

**ENVIRONMENT BILL**  
**Supplementary Delegated Powers Memorandum from the Department for the  
Environment, Food and Rural Affairs**

Introduction

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

**After Clause 80 – New Section 141DA of the Water Industry Act 1991 - Reporting on discharges from storm overflows – a power to make exceptions from the new reporting duty on sewerage undertakers**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution Procedure*

Context and purpose

Clause 80 of the Environment Bill introduces several new duties relating to the operation of storm overflows through additions to Part 4 of the Water Industry Act 1991. New section 141DA will add a further duty on sewerage undertakers whose areas are wholly or mainly in England to publish near real-time information on discharges from their storm overflows. Subsection (1) sets out the information to be published by the sewerage undertaker and subsection (2) requires such publication to be in near real-time (within one hour of the occurrence). The power in subsection (5) will enable the Secretary of State to provide in Regulations for exceptions to the duties in subsections (1) and (2).

Justification for taking the power

It will be necessary for the Secretary of State to be able to provide for exceptions to the duties in subsections (1) and (2) of new section 141DA. Discussions with sewerage undertakers may identify circumstances where the application of one or both duties would have little benefit. This might be the case, for example, for storm overflows where there is a very low risk of a discharge occurring. Considerations as to technical feasibility might require a limited exception from the duty in subsection (2). Subsection (6) will require the Secretary of State to consult on the proposed exceptions.

Justification for taking the procedure

Since the power in subsection (5) of new section 141DA would be used to provide for exceptions to the general duties in subsections (1) and (2), the Department considers that the regulations would be of particular interest to Parliament. In consequence, the Department proposes that the regulations be subject to the affirmative resolution procedure in order to provide Parliament with sufficient opportunity for scrutiny and debate.

**After Clause 80 – New Section 141DB of the Water Industry Act 1991 – Monitoring quality of water potentially affected by discharges from storm overflows and sewage disposal works – a power to make provision in connection with a new monitoring duty on sewerage undertakers**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution Procedure*

Context and purpose

Clause 80 of the Environment Bill introduces several new duties relating to the operation of storm overflows through additions to Part 4 of the Water Industry Act 1991. New section 141DB will add a further duty on sewerage undertakers whose areas are wholly or mainly in England to monitor continuously the quality of water upstream and downstream of their storm overflows and sewage disposal works for the range of information specified in subsection (3). Subsection (3)(e) provides a power for the Secretary of State to extend the monitoring duty to additional information specified in regulations.

Subsection (5) provides the Secretary of State with the power to make regulations specifying how the monitoring is to be carried out and providing for the detail of how the resulting information is to be published by sewerage undertakers. The subsection also enables the Secretary of State to provide in Regulations for exceptions to the duty in subsection (1).

Justification for taking the power

It is appropriate that the Secretary of State should be able to provide for exceptions to the duty in subsection (1) of new section 141DB. Discussions with sewerage undertakers may identify circumstances where the application of the duty would have little benefit. This might be the case, for example, for storm overflows where there is clearly a very low risk to water quality. In addition, it will be important to enable additions over time, reflecting changing priorities and scientific advances, to the list of required information set out in subsection (3). The power will not allow for the existing information requirements to be repealed or amended. Requirements as to exactly how the monitoring is to be carried out and the information published are suitable for inclusion in regulations, following consultation and careful consideration. For example, it may be appropriate to include provision specifying maximum distances that monitoring points can be from the asset. Subsection (6) will require the Secretary of State to consult on the proposed regulations.

Justification for taking the procedure

Since the power in subsection (5) of new section 141DB could be used to provide for exceptions to the general duty in subsection (1), the Department considers that the regulations would be of particular interest to Parliament. In consequence, the Department proposes that the regulations be subject to the affirmative resolution procedure in order to provide Parliament with sufficient opportunity for scrutiny and debate.

**Clause 96, new paragraph following paragraph (6) - Biodiversity Gain – a power to increase the period habitat enhancements on biodiversity gain sites must be maintained**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution Procedure*

Context and purpose

Sections 92 to 94 and Schedule 14 of the Bill introduce a biodiversity net gain objective with respect to development subject to requiring planning permission, by inserting section 90A and Schedule 7A into the Town and Country Planning Act 1990. Clause 96 provides for the creation of a biodiversity gain sites register. Paragraphs 2(2) and 10 of new Schedule 7A to the 1990 Act, provides that where a biodiversity gain registered on the biodiversity gain sites register is allocated to a development, that gain counts towards the biodiversity value attributable to that development. Clause 96(2)(b) provides that to be a biodiversity gain site, the habitat enhancement carried out on the site, must be maintained for at least 30 years from the completion of that enhancement. This 30 year period has been the subject of significant interest in the Lords, and as such a duty has now been placed upon the Secretary of State to keep under review the supply of land for registration on the biodiversity gain sites register, and consider if the 30 year maintenance period can be increased without adversely affecting that supply.

Justification for taking the power

Should the Secretary of State determine that the 30 year maintenance period set out in clause 96(2)(b) can be increased without adversely affecting the supply of land for registration, a power is necessary to amend that figure, by increasing it to a period of over 30 years, if this is considered appropriate. This will require habitat enhancements to be subject to ongoing maintenance for a longer period, where appropriate.

Justification for taking the procedure

The Department considers that the negative procedure would give Parliament the right level of scrutiny. The changes will be technical in nature, providing for altering a condition for land being eligible for entry onto the biodiversity gain site register. A negative procedure is consistent with that provided for other technical amendments, in relation to biodiversity net gain, in new Schedule 7A.

**Schedule 14 New Schedule 7A Town and Country Planning Act 1990, paragraph 9(4) - Biodiversity Gain – a power to amend the period onsite biodiversity gain must be maintained for.**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution Procedure*

Context and purpose

Sections 92 to 94 and Schedule 14 of the Bill introduce a biodiversity net gain objective with respect to development subject to requiring planning permission, by inserting section 90A and Schedule 7A into the Town and Country Planning Act 1990. Paragraph 8 and 9 of Schedule 7A set out how the post-development biodiversity value of a site is to be calculated. The biodiversity value attributable to a development is made up of the sum of the site's post-development biodiversity value and offsite biodiversity gains, the latter being either: gain allocated to the development in the biodiversity gain site register provided for in clause 9 of the Bill, or, biodiversity credits provided for in clause 97. Paragraph 9(3) provides that for a habitat enhancement to count towards the post-development biodiversity value of a site, it must be subject to condition that it is maintained for at least 30 years. This 30 year period has been the subject of significant interest in the Lords, and as such a duty has now been placed upon the Secretary of State to keep under review the supply of land for registration on the biodiversity gain sites register, and consider if the 30 year maintenance period can be increased without adversely affecting that supply.

Justification for taking the power

This power complements that to increase the specified 30 year maintenance period in clause 96(2)(b) of the Bill, which applies to biodiversity gain sites to be added to the biodiversity gain site register. If the maintenance requirement for offsite biodiversity gain sites is increased to over 30 years, it is considered appropriate that the minimum maintenance period for onsite habitat enhancements should be increased to a similar figure, in order to ensure equivalence between onsite and offsite gains.

Justification for taking the procedure

The Department considers that the negative procedure would give Parliament the right level of scrutiny. The changes will be technical in nature, providing for altering a condition for land being eligible for counting towards the post-development biodiversity value of a site. A negative procedure is consistent with that provided elsewhere in new Schedule 7A and elsewhere in the 1990 Act.