether the product has the characteristics which it is described to have on the label or in other information accompanying the product. For example, if a label is required to be affixed to packaging in order to state whether or not it is a recyclable, regulations may contain a provision giving someone the function of determining whether the packaging is indeed recyclable or not. This body will also publish the results of their determinations.
- Additional examples include mandatory labelling of clothing in respect of durability, expected lifetime or recycled content, or information about nappies and other absorbent hygiene products covering their environmental performance and impact.

- Specifying a scheme for classifying products, such as a ‘rating label’ scheme assessing how well products meet criteria relating to resource efficiency.
- Requiring information about a product to be determined according to specified criteria. This criteria could be based on the results of the determinations or classification schemes set out above.

Consultation etc requirements

1336 Paragraph 5 contains the steps the relevant national authority must follow, and the matters to which the authority must have regard, before making product specific regulations under Part 1 of this Schedule.

1337 Sub-paragraph (1) sets out that they must consult any persons they consider appropriate, as well as having regard to the matters set out in sub-paragraph (2). These are that the product has a significant impact on natural resources at any stage of its production, use or disposal; that the benefits of the regulations outweigh the costs associated with complying with them; and whether any exemptions or special provisions should made for smaller businesses.

Interpretation

1338 Paragraph 6 contains definitions for the purposes of Part 1 of this Schedule. In particular, it defines “product” as including a product which is a component part of, or packaging of another product. This could for example include food or drinks packaging, which could be labelled with a ‘recyclable/ non-recyclable’ marking.

Part 2: Enforcement

General power

1339 Paragraph 7 gives the relevant national authority power to make regulations containing provision for the enforcement of resource efficiency information requirements.

Powers to confer functions

1340 Paragraph 8(1) sets out that regulations may confer enforcement functions on one or more bodies. Those bodies will be specified in the regulations.

1341 Sub-paragraph (2) sets out that these functions may involve the enforcement body exercising discretion in relation to the exercise of their enforcement functions. It also outlines that the enforcement body may authorise another body to carry out one or more of its functions on its behalf.

1342 Sub-paragraph (3) sets out that regulations may also include a provision

requiring the enforcement authority to develop guidance relating to its enforcement activities.

Monitoring compliance

1343 Paragraph 9 sets out that regulations may include provisions on compliance with the regulations. This includes provisions which confer the function of monitoring compliance with resource efficiency information requirements onto an enforcement authority.

Records and information

1344 Paragraph 10 sets out that regulations may include provision on records and information relevant to monitoring the enforcement of these measures. These may require persons who have obligations to keep records and provide them to an enforcement authority if needed. The regulations may also provide that the enforcement authority makes reports or provides information about their enforcement activity to the relevant national authority.

Powers of entry etc

1345 Paragraph 11 sets out that regulations may confer on enforcement authorities powers of entry, inspection, examination, search and seizure. Regulations may make provision that such powers are only

exercisable under the authority of a warrant, issued by a justice of the peace, sheriff, summary sheriff or lay magistrate. Regulations may also make provision about how applications for and the execution of warrants may be made. Regulations must provide that where powers are conferred to either enter premises by force, enter a private dwelling without the consent of the occupier; or search and seize material, the authority of a warrant must be obtained.

Sanctions

1346 Paragraph 12 enables regulations to include provision for the imposition of civil sanctions or creating criminal offences.

1347 Sub-paragraph (1)(a) sets out that regulations may provide for the imposition of civil sanctions in the following circumstances:

- for failure to comply with any of the requirements under Parts 1 and 2 of these regulations; or
- where there has been an obstruction of or failure to assist a person carrying out enforcement functions.

1348 Sub-paragraph (1)(b) sets out that regulations may also include provision on appeals against such sanctions.

1349 Sub-paragraph (2) sets out that

regulations may include provision on creating criminal offences punishable with a fine under the following circumstances:

- in respect of failures to comply with civil sanctions imposed under Part 2 of this schedule; or
- where there has been the obstruction of, or failure to assist, an enforcement authority when they are carrying out their functions.

1350 Sub-paragraph (3) defines “civil sanction” as a sanction of a kind referred to in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (“the 2008 Act”) – that is, a fixed monetary penalty, discretionary requirement, stop notice or enforcement undertaking.

1351 Sub-paragraph (4) outlines that regulations may include provision for the imposition of sanctions of that kind, whether or not the conduct in respect of which the sanction is imposed is an offence, or the enforcement authority is a regulator for the purposes of Part 3 of the 2008 Act, or the relevant national authority may make provision for the imposition of sanctions under that Part.

Costs

1352 Paragraph 13(a) sets out that regulations may include provision requiring persons subject to resource efficiency requirements to pay costs incurred by an enforcement authority in administering and enforcing those requirements. This power could be used, for example, to enable an enforcement authority to charge a manufacturer or supplier its costs of testing a product which fails to comply with resource efficiency requirements.

1353 Sub-paragraph (b) provides that regulations may authorise a court or tribunal to award costs incurred by the enforcement authority.

Consultation requirement

1354 Paragraph 14 requires the relevant national authority to consult before making enforcement regulations.

Schedule 7: Resource efficiency requirements

Part 1: Requirements

General power

1355 Paragraph 1(1) is a power which enables the relevant national authority, as defined in clause 52, to make product-specific regulations setting requirements relating to a product's resource efficiency.

1356 Sub-paragraph (2) exempts energy-related products as defined in the Ecodesign for Energy-Related Products Regulations 2010 (S.I. 2010/2617)), food products, medicinal products and veterinary medicinal products from being subject to regulations made under this measure. The resource efficiency of energy-related products may be regulated under separate powers. Food and medicines are already extensively regulated so it is not considered appropriate to impose further regulation relating to resource efficiency of those products.

1357 Sub-paragraph (3) allows regulations to be made in relation to the packaging of those products listed in sub-paragraph (2).

Meaning of "resource efficiency requirements"

1358 Paragraph 2(1) defines "resource efficiency requirements" as any requirement which is relevant to the product's impact on the natural environment and which falls within sub-paragraphs (2) or (3). "Natural environment" has the same meaning as in clause 43.

1359 Sub-paragraphs (2) and (3) together provide an exhaustive list of types of resource efficiency requirements which may be made about a product. Sub-paragraph (2)

includes requirements relating to aspects of the product's design which affect its expected life, the product's durability, reparability, and upgradeability, including potential for being remanufactured and the ways in which it can be disposed of at the end of its life. This would enable, for example, a requirement that the product is designed so it can be disassembled, and that spare parts are to be made available in order to facilitate repair. It would also enable a requirement for materials used in the product to be recyclable.

1360 Sub-paragraph (3) includes other requirements relating to the impact of the product on the natural environment: these include the materials and techniques used in its manufacture, the resources consumed during its production or use (for example, water or fuel), and the pollutants (such as greenhouse gases) released or emitted during its production, which includes extraction of raw materials, as well as use or disposal. This would enable, for example, a requirement that timber used in a product must be sustainably sourced.

1361 Sub-paragraph (4) provides for resource efficiency standards to be specified either in the regulations or by reference to standards

prepared by a third person, which may be pre-existing standards such as an ISO standard.

Persons on whom requirements may be imposed

1362 Paragraph 3 sets out the persons who may be subject to requirements under regulations made pursuant to this measure. These are limited to those who are involved in the manufacture, import, distribution, sale or supply of the product. This may include someone who supplies a product by way of hire or lease.

Examples of provision that may be made

1363 Paragraph 4 gives examples of provisions that may be made. These include, in sub-paragraph (1), provisions which prohibit a product from being distributed, sold or supplied if it fails to meets the requirements in the regulation, and provisions requiring persons involved in a product's supply chain to keep records or information about the product and provide this to other such persons where appropriate.

1364 Sub-paragraph (2)(a) sets out that regulations may also include provision about how and by whom determinations about a product's compliance with resource efficiency regulations may be made. Sub-paragraph (2)(b) enables regulations to provide for

appeals against such determinations. Sub-paragraph (2)(c) enables provision to be made about evidencing a product's compliance with resource efficiency requirements, for example requirements to affix a label or apply a marking to a product.

Consultation etc requirements

1365 Paragraph 5 sets out the steps the relevant national authority must follow, and matters of which the authority must be satisfied, before making product-specific regulations under Part 1 of this Schedule.

1366 Sub-paragraph (1) requires the relevant national authority to consult such persons as the authority considers appropriate, and to publish for the purposes of the consultation an assessment of the matters of which it is required to be satisfied before making regulations, and a draft of the regulations.

1367 Under sub-paragraphs (2) to (4), those matters are:

- that the product has a significant impact on the natural environment (if there are no existing regulations under Part 1 of this Schedule applying to the product);,
- that the regulations would be likely to reduce that impact (in all cases);
- that the benefits would be significant as

against the likely costs of the regulations; and

- that a reduction in the product's environmental impact could not be achieved as effectively by other means.

1368 Sub-paragraph (5) sets out that the relevant national authority must also consider whether exemptions should be given or other special provision made for smaller businesses. "Smaller businesses" is not defined in the Schedule, so that there is flexibility for regulations relating to different products to apply exemptions or special provisions to different descriptions of smaller businesses. The need for exemptions or special provisions, and the businesses to which they should apply, will be considered as part of the impact analysis.

Interpretation

1369 Paragraph 6 contains definitions for the purposes of Part 1 of this Schedule. In particular, it defines "product" as including a product which is a component part of, or packaging for, another product. A component part could, for example, be the engine of a vehicle.

Part 2: Enforcement

1370 This Part gives the relevant national

authority powers to make regulations containing provision for the enforcement of resource efficiency requirements. The powers are identical to those in Part 2 of Schedule 6 (resource efficiency information).

Schedule 8: Deposit schemes

Power to establish deposit schemes

1371 Paragraph 1 provides a general power for the "relevant national authority" (as defined in clause 53(2)) to make regulations establishing deposit schemes.

1372 Sub-paragraph (1) provides that regulations can be made for the purposes of sustaining, promoting or securing an increase in recycling, reuse, or to reduce the incidence of littering or fly-tipping.

1373 Sub-paragraph (2) sets out what a deposit scheme is. This is a scheme under which a person supplied with a deposit item by a scheme supplier (this might be a producer, retailer or distributor) pays the supplier an amount (the deposit) and a person who gives a deposit item to a scheme collector (this might be a retailer or to another return point) is then entitled to be paid a refund in respect of that item.

1374 Sub-paragraph (3) sets out what a deposit item is. This is an item specified in

regulations that is supplied by way of sale or in connection with the supply of goods or services. By way of example, this might be a drinks container or disposable cutlery.

1375 Sub-paragraph (4) sets out that a deposit scheme may specify the circumstances in which a deposit or refund is to be paid.

1376 Sub-paragraph (5) provides that "scheme suppliers" and "scheme collectors" are to be defined in the regulations, it provides that a scheme supplier and a scheme collector is someone who is a supplier or producer of a deposit item. A scheme collector may also be a scheme administrator. By way of example, a scheme supplier might be a producer, distributor or retailer of a drinks container. Scheme collectors, which might be a retailer or the scheme administrator, host return points, refund deposits and handle the material that has been collected.

1377 Sub-paragraph (6) provides that the deposit scheme may set a deposit amount specified in regulations, or an amount determined by the scheme administrator or an amount determined (and published) by the relevant national authority.

1378 Sub-paragraph (7) gives a definition of the word "specified".

Scheme suppliers

1379 Paragraph 2 provides that regulations may impose requirements on scheme suppliers, including:

- taking steps to ensure deposits are paid for the deposit item;
- how items are marked to identify them as deposit items;
- the retention of deposits; paying deposits to other scheme suppliers, scheme collectors or to a scheme administrator;
- ensuring a proportion of deposit items are returned to scheme collectors; keeping records in connection with the scheme; and
- providing those records or other information in connection with the scheme to a scheme administrator.

1380 The requirements may be different for different scheme suppliers.

Scheme collectors

1381 Paragraph 3 provides that regulations may impose requirements on scheme collectors, including:

- paying those who return a deposited item a refund;
- arranging for the recycling of any items

returned or disposing of those items in accordance with the scheme; and

- ensuring a proportion of deposit items are returned to scheme collectors, keeping records in connection with the scheme and providing those records or other information in connection with the scheme to a scheme administrator.

1382 The requirements may be different for different scheme collectors.

Deposit scheme administrators

1383 Paragraph 4(1) provides that regulations may appoint or make provision for the appointment of a deposit scheme administrator.

1384 Sub-paragraph (2) sets out the functions that regulations may confer on the scheme administrator. These include:

- the registration of scheme suppliers and scheme collectors;
- charging registration fees;
- giving directions to the scheme suppliers and scheme collectors in relation to the requirements placed on them under the deposit scheme;
- ensuring a proportion of deposit items are returned to scheme collectors;

- arranging for the recycling of any items returned, or disposing of those items in accordance with the scheme;
- making payments to scheme collectors to reimburse them for any refunded deposits they have paid out;
- the retention of amounts that they have received under the deposit scheme, including determining how these amounts should be utilised;
- payments to other scheme administrators; and
- keeping records and providing these records to the relevant national authority.

1385 Sub-paragraph (3) specifies that, where there is more than one scheme administrator, different functions may be conferred on different scheme administrators by a deposit scheme.

1386 Sub-paragraph (4) provides that regulations may confer a power on the relevant national authority to give directions to a scheme administrator as to how the scheme administrator should exercise their functions under the scheme.

1387 Sub-paragraph (5) defines the word “specified” for this paragraph.

Enforcement

1388 Paragraph 5 makes provision for the enforcement of a "relevant requirement" (defined in sub-paragraph (5) as a requirement imposed by regulations or under a deposit scheme) and for offences and penalties.

1389 Sub-paragraph (2) provides that regulations may make provision for the appointment of an enforcement authority, the provision of records and information to persons specified in the regulations, a failure to comply with a relevant requirement to constitute an offence, about such offences, and the imposition of civil sanctions in respect of failures to comply with relevant requirements.

1390 Sub-paragraph (3) defines "civil sanction" as a sanction of a kind referred to in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 ("the 2008 Act") – that is, a fixed monetary penalty, discretionary requirement, stop notice or enforcement undertaking.

1391 Sub-paragraph (4) outlines that regulations may include provision for the imposition of sanctions of that kind, whether or not the enforcement authority is a regulator or the conduct in respect of which

the sanction is imposed is a relevant offence for the purposes of Part 3 of the 2008 Act, or the relevant national authority may make provision for the imposition of sanctions under that Part.

1392 Sub-paragraph (5) provides definitions as described above.

Interpretation

1393 Paragraph 6 defines words used in the Schedule.

Schedule 9: Charges for single use plastic items

General power

1394 Paragraph 1 provides a general power for the "relevant national authority" (as defined in clause 54(2)) to make regulations about charging by sellers of goods or services for single use plastic items. Powers to define what is meant by "sellers" are set out in paragraph 3.

1395 Sub-paragraphs (2) and (3) define what a "single use plastic item" is. This is a manufactured item made wholly or partly of plastic that is likely to be used only once (or for a short period of time) before being disposed of, and which is supplied in connection with good or services.

1396 Sub-paragraphs (4) and (5) state that an item is supplied in connection with goods and services if it is supplied at the place the goods or services are sold so that the goods can be taken away, used consumed or delivered. This might be a plastic food container or other plastic packaging into which the goods are placed or plastic cutlery.

Requirement to charge

1397 Paragraph 2 provides that the regulations may require sellers of goods or services to charge for single use plastic items specified in those regulations.

Sellers of goods and services

1398 Paragraph 3 provides that "sellers" in relation to goods or services are to be defined in the regulations, including by reference to one or more of the following:

- a person's involvement in selling goods services;
- a person's interest in the goods or services or;
- a person's interest in the premises at or from which the goods or services are sold.

