

# Environment Bill

---

---

## COMMONS INSISTENCE, DISAGREEMENT, AMENDMENTS IN LIEU AND REASONS

---

---

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

---

---

### Clause 24

#### LORDS AMENDMENT 31

**31** Leave out Clause 24 and insert the following new Clause—

**“OEP independence**

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

#### COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

*The Commons disagree to Lords Amendment 31 but propose amendments 31A and 31B as amendments in lieu—*

**31A** Page 14, line 35, leave out subsections (3) and (4)

**31B** Page 14, line 38, at end insert—

- “(6) Before issuing the guidance, the Secretary of State must—
- (a) prepare a draft, and
  - (b) lay the draft before Parliament.
- (7) If before the end of the 21 day period—
- (a) either House of Parliament passes a resolution in respect of the draft guidance, or
  - (b) a committee of either House of Parliament, or a joint committee of both Houses, makes recommendations in respect of the draft guidance,
- the Secretary of State must produce a response and lay it before Parliament.
- (8) The Secretary of State may prepare and lay before Parliament the final guidance, but not before—
- (a) if subsection (7) applies, the day on which the Secretary of State lays the response required by that subsection, or
  - (b) otherwise, the end of the 21 day period.
- (9) The final guidance has effect when it is laid before Parliament.
- (10) The Secretary of State must publish the guidance when it comes into effect.
- (11) The “21 day period” is the period of 21 sitting days beginning with the first sitting day after the day on which the draft guidance is laid under subsection (6).
- (12) “Sitting day” means a day on which both Houses of Parliament sit.
- (13) The Secretary of State may revise the guidance at any time (and subsections (6) to (12) apply in relation to any revised guidance).”

#### LORDS NON-INSISTENCE, DISAGREEMENT AND AMENDMENT IN LIEU

*The Lords do not insist on their Amendment 31, do disagree with the Commons in their Amendments 31A and 31B, and do propose Amendment 31C in lieu—*

**31C** Leave out Clause 24 and insert the following new Clause—

#### “OEP independence

- (1) The OEP has complete discretion in the carrying out of its functions, including in—
  - (a) preparing its enforcement policy,
  - (b) exercising its enforcement functions, and
  - (c) preparing and publishing its budget.
- (2) The Secretary of State may issue guidance to the OEP on the matters listed in section 22(6)(c).
- (3) The OEP must have regard to the guidance in preparing its enforcement policy, unless there are material considerations that indicate otherwise.
- (4) Before issuing the guidance, the Secretary of State must—
  - (a) prepare and consult on a draft,
  - (b) lay the draft before Parliament, and
  - (c) publish a response to the consultation.

- (5) The Secretary of State must publish the guidance when it comes into effect.
- (6) In making or terminating appointments under paragraph 1 and paragraph 5 of Schedule 1, the Secretary of State must obtain the consent of the Environment, Food and Rural Affairs and Environmental Audit Committees of the House of Commons.”

#### COMMONS REASON

*The Commons insist on their Amendments 31A and 31B and disagree to Lords Amendment 31C for the following Reason –*

- 31D** *Because the Bill and Amendments 31A and 31B make appropriate provision in relation to guidance and the independence of the OEP.*

#### Clause 37

#### LORDS AMENDMENT 33

- 33** Page 22, line 23, leave out subsection (8) and insert –

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

#### COMMONS REASON

*The Commons disagree to Lords Amendment 33 for the following Reason –*

- 33A** *Because the circumstances in which the court may grant a remedy on an environmental review should not be altered in the manner proposed.*

#### LORDS NON-INSISTENCE AND AMENDMENT IN LIEU

*The Lords do not insist on their Amendment 33, to which the Commons have disagreed for their Reason 33A, and do propose Amendment 33B in lieu –*

- 33B** Page 22, line 23, leave out subsection (8) and insert –

- “(8) Where the court makes a statement of non-compliance it may grant any remedy that may be granted by it on a judicial review other than damages.
- (8A) In deciding whether to grant such a remedy, the court must have regard to –
  - (a) the nature and circumstances of the non-compliance;
  - (b) any detriment to good administration that would result from granting or failing to grant a remedy;
  - (c) the interests or expectations of persons who would benefit from the grant of a remedy;

- (d) the interests or expectations of persons who have relied on the failure by the public authority to comply with environmental law;
- (e) any other matter that appears to the court to be relevant.”

#### COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

*The Commons disagree to Lords Amendment 33B but propose amendments 33C and 33D as amendments in lieu –*

- 33C** Clause 37, page 22, line 25, leave out from “if” to end of line 28 and insert “Condition A or Condition B is met.
- (8A) Condition A is that the court is satisfied that granting the remedy would not –
    - (a) be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or
    - (b) be detrimental to good administration.
  - (8B) Condition B is that Condition A is not met but the court is satisfied that –
    - (a) granting the remedy is necessary in order to prevent or mitigate serious damage to the natural environment or to human health, and
    - (b) there is an exceptional public interest reason to grant it.”
- 33D** Schedule 3, page 148, line 21, leave out from “if” to end of line 26 and insert “Condition A or Condition B is met.
- (5A) Condition A is that the court is satisfied that granting the remedy would not –
    - (a) be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or
    - (b) be detrimental to good administration.
  - (5B) Condition B is that Condition A is not met but the court is satisfied that –
    - (a) granting the remedy is necessary in order to prevent or mitigate serious damage to the natural environment or to human health, and
    - (b) there is an exceptional public interest reason to grant it.”

## After Clause 78

## LORDS AMENDMENT 45

45 Insert the following new Clause –

**“Storm overflows**

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

**“CHAPTER 4**

## STORM OVERFLOWS

7 **141A Duty on sewerage undertakers to take all reasonable steps to ensure untreated sewage is not discharged from storm overflows**

- (1) A sewerage undertaker must demonstrate improvements in the sewerage systems and progressive reductions in the harm caused by untreated sewage discharges.
- (2) The Secretary of State, the Director and the Environment Agency must exercise their respective functions under this and any other Act to secure compliance with this duty.
- 14

**141B Storm overflow discharge reduction plan**

- (1) The Secretary of State must prepare a plan for the purposes of –
- (a) reducing discharges from the storm overflows of sewerage undertakers whose area is wholly or mainly in England, and
  - (b) reducing the adverse impacts of those discharges.
- (2) The reference in subsection (1)(a) to reducing discharges of sewage includes –
- (a) reducing the frequency and duration of the discharges, and
  - (b) reducing the volume of the discharges.
- (3) The reference in subsection (1)(b) to reducing adverse impacts includes –
- (a) reducing adverse impacts on the environment, and
  - (b) reducing adverse impacts on public health.
- (4) The plan may in particular include proposals for –
- (a) reducing the need for anything to be discharged by the storm overflows;
  - (b) treating sewage that is discharged by the storm overflows;
  - (c) monitoring the quality of watercourses, bodies of water or water in underground strata into which the storm overflows discharge;
  - (d) obtaining information about the operation of the storm overflows.
- (5) When preparing the plan the Secretary of State must consult –
- (a) the Environment Agency,
  - (b) the Authority,
  - (c) the Council,

- (d) Natural England,
  - (e) sewerage undertakers whose area is wholly or mainly in England, or persons representing them, and
  - (f) such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must publish the plan before 1 September 2022.
  - (7) The Secretary of State may at any time revise the plan, having consulted the persons referred to in subsection (5), and must publish any revised version.
  - (8) The plan, and any revised version of it, must be laid before Parliament once it is published.

#### **141C Progress reports on storm overflow discharge reduction plan**

- (1) The Secretary of State must publish reports (“progress reports”) relating to the plan under section 141B.
- (2) A progress report is to contain the Secretary of State’s assessment of—
  - (a) the progress made, during the period to which the report relates, in implementing the proposals in the plan (or any revised version of it), and
  - (b) the effect of that progress on the matters referred to in section 141B(1)(a) and (b).
- (3) The first progress report must relate to the period of three years beginning with the day on which the plan under section 141B is first published.
- (4) Subsequent progress reports must relate to successive periods of five years after the period referred to in subsection (3).
- (5) A progress report must be published within 12 weeks following the last day of the period to which it relates.
- (6) A progress report must be laid before Parliament once it is published.