1399 It provides that the regulations may apply to a range of different sellers, including all sellers of goods and services and sellers

identified by reference to factors specified in the regulations. The factors that may be specified in the regulations may include the place from which the goods or services are sold, the type and value of goods or services supplied and the seller's turnover.

Amount of charge

1400 Paragraph 4 provides that the regulations may specify the minimum amount that sellers must charge for each single use plastic item or provide for that amount to be determined in accordance with the regulations.

Administration

1401 Paragraph 5 contains powers to appoint an administrator to administer the provisions made by the regulations and clarify references in the Schedule to "an administrator".

Registration

1402 Paragraph 6 provides that the regulations may require sellers to register with an administrator and make provision about applications for registration, the period of registration and the cancellation of registration. The regulations may also provide for sellers to pay registration fees, and specify the amount.

Record-keeping and publication of records

1403 Paragraph 7 provides that the regulations may require records to be kept in relation to charges made for single use plastic items, including records relating to the amounts received by the seller by way of charges and the uses to which the proceeds of the charge are put. The regulations may also require that this information is published and is made available to the relevant national authority, an administrator or members of the public upon request.

1404 Sub-paragraph (4) defines “gross proceeds of the charge” and “net proceeds of the charge” for the purposes of this paragraph.

Enforcement

1405 Paragraph 8 provides that the regulations may confer powers and duties on an administrator in order to enforce the regulations and in particular, to enable the administrator to obtain relevant documents and information or question a seller (or their officers or employees) where the administrator reasonably believes that there has been a breach of the regulations.

Civil sanctions

1406 Paragraph 9 provides that the regulations may include civil sanctions to

deal with breaches of requirements in the regulations.

1407 Sub-paragraph (2) provides that the regulations may make provision for appeals.

1408 Sub-paragraph (3) state that or the purposes of this paragraph, a “civil sanction” is a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (“the 2008 Act”) – that is, fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings.

1409 Sub-paragraph (4) outlines that regulations may include provision for the imposition of sanctions of that kind, whether or not the enforcement authority is a regulator or the conduct in respect of which the sanction is imposed is a relevant offence for the purposes of Part 3 of the 2008 Act, or the relevant national authority may make provision for the imposition of sanctions under that Part.

Schedule 10: Enforcement powers

Powers to search and seize vehicles in connection with waste offences

1410 Paragraphs 1 and 2 amend section 5(6) of the Control of Pollution (Amendment) Act 1989 and section 34B(6) of the

Environmental Protection Act 1990 respectively. Sub-paragraphs 1(a) and 2(a) make amendments to allow a vehicle seized by the police without an Environment Agency or Natural Resources Wales officer present to be seized on behalf of the respective authority if the authority has requested for the police to do this. This is instead of it being considered to be done on behalf of the waste collection authority in whose area the seizure takes place, which adds an unnecessary step for the Environment Agency or Natural Resources Wales as they then have to re-seize it from the waste collection authority.

1411 Sub-paragraphs 1(b) and 2(b) make amendments to clarify that, where no request has been made by the Environment Agency or Natural Resources Wales, or in any other case, a vehicle will still be considered to be seized on behalf of the waste collection authority in whose area the seizure takes place.

Powers of direction in relation to waste

1412 Paragraph 3 amends section 57 of the Environmental Protection Act 1990.

1413 Sub-paragraph (2) amends subsection (2) to account for circumstances in which waste might be taken to an appropriate storage site in the first instance, or otherwise

not directly treated or disposed of.

1414 Sub-paragraph (3) inserts new subsection (2A) after subsection (2) to allow the Secretary of State to direct a registered waste carrier to collect waste and deliver it to a specific site. It also allows the Secretary of State to direct a person keeping waste, or the owner or occupier of the land on which the waste is being kept, to enable the collection of the waste by the waste carrier.

1415 Sub-paragraph (4) amends subsection (4) so that the requirement to pay costs is not limited to treating and disposing of waste and covers circumstances in which waste might be taken to an appropriate storage site in the first instance, or otherwise not directly treated or disposed of.

1416 Sub-paragraph (5) inserts new subsection (4A) after subsection (4) to allow the Secretary of State to direct the waste keeper or the owner or occupier of the land where the waste is being kept to pay the waste carrier's reasonable costs and/or to pay the reasonable costs of the person to whom the waste is delivered. The reasonable costs would be part of the discussion and analysis in advance of issuing a direction.

1417 Sub-paragraph (6) amends subsection (7) to clarify that the Secretary of State may

choose to pay the reasonable costs under subsection (4) instead.

1418 Sub-paragraph (7) inserts new subsection (7A) after subsection (7) to allow the appropriate Minister to directly reimburse the registered waste carrier or the person to whom the waste is delivered, in line with new subsection (4A), instead of the waste keeper or the owner or occupier of the land where the waste is being kept.

1419 Sub-paragraph (8) amends subsection (8) insert a definition of “appropriate Minister”, defined to mean either the Secretary of State or the Welsh Ministers depending on the location of the land where waste is being kept. It also inserts a definition of “registered waste carrier”.

Powers of entry in relation to pollution control etc

1420 Paragraphs 4 to 6 of Schedule 11 relate to section 108 of the Environment Act 1995.

1421 Paragraph 5 makes amendments to section 108 of that Act.

1422 Sub-paragraph (2) inserts new paragraph (ka) in subsection (4) after paragraph (k), giving an authorised person with a power to enter a premises under subsection (4)(a) the power to (i) search the premises, (ii) seize and remove documentary

or other evidence, (iii) require electronic information to be produced in a form that enables it to be removed or produced as documentary evidence, and (iv) to operate equipment found on the premises in order to produce information from it. These powers can only be used for the purposes of an examination or investigation made using the power in subsection (4)(c).

1423 Sub-paragraph (3) amends subsection (6) by removing paragraph (a). This removes the requirement to provide at least seven days' notice of a proposed entry where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises. The requirement for consent of the occupier or a warrant remains. This allows the power of entry to be used where giving notice would undermine the purpose for which the warrant is issued, or without a delay where consent has been given by the occupier.

1424 Sub-paragraph (4) inserts new subsections (7A) to (7F) after subsection (7). Subsection (7A) prevents the use of the power unless with the authority of a warrant issued under Schedule 18 of the Environment Act 1995, or unless the conditions in subsections (7B) and (7C)

apply.

1425 New subsection (7B) clarifies that where the authorised person has reasonable grounds for believing there is evidence of non-compliance of pollution control or flood risk enactments they may, when it is necessary, use the powers without first obtaining a warrant in order to prevent the evidence being concealed, lost, altered or destroyed.

1426 New subsection (7C) clarifies that the requirement to have a warrant does not apply for doing something within the power under subsection (4)(ka) that can also be done under a different power under subsection (4).

1427 New subsection (7D) requires that protected material seized or removed under subsection (4)(ka) cannot be used for an examination or investigation under subsection (4)(c) and must be returned to the premises it was removed from, or the person who last had possession or control of it, as soon as reasonably practicable afire it is identified. New subsection (7F) defines protected material as material subject to legal professional privilege or is excluded or journalistic material within the meaning of sections 11 and 13 respectively of the Police and Criminal Evidence Act 1984.

1428 New subsection (7E) clarifies that if something contains both protected and non-protected material, the requirements under new subsection (7D) do not prevent the non-protected material from being used for the purposes of an examination or investigation, retained or copied.

1429 Sub-paragraph (5) inserts new subsection (12A) after subsection (12), clarifying that evidence removed or taken away under subsection (4)(ka) can only be retained so long as is necessary taking into account all the circumstances.

1430 Sub-paragraph (6) amends subsection (15) to insert a definition of “document” after the definition of “authorised person”, and to insert a definition of “English or Welsh authorised person” after a definition of “enforcing authority”. It also clarifies that, as the powers in section 108 cannot be used in relation to section 46 of the Environmental Protection Act 1990 (receptacles for household waste) in England, they also cannot be used for sections 46A to 46D, which relate to enforcement of section 46.

1431 Paragraph 6 makes amendments to Schedule 18 to the Environment Act 1995.

1432 Sub-paragraph (2) inserts new sub-paragraphs (2A) and (2B) after

paragraph 2(2). New sub-paragraph (2A) allows a justice of the peace to issue a warrant authorising use of the powers in section 108(4)(ka), provided they are satisfied that the conditions in new sub-paragraph (2B) are met. The conditions in new sub-paragraph (2B) are that there are reasonable grounds for believing there is material on the premises in question that is likely to be of substantial value to an examination or investigation under section 108(4)(c) and that it is either impracticable to communicate with a person in order to gain access to the material or that access to the material is unlikely to be granted without a warrant.

1433 Sub-paragraph (2) also removes paragraph 2(3) from Schedule 18, which requires the justice of the peace issuing a warrant to be satisfied that the notice period in subsection (6) of section 108 of the Act has been given, as that notice period requirement has been removed by paragraph 5(3) as detailed above.

1434 Sub-paragraph (3) amends paragraph 3 of Schedule 18 to remove the need to produce authorisation unless requested to do so, making it more straightforward to enter an abandoned or predominantly unoccupied site

or premises.

Schedule 11: Local air quality management framework

1435 The Schedule makes amendments to the cited sections of the Environment Act 1995.

1436 Paragraph 2 amends section 80 (national air quality strategy) of the Environment Act 1995. Sub-paragraph (2) omits subsection (3); sub-paragraph (3) inserts new subsections (4A). New subsection (4A) requires that the National Air Quality Strategy be reviewed, and, following that review, amended if that is considered necessary. New subsection (4A)(a) and (b) sets out the minimum review periods, requiring a review initially within 12 months of the schedule coming into force, and then subsequent reviews to happen at least once every five years after that.

1437 Paragraph 3 inserts new section 80A into the Environment Act 1995.

New section 80A Duty to report on air quality in England

1438 New section 80A requires the Secretary of State to lay a statement annually before Parliament which sets out an assessment of progress made towards meeting air quality objectives and standards in England, as well

as the steps the Secretary of State has taken in support of meeting those standards and objectives. These are the standards and objectives for local air quality that the Secretary of State must include in the National Air Quality Strategy and enact in secondary legislation, which are then the levels that local authorities must assess against under the Local Air Quality Management Framework.

1439 Paragraph 4 inserts new section 81A into the Environment Act 1995.

New section 81A: Functions of relevant public authorities

1440 New section 81A applies a legislative requirement to certain relevant public authorities to co-operate with local authority air quality action planning, once the relevant public authority has been designated under subsection (3) below by the Secretary of State.

1441 Subsection (1) applies the duty to have regard to the National Air Quality Strategy when carrying out functions and services which might affect air quality to additional bodies who may be relevant to meeting air quality standards and objectives.

1442 Subsection (2) defines a “relevant public

authority” as a body or person prescribed by the Secretary of State in regulations.

1443 Subsection (3) gives Secretary of State the power to designate a relevant public authority in England if it is determined that the person carries out functions of a public nature that are relevant to air quality in local authority areas.

1444 Subsection (4) ensures that the Secretary of State consults with both the person who is proposed to be designated as a relevant public authority and anyone else considered appropriate, ahead of making regulations that designate the relevant public body or bodies.

1445 Subsection (5) clarifies that references to England include the territorial sea adjacent to England, but not the territorial sea adjacent to Wales or Scotland.

1446 Paragraph 5 amends section 82 (local authority reviews) of the Environment Act 1995. Sub-paragraph (2) provides drafting to allow for the insertion of further subsections into that Act. Sub-paragraph (3) inserts new subsections (4), (5) and (6).

1447 New subsection (4) of section 82 replicates the former duty on local authorities to identify where air quality standards or

objectives are not likely to be achieved within the “relevant period” (a period to be prescribed by regulations).

1448 New subsection (5) of section 82 provides that local authorities in England must also identify which sources of emissions they believe are responsible for failure to achieve air quality standards or objectives; identify neighbouring authorities who may be responsible for emissions; and identify other relevant public authorities or the Environment Agency who may be responsible for emissions.

1449 New subsection (6) of section 82 defines a source of pollution as relevant if it is: within the local authority; within a neighbouring local authority in England; or within an area where a relevant public authority has functions of a public nature and the local authority considers these functions as relevant to the source of the emissions.

1450 Paragraph 6 inserts new section 83A into the Environment Act 1995.

New section 83A Duties of English local authorities in relation to designated areas

1451 Subsection (1) sets out the application of this section.

1452 Subsection (2) applies a duty on local

authorities to prepare an action plan to ensure air quality standards and objectives are achieved in the Air Quality Management Area it has designated in accordance with section 83. This tightens the requirement to ensure that action plans should secure the required standards and objectives.

1453 Subsection (3) sets out that an action plan's purpose is to set out how the local authority will *secure* air quality standards and objectives in the air quality management area.

1454 Subsection (4) sets out that the action plan must also *maintain* air quality standards and objectives in the Air Quality Management Area, once achieved.

1455 Subsection (5) provides that action plans must set out measures the local authority will take to secure and maintain air quality standards and objectives within the Air Quality Management Area, and requires a date by which these measures must be carried out to be set out in the plan.

1456 Subsection (6) provides that local authorities *may* revise the action plan, and *must* revise the action plan if new or different measures are required. This will be applicable if the existing plan is not securing compliance, or if there are new

circumstances which need to be taken into account.

1457 Subsection (7) sets out that the following two subsections apply where a district council preparing a plan is in a two-tier authority.

1458 Subsection (8) provides that, in the case of disagreement between a county and district council on the contents of the plan, either the county council or the district council preparing the plan can refer the matter to the Secretary of State.

1459 Subsection (9) gives Secretary of State the power to confirm or reject the proposed action plan and the actions to be taken, where there is disagreement between the district and county council. This would apply where the Secretary of State considers the plan to be inadequate and not likely to secure compliance with air quality objectives.

1460 Subsection (10) requires that, if an action plan has been referred to the Secretary of State under subsection (8), the district council must abide by the Secretary of State's decision.

1461 Paragraph 7 amends section 84 of the Environment Act 1995 to clarify that this section now applies only to Scottish and

Welsh local authorities.

1462 Paragraph 8 inserts new sections 85A and 85B into the Environment Act 1995. These new sections define the new duties of air quality partners. These could be neighbouring authorities, relevant public authorities or the Environment Agency, where relevant to a local pollution exceedance or likely future exceedance.

New section 85A Duty of air quality partners to co-operate

1463 Subsection (1) defines an “air quality partner” as a body responsible for emissions contributing to exceedance of local air quality objectives.

1464 Subsection (2) requires an air quality partner to assist a local authority upon request in connection with meeting air quality standards and objectives in the context of action planning where there is an exceedance. Such requests may include provision of information needed to accurately assess a pollution source’s contribution to a local exceedance.

1465 Subsection (3) clarifies that an air quality partner may refuse a request for assistance it deems to be unreasonable. It is for the air quality partner to determine whether a

request is reasonable – for example, a request may be considered unreasonable on grounds of disproportionate cost, feasibility, relevance, or incompatibility with their wider legal obligations.

New section 85B Role of air quality partners in relation to action plans

1466 Subsection (1) places a duty on local authorities in England to notify all of their identified air quality partners if they intend to prepare an action plan.

1467 Subsection (2) places a duty on air quality partners to propose measures for inclusion in the plan they will take to contribute to achievement or maintenance of air quality standards. It is for the air quality partner to propose measures they deem reasonable taking into account their wider legal responsibilities, disproportionate cost and feasibility.

1468 Subsection (3) provides that an air quality partner should specify a date by when they will carry out the measures they have proposed and, as far as possible, meet those commitments.

1469 Subsection (4) requires action plans to include the proposals and dates provided by air quality partners.

1470 Subsection (5) provides for the Secretary of State to direct air quality partners to make further proposals for action by a date specified by the Secretary of State where existing proposals are considered insufficient. This is a last resort measure, and is limited to directing that an air quality partner propose further actions; it does not give the Secretary of State the power to determine the measures the air quality partner will take. This power of direction would not be utilised unilaterally by the Secretary of State where a relevant public body falls under the governance of another government department – agreement with the relevant government department would be sought. If agreement was reached that ministerial direction was necessary, the lead department could legitimately opt to use existing governance structures instead.

1471 Subsection (6) sets out that directions given under subsection (5) may specify the extent to which further proposals are designed to augment or replace existing actions proposed by air quality partners. So a direction could require the partner to go further in respect of a particular action it intends to take, such as extending its scope, or it could ask the partner to come up with new measures.

1472 Subsection (7) requires air quality partners to comply with directions as above.

1473 Paragraph 9 amends section 86 of the Environment Act 1995.

1474 Paragraph 9(2) omits subsection (1) relating to the role of district and county councils, which is now covered in new section 83A.

1475 Paragraph 9(3) sets out that county councils may make recommendations to district councils in respect of meeting air quality objectives.

1476 Paragraph 9(4) inserts new subsection (2A) into section 86, providing that district councils in areas of England where there is a county council must inform county councils if they intend to prepare an action plan.

1477 Paragraph 9(5) substitutes subsections (3) to (5) of section 86. New subsection (3) provides that if, as above, a county council has been informed of a district council's intention to prepare an action plan, the county council should propose measures that they will take to help secure the achievement and maintenance of air quality standards and objectives in the local authority's area. New subsection (4) sets out proposals should have a date specified for the carrying out of

the measures and, as far as possible, those dates should be met. New subsection (5) sets out district councils should incorporate county council proposals and dates in their action plans.

1478 Paragraph 9(6) applies the definition of a district council to England.

1479 Paragraph 9(7) makes consequential amendments.

1480 Paragraph 10 substitutes section 86A in the Environment Act 1995 with new sections 86A and 86B.

New section 86A Role of the Mayor of London in relation to action plans

1481 Subsection (1) provides that local authorities in London must inform the Mayor of London if they intend to prepare an action plan

1482 Subsection (2) has the effect that if, as above, the Mayor of London has been informed of a local authority's intention to prepare an action plan, the Mayor must propose measures that the Mayor will take to help contribute to the achievement and maintenance of air quality standards and objectives. This replicates the duty that now applies to county councils in areas outside of London

1483 Subsection (3) sets out that proposals should have a date specified for carrying out of proposed measures and, as far as possible, those dates should be met.

1484 Subsection (4) requires local authorities to incorporate the Mayor of London's proposals and dates in their action plans.

New section 86B Role of combined authorities in relation to action plans

1485 Subsection (1) requires that a local authority in a combined authority area must notify the combined authority of its intention to produce a plan.

1486 Subsection (2) requires that if, as above, the combined authority has been informed of a local authority's intention to prepare an action plan, they should propose measures that they will take to help contribute to the achievement and maintenance of air quality standards.

1487 Subsection (3) requires that proposals should have a date specified for carrying out of proposed measures and that, as far as possible, those dates should be met.

1488 Subsection (4) requires that local authorities should incorporate combined authority proposals and dates in their action plans.

1489 Subsection (5) defines “combined authority”.

1490 Paragraph 11 amends section 87 (regulations) of the Environment Act 1995. These amendments broaden the range of bodies the Secretary of State can confer powers on, impose duties on, prescribe measures to be adopted by, require provision of relevant information or enable cost recovery in the realm of measures to improve air quality, to include relevant county councils, relevant public authorities and the Environment Agency.

1491 Paragraph 12 amends section 88 of the Environment Act 1995. These amendments widen the number of bodies the Secretary of State may issue guidance to relating to local air quality, and to which they must have regard, to include relevant public authorities and the Environment Agency.

1492 Paragraph 13 amends section 91 (interpretation) of the Environment Act 1995, providing additional definitions.

1493 Paragraph 14 makes amendments to Schedule 11 (air quality: supplementary provisions) to the Environment Act 1995, simplifying wording.

Schedule 12: Smoke control in England and Wales

Part 1: Principal amendments to the Clean Air Act 1993: England

1494 Paragraphs 1 to 8 make amendments to the Clean Air Act 1993.

1495 Paragraph 2 inserts new section 19A, which introduces new Schedule 1A.

1496 Paragraph 3 inserts new Schedule 1A after Schedule 1. Schedule 1A makes provisions for imposing financial penalties for emissions of smoke from a chimney of a building, a chimney (not being a chimney of a building) which serves the furnace of any fixed boiler or industrial plant and, if applicable, a chimney of a vessel in smoke control areas in England. The amendments to this Act enable a local authority to extend the scope of a smoke control area to cover moored inland waterway vessels (as set out in paragraph 7 below), subject to local consultation. They would need to amend their smoke control order to include vessels and then once it comes into operation smoke emissions from the chimney of such vessels could be liable to a financial penalty.

New Schedule 1A Penalty for emission of smoke in smoke control area in England

1497 Paragraph 1 of new Schedule 1A defines “relevant chimney” and “person liable” (in relation to a relevant chimney).

1498 Paragraph 2 of new Schedule 1A defines “notice of intent”, setting out when a notice of intent applies and what it must do. Where a local authority is satisfied that smoke has been emitted from a relevant chimney, they can give a notice to the liable person. The notice must include the information specified in sub-paragraph (3).

1499 Paragraph 3 of new Schedule 1A provides the minimum and maximum levels of penalty that can be given in respect of a financial penalty issued under the Schedule. Sub-paragraphs (3) and (4) allow the Secretary of State to amend these amounts under regulations, subject to the affirmative resolution procedure. This means that draft regulations must be laid before and approved by a resolution of both Houses of Parliament.

1500 Paragraph 4 of new Schedule 1A gives the recipient of the notice of intent a period of 28 days from the day after the notice of intent was given to object in writing on a ground specified in sub-paragraph (2) and provide evidence to support the objection. For example, they could object on the grounds that there was no emission of smoke on the

occasion specified or that they were not the person liable on the occasion specified in the notice of intent. Sub-paragraph (3) stipulates that if the objection is on the grounds of the person not being liable, the name and address of the liable person must be included if known. Sub-paragraph (4) allows the Secretary of State to amend the grounds of objection under regulations, subject to consultation with anyone who may have an interest in the proposed regulations (sub-paragraph (5)) as well as the affirmative resolution procedure (sub-paragraph (6)). This means that draft regulations must be laid before and approved by a resolution of both Houses of Parliament.

1501 Paragraph 5 of new Schedule 1A gives the local authority the power to impose a financial penalty, following the issuing of a notice of intent, and specifies the period within which they must do so. Sub-paragraph (2) stipulates that a local authority must notify a person of their decision not to impose a financial penalty, if applicable. For example, if the local authority receives an objection following the issuing of a notice of intent and is satisfied that the penalty should not apply, they must inform the person of their decision.

1502 Paragraph 6 of new Schedule 1A

provides for the application of this paragraph where a local authority decides to impose a financial penalty. It sets out how a local authority can use a final notice to impose a financial penalty and defines a “final notice”. It also sets out what a final notice must specify (sub-paragraph (3)) and sets out the period within which the financial penalty must be paid (sub-paragraph (4)).

1503 Paragraph 7 of new Schedule 1A gives local authorities the power to withdraw a notice of intent or final notice, or reduce the amount specified in a final notice, and explains how to use said power.

1504 Paragraph 8 of new Schedule 1A gives the recipient of a financial penalty a period within which they can appeal to the First-tier Tribunal. It also sets out the grounds of appeal to the First-tier Tribunal a person may take. Sub-paragraph (3) stipulates that until the appeal has been determined or withdrawn, the final notice is suspended (that is, the local authority cannot pursue any debt until such time). Sub-paragraph (4) gives the First-tier Tribunal the power to respond to the appeal.

1505 Paragraph 9 of new Schedule 1A states that a financial penalty is recoverable as a civil debt due to the relevant local authority.

1506 Paragraph 10 of new Schedule 1A allows a local authority to delegate any of their functions under this Schedule. It requires that delegation must be made by giving notice to the delegate.

1507 Paragraph 11 of new Schedule 1A requires that a notice under this Schedule must be in writing, and instructs how a notice may be given to a person

1508 Paragraph 12 of new Schedule 1A applies to a vessel moored in a smoke control area in England and is subject to the operation of new Schedule 1A. It sets out that when a local authority has included vessels within the scope of its smoke control area, these provisions apply in respect of emissions of smoke from those vessels. If the notice of intent cannot be given to the occupier of the vessel, it may instead be given to the registered owner of the vessel, in which case one of the grounds for objecting listed in paragraph 4(2) – that they were not the person liable on the occasion specified in the notice of intent – does not apply. A person who receives a notice of intent relating to a vessel may object under paragraph 4 on the further ground that the smoke emitted on the occasion specified was solely due to engine-powered propulsion or

to provide electric power to the vessel.

1509 Paragraph 4 inserts new sections 19B to 19D after new section 19A. These sections set out the offences relating to the acquisition and sale of controlled solid fuel in England, the exemption relating to particular areas in England, and the interpretation of new sections 19A to 19C.

New section 19B Acquisition and sale of controlled solid fuel in England

1510 Most of the provisions set out in new sections 19B and 19C mirror those in existing sections 22 and 23 of the Clean Air Act, but have been amended to provide a distinction between how Part 3 of the Act applies in England and in Wales. For example, subsection (1) of new section 19B provides for an offence of acquiring controlled solid fuel for use in a building, fireplace, fixed boiler or industrial plant to which a smoke control order applies. This offence already exists in existing section 23 of the Act.

1511 New subsection (2) clarifies that the acquisition of controlled solid fuel for use in the propulsion of a vessel or to provide electric power to the vessel will not form an offence.

1512 New subsection (3) clarifies that

acquiring controlled fuel for use in an approved fireplace will not form an offence, mirroring the existing defence under section 23. For example, wood is a controlled solid fuel but it is not an offence to acquire wood for use in a smoke control area if it will used in a fireplace of a type specified in a list published by the Secretary of State and used in compliance with any conditions specified in the list.

1513 New subsection (4) sets out a new offence where a retailer must notify potential buyers that is an offence to acquire controlled solid fuel for certain purposes (for example, if it will be burned in a fireplace not specified in the Secretary of State's list of approved fireplaces, such as an open fireplace, in a smoke control area in England). This also applies to online retailers. Reasonable steps to notify potential purchasers could include, for example, putting an informative sign next to the fuels and at the cash register, or including a notification during online checkout.

1514 New subsection (5) provides for an offence of selling controlled fuels for delivery to a building, or premises with a fixed boiler or industrial plant to which a smoke control order in England applies. This offence

already exists in the current Act.

1515 New subsection (6) provides defences for the offence under subsection (5), mirroring the existing defences in the current Act.

1516 New subsection (7) provides that a person guilty of the offences under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

1517 New subsection (8) provides that a person guilty of the offence under subsections (4) and (5) is liable on summary conviction to a fine. The level of fine will be determined by the Court.

New section 19C Exemptions relating to particular areas in England

1518 The provisions set out in new section 19C (exemptions relating to particular areas in England) allow the Secretary of State to order the suspension of financial penalties for emission of smoke and/or offences relating to the acquisition and sale of controlled solid fuel in England. Subsection (2) sets out that the Secretary of State must consult the relevant local authority prior to using their power under subsection (1), and subsection (3) sets out what the local authority must do

following the making of such an order.

New Section 19D Interpretation: “approved fireplace” and “controlled solid fuel”

1519 New section 19D applies to new sections 19A to 19C. Subsection (1) defines “approved fireplace”, and subsection (2) sets out the requirements a fireplace must meet in order for the Secretary of State to include it on the list of approved fireplaces. Subsections (3) and (4) define “controlled solid fuel” and “approved fuel”.

1520 Paragraph 5 inserts new section 26A after section 26.

New section 26A Duty of local authority to reimburse for adaptations of vessels in England

1521 This section sets out the criteria by which local authorities in England are required to reimburse owners or occupiers of vessels that are subject to a smoke control order, for works carried out to avoid incurring a financial penalty under new Schedule 1A to the Clean Air Act 1993.

1522 Subsection (1) sets out the criteria an owner or occupier of a vessel must meet in order to be eligible for reimbursement under these provisions. For example, the vessel must have the right to moor at a single

mooring place for the qualifying period, the owner or occupier must complete the adaptations prior to the coming into operation of the order, and the owner or occupier must not have access to mains gas or electricity.

1523 Subsection (2) provides further conditions for when reimbursement will be required, and requires local authorities to reimburse the owner or occupier of a vessel 70% of the expenditure incurred in carrying out the adaptations if the adaptations are completed prior to the coming into operation of the order, the local authority approves the expenditure, and the adaptations are completed to the satisfaction of the local authority.

1524 Subsection (3) stipulates that reimbursement must be paid in equal monthly instalments for a period of six months.

1525 Subsection (4) removes the duty on local authorities to reimburse the owner or occupier of a vessel, should the owner or occupier cease to have the right to moor at the single mooring place or the vessel be absent from the smoke control area for one or more periods totalling three months.

1526 Paragraph 6 inserts new section 28A after section 28.

New section 28A Guidance for local authorities in England

1527 New section 28A requires local authorities in England to have regard to any guidance published by the Secretary of State related to their functions under Part 3 of the Act.

1528 Paragraph 7 inserts new subsections (2A) to (2C) after section 44(2).

1529 New subsection (2A) allows local authorities in England to include moored vessels in scope of their smoke control areas, which would be subject to the operation of new Schedule 1A. The amendments in this Act enable a local authority to extend the scope of a smoke control area to cover moored vessels, subject to local consultation. They would need to amend their smoke control order to include vessels, and then, once it comes into operation, smoke emissions from the chimney of such vessels could be liable to a financial penalty. New subsection (2B) extends references to a building in Part 3 and in section 54 of the Act to vessels, except for references in section 24 and 25 to dwellings. New subsection (2C) defines “moored vessels”.

1530 Paragraph 8 clarifies that rights of entry

under section 56 only apply in relation to a private dwelling where adaptations are required under section 24(1), or to a vessel where there is a duty to make reimbursements to the occupier or owner for works carried out under section 26A(3).

Part 2: Principal amendments to the Clean Air Act 1993: Wales

1531 Paragraphs 9 to 11 make amendments to the Clean Air Act 1993.

1532 Paragraph 10 amends section 20 (prohibition on emission of smoke in smoke control area), which only applies in Wales following the minor and consequential amendments made in Part 3. Sub-paragraph (2) amends, for Wales, the procedure for declaring a fuel to be authorised for the purposes of Part 3 of the Act. It enables Welsh Ministers to authorise fuels by publishing a list of authorised fuels and to update this list as needed. Sub-paragraph (3) omits subsection (6), which gives meaning to "authorised fuel".

1533 Paragraph 11 amends section 21 (power by order to exempt certain fireplaces) as it applies to Wales. Welsh Ministers currently have the power to exempt any class of fireplace by order upon such conditions as may be specified in the order, if they are

satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke. The amendment enables Welsh Ministers to exempt such fireplaces by publishing a list of exempted fireplaces and any relevant conditions and to update this list as needed.

1534 The amendments made by these paragraphs will enable Welsh Ministers to authorise fuels and exempt fireplaces as and when they are manufactured and tested, rather than waiting for common commencement dates as is currently the case for Wales.

Part 3: Minor and consequential amendments

Minor and consequential amendments to the Clean Air Act 1993

1535 Paragraph 13 amends section 18 (declaration of smoke control area by local authority) to achieve a distinction between how Part 3 applies in England and in Wales, and extends the section to include new Schedule 1A.

1536 Paragraph 14 amends section 20 (prohibition on emission of smoke in smoke control area) to provide that the section applies only in Wales.

1537 Paragraph 15 amends section 21 (power to exempt certain fireplaces) to achieve a distinction between how Part 3 applies in England and in Wales.

1538 Paragraph 16 amends section 22 (exemptions relating to particular areas) to achieve a distinction between how Part 3 applies in England and in Wales.

1539 Paragraph 17 amends section 23 (acquisition and sale of unauthorised fuel in a smoke control area) to achieve a distinction between how Part 3 applies in England and in Wales.

1540 Paragraph 18 amends section 24 (power to require adaptations of fireplaces) to achieve a distinction between how Part 3 applies in England and in Wales, and extends the section to include new Schedule 1A.

1541 Paragraph 19 amends section 26 (power to make grants for fireplaces in churches etc) to achieve a distinction between how Part 3 applies in England and in Wales and, extends references made to premises to include vessels.

1542 Paragraph 20 amends section 27 (references to adaptations) to achieve a distinction between how Part 3 applies in

England and in Wales, and extends references made to a dwelling to include vessels.

1543 Paragraph 21 amends section 28 (expenditure on execution of works) to extend references made to a dwelling to include vessels.

1544 Paragraph 22 inserts the definition of "smoke control order in England" into section 29 (interpretation).

1545 Paragraph 23 amends section 63 (regulations and orders) to clarify that the delegated powers set out in paragraph 3(3) and 4(5) of new Schedule 1A are not subject to annulment in pursuance of a resolution of either House of Parliament.

1546 Paragraph 24 amends Schedule 1 to achieve a distinction between how Part 3 applies in England and in Wales, and extends paragraph 5 of that Schedule 1 to new Schedule 1A. Sub-paragraph (3) inserts new paragraph 6A into Schedule 1, which provides a duty on local authorities in England to inform the Secretary of State of any new smoke control orders and the date on which they will come into operation.

Minor amendments to other legislation

1547 Paragraph 25 inserts "in Wales" into

subsection (3)(i) of section 79 of the Environmental Protection Act 1990 (statutory nuisances). This achieves a distinction between how the section applies in England and in Wales. It means that private dwellings in smoke control areas in England are no longer exempt from nuisance legislation, but retains the exemption for Wales. This means that smoke from private dwellings in smoke control areas in England can constitute a statutory nuisance, provided that it is prejudicial to health or a nuisance, as is currently the case for private dwellings outside of smoke control areas in England.

Part 4: Smoke Control Areas in England: Transitional Provision

1548 This transitional provision ensures that, where a local authority in England has made a smoke control order, any limitations that currently apply by virtue of that order will continue to apply in relation to new Schedule 1A, when those provisions are commenced. This is because if a smoke control order that applies in England makes any such limitations or exemptions from section 20 of the Clean Air Act 1993 these would be of no effect once Schedule 1A comes into force, as section 20 will then only apply in Wales.

Schedule 13: Modifying water and sewerage undertakers' appointments: Procedure for appeals

1549 Schedule 13 inserts new Schedule 2ZA into the Water Industry Act 1991.

New Schedule 2ZA Procedure for appeals under section 12D

1550 New Schedule 2ZA sets out the details of the Competition and Markets Authority (CMA) process for appeals against licence condition modifications under section 12D of the Water Industry Act 1991.

1551 Paragraph 1 of new Schedule 2ZA sets out the procedure to make an application for permission to appeal under section 12D. Sub-paragraph (1) sets out the procedure that must be followed to bring an appeal. An appeal must be made by sending a notice to the CMA requesting for permission to appeal.

1552 Sub-paragraph (2) refers to the persons set out in section 12D as being the only persons that can apply for permission to appeal.

1553 Sub-paragraph (3) requires an application for permission to be made within 20 working days after the working day on which Ofwat's decision on the modification is published.

1554 Sub-paragraph (4) requires specific information to be provided with the application for permission to appeal which will be detailed in rules.

1555 Sub-paragraph (5) enables provision to be made in the rules requiring the applicant to confirm through a statement of truth that the evidence contained in an application is true.

1556 Sub-paragraph (6) defines a person applying for permission to bring an appeal as an “appellant”.

1557 Sub-paragraph (7) requires the appellant to send a copy of the application for permission to appeal to Ofwat at the same time as the application is sent to the CMA, along with any other information that may be required by the appeal rules.

1558 Sub-paragraph (8) requires that the decision about whether to grant permission to appeal be made by a member of the CMA who is duly authorised.

1559 Sub-paragraph (9) provides that Ofwat must be afforded an opportunity to comment on the application before CMA decides whether to give permission.

1560 Sub-paragraph (10)(a) requires the CMA to respond to the application for permission

to appeal by the end of the 10th working day after the day on which the CMA received any comments from Ofwat.

1561 Sub-paragraph (10)(b) requires the CMA to respond to the application for permission to appeal by the end of the 14th working day after the day it received the application where there are no comments from Ofwat.

1562 Sub-paragraph (11) sets out the conditions subject to which permission to appeal can be granted, including provision for joint appeals.

1563 Sub-paragraph (12) requires notification to the appellant and Ofwat where an appeal is granted or refused, and of the reasons for it.

1564 Sub-paragraph (13) requires CMA to publish its decision on the application for permission to appeal as soon as reasonably practicable.

1565 Sub-paragraph (14) provides for section 12I(2), which allows the CMA not to publish any commercial information that could harm the business interests of an undertaking to which it relates or any information that relates to an individual and could harm their interests, to apply to any information to be published under sub-paragraph (13) relating

to the CMA decision on an application to bring an appeal against a proposed licence modification decision.

1566 New paragraph 2 of new Schedule 2ZA sets out the procedure for suspending an Ofwat decision on licence modification.

1567 Sub-paragraph (1) enables the CMA to prevent the modification from taking effect or limit the extent to which the modification takes effect until after it has taken its decision on the appeal.

1568 Sub-paragraph (2) provides that, where an appeal is made against a licence condition change that came into effect earlier than 56 working days following publication of the decision, the CMA can suspend the change or limit its effect as it considers necessary pending the determination of the appeal.

1569 Sub-paragraph (3) provides that the CMA can only suspend the effect of the change where the appellant requested that it be suspended when they made their application for permission to appeal within the specified time limit; where Ofwat has been able to comment on the application; where the change would create significant costs for the appellant or the persons the appellant represents; and where the change is not needed, from the perspective of the

balance of convenience, to come into effect until the decision on the appeal is made.

1570 Sub-paragraph (4) provides that the CMA must make a decision about suspending the early effective date by the end of the 10th working day after the day they received any comments from Ofwat, or by the end of the 14th working day after the day they received the application where there are no comments from Ofwat.

1571 Sub-paragraph (5) requires the appellant to send an application to suspend the early effective date to Ofwat at the same time as it is sent to the CMA.

1572 Sub-paragraph (6) provides that the person making the decision on the application for the CMA must be licensed to do so, and that the CMA must publish the decision as soon as it is reasonably practical to do so.

1573 Sub-paragraph (7) provides for section 12I(2), which allows the CMA not to publish any commercial information that could harm the business interests of an undertaking to which it relates or any information that relates to an individual and could harm their interests, to apply to any information to be published as a result of a direction on an application to bring an appeal against a

proposed licence modification decision.

1574 Paragraph 3 of new Schedule 2ZA sets out the time limit for representations and observations by Ofwat. Under sub-paragraph (1), where Ofwat wishes to comment on an application for permission to bring an appeal or a CMA direction, it must do so within the time limit imposed by sub-paragraph (2). The time limit provided by sub-paragraph (2) is ten working days beginning with the first working day on which Ofwat received a copy of the application for permission to appeal or the application for a direction. Under sub-paragraphs (3) and (4), where the CMA has granted permission to bring an appeal, and Ofwat wishes to make representations on the reasons that it reached the decision that is under appeal or on any grounds on which the appeal has been brought, Ofwat must make any written representations within a specified time limit. That time limit, which is set out in sub-paragraph (4), is by the end of the 15th working day from the date that the permission to appeal was granted.

1575 Sub-paragraph (5) requires Ofwat to send a copy of its representations made under paragraph 3 to the person bringing the appeal.

1576 Paragraph 4 of new Schedule 2ZA sets

out how the CMA group that considers and determines an appeal must be constituted. Sub-paragraph (2) provides that the decision made by the group is only valid if all members of the group are present at the meeting making the decision and at least 2 members of the group support the decision.

1577 Paragraph 5 of new Schedule 2ZA sets out the matters that can be considered as part of an appeal. Sub-paragraph (1) enables the CMA, in order to reach a determination on the appeal, to disregard any issues that the person making the appeal has raised that were not included in their application to make an appeal, and to disregard any issues that Ofwat raises after the period in which it had the opportunity to comment on the appeal application or on any CMA direction.

1578 Paragraph 6 of new Schedule 2ZA enables the CMA, to request, via a notice, the production of documents, estimates, forecasts, returns or other specified information relevant to an appeal.

1579 Sub-paragraph (2) enables the CMA to set out a time for the documents or information requested under subparagraph (1) to be produced, where they need to be sent, and the format in which they are required.

1580 Sub-paragraph (3) limits the information the CMA is able to request to that which could be required in High Court civil cases.

1581 Sub-paragraph (4) allows anyone authorised on behalf of the CMA to copy any documents, estimates, forecasts, returns or other information requested by and provided to the CMA.

1582 Sub-paragraph (5) requires that a notice issued under sub-paragraph (1) must be issued by someone who is authorised on behalf of the CMA to do so, and must include details about possible consequences of the person to whom it is directed not complying with the notice.

1583 Paragraph 7 of new Schedule 2ZA sets out when an oral hearings may be held and specifies who can be required to present evidence.

1584 Sub-paragraph (1) allows for evidence to be taken under oath by the person considering an application for permission to bring an appeal, a person considering an application for a direction or by the CMA group determining the appeal.

1585 Sub-paragraph (2) provides that the CMA may issue a notice to require a person to attend the hearing and give evidence. The

CMA must request a person to attend by notice setting out the time and place where the person must attend to give evidence.

1586 Sub-paragraph (3) allows for the person or group conducting the hearing to require the appellant or Ofwat to give evidence, or someone representing the appellant or Ofwat to make representations or observations.

1587 Sub-paragraph (4) allows for a person giving evidence at the hearing to be questioned by any party to the appeal. Sub-paragraph (5) provides that if the appellant, Ofwat, or a representative of either of these is not at the hearing the CMA does not have to consider the evidence that would have been provided and can determine the application for permission to appeal or the appeal without the evidence.

1588 Sub-paragraph (6) limits the type of evidence that a person can be required to give to that which could be required within a High Court civil case.

1589 Sub-paragraph (7) allows the person providing evidence to claim expenses for their attendance from the CMA if they have to travel more than 10 miles from their home to the hearing.

1590 Sub-paragraph (8) allows authorised

members of the CMA to issue the notice to a person requiring that they give evidence at an oral hearing.

1591 Paragraph 8 of new Schedule 2ZA provides the CMA with the power to require a person to produce written evidence.

1592 Sub-paragraph (1) sets out that the CMA can request by notice written evidence from a person requesting a direction from the CMA or from the CMA group determining an appeal.

1593 Sub-paragraph (2) allows the CMA to specify by when and where the evidence must be provided, and that it must be verified by a statement of truth. If verification is required and not provided, the CMA must disregard the evidence.

1594 Sub-paragraph (3) limits the type of written evidence that a person can be required to give to that which could be required within a High Court civil case.

1595 Sub-paragraph (4) allows an authorised member of the CMA to issue the notice to a person requiring that person to provide written evidence.

1596 Paragraph 9 of new Schedule 2ZA enables the CMA to commission and use evidence from an expert in an appeal. The

expert can be asked to provide evidence on any aspect of the appeal.

1597 Paragraph 10 of new Schedule 2ZA sets out the process that takes effect when a person fails to comply with a CMA notice requesting the production of documents under paragraph 6, or fails to attend oral hearings under paragraph 7, or fails to provide written evidence as required under paragraph 8.

1598 Sub-paragraph (2) enables the CMA to refer the failure, or the making of false statement or providing of false information, to the High Court.

1599 Sub-paragraph (3) sets out the process that the High Court can undertake which can ultimately, may enable the person to be punished as if they had been found in contempt of court.

1600 Sub-paragraph (4) enables the High Court, where the person is a business, to find both the business and any director or senior official of the business in contempt of court.

1601 Sub-paragraph (5) makes it a criminal offence for anyone to alter, suppress or destroy a document that the CMA requests under paragraph 6. The offence is punishable by a fine on summary conviction

or a fine and or imprisonment on indictment.

1602 Paragraph 11 of new Schedule 2ZA sets out the procedure for making rules about the process for considering appeals under section 12D.

1603 Under sub-paragraph (2), rules made under sub-paragraph (1) can supplement the provisions of new Schedule 2ZA, and may include rules concerning evidence given at an oral hearing or other representations at a hearing.

1604 Under sub-paragraph (3), the CMA Board must publicise rules made under paragraph 11 to bring them to the attention of those affected by them.

1605 Under sub-paragraph (4), the CMA Board must consult those persons affected by the rules before setting them.

1606 Under sub-paragraph (5), rules made under sub-paragraph (1) may vary in relation to different cases.

1607 Paragraph 12 of new Schedule 2ZA deals with the position in relation to costs under the appeal procedure.

1608 Sub-paragraph (1) sets out how the CMA's costs for dealing with the appeal will be payable.

1609 Sub-paragraph (2) sets out who is liable to pay the CMA's costs, depending on the outcome of the appeal.

1610 Under sub-paragraph (3), the CMA can also order one party to pay the reasonable costs of the other party, depending on the appeal outcome.

1611 Under sub-paragraph (4), any party required to pay costs to another party must do so within 28 days from the day after the date of the CMA order.

1612 Under sub-paragraph (5), where the costs are not paid to the other party within the time period, they will accrue interest as set out in the order.

1613 Under sub-paragraph (6), any unpaid costs may be recovered as a civil debt by the person entitled to the costs.

1614 Paragraph 13 of new Schedule 2ZA sets out the definitions of terms used.

Schedule 14: Biodiversity gain as condition of planning permission

Part 1: Biodiversity gain condition

1615 Paragraph 1 inserts new section 90A into the Town and Country Planning Act 1990, which gives effect to new Schedule 7A.

1616 Paragraph 2 inserts new Schedule 7A.

New Schedule 7A Biodiversity gain in England

Part 1: Overview and interpretation

1617 Paragraph 1 of Schedule 7A gives effect to paragraphs 2 to 11, which set out details of a new general condition to all planning permissions granted in England, subject to exceptions. The condition requires a biodiversity gain plan to be submitted and approved by the planning authority before development can lawfully commence. The biodiversity gain plan should contain an assessment of the value of natural habitats before development and after development, and ensure that at least a 10% net gain is achieved between the earlier and later values. The Town and Country Planning Act 1990 already allows for planning permission to be granted subject to condition(s). This "general condition" for biodiversity gain, which is mandatory for all planning permissions, is novel. Because the condition is deemed to have been granted, it exists in statute prior to the grant of planning permission. It may therefore be met at the time of granting planning permission where the planning authority also approves a biodiversity gain plan, meaning that the biodiversity net gain plan may not need to be submitted and approved in a separate process after planning permission has been

granted. This could be used for straightforward planning applications where the relevant information is available upfront. The general condition will not apply to all development in all scenarios. Part 1 includes a power to detail these exceptions in secondary legislation.

1618 Paragraph 2 sets out the biodiversity gain objective and how it must be met. The objective is that the biodiversity value, expressed in biodiversity units, attributable to the development exceeds that which existed before development by at least 10%. Sub-paragraph (4) gives the Secretary of State a power to vary the percentage gain required.

1619 Paragraph 3 identifies the biodiversity metric as the approach which will be used to calculate the relative biodiversity value of any habitat. The metric uses habitats as a proxy for biodiversity value, which it measures and expresses in terms of “biodiversity units”.