#### **141D Annual reports on discharges from storm overflows**

- (1) A sewerage undertaker whose area is wholly or mainly in England must publish annual reports in relation to the undertaker’s storm overflows (“storm overflow reports”).
- (2) A storm overflow report must specify, for each of the sewerage undertaker’s storm overflows—
  - (a) the location of the storm overflow;
  - (b) the watercourse, body of water or underground strata into which the storm overflow discharges;
  - (c) the frequency and duration of discharges from the storm overflow in the period to which the report relates;
  - (d) where the information is available, the volume of each discharge in that period;

- (e) information on any investigations that have taken place or improvement works that have been undertaken in relation to the storm overflow during that period.
- (3) Storm overflow reports are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by a sewerage undertaker before 1 April in the year after the calendar year to which it relates.
- (5) A storm overflow report must –
  - (a) be in a form which allows the public readily to understand the information contained in the report, and
  - (b) be published in a way which makes the report readily accessible to the public.
- (6) The duties of a sewerage undertaker under this section are enforceable under section 18 by –
  - (a) the Secretary of State, or
  - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.

#### **141E Environment Agency reports**

- (1) The Environment Agency must publish annual reports in relation to the operation of storm overflows of sewerage undertakers whose area is wholly or mainly in England.
- (2) A report under this section must specify –
  - (a) the location of the storm overflows;
  - (b) the watercourse, body of water or underground strata into which the storm overflows discharge;
  - (c) the frequency and duration of discharges from the storm overflows in the period to which the report relates;
  - (d) where the information is available, the volume of each discharge in that period.
- (3) Reports under this section are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by the Environment Agency –
  - (a) before 1 April in the year after the calendar year to which it relates, and
  - (b) in such manner as the Environment Agency thinks fit.

#### **141F Interpretation of Chapter 4**

- (1) In this Chapter, references to a storm overflow of a sewerage undertaker are to any structure or apparatus –
  - (a) which is comprised in the sewerage system of the sewerage undertaker, and
  - (b) which, when the capacity of other parts of the system downstream or of storage tanks at sewage disposal works is exceeded, relieves them by discharging their excess contents into inland waters, underground strata or the sea.

- (2) References in this Chapter to discharges from a storm overflow do not include discharges occurring as a result of—
  - (a) electrical power failure at sewage disposal works,
  - (b) mechanical breakdown at sewage disposal works,
  - (c) rising main failure, or
  - (d) blockage of any part of the sewerage system downstream of the storm overflow.
- (3) Section 17BA(7) (meaning of sewerage system of a sewerage undertaker) applies for the purposes of subsection (1).”

#### COMMONS AMENDMENT

*The Commons agree with the Lords in their Amendment 45 and propose amendment 45A as an amendment thereto –*

**45A** Leave out lines 7 to 14

#### LORDS AGREEMENT AND AMENDMENT TO COMMONS AMENDMENT

*The Lords do agree with the Commons in their Amendment 45A and do propose Amendment 45B thereto –*

**45B** At end insert “and insert –

**“141A Duty on sewerage undertakers to take all reasonable steps to ensure untreated sewage is not discharged from storm overflows into inland and coastal waters**

- (1) A sewerage undertaker must, as soon as reasonable, take such steps as are necessary to –
  - (a) demonstrate improvement in the performance of sewerage systems, and
  - (b) secure progressive reductions in the harm caused by untreated sewage discharges into inland and coastal waters.
- (2) The Secretary of State, the Director and the Environment Agency must exercise their respective functions under this and any other Act to secure compliance with this duty.”

#### COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

*The Commons disagree to Lords Amendment 45B but propose amendments 45C and 45D as amendments in lieu –*

**45C** After Clause 78, page 73, line 29, insert the following new Clause –

**“Reduction of adverse impact of storm overflows**

In Chapter 4 of Part 4 of the Water Industry Act 1991, after section 141EB insert –

**“141EC Reduction of adverse impact of storm overflows**

- (1) A sewerage undertaker whose area is wholly or mainly in England must secure a progressive reduction in the adverse impact of discharges from the undertaker’s storm overflows.