1620 Paragraph 4 makes provision for the Secretary of State to publish the biodiversity metric, the tool which is used to measure the relative biodiversity value of habitats as relevant to this schedule. Sub-paragraphs (3) and (5) give the Secretary of State the power to update the biodiversity metric, and set out

any arrangements for transition when the metric is updated so that developers and planning authorities are clear what is required where, for example, a planning application is under consideration on the date the updated version of the metric comes into effect. Updates to the metric will allow technical improvements, reflecting improved ecological understanding and further evaluation of the metric's application in practice, to the metric to be incorporated into the approach. Updates will be infrequent to avoid creating unnecessary uncertainty for the planning system. The intention is to publish a timeline of planned updates. The provision also enables the Secretary of State to make transitional provision where the metric is revised and republished.

1621 Paragraph 5 defines the date on which the pre-development biodiversity value of land should be taken to be measured. Sub-paragraph (3) enables a developer and a local planning authority to agree another date where more appropriate than the default set out in sub-paragraph (2). Sub-paragraph (4) makes provision for circumstances in which the planning authority is aware that there has been degradation of habitats in advance of development.

1622 Paragraph 6 sets out that the pre-development biodiversity value of on-site habitats is to be taken as the value before certain activities took place. These activities must have been carried out without planning permission, or without an alternative permission specified by the Secretary of State in regulations, on or after 15 October 2019. The activities must also have reduced the biodiversity value of habitats on the site below what it would otherwise have been at the time of planning application or planning permission.

1623 Paragraph 7 defines the pre-development biodiversity value in the event that a site registered as a “biodiversity gain site” is developed. It sets out that the pre-development value of the land should be taken to be the enhanced value of the registered site, regardless of whether or not the registered biodiversity enhancement has in fact been delivered successfully. This will mean that the development of a registered compensation site, whilst unlikely and undesirable, should not undermine the overall biodiversity gain outcome.

1624 Paragraph 8 defines the post-development biodiversity value of habitat on the development site as the

projected value of habitats on the development site. The value needs to be projected because a planning authority will need to use this figure before development starts to determine whether the development will achieve the net gain objective. In practice, the post-development biodiversity value of habitats on the development site will be determined by applying the metric to the developer's plan for the development site as detailed in the biodiversity gain plan.

1625 Paragraph 9 stipulates that significant increases in onsite biodiversity value can only be considered part of the post-development biodiversity value if they are secured through a suitable mechanism and will be maintained for at least 30 years after the completion of development.

1626 Paragraph 10 defines what can be counted towards "registered offsite biodiversity gain" in relation to a development. This relates to gain achieved on land other than the development site. Where a developer makes an agreement with a third party to do so, or enters into an agreement to do so themselves, this gain can be allocated to the development to be counted towards meeting the biodiversity objective. The biodiversity gain and its

allocation to a development must be recorded on the biodiversity gains site register.

1627 Paragraph 11 makes reference to biodiversity credits, as described in clause 90 of the current Bill.

1628 Paragraph 12 defines the terms “developer”, “onsite habitat” and “planning authority” as they are applied in the new Schedule 7A. Sub-paragraph (2) states that references to planning permission should be taken to include deemed planning permission, which is granted by government departments to certain development. This includes development approved under the Electricity Act 1989 and the Transport and Works Act 1989.

Part 2: Condition of planning permission relating to biodiversity gain

1629 Paragraph 13 sets out and applies the general condition to all planning permissions granted for development in England, subject to exceptions in paragraphs 17 and 18 and further application beyond the standard definition of planning permission in paragraph 19.

1630 Paragraph 13 contains the wording of the general condition itself, which requires that a

developer wishing to commence a development approved by planning permission will first need to submit a biodiversity gain plan to the planning authority, as defined in paragraph 12, and obtain the planning authority's approval of this plan.

1631 Paragraph 14 establishes what information a biodiversity gain plan must include to satisfy the general condition. A biodiversity gain plan must specify all the information necessary for a planning authority to be able to approve the plan under paragraph 15. This includes information about the biodiversity value of habitats before and after development and steps taken to minimise harm to habitats during development.

1632 The Secretary of State may specify other matters to be included in the plan under sub-paragraph (2)(f). Sub-paragraph (3) provides for the Secretary of State to specify the procedure which must be followed when submitting a gain plan.

1633 Paragraph 15 requires planning authorities to approve a biodiversity gain plan if, and only if, key information in the biodiversity gain plan is accurate and the biodiversity gain objective is met. Authorities

need to be satisfied with the information provided, including the value of onsite and offsite habitat gains and losses associated with the development. If the authority decides they are not satisfied, development would not be able to proceed lawfully unless the developer successfully appeals this decision.

1634 Paragraph 16 gives the Secretary of State the power to specify procedures to follow and factors to be taken into account when approving a biodiversity gain plan, and in relation to appeals against decisions.

1635 Paragraph 17 exempts all development granted planning permission by the Secretary of State using a development order, or under provisions for urgent Crown development, from the application of the general condition. This includes development granted permission by the General Permitted Development Order, which allows various types of development to proceed without requiring a planning application. Paragraph 17 also gives the Secretary of State the power to exempt development from the requirement to apply the general condition.

1636 A net gain in biodiversity cannot be achieved on areas of development which result in the loss of irreplaceable habitat, such as ancient woodland. In recognition of

this paragraph 18 allows the Secretary of State to make regulations that modify or exclude the application of the general condition to irreplaceable habitat. Existing strong planning policy protections for irreplaceable habitat will remain, and will not be replaced or in any way undermined by the biodiversity gain requirement or any regulations to be made in relation to irreplaceable habitat. Sub-paragraph (2) specifies that, where development does impact irreplaceable habitats, regulations must require measures to be taken to minimise the negative impacts of this development on those habitats, and that those measures should be agreed with the planning authority where they are not made by the planning authority in the first place. Sub-paragraph (3) allows regulations to confer powers and duties on Natural England in relation to giving guidance on the treatment of irreplaceable habitat in development.

1637 Whilst it is generally agreed in practice that development cannot claim biodiversity net gain in cases when development results in land take from statutory protected sites (such as Sites of Special Scientific Interest, Special Protection Areas, Special Areas of Conservation, and Ramsar sites),

development on such sites is not specifically exempted from the net gain requirement. The biodiversity metric does not address impacts on species, recognise the significance of site designations, or take account of indirect impacts, cumulative impacts or in-combination impacts. In recognition of these limitations, the biodiversity net gain requirement for development on such sites is additional to any existing legal or policy requirements for statutory protected areas and their features, including restoration and conservation of designated features and the achievement of favourable conservation status and favourable condition. These requirements will need to be dealt with separately by the developer and planning authority.

1638 Paragraph 19 allows the Secretary of State to modify the application of this Part to permissions for phased development or developments where subsequent approval has the effect of phasing development. Sub-paragraph (2) sets out that regulations may include provisions for biodiversity gain conditions to be included in the grant of planning permissions for these types of permission.

1639 Paragraph 20 gives the Secretary of

State powers to modify or exclude the application of this Part to planning permissions for development already carried out, or planning permissions granted for the alteration or removal of buildings or works by any order requiring discontinuance of any use of land.

1640 Paragraph 21 makes provision for the Secretary of State to make provision as to the application of this Part of the Schedule to planning permission granted in relation to a purchase notice and the successful appeal of a planning enforcement notice.

Part 2: Consequential amendments.

1641 Paragraph 3 details the consequential amendments to the Town and Country Planning Act 1990.

Schedule 15: Controlling the felling of trees in England

Introductory

1642 This Schedule amends Part 2 of the Forestry Act 1967 ("the 1967 Act").

Penalty for felling without licence: increase of fine

1643 Paragraph 2 amends section 17 to preserve in Wales the current level of fine that the Courts are able to impose (level 4 (£2,500) or twice the value of the tree,

whichever is the higher) following conviction for a section 17 offence (felling without a licence where one was required), whilst amending the fine available in respect of such a conviction in England to an unlimited level 5 fine.

Restocking notices to be local land charges

1644 Paragraph 3 amends section 17A by inserting new subsection (1B), which provides that a restocking notice is a local land charge and, for the purposes of the Local Land Charges Act 1975, the Commissioners who serve the notice are defined as the “originating authority.”

Enforcement notices to be local land charges

1645 Paragraph 4 inserts new subsection (6) at the end of section 24. This, as in paragraph 3, provides that a notice under this section is a local land charge and, for the purposes of the Local Land Charges Act 1975, the Commissioners who serve the notice are defined as the “originating authority.”

1646 Local land charges will give notice to any buyer, and anyone who inspects the land register, that any buyer will acquire the land subject to the local land charge unless and until it is removed.

Further enforcement notices for new estate or interest holders

1647 Paragraph 5 inserts new section 24A after section 24.

1648 Sub-paragraph (1) inserts a cross-reference to new section 24A in section 17C.

1649 Sub-paragraph (2) provides the text for new section 24A. It has the effect of allowing the Forestry Commission to serve the new owner of land that is still subject to an enforcement notice with a subsequent enforcement notice. This will compel the new owner of the land to comply with the restocking of the land, as the previous owner can no longer be reasonably expected to comply with the original Enforcement Notice. This is in line with the 'buyer beware' principle of the English housing market: that the buyer should perform due diligence checks before purchase, and failure to do so means a buyer will not be entitled to remedial action by the seller following purchase.

1650 It also follows the principle already established in the 1967 Act that the new owner of land inherits the responsibility to restock that land. This is established at present by the Act providing for enforcement notices to be served on the new owner of the

land if that land is sold during the life of a restocking notice (and that restocking notice is not complied with).

Power of court to order restocking after conviction for failure to comply with enforcement notice

1651 Paragraph 6 inserts new section 24B into the 1967 Act. It has the effect of giving the court the power, following a conviction under section 24 of the Act (failure to comply with an Enforcement Notice), to make a restocking order that compels the person convicted to restock the land. This power is in addition to the existing fine.

1652 Subsection (3) of new section 24B explains that a restocking order will require a person to take specified steps within a specified time to stock or restock an area of land with trees – either the land under which the restocking notice was given or other land that the court considers appropriate – and to maintain those trees for the period specified in the order (which will not exceed 10 years).

1653 Subsection (4) of new section 24B provides that in deciding whether to make a restocking order a court must have regard to the interests of good forestry and agriculture and the desirability of promoting the growing and maintenance of trees in England.

1654 Subsection (5) of new section 24B provides for the application of section 63(3) of the Magistrates' Courts Act 1980 for breaches in relation to a restocking order.

Service of notices on directors of companies that have estates or interests in land

1655 Paragraph 7 amends section 30. Section 30 sets out the precise manner in which documents, such as restocking notices and enforcement notices, should be served. Where a company is to be served with such a notice, section 30 currently stipulates that this must be upon the company "clerk" or "secretary". This paragraph amends section 30 to allow notices to be served upon a company "director" as well.

Requiring information from the owner of land

1656 Paragraph 8 also amends section 30. Section 30, for the purposes of serving documents, gives the Forestry Commission the power to request information regarding the ownership of the land from the "occupier" or "any person who, either directly or indirectly, receives rent" from the land in question. Failure to comply with the request is an offence carrying a fine. This clause amends the 1967 Act to allow that request to be made of an "owner" of any land in England, compelling them to disclose, for

instance, details of any leaseholders or tenants of the land.

Schedule 16: Use of forest risk commodities in commercial activity

1657 Schedule 16 sets out new requirements on regulated persons using forest risk commodities in their UK commercial activities. Part 1 of the Schedule describes the new requirements and the persons they apply to, Part 2 contains enforcement provisions, and Part 3 contains a requirement to review the effectiveness of the Schedule, and definitions of terms in the Schedule.

Part 1: Requirements

1658 Part 1 of the Schedule contains restrictions on the use of forest risk commodities and requirements relating to due diligence and reporting. It also specifies how regulated persons will be determined, and how these persons could be exempt from the requirements.

Meaning of “forest risk commodity”

1659 Paragraph 1 outlines the meaning of “forest risk commodity”. This captures agricultural commodities whose production is associated with wide-scale conversion of forest. Some examples of commodities likely to be considered for inclusion within this

definition include beef, cocoa, leather, palm oil, rubber and soya. The Secretary of State will have power to make regulations specifying the commodities to which the Part 1 requirements will apply. This means that commodities will be brought into scope at a later date by laying further secondary legislation.

1660 Sub-paragraph (2) requires that regulations bringing commodities into scope can only specify a commodity that has been produced from a plant, animal or other living organism (such as a fungus).

1661 Sub-paragraph (3) outlines that a commodity can only be specified in regulations if the Secretary of State considers that forest is being converted for the purposes of producing the commodity. Sub-paragraph (4) defines “forest” for the purposes set out in sub-paragraph (3).

1662 Sub-paragraph (5) outlines that the definition of “forest” in sub-paragraph (4) includes land that is wholly or partly submerged in water, for example in the case of mangrove forests. Submersion could be either temporary or permanent.

1663 Sub-paragraph (6) outlines that timber and timber products cannot be specified as regulated forest risk commodities. This is to

avoid overlap with an existing environmental regime, Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010, which lays down obligations on operators who place timber and timber products on the market.

1664 Sub-paragraph (7) requires the Secretary of State to consult before specifying which forest risk commodities will be in scope in regulations, and sub-paragraph (8) allows for this consultation requirement to be carried out before the requirements set out in Part 1 come into force.

Prohibition on using illegally produced commodities

1665 Paragraph 2 prohibits the use of regulated forest risk commodities, and products derived from forest risk commodities, in a regulated person's UK commercial activity unless they were produced in compliance with relevant local laws.

1666 Sub-paragraph (3) defines "local law" as any law that has effect in the country or territory where the organism from which a forest risk commodity was produced was grown, raised or cultivated.

1667 Sub-paragraph (4) defines "relevant local law" as a local law which relates to land use

or land ownership where the commodity was grown, raised or cultivated. A relevant local law would include, for example, a law designating an area as a national park in which agriculture is not allowed. The effect of this definition is that the commodity must be sourced from land that is legally occupied or used. The sub-paragraph also sets out that other laws that relate to that land can be specified by the Secretary of State through regulations. This means that the Secretary of State can add to the category of relevant local law if it relates to the land the commodity was produced on.

1668 Sub-paragraph (5) sets out that regulations adding to the categories of "relevant local law" may only specify local laws if they relate to the prevention of forests from being converted for agricultural use.

1669 Sub-paragraph (6) defines the "source organism" as the plant, animal, or living organism from which the forest risk commodity was produced. For example, the animal from which a meat came from, or the plant or tree from which fruits were harvested.

1670 Sub-paragraphs (7) and (8) set out that the prohibition does not apply where the commodity is waste and is a renewable

transport fuel that qualifies and may be issued with a Renewable Transport Fuel certificate. This is to avoid overlap with an existing environmental regime, the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072).

Due diligence system

1671 Paragraph 3 requires that regulated persons who use forest risk commodities in their UK commercial activities, or products derived from them, must set up and implement a due diligence system for the regulated commodities they use.

1672 Sub-paragraph (2) outlines the three components this due diligence system must include, which are:

- identifying and obtaining information about the regulated commodity;
- assessing the risk that the commodity was sourced from land that was illegally occupied or used; and
- mitigating the risk.

1673 Sub-paragraph (3) allows the Secretary of State to make regulations containing further details on the due diligence system outlined in sub-paragraph (2)(a) to (c). This includes:

- information that should be obtained;

- the criteria for assessing the risk; and
- ways to mitigate risks.

Annual report on due diligence system

1674 Paragraph 4 requires a regulated person who uses forest risk commodities in their UK commercial activities, or products derived from them, to provide a report on the actions taken in Paragraph 3 to establish and implement a due diligence system for the regulated commodity. Reports are to be provided for each annual reporting period.

1675 Sub-paragraph (2) requires the regulated person to provide their report within 6 months after the end of the reporting period, and no later than this.

1676 Sub-paragraph (3) allows the Secretary of State to make regulations containing details of the content and form of the report, and how they should be provided to the relevant authority.

1677 Sub-paragraph (4) requires the relevant authority to make reports from regulated persons under this paragraph available to the public. The extent and way in which these reports would be made public would be set out in regulations made by the Secretary of State.

1678 Sub-paragraph (5) defines the term

"relevant authority" as the Secretary of State, or another person if the Secretary of State has specified that person to be the relevant authority in regulations.

1679 Sub-paragraph (6) defines the "reporting period" for the Schedule as the day in which the requirements come into force until the following 31 March, and then each successive period of 1 year after that. This means that the reporting period is the same as the UK's financial year.

Exemption

1680 Paragraph 5 sets out that a regulated person can be exempt from the requirements set out in Paragraphs 2 to 4 in relation to their use of forest risk commodities in their UK commercial activities if the amount they use is below a weight or volume threshold. For example, a large processor of a food item may use a very small amount of a forest risk commodity as an ingredient to make up the food item. If, in aggregate, the total use of that commodity over the course of a year is below the threshold, they would be exempt. Sub-paragraph (1) sets out that regulated persons can only be exempt if they satisfy two conditions, as detailed below.

1681 Sub-paragraph (2) requires that in order to satisfy the first condition, a regulated

person must give notice to the relevant authority before the start of a reporting period. The notice must contain a declaration that the person is satisfied they will not be using an amount of forest risk commodity during the reporting period that exceeds a prescribed weight or volume threshold, and other prescribed information.

1682 Sub-paragraph (3) requires that in order to satisfy the second condition, the regulated person must not use an amount of the commodity in their UK commercial activity during the period that exceeds the prescribed weight or volume threshold for that commodity.

1683 Sub-paragraph (4) sets out that the following sub-paragraphs (5) and (6) only apply in the scenario where a regulated person gives notice under sub-paragraph (2), but the amount of the forest risk commodity used in their UK commercial activities during the period exceeds the prescribed weight or volume threshold for that commodity.

1684 Sub-paragraph (5) outlines that if the regulated person gives a second notice to the relevant authority containing the prescribed information before the date at which their commodity use exceeds the threshold, the person is exempt from the Part 1

requirements from the start of the reporting period until the date this second notice is given.

1685 Sub-paragraph (6) outlines that if the regulated person does not give a second notice to the relevant authority before the date at which their commodity use exceeds the prescribed threshold, then they will not be exempt from the requirements in Part 1 of the Schedule for any part of the reporting period.

1686 Sub-paragraph (7) defines the terms “prescribed”, “relevant date” and “relevant enforcement authority” used in this paragraph.

1687 Sub-paragraph (8) sets out that regulations made under this paragraph may set thresholds on the weight or volume of a forest risk commodity below which the exemption may apply. Regulations may also make provision about how the amount of forest risk commodity used in the threshold is to be determined.

1688 Sub-paragraph (9) requires the Secretary of State to consult with appropriate persons before making regulations under this paragraph (apart from regulations made under sub-paragraphs (2)(b) and (5)). Sub-paragraph (10) sets out that the consultation may be carried out before

paragraph 5 comes into force.

Guidance

1689 Paragraph 6 sets out that the Secretary of State may issue guidance about the requirements in Part 1 to an enforcement authority, and if so, that the enforcement authority must take this into account when enforcing these measures.

Meaning of “regulated person”

1690 Paragraph 7 sets out the persons who will be subject to the requirements set out in Paragraphs 2 to 4 in Part 1 of this Schedule.

1691 Sub-paragraph (1) specifies that for the purposes of this Schedule a “regulated person” is an entity that carries out commercial activities in the UK in relation to a regulated forest risk commodity, and either exceeds a turnover threshold set by the Secretary of State for that commodity, or is a subsidiary of an undertaking that exceeds the turnover threshold for that commodity. This means that different turnover thresholds could be set for different forest risk commodities, and regulated persons will only be subject to the requirements for a particular forest risk commodity if they, or their parent company, exceed the relevant turnover threshold.

1692 Sub-paragraph (2) outlines that regulations under sub-paragraph (1) may make provision about how the turnover threshold will be determined for forest risk commodities, and sub-paragraph (3) requires that the Secretary of State must consult persons they consider appropriate before making these regulations. The requirement to consult may be carried out before the requirements come into force, as outlined in sub-paragraph (4).

1693 Sub-paragraph (5) sets out that regulations may make provision whereby a person who becomes a regulated person may, for a specified transition period after becoming a regulated person:

- not have Part 1 requirements applied to them; or
- have modified Part 1 requirements applied to them.

1694 Sub-paragraph (6) allows for the Secretary of State to specify in regulations that a group of undertakings may be treated as one regulated person instead of multiple regulated persons, in such circumstances and for such purposes as may be provided.

1695 Sub-paragraph (7) defines the terms “group” and “undertaking” for the purposes of

paragraph 7 as those used in the Companies Act 2006.

Part 2: Enforcement

General power

1696 Paragraph 8 makes provision for the Secretary of State to make regulations for the enforcement of requirements made under Part 1, or imposed by regulations made under Part 1 of this Schedule.

Powers to confer functions

1697 Paragraph 9 allows for functions to be conferred on one or more enforcement authorities. Sub-paragraph (2) sets out that these functions may include the exercise of discretion, and that regulations may also provide for a person to be authorised to exercise functions on behalf of an enforcement authority.

1698 Sub-paragraph (3) makes provision for regulations to be made under Part 2 that require an enforcement authority to issue guidance about how it will exercise its functions, and requires them to consult with specified persons before issuing this guidance.

Monitoring compliance

1699 Paragraph 10 sets out that regulations made under Part 2 of this Schedule may

include provisions for the enforcement authority to monitor compliance with the requirements set out in Part 1 of the Schedule.

Records and information

1700 Paragraph 11 sets out that regulations made under Part 2 of this Schedule may include provisions requiring regulated persons subject to the requirements in Part 1 to keep records. These regulations may also require regulated persons to provide records or information to an enforcement authority, and require the enforcement authority to provide reports or other information to the Secretary of State.

Powers of entry etc

1701 Paragraph 12 allows for regulations to confer on an enforcement authority powers of entry, inspection, examination, search and seizure. These powers are needed so that the enforcement authority is able to check that regulated businesses are complying with the law. For example, the enforcement authority may have reason to believe a company is using more of a regulated commodity than they stated when they gave notice for the purpose of using the exemption, and may wish to examine the premises to check if this is the case.

1702 Sub-paragraph (2) sets out that regulations may include provision for powers to be exercisable only if a warrant is issued, about applications for warrants, and about the execution of warrants.

1703 Sub-paragraph (3) sets out that warrants are needed in order to enter premises by force, to enter a private dwelling without the consent of the occupier, and to search and seize material.

Sanctions

1704 Paragraph 13 makes provision about the civil sanctions that can be applied where regulated persons fail to comply with requirements in Part 1, Part 2 regulations, or for their obstruction of or failure to assist an enforcement authority. It also makes provision for appeals against such sanctions.

1705 Sub-paragraph (2) sets out that regulations made under Part 2 must ensure that if a regulated person fails to comply with a requirement in paragraph 2(1) or (2) in relation to their use of forest risk commodities and derived products, but the enforcement authority is satisfied that the regulated person took all reasonable steps to implement a due diligence system for that commodity, then a civil sanction may not be imposed on the regulated person for their

failure to comply.

1706 Sub-paragraph (3) outlines that regulations may include provisions creating criminal offences punishable with a fine if a regulated person fails to comply with civil sanctions that were imposed on them, or for the obstruction or failure to assist an enforcement authority.

1707 Sub-paragraph (4) defines “civil sanctions” for the purposes of this paragraph, and that these can include fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings.

1708 Paragraph 14 sets out that Part 2 regulations may include provision for imposing sanctions regardless of whether the conduct for which it was imposed is an offence, or if the enforcement authority is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

Charges

1709 Paragraph 15(a) specifies that regulations made under Part 2 of the Schedule may make provision for the payment of a charge on a regulated person to be used by the enforcement authority to recover the costs it incurred when performing its functions.

1710 Sub-paragraph (b) allows for regulations to make provision that authorise a court or tribunal to award costs incurred to the enforcement authority.

Consultation requirements

1711 Paragraph 16 requires the Secretary of State to consult with appropriate persons before making regulations under Part 2 of the Schedule. Sub-paragraph (2) sets out that the consultation may be carried out before this paragraph comes into force.

Part 3: General Provisions

Review

1712 Paragraph 17 makes provision for the Secretary of State to review the effectiveness of Part 1 and Part 2 of the Schedule.

1713 Sub-paragraph (2) sets out what the review must consider in particular. This includes:

- the amount of forest being converted to agricultural use for producing commodities;
- the impact of the Schedule on the amount of forest being converted to agricultural use for producing forest risk commodities;
- the impact of the Schedule on the use of

forest risk commodities, and their derived products, from being used in UK commercial activities where they were produced on land illegally occupied or used; and

- any changes to relevant local laws in relation to forest risk commodities.

1714 Sub-paragraph (3) requires the Secretary of State to publish and lay before Parliament a report that contains the conclusions of the review, and the steps they intend to take to improve the effectiveness of the provisions, if any.

1715 Sub-paragraph (4) outlines that the review must be completed within the second and third anniversary of the Part 1 requirements coming into force. Sub-paragraph (5) states that subsequent reviews must be completed before the end of the two-year period since the previous review was completed. This means that reviews must be completed every two years beginning from when the requirements come into force.

1716 Sub-paragraph (6) set outs that the review is only completed once the Secretary of State has laid the report before Parliament and published it.

Interpretation

1717 Paragraph 18 defines the terms used in the Schedule.

1718 Sub-paragraph (2) explains the meaning of a product derived from a forest risk commodity. It includes any product of an animal that has been fed on a forest risk commodity.

Schedule 17: Discharge or modification of obligations under conservation covenants

1719 Schedule 17 enables the Upper Tribunal to discharge land from an obligation under a conservation covenant, or to modify such an obligation, on application. Any landowner bound by, or entitled to the benefit of, such an obligation, or the responsible body under the covenant, can apply. In practice, applications will be made to the Lands Chamber, and procedure will be governed by the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.

1720 Separate provision is made for discharge and modification, in Parts 1 and 2 of the Schedule respectively. Applications may be made for either, but in some circumstances will be made for both.

Part 1: Discharge by Upper Tribunal

Power to discharge on application by landowner or responsible body

1721 Paragraphs 1 and 2 make provision for applications for discharge, and provide that the Tribunal must add as parties as necessary, depending upon who has made the application: the responsible body and everyone who is currently bound by or entitled to the benefit of the obligation concerned.

Deciding whether to discharge

1722 Paragraph 3(1) provides that the Upper Tribunal may make an order discharging an obligation when it considers it reasonable to do so in all the circumstances of the case. Sub-paragraph (2) sets out the matters that the Upper Tribunal must have regard to when considering whether or not to exercise its discretion. When considering the extent to which the performance of an obligation is, or is likely in the future to be, affordable or practicable (sub-paragraph (2)(a)(iii) and (iv)), sub-paragraph (4) requires the Upper Tribunal to disregard the personal circumstances of the person bound by the obligation.

1723 Paragraph 3(3) requires the Tribunal also to consider, on an application for discharge made by a person bound by or

owed an obligation under a conservation covenant by virtue of being a landowner, whether the purpose for which the obligation in question was created could equally well be served by the creation of another conservation covenant on other land held by the landowner. In other words, the Tribunal is to consider whether any form of like-for-like substitution is possible. If it is, paragraph 5 comes into play.

Supplementary powers

1724 Paragraph 4 gives the Upper Tribunal the power to include in an order a requirement that the applicant pay compensation in respect of any resulting loss of benefit.

1725 Paragraph 5 enables the Upper Tribunal, with the consent of the landowner and the responsible body, to make an order discharging an obligation conditional on entry into a new conservation covenant agreement containing such provisions as the order may specify. This may be an option where an obligation under a new conservation covenant will be able to fulfil the same purpose as the obligation to be discharged. If this is the position, then the landowner and responsible body can enter into an agreement for a new conservation covenant

in relation to the replacement land.

Part 2: Modification by Upper Tribunal

Power to modify on application by landowner or responsible body

1726 Paragraphs 6 and 7 make provision for application for modification, and provide that the Tribunal must add as parties as necessary, depending upon who has made the application: the responsible body and everyone who is currently bound by or entitled to the benefit of the obligation concerned.

1727 Paragraph 8 has the effect that the Upper Tribunal's powers to modify an obligation under a conservation covenant cannot be exercised so as to produce a result which could not have been achieved by the original agreement (because inconsistent with the requirements of clause 108(1)(a)). For example, it would not be possible to modify an obligation in such a way that it no longer served a conservation purpose.

Deciding whether to modify

1728 Paragraph 9(1) provides that the Upper Tribunal may make an order modifying an obligation when it considers it reasonable to do so in all the circumstances of the case. Sub-paragraph (2) sets out the matters that

the Upper Tribunal must have regard to when considering whether or not to exercise its discretion. When considering the extent to which the performance of an obligation is, or is likely in the future to be, affordable or practicable (paragraph 9(2)(iii) and (iv)), paragraph 9(3) requires the Upper Tribunal to disregard the personal circumstances of the person bound by the obligation.

Supplementary powers

1729 Paragraph 10 gives the Upper Tribunal the power to include in an order a requirement that the applicant pay compensation in respect of any resulting loss of benefit.

1730 Paragraph 11 enables the Upper Tribunal, with the consent of the landowner and the responsible body, to make an order modifying an obligation conditional on the applicant and the responsible body entering into an agreement for a new conservation covenant containing such provision as the order may specify.

Effect of modification

1731 Paragraph 12 describes the effect of a modification to a conservation covenant, which must for the future be read as modified by the Upper Tribunal's order as respects the land to which the modification relates. The

parties to the proceedings will be bound by the order of the Upper Tribunal, as will their successors (as respects any of the land to which the modification relates).

Schedule 18: Application of Part 7 to Crown land

Part 1: General

1732 Schedule 18 makes provision for Part 7 to have effect with modifications in certain cases where an interest in Crown land is held by or on behalf of the Crown.

Interpretation

1733 Paragraph 2 defines “Crown land” and who is the appropriate authority in relation to each of the categories of Crown land. In cases where it is the appropriate authority that holds an interest in Crown land held by or on behalf of the Crown, Part 7 can be left to operate in the normal way. The appropriate authority is the landowner and can create a conservation covenant. Any obligation of the authority under the covenant will be an obligation of the landowner in the ordinary way. Where that is not the case, the intention is that any obligation under a conservation covenant created by the Crown, or under a conservation covenant affecting land acquired by the Crown, should be an

obligation of the appropriate authority, rather than of the Crown entity that holds the relevant estate in land. Provision is made to this effect in paragraphs 5 to 20 (see below).

Demesne land, land subject to escheat and bona vacantia

1734 Paragraph 3 deals with the situation where no freehold estate in land exists and, as a result of the feudal origins of land law and the fact that the Crown has dominion over all land as lord paramount, the Crown owns the land directly. This is “demesne land”. For the purposes of Part 7, demesne land will be treated as if the Crown held a freehold estate in the land. This enables the Crown to create a conservation covenant over demesne land. Further, the owner of an estate in land granted or created out of demesne land will be treated as a successor and the normal rules governing whether a successor is bound by a conservation covenant will apply.

1735 Paragraph 4 deals with the situation where land reverts to the Crown through escheat. This occurs when the freehold interest in land ceases to exist, for example where it is disclaimed by a trustee in bankruptcy or liquidator. Where there is no freehold in land, the Crown resumes its

ownership of the land. A conservation covenant is not terminated when ownership of land reverts to the Crown through escheat. A future owner of the land can also be bound by the conservation covenant (see clause 113, as modified by paragraph 9 of Schedule 18). Where land to which an obligation under a conservation covenant relates reverts to the Crown through escheat, the Crown will not be liable under the obligation in respect of any period before it takes possession or control of the land, enters into occupation of the land, or becomes the holder of an estate in the land. This replicates the general rule of land law regarding the Crown's liability in respect of land that vests in it by operation of law.

1736 Paragraph 5 deals with the situation where an estate in land transfers to the Crown as bona vacantia. This occurs in particular where a person dies intestate and no one is entitled to his or her estate under the intestacy rules (contained in the Administration of Estates Act 1925), or where a company is dissolved. In these circumstances, property becomes vested in the Crown. Where an estate in land to which an obligation under a conservation covenant relates passes as bona vacantia, the appropriate authority will not be liable under

the covenant in respect of any period before it takes possession or control of the land or enters into occupation of the land. This replicates the general rule of land law in relation to property that vests in the Crown by operation of law.

Part 2: Conservation covenants relating to Crown land held by a person other than the appropriate authority

Agreements for the purposes of section 108

1737 Paragraph 6 enables a conservation covenant to be created, not by the Crown entity that holds the relevant estate in land, but by the appropriate authority acting in its place. An obligation of the appropriate authority under such a conservation covenant is then treated for the purposes of Part 7 as an obligation of the landowner.

Modification of Part 7 in relation to obligations under certain Crown conservation covenants

1738 Paragraphs 7 to 12 modify various provisions in Part 7 to deal with the fact that, in this special case, the appropriate authority will act in place of the Crown entity holding the relevant estate in land (for example, an obligation of the landowner needs to bind the appropriate authority), but the provisions about successors still have to operate by

reference to the actual landowner.

Part 3: Other modifications of Part 7

Cases where estate in land to which conservation covenant relates has been acquired by the Crown and is held by person other than the appropriate authority

1739 Paragraphs 13 to 17 deal with the case where an interest in land to which an obligation under a conservation covenant relates is acquired by the Crown and the relevant estate in land is not held by the appropriate authority. In this case, the intention is that it should be the appropriate authority that is subject to any obligation of the landowner under the covenant, or entitled to the benefit of any obligation of the responsible body under the covenant, instead of the Crown entity that holds the relevant estate in land. To that end, paragraphs 14 to 17 provide for various provisions in Part 7 to have effect, in this special case, with appropriate modifications.

Agreements under sections 118(1) and (3), 119(1) and 120(1)

1740 Paragraphs 18 to 21 provide for clauses 118 to 120 to have effect with modifications to deal with the fact that Parts 2 and 3 of the Schedule may produce the result,

exceptionally, that the appropriate authority may be bound by an obligation of the landowner under a conservation covenant, or entitled to the benefit of an obligation of the responsible body under a conservation covenant, without being the holder of the relevant estate in land.

Schedule 19: Consequential amendments relating to Part 7

1741 Schedule 19 makes consequential amendments relating to two main issues. Firstly, it ensures that holders of conservation covenants will be notified if a public authority seeks compulsorily to acquire the burdened land. Secondly, it enables public authorities to develop land that has been acquired for planning purposes in accordance with planning permission, even if it requires overriding conservation covenants (except conservation covenants held by the National Trust).

Acquisition of Land Act 1981 (c. 67)

1742 Paragraphs 2 and 3 amend section 12 of and paragraph 3 of Schedule 1 to the Acquisition of Land Act 1981 to ensure that a person entitled to the benefit of an obligation under a conservation covenant will be notified if a compulsory purchase order is made or proposed with respect to land to

which the obligation relates. Any objection made in response to such a notice will be treated as a “relevant objection” for the purposes of that Act.

Housing and Planning Act 2016 (c. 22)

1743 Paragraphs 4 to 7 amend the Housing and Planning Act 2016 to cover a number of points in respect of developing land acquired for planning purposes which is subject to a conservation covenant.

1744 Paragraph 5(2) amends sections 203(1)(b) and 203(4)(b) of that Act so that local authorities and other public and quasi-public bodies, in carrying out their normal functions for the public benefit, can rely on section 203 of the Act to override the covenant’s obligations in land that has been acquired for planning purposes and is developed or used in accordance with that section.

1745 Paragraph 5(3) amends section 203(10) of that Act to ensure that obligations under a conservation covenant owed to the National Trust cannot be overridden under section 203 of that Act.

1746 Paragraph 6 amends section 204 of that Act so that compensation is not available to the beneficiary of an obligation under a conservation covenant under this section of

the Act by virtue of the conservation covenant having been overridden under section 203. This reflects the nature of conservation covenants as distinct from an interest in property and as agreements entered into for the public good.

Neighbourhood Planning Act 2017 (c. 20)

1747 Paragraphs 8 to 12 amend the Neighbourhood Planning Act 2017 in connection with the use, in accordance with section 27 of that Act, of land which an acquiring authority has temporarily possessed. Paragraph 9 amends section 20 of that Act so that a person entitled to the benefit of an obligation under a conservation covenant is to be notified before an authority takes temporary possession of the land to which the obligation relates. Paragraphs 10 and 11 amend section 23 and 27 of that Act so as: (i) to make clear that the acquiring authority is not bound by obligations under a conservation covenant relating to the land by virtue of acquiring a right to use land under section 27 of that Act and that in using land under that section it may cause a person to be in breach of an obligation under a conservation covenant relating to the land; (ii) to provide that a person entitled to the benefit of an obligation under a conservation covenant is not eligible for compensation

under section 23 of that Act; and (iii) to provide that in using land under section 27 of that Act, the acquiring authority may not cause a person to be in breach of an obligation owed to the National Trust under conservation covenants (or use land in such a way that, if a person permitted or suffered such use, that person would be in breach of such an obligation). The relevant provisions of the Neighbourhood Planning Act 2017 are not currently in force.

Schedule 20: Amendment of REACH legislation

Amendment of the REACH Regulation

1748 Paragraph 1 of Schedule 20 gives the Secretary of State the power to amend the Articles of the REACH Regulation, as it applies in the UK. This will, for example, allow the Secretary of State to amend, or add to, the transitional provisions in Title 14A to ensure an effective regulatory transfer of the REACH Regulation into the UK, and facilitate future changes. The provision excludes certain Articles, including those which set out the fundamental aims and principles of REACH.

1749 Any regulations made under this power must be consistent with Article 1 of the REACH Regulation which sets out its aim and scope. The Secretary of State must

publish a statement to explain how this condition is met. Certain protected provisions are excluded from the power to amend the REACH Regulation, except where this is consequential etc. to another amendment. These protected provisions are listed in paragraph 6 of this Schedule. Regulations made under this power are subject to the affirmative procedure.

Amendment of the REACH Enforcement Regulations 2008

1750 Paragraph 2 of Schedule 20 gives the Secretary of State and the Devolved Administrations the power to amend the REACH Enforcement Regulations 2008 (the "REACH Enforcement Regulations"). These Regulations were made under section 2(2) of the European Communities Act 1972. Section 1 of the European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972. This means that there is no longer any power to amend the REACH Enforcement Regulations.

1751 Any regulations made under this power must be necessary or appropriate for, or in connection with, the enforcement of REACH. Regulations may create new criminal offences or extend the scope of existing ones connected to the enforcement of REACH.

Penalties are restricted to the maximum levels that could have been provided for under section 2(2) of the European Communities Act 1972 by virtue of paragraph 1(d) of Schedule 2 to that Act as it applied in the different parts of the UK. Regulations made under this power are subject to the affirmative procedure.

1752 The REACH Regulation and the REACH Enforcement Regulations relate to a mixture of devolved and reserved matters. Under paragraph 2 of the Schedule, a Devolved Administration can only amend the REACH Enforcement Regulations where the provision would be within the competence of the relevant legislature.

Consent of the devolved administrations

1753 Paragraph 3 states that the Secretary of State can only make regulations under this Schedule with the consent of the Devolved Administrations to the extent that the function is within devolved competence.

Requests by devolved administrations for exercise of powers under this Schedule

1754 Paragraph 4 provides for the Devolved Administrations to be able to request that the Secretary of State makes regulations.

Consultation

1755 Paragraph 5 of the Schedule requires the Secretary of State to consult the UK REACH Agency (the Health and Safety Executive) and other people they consider appropriate before exercising these powers. The Secretary of State must also consult people nominated by a Devolved Administration.

The protected provisions

1756 Paragraph 6 lists the protected provisions in the REACH Regulation that cannot be amended under this Schedule (see paragraph 1). These protected provisions relate to the fundamental principles of REACH, the role of the Devolved Administrations, transparency, and collaboration between the Agency and other bodies. The Annexes to the REACH Regulation are also excluded because the REACH Regulation itself contains the necessary powers to amend them.

1757 Schedule 20 extends, and applies, to the whole of the United Kingdom.

Commencement

1758 Part 8 of the Bill (Miscellaneous and General Provisions) will come into force on the day this Bill is passed. Clause 137(2) sets out those provisions in the Bill which will come into force two months after the day this

Bill is passed.

1759 Clause 137(3) sets out those provisions which will come into force on such day as the Secretary of State may by regulations appoint. Corresponding powers are provided for Welsh Minsters, Scottish Ministers and DAERA.

Financial implications of the Bill

1760 Costs from the Environment Bill will include, but are not limited to:

- The establishment and running of the Office for Environmental Protection.
- Additional activities for public bodies, such as local authorities; arms-length bodies (for example, Environment Agency and Natural England); other government departments (for example, additional costs for the justice system and additional responsibilities for policymakers across government); and Defra.
- Additional resources to support the delivery of activities, such as enforcement officers and policymakers.
- Infrastructure and other assets, such as estates costs for the Office for Environmental Protection, and enhanced

IT systems to deliver certain measures.

Parliamentary approval for financial costs or for charges imposed

- The House of Commons passed a money resolution for this Bill on 26 February 2020, to cover: expenditure by the Secretary of State, including in particular the cost of establishing and funding the Office for Environmental Protection (clause 21(1) and paragraph 12 of Schedule 1), and a power to make grants or loans to the operator of an electronic waste tracking system (clause 57(2), inserted section 34CA(11)); and
- increased expenditure under other Acts, arising from the costs to public authorities of functions conferred or imposed on them by virtue of the Bill (for example, local authorities' new duties in relation to separate waste collection under clause 56).

1761 The House of Commons passed a ways and means resolution for this Bill on 26 February 2020, to cover::

- the provisions about producer responsibility for disposal costs, under which producers can be required to make payments in respect of the costs of

disposing of products and materials (clause 50 and Schedule 5);

- a number of provisions allowing fees and charges to be imposed in connection with the exercise of functions (for example, clause 63 extends the Environment Agency's charging powers under section 41 of the Environment Act 1995); and
- charges for biodiversity credits made by the Secretary of State under clause 94 of the Bill.

Compatibility with the European Convention on Human Rights

1762 The government considers that the Environment Bill is compatible with the European Convention on Human Rights (ECHR).

1763 Accordingly, the Secretary of State for Environment, Food and Rural Affairs has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect. The government's ECHR analysis can be found in the memorandum to the Joint Committee on Human Rights. This memorandum is available on the parliament website.

Public Sector Equalities Statement

1764 In relation to the policy which is given effect by the Bill, the Secretary of State for Environment, Food and Rural Affairs has had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.

Related documents

1765 The following documents are relevant to the Bill and can be read at the stated locations:

Draft Bill and pre-legislative scrutiny

- Draft Environment (Governance and Principles) Bill, December 2018.
- Draft Environment (Governance and Principles) Bill Statement of Impacts, December 2018.
- Information paper on the policy statement on Environmental Principles, December 2018.
- Environment (Principles and Governance) Bill: Memorandum from Defra to the Delegated Powers and regulatory Reform Committee, 23 July 2019.
- Draft Environment (Principles and Governance) Bill 2018 policy paper,

updated 23 July 2019.

Pre-legislative scrutiny reports

- Environmental Audit Committee Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill, 24 April 2019.
- Environment, Food and Rural Affairs Committee Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill, 30 April 2019.

Consultations

- *Environmental Principles and Governance after EU Exit – seeking views on the development of an Environmental Principles and Governance Bill*. Duration: 10 May – 2 August 2018. No. of responses: 740 individual responses (plus an additional 176,006 campaign responses). Government response published: 19 December 2018. The consultation and government response can be found at the following hyperlink.
- *Draft Clean Air Strategy – seeking views on the draft Clean Air Strategy which outlines our ambitions relating to reducing air pollution in the round, making our air healthier to breathe,*

protecting nature and boosting the economy. Duration: 22 May – 14 August 2018. No. of responses: 711 responses. Government response published: 14 January 2019. The consultation and government response can be found at the following hyperlink.

- *Net Gain - seeking views on how we can improve the planning system in England to protect the environment (biodiversity net gain) and build places to live and work*. Duration: 2 December 2018 – 10 February 2019. No. of responses: 470 responses. Government response published: 23 July 2019. The consultation and government response can be found at the following hyperlink.
- *Protecting and enhancing England's trees and woodlands - the UK government's proposals to introduce four new measures designed to increase transparency and accountability in the process of felling street trees and to strengthen the Forestry Commission's power to tackle illegal tree felling.* Duration: 30 December 2018 – 28 February 2019. No. of responses: 4,671 responses. Government response published: 15 October 2019. The

consultation and government response can be found at the following hyperlink.

- *Conservation covenants*. Duration: 22 February – 22 March 2019. No of responses 112 responses. Government response published: 23 July 2019. The consultation and government response can be found at the following hyperlink.
- *Consultation on reforming the UK packaging producer responsibility system – seeking views on measures to reduce the amount of unnecessary and difficult to recycle packaging and increase the amount of packaging that can and is recycled, through reforms to the packaging producer responsibility regulations*. Duration: 18 February – 13 May 2019. No. of responses: 712 responses. Government response published: 23 July 2019. The consultation and government response can be found at the following hyperlink.
- *Consultation on consistency in Household and business recycling collections in England*. Duration: 18 February – 13 May 2019. No. of responses: 1,758 responses. Government response published: 23 July 2019. The consultation and

government response can be found at the following hyperlink.

- *Introducing a Deposit Return Scheme (DRS) in England, Wales and Northern Ireland*. Duration: 18 February – 13 May 2019. No. of responses: 1,180 individual responses (plus an additional 207,089 campaign responses). Government response published: 23 July 2019. The consultation and government response can be found at the following hyperlink.
- *Improving our management of water in the environment – seeking views on proposals for better long-term planning for water resource and drainage and modernising water regulation*. Duration: 15 January– 12 March 2019. No. of responses: 298 responses. Government response published: 23 July 2019. The consultation and government response can be found at the following hyperlink.
- *Due diligence on forest risk commodities.* Duration: 25 August – 5 October 2020. No. of responses: 1,213 individual responses (plus an additional 62,506 campaign responses). Government response published: 11 November 2020. The consultation and government response can be found at

the following hyperlink.

- *Draft Policy Statement on Environmental Principles.* Duration: 10 March – 2 June 2021. The consultation can be found at the following hyperlink.
- *Introducing a Deposit Return Scheme in England, Wales and Northern Ireland*. Duration: 24 March – 4 June 2021. The consultation can be found at the following hyperlink.
- *Extended Producer Responsibility for Packaging.* Duration: 24 March – 4 June 2021. The consultation can be found at the following hyperlink.

Technical report

- Air quality: Assessing progress towards WHO guideline levels of PM2.5 in the UK, 23 July 2019.

Policy statement

- Environment Bill 2020 policy statement, updated 21 October 2020.

Policy paper

- Environment Bill – environmental targets policy paper, updated 21 October 2020.

Factsheets

- Environmental governance factsheet (parts 1 and 2), updated October 21 2020.
- Waste and resource efficiency factsheet (part 3), updated 21 October 2020.
- Air quality factsheet (part 4), updated 21 October 2020.
- Water factsheet (part 5), updated 21 October 2020.
- Nature and conservation covenants (part 6 and 7), updated 21 October 2020.

Annex A - Territorial extent and application in the United Kingdom

Clause 136 sets out the territorial extent of the clauses in the Bill. The extent of a Bill is the legal jurisdiction where it forms part of the law. The extent of a Bill can be different from its application. Application refers to where it has practical effect.

Most of the Bill forms part of the law of England and Wales and applies to England. Around half of the Bill's provisions extend and apply to Wales, with a significant number of provisions having Great Britain, UK or England, Wales and Northern Ireland extent. Clauses 47, 58, 60, 64, 66, 70, 85 and Schedule 2 form part of the law of Northern Ireland and apply to Northern Ireland only. Clauses 84 and 89 apply to Wales only.

The following provisions apply to England only, disregarding minor or consequential effects outside England, and, in the view of the UK Government, would be within the legislative competence of Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly for the purposes of EVEL: clauses 1 to 6 (environmental targets); clauses 7 to 14 (environmental improvement plans); clause 15 (environmental monitoring); clauses 16 to 18 (policy statement on environmental principles); clause 20 (reports on international environmental protection legislation); clause 27 (monitoring and reporting on environmental improvement plans and targets); clause 56 (separation of waste); clause 82 (water abstraction: no compensation for certain licence modifications); clause 88 (valuation of other land in drainage district: England); clauses 92 to 94 (biodiversity gain in planning); clauses 95 to 96 (biodiversity objective and reporting); clauses 97 to 101 (local nature recovery strategies); clauses 102 to 104 (conservation); clauses 105 to 106 (tree felling and planting); clauses 108 to 130 (conservation covenants); Schedule 14 (Biodiversity gain as condition of planning permission); Schedule 15 (Controlling the felling of trees in England); Schedule 17 (Discharge or modification of obligations under conservation covenants); Schedule 18 (Application of Part 7 to Crown land); and Schedule 19 (Consequential

amendments relating to Part 7).

The following provisions apply to England and Wales only, disregarding minor or consequential effects outside England and Wales, and, in the view of the UK Government, would be within the legislative competence of Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to public business: clause 59 (hazardous waste: England and Wales); clause 65 (enforcement powers); clause 67 (littering enforcement); clause 68 (fixed penalty notices); clause 69 (regulation of polluting activities); clause 77 (water resources management plans, drought plans and joint proposals); clause 78 (drainage and sewerage management plans); clause 79 (authority's power to require information); clause 81 (electronic service of documents); clause 90 (valuation of agricultural land in drainage district: England and Wales); and Schedule 10 (Enforcement powers).[2]

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[2] References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clauses 1-6 (environmental targets)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 7-14 (environmental improvement plans)	Yes	No	No	No	Yes	Yes	Yes	No
Clause 15 (environmental monitoring)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 16- 18 (Policy statement on environmental principles)	Yes	No	No	No	Yes	Yes	Yes	No

Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 19 (statements about Bills containing new environmental law)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 20 (reports on international environmental protection legislation)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 21-26 (the Office for Environmental Protection)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 27 (monitoring and reporting on environmental improvement plans and targets)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 28-29 (the OEP's scrutiny and advice functions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 30-40 (the OEP's	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
enforcement functions)								
Clauses 41-42 (information)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 43-46 (interpretation of Part 1)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 47 (improving the natural environment: Northern Ireland)	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Clause 48 (the Office for Environmental Protection: Northern Ireland)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Clause 49 (producer responsibility obligations)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Clause 50 (producer responsibility for disposal costs)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
								Ireland)
Clauses 51-52 (resource efficiency information and requirements)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Clause 53 (deposit schemes)	Yes	Yes	No	Yes	N/A	N/A	N/A	Yes (Wales and Northern Ireland)
Clause 54 (charges for single use plastic items)	Yes	Yes	No	Yes	N/A	N/A	N/A	Yes (Wales and Northern Ireland)
Clause 55 (charges for carrier bags)	Yes	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Clause 56 (separation of waste)	Yes	No	No	No	Yes	Yes	Yes	No
Clause 57 (electronic waste tracking: Great Britain)	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (Wales, Scotland)
Clause 58 (electronic waste tracking:	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Northern Ireland)								Ireland)
Clause 59 (hazardous waste: England and Wales)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 60 (hazardous waste: Northern Ireland)	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Clause 61 (transfrontier shipments of waste)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 62 (regulations under the Environmental Protection Act 1990)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland)
Clause 63 (powers to make charging schemes)	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (Wales, Scotland)
Clause 64 (waste charging: Northern	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Ireland)								
Clause 65 (enforcement powers)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 66 (enforcement powers: Northern Ireland)	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Clause 67 (littering enforcement)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 68 (fixed penalty notices)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 69 (regulation of polluting activities)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 70 (waste regulation: amendment of Northern Ireland Order)	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Clause 71 (local air quality management	Yes	In part	In part	No	N/A	N/A	N/A	Yes (Wales, Scotland)

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
framework)								
Clause 72 (smoke control areas: amendments of the Clean Air Act 1993)	Yes	In part	No	No	N/A	N/A	N/A	Yes (Wales)
Clauses 73-76 (environmental recall of motor vehicles etc)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 77 (water resources management plans, drought plans and joint proposals)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 78 (drainage and sewerage management plans)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 79 (authority's power to require information)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 80 (water and	Yes	No	No	No	No	No	No	No

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
sewerage undertakers in England: modifying appointments)								
Clause 81 (electronic service of documents)	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Clause 82 (water abstraction: no compensation for certain licence conditions)	Yes	No	No	No	Yes	Yes	Yes	No
Clause 83 (water quality: powers of Secretary of State)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Clause 84 (water quality: powers of Welsh Ministers)	No	Yes	No	No	N/A	N/A	N/A	Yes (Wales)
Clause 85 (water quality: powers of Northern	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Ireland department)								
Clause 86 (Solway Tweed river basin district: power to transfer functions)	Yes	No	Yes	No	N/A	N/A	N/A	Yes (Scotland)
Clause 87 (water quality: interpretation)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Clause 88 (valuation of other land in drainage district: England)	Yes	No	No	No	Yes	Yes	Yes	No
Clause 89 (valuation of other land in drainage district: Wales)	No	Yes	No	No	N/A	N/A	N/A	Yes (Wales)
Clause 90 (valuation of agricultural land in drainage	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
district: England and Wales)								
Clause 91 (disclosure of Revenue and Customs information)	Yes	Yes	No	No	No	No	No	Yes (Wales)
Clauses 92-94 (biodiversity gain in planning)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 95-96 (biodiversity objective and reporting)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 97-101 (local nature recovery strategies)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 102-104 (conservation)	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 105-106 (tree felling and planting)	Yes	No	No	No	Yes	Yes	Yes	No
Clause 107 (use of forest	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Northern

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
risk commodities in commercial activity)								Ireland)
Clauses 108-130 (conservation covenants)	Yes	No	No	No	Yes	Yes	Yes	No
Clause 131 (amendment of REACH legislation)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Clause 132 (consequential provision)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 133 (regulations)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 134 (Crown application)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 135 (financial provisions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 136 (extent)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 137 (commencement)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 138 (transitional or saving provision)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 139 (short title)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1 — The Office for Environmental Protection	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2 — Improving the natural environment: Northern Ireland	No	No	No	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Schedule 3 — The Office for Environmental Protection: Northern Ireland	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Schedule 4 — Producer	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales,

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
responsibility obligations								Scotland and Northern Ireland
Schedule 5 — Producer responsibility for disposal costs	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Schedule 6 — Resource efficiency information	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Schedule 7 — Resource efficiency requirements	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales, Scotland and Northern Ireland)
Schedule 8 — Deposit schemes	Yes	Yes	No	Yes	N/A	N/A	N/A	Yes (Wales and Northern Ireland)
Schedule 9 — Charges for single use plastic items	Yes	Yes	No	Yes	N/A	N/A	N/A	Yes (Wales and Northern

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
								Ireland)
Schedule 10 — Enforcement powers	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales)
Schedule 11 — Local air quality management framework	Yes	In part	In part	No	N/A	N/A	N/A	Yes (Wales, Scotland)
Schedule 12 — Smoke control in England and Wales	Yes	In part	No	No	N/A	N/A	N/A	Yes (Wales)
Schedule 13 — Modifying water and sewerage undertakers' appointments: procedure for appeals	Yes	No	No	No	No	No	No	No
Schedule 14 — Biodiversity gain as condition of planning permission	Yes	No	No	No	Yes	Yes	Yes	No

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Schedule 15 — Controlling the felling of trees in England	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 16 – Use of forest risk commodities in commercial activity	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Northern Ireland)
Schedule 17 — Discharge or modification of obligations under conservation covenants	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 18 — Application of Part 7 to Crown land	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 19 — Consequential amendments relating to Part 7	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 20 — Amendment	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Wales,

Provision	Extends to England & Wales and applies to England?	Extends to England & Wales and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
of REACH legislation								Scotland and Northern Ireland)

Minor or consequential effects[3]

The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

Minor or consequential effects outside England

Executive and legislative competence in relation to water resources is devolved to the Welsh and Scottish Government. Subsection (2) of clause 82 (water abstraction: no compensation for certain licence modifications) amends section 27 of the

[3] References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Water Act 2003, providing that this section will not apply to licences varied or revoked on or after 1 January 2028 unless the licence applies in relation to Wales. This is because, after 1 January 2028, new section 61ZA of the Water Resources Act 1991 will effectively supersede section 27 of the Water Act 2003 in England. Section 27 of the Water Act 2003 extends and applies to England and Wales and so the amendment has the same extent and application. Subsection (3) of clause 82 amends section Schedule 8 to the Water Act 2014 in relation to the powers under which the relevant Minister may make secondary legislation to regulate the use of water resources. The amendment to Schedule 8 will permit any future regulations relating to water resources to make provision similar to the existing legislation regulating water resources as that legislation has effect when the regulations are made, where it currently provides that regulations can make provision similar to the legislation as it had effect on 14 July 2014. The amendment is intended to ensure that future regulations can make provision similar to new sections 61ZA and 61ZB. Schedule 8 extends and applies to England and Wales and parts of Scotland for specific purposes.[4] The

[4] Schedule 8 to the Water Act 2014 extends to Scotland only so far as required for the purposes of regulations made

amendment to Schedule 8 has the same extent and application. As there are no substantive changes being made to the water resources legislation in Wales or Scotland, this amendment has only minor effect in these nations.

Clause 95 (general duty to conserve and enhance biodiversity) amends section 40 of the Natural Environment and Rural Communities Act 2006. Section 40 (following amendments made by the Environment (Wales) Act 2016) currently extends to England and Wales, and applies to all public bodies carrying out functions in England, and also to HMRC. The amendments to section 40 have the same application as the provision currently has, and therefore apply primarily to England but also to HMRC carrying out functions in England or Wales.

Minor or consequential effects outside England and Wales

Clause 68 amends section 33ZA of the Environmental Protection Act 1990. Section 33ZA extends to England, Wales and Scotland by virtue of regulation 1 of the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. However, section 33ZA only applies where an

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pursuant to section 61(11)(b) of that Act. Such regulations may apply to so much of the River Esk, with its banks and tributary streams up to their sources, as is situated in Scotland.

authorised officer of an English waste collection authority believes an offence has been committed in the area of the authority. English waste collection authority is defined as a waste collection authority whose area is in England (section 33ZA(12)). Section 33ZA therefore extends to but does not apply in Scotland and, as a result, this amendment will have no, or only a minor, effect in Scotland.

Subject matter and legislative competence of devolved legislatures

The subject matter of clauses 1 to 6 (environmental targets); clauses 7 to 14 (environmental improvement plans); clause 15 (environmental monitoring); clauses 16 to 18 (policy statement on environmental principles) clause 20 (reports on international environmental protection legislation); and clause 27 (monitoring and reporting on environmental improvement plans and targets) is within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru. The primary purpose of the clauses relates to the environment, which is within the legislative competence of each of the three devolved legislatures, being not within Schedule 5 to the Scotland Act 1998 and not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); not within Schedules 2 or 3 to the Northern Ireland Act 1998 and not otherwise outside the legislative

competence of the Northern Ireland Assembly (see section 6 of that Act); not a reserved matter listed within Schedule 7A to the Government of Wales Act 2006 and not within an exception listed therein, and not otherwise outside the legislative competence of Senedd Cymru (see section 108A of that Act). In Wales, the Wellbeing of Future Generations (Wales) Act 2015 imposes duties in relation to “sustainable development” and “well-being goals” which have the effect of imposing duties on Welsh public bodies with respect to the environment, together with reporting and monitoring provisions. Section 6 of the Environment (Wales) Act 2016, section 1 of the Nature Conservation (Scotland) Act 2004, and section 1 of the Wildlife and Natural Environment Act (Northern Ireland) 2011 all impose duties on public bodies in respect of the improvement of the environment and biodiversity.

Clause 54 (separation of waste); clause 59 (hazardous waste: England and Wales); clause 65 (enforcement powers) and Schedule 10; clause 67 (littering enforcement); clause 68 (fixed penalty notices); and clause 69 (regulation of polluting activities) relate to waste. These are matters within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru, being matters which are: (i) not excepted or reserved matters within Schedules 2 or 3 of the Northern Ireland Act 1998, (ii) not reserved matters

within Schedule 5 of the Scotland Act 1998, (iii) not reserved matters within Schedule 7A to the Government of Wales Act 2006, and (iv) not otherwise outside the legislative competence of any of those three devolved legislatures.

The subject matter of clause 77 (water resources management plans, drought plans and joint proposals); clause 78 (drainage and sewerage management plans); clause 97 (authority's power to require information); clause 81 (electronic service of documents); and clause 82 (water abstraction: no compensation for certain licence modifications) relate to the water supply and sewerage, abstraction and impounding of water, water resources management, water quality, and the water industry including the regulation of water companies. As subject areas, these matters are within the legislative competence of the Scottish Parliament, Senedd Cymru and Northern Ireland Assembly. In relation to Wales, these matters are not in the list of reserved matters listed within Schedule 7A to the Government of Wales Act 2006 and not within an exception listed therein, and not otherwise outside the legislative competence of the Senedd Cymru (see section 108A of that Act). In relation to Scotland the subject matters are not within Schedule 5 to the Scotland Act 1998 and are not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act). In relation to Northern Ireland, the primary purpose

of the subject matters of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act).

Clauses 88 and 90 (land drainage) relate primarily to the subject matters of flooding and land drainage. These matters are within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the Senedd Cymru, being matters which are: (i) not excepted or reserved matters within Schedules 2 or 3 of the Northern Ireland Act 1998, (ii) not reserved matters within Schedule 5 of the Scotland Act 1998, (iii) not reserved matters within Schedule 7A to the Government of Wales Act 2006, and (iv) not otherwise outside the legislative competence of any of those three devolved legislatures.

Clauses 92 to 94 (biodiversity gain in planning), clauses 95 and 96 (biodiversity objective and reporting) and Schedule 14 (Biodiversity gain as condition of planning permission) relate to nature conservation and town and country planning, while clauses 97 to 101 (local nature recovery strategies), Clauses 102-104 (conservation), clauses 105 and 106 (tree felling and planting), clauses 108 to 130 (conservation covenants) and Schedule 15 (Controlling the felling of trees in England) and Schedules 17 to 19(conservation

covenants) relate to nature conservation and the environment. These are matters within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru, being matters which are: (i) not excepted or reserved matters within Schedules 2 or 3 of the Northern Ireland Act 1998, (ii) not reserved matters within Schedule 5 of the Scotland Act 1998, (iii) not reserved matters within Schedule 7A to the Government of Wales Act 2006, and (iv) not otherwise outside the legislative competence of any of those three devolved legislatures.

ENVIRONMENT BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Environment Bill as introduced in the House of Commons on 12 May 2021 (Bill 3).

Ordered by the House of Commons to be printed, 12 May 2021

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