- (2) The reference in subsection (1) to reducing adverse impacts includes –
  - (a) reducing adverse impacts on the environment, and
  - (b) reducing adverse impacts on public health.
- (3) The duty of a sewerage undertaker under this section is enforceable under section 18 by –
  - (a) the Secretary of State, or
  - (b) the Authority with the consent of or in accordance with a general authorisation given by the Secretary of State.””

- 45D** Clause 139, page 125, line 41, at end insert –  
 “( ) section (*Reduction of adverse impacts of storm overflows*) (reduction of adverse impacts of storm overflows);”

### Schedule 3

#### LORDS AMENDMENT 75

- 75** Page 155, leave out lines 2 to 16 and insert –  
**“24A OEP independence in Northern Ireland**
- (1) The OEP has complete discretion in the carrying out of its functions in Northern Ireland, including in –
    - (a) preparing its enforcement policy,
    - (b) exercising its enforcement functions, and
    - (c) preparing and publishing its budget.
  - (2) In making and terminating appointments under paragraph 2(2B) and paragraph 5(8B) of Schedule 1, the Northern Ireland Department must obtain the consent of the Committee for Agriculture, Environment and Rural Affairs of the Northern Ireland Assembly.”

#### COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

*The Commons disagree to Lords Amendment 75 but propose amendments 75A and 75B as amendments in lieu –*

- 75A** Page 155, leave out lines 12 to 14

- 75B** Page 155, line 16, at end insert –
- “(6) Before issuing the guidance, the Department must –
    - (a) prepare a draft, and
    - (b) lay the draft before the Northern Ireland Assembly.
  - (7) If before the end of the 21 day period the Northern Ireland Assembly passes a resolution in respect of the draft guidance, the Department must produce a response and lay it before the Assembly.
  - (8) The Department may prepare and lay before the Northern Ireland Assembly the final guidance, but not before –
    - (a) if subsection (7) applies, the day on which the Department lays the response required by that subsection, or
    - (b) otherwise, the end of the 21 day period.

- (9) The final guidance has effect when it is laid before the Northern Ireland Assembly.
- (10) The Department must publish the guidance when it comes into effect.
- (11) The “21 day period” is the period of 21 sitting days beginning with the first sitting day after the day on which the draft guidance is laid under subsection (6).
- (12) “Sitting day” means a day on which the Northern Ireland Assembly sits.
- (13) The Department may revise the guidance at any time (and subsections (6) to (12) apply in relation to any revised guidance).”

#### LORDS NON-INSISTENCE, DISAGREEMENT AND AMENDMENT IN LIEU

*The Lords do not insist on their Amendment 75, do disagree with the Commons in their Amendments 75A and 75B and do propose Amendment 75C in lieu –*

**75C** Page 155, leave out lines 2 to 16 and insert –

#### **“24A OEP independence**

- (1) The OEP has complete discretion in the carrying out of its functions in Northern Ireland, including in–
  - (a) preparing its enforcement policy,
  - (b) exercising its enforcement functions, and
  - (c) preparing and publishing its budget.
- (2) The Department may issue guidance to the OEP on the matters listed in section 22(6)(c).
- (3) The OEP must have regard to the guidance in preparing its enforcement policy, unless there are material considerations that indicate otherwise.
- (4) Before issuing the guidance, the Department must–
  - (a) prepare and consult on a draft,
  - (b) lay the draft before the Northern Ireland Assembly, and
  - (c) publish a response to the consultation.
- (5) The Department must publish the guidance when it comes into effect.
- (6) In making or terminating appointments under paragraph 2(2B) and paragraph 5(8)(b) of Schedule 1, the Northern Ireland Department must obtain the consent of the Committee for Agriculture, Environment and Rural Affairs of the Northern Ireland Assembly.”

#### COMMONS REASON

*The Commons insist on their Amendments 75A and 75B and disagree to Lords Amendment 75C for the following Reason –*

**75D** *Because the Bill and Amendments 75A and 75B make appropriate provision in relation to guidance and the independence of the OEP.*



# Environment Bill

---

---

COMMONS INSISTENCE, DISAGREEMENT, AMENDMENTS IN LIEU AND  
REASONS

---

*8 November 2021*

---

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS