

# Levelling-up and Regeneration Bill

---

AMENDMENTS  
TO BE MOVED  
ON REPORT

*[Supplementary to the Fourth Marshalled List]*

**After Clause 95**

LORD STUNELL

After Clause 95, insert the following new Clause –

**“Affordable housing regulations**

- (1) The Secretary of State must, within 6 months of the day on which this Act is passed, make regulations relating to affordable housing.
- (2) The regulations under subsection (1) must define the meaning of an “affordable home” for the purposes of this Act.
- (3) Any definition in regulations made relating to the definition of “affordable home” must include reference to the ability to pay of a household of median income within a relevant local planning authority area.
- (4) The regulations must also disapply Section 43 of the Freedom of Information Act 2000 (commercial interests) in relation to information that may be relevant to the viability of affordable housing in a housing development.”

***Member's explanatory statement***

*This amendment would require the Secretary of State to make regulations relating to affordable housing. Regulations must include a definition of affordable housing that takes into account median household income and would also disapply the exemption from disclosure of relevant information on the grounds of commercial confidentiality in relation to the viability of affordable housing.*

**After Clause 128**

THE EARL OF CAITHNESS

After Clause 128, insert the following new clause –

**“Duties in relation to wildfire risk and mitigation**

- (1) The Secretary of State, working with the Home Office and Department for Environment, Food and Rural Affairs, must produce a national wildfire strategy

and action plan within six months of royal assent, to inform national planning policy and guidance relating to the development or use of land.

- (2) The strategy must include, but not be limited to, an assessment of the risk of wildfire to environmental, economic and social values, and should be reviewed on an annual basis.
- (3) Each local planning authority in England, in conjunction with the Fire & Rescue Services, must produce a wildfire risk assessment.
- (4) The wildfire risk assessment under subsection (3) should include—
  - (a) a map identifying the areas of current risk produced in accordance with the UK Fire Rating Danger System and the location of risk reduction zones,
  - (b) the actions to be taken to mitigate risk in the areas identified, including but not limited to fuel management or vegetation change and public education,
  - (c) guidance to local communities on how to improve the resilience of their homes and communities.
- (5) When considering an application for planning permission, the relevant planning authority must have regard to the wildfire risk assessment for that authority area and the design of the building/properties, the layout of the buildings, their interaction with the landscape and the provision of risk reduction measures.”

#### **Clause 158**

BARONESS SCOTT OF BYBROOK

Clause 158, page 184, line 21, at end insert—

- “(1A) In carrying out the duty under subsection (1), a sewerage undertaker must consider whether nature-based solutions, technologies and facilities relating to sewerage and water could be used to meet the standard.”

***Member's explanatory statement***

*This amendment requires sewerage undertakers to consider using nature-based solutions in the course of meeting the nutrient pollution standard.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 184, line 32, leave out “Sensitive” and insert “Nutrient affected and sensitive”

***Member's explanatory statement***

*This amendment is consequential on the second amendment in my name to clause 158 at page 184, line 32.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 184, line 32, at end insert –

“(A1) Where the Secretary of State considers that a habitats site that is wholly or partly in England is in an unfavourable condition by virtue of pollution from nutrients in water of any kind, the Secretary of State must designate the catchment area for the habitats site as a nutrient affected catchment area.”

***Member's explanatory statement***

*This amendment requires the Secretary of State to designate the catchment areas for habitats sites in an unfavourable condition due to nutrient pollution as “nutrient affected catchment areas”.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 184, line 35, after “nutrients” insert “in water”

***Member's explanatory statement***

*This amendment clarifies that the nutrients comprising nitrogen or compounds of nitrogen must be in water.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 185, line 1, after “nutrients” insert “in water”

***Member's explanatory statement***

*This amendment clarifies that the nutrients comprising phosphorus or compounds of phosphorus must be in water.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 185, line 6, after “pollution” insert “from nutrients in water of any kind, or”

***Member's explanatory statement***

*This amendment is consequential on the second amendment in my name to clause 158 at page 184, line 32.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 185, line 8, at end insert “or

(c) whether to exercise the power in subsection (4)(e),”

***Member's explanatory statement***

*This amendment is consequential on the amendment to clause 158 at page 185, line 20.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 185, line 11, at end insert –

- “(3A) A designation under subsection (A1) –
- (a) must be in writing,
  - (b) must be published as soon as practicable after being made, and
  - (c) takes effect –
    - (i) on the day specified in the designation, or
    - (ii) if none is specified, on the day on which it is made.”

***Member's explanatory statement***

*This amendment imposes procedural requirements in relation to the duty created by the second amendment in my name to clause 158 at page 184, line 32.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 185, line 20, at end insert “, and

- (e) may specify the concentration that applies to a plant (which discharges into the catchment area) in relation to a nutrient pollution standard instead of the standard concentration.”

***Member's explanatory statement***

*This amendment allows the Secretary of State to specify the maximum permissible concentration of nitrogen or phosphorus in treated effluent discharged by a plant (instead of the concentration specified in section 96F).*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 185, line 22, at end insert –

- “(5A) Before specifying a concentration under subsection (4)(e), the Secretary of State must consult the Environment Agency.
- (5B) A concentration specified under subsection (4)(e) ceases to have effect if, after the day on which the designation is made, the plant becomes an exempt plant.”

***Member's explanatory statement***

*This amendment deals with procedural matters related to the power created by the amendment to clause 158 at page 185, line 20.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 185, line 25, after “subsection” insert “(A1),”

***Member's explanatory statement***

*This amendment is consequential on the second amendment in my name to clause 158 at page 184, line 32.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 186, line 13, at end insert –

- “(4A) A designation under subsection (2) may specify the concentration that applies to a plant in relation to a nutrient pollution standard instead of the standard concentration.
- (4B) Before specifying a concentration under subsection (4A), the Secretary of State must consult the Environment Agency.
- (4C) A concentration specified under subsection (4A) ceases to have effect if, after the day on which the designation is made, the plant again becomes an exempt plant.”

***Member's explanatory statement***

*This amendment provides a power equivalent to that created by the amendment to clause 158 at page 185, line 20, for cases where (by virtue of a designation made by the Secretary of State) an exempt plant later becomes subject to the nutrient pollution standard.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 186, line 17, leave out “Subsection (7) applies” and insert “Subsections (7) and (7A) apply”

***Member's explanatory statement***

*This amendment is consequential on the amendment to clause 158 at page 186, line 25.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 186, line 25, at end insert –

- “(7A) The regulations may provide for the Secretary of State to specify the concentration that applies to a plant that ceases, by virtue of the regulations, to be an exempt plant in relation to a nutrient pollution standard instead of the standard concentration; and, if such provision is made, the regulations must –
- (a) require that the Secretary of State consult the Environment Agency before specifying a concentration;
  - (b) provide for any specified concentration to cease to have effect if, after the day on which the plant ceases to be an exempt plant, the plant again becomes an exempt plant.”

***Member's explanatory statement***

*This amendment provides an enabling power equivalent to the power created by the amendment to clause 158 at page 185, line 20, for cases where (by virtue of regulations) an exempt plant later becomes subject to the nutrient pollution standard*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 186, line 33, at end insert –

“(10) References in this section to the designation of an associated catchment area are to its designation as a sensitive catchment area.”

***Member's explanatory statement***

*This amendment, which is consequential on the second amendment in my name to clause 158 at page 188, line 22, clarifies the meaning of existing references to the designation of catchment areas.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 186, line 36, after “(2)” insert “or (2A)”

***Member's explanatory statement***

*This amendment is consequential on the amendment to clause 158 at page 187, line 10.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 187, line 10, at end insert –

“(2A) Where the associated catchment area has ceased to be a catchment permitting area and a date has been specified under section 96FB(4)(c), that date is the upgrade date.”

***Member's explanatory statement***

*This amendment provides for an alternative upgrade date where the sensitive catchment area has also been designated as a catchment permitting area (see the second amendment in my name to clause 158 at page 188, line 22) and that designation is later revoked.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 187, line 12, at end insert –

“(4) References in this section to the designation of an associated catchment area are to its designation as a sensitive catchment area.”

***Member's explanatory statement***

*This amendment, which is consequential on the second amendment in my name to clause 158 at page 188, line 22, clarifies the meaning of existing references to the designation of catchment areas.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 187, line 15, leave out from “if” to end of line 16 and insert “ –

- (a) where the associated catchment area is not a catchment permitting area (see section 96FA), the concentration of total nitrogen in treated effluent that the plant discharges is not more than –

- (i) 10 mg/l, or
  - (ii) where a different concentration applies to the plant under section 96C(4)(e) or 96D(4A) or by virtue of regulations made under section 96D(7A), that concentration;
- (b) where the associated catchment area is a catchment permitting area, the sewerage undertaker is complying with any condition in the environmental permit for the plant imposed in pursuance of section 96FA(3)(b)."

***Member's explanatory statement***

*This amendment provides for the nutrient pollution standard to be met through (i) the concentration specified under the powers created by the amendments to clause 158 at page 185, line 20, page 186, line 13, and page 186, line 25 or (ii) compliance with conditions imposed under provision inserted by the second amendment in my name to clause 158 at page 188, line 22.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 187, line 18, leave out from "if" to end of line 19 and insert "—

- (a) where the associated catchment area is not a catchment permitting area, the concentration of total phosphorus in treated effluent that the plant discharges is not more than—
  - (i) 0.25 mg/l, or
  - (ii) where a different concentration applies to the plant under section 96C(4)(e) or 96D(4A) or by virtue of regulations made under section 96D(7A), that concentration;
- (b) where the associated catchment area is a catchment permitting area, the sewerage undertaker is complying with any condition in the environmental permit for the plant imposed in pursuance of section 96FA(3)(b)."

***Member's explanatory statement***

*This amendment provides for the nutrient pollution standard to be met through (i) the concentration specified under the powers created by the amendments to clause 158 at page 185, line 20, page 186, line 13, and page 186, line 25 or (ii) compliance with conditions imposed under provision inserted by the second amendment in my name to clause 158 at page 188, line 22.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 188, line 19, at end insert—

- "(ca) make provision in relation to section 96FA, including—
- (i) the determination of compliance with conditions in environmental permits imposed in pursuance of section 96FA(3)(b);
  - (ii) in connection with any kind of plant;"

***Member's explanatory statement***

*This amendment provides for regulations under the new section 96F(5) of the Water Industry Act 1991 (determination of nutrient levels in treated effluent) to apply in connection with the provision inserted by the second amendment in my name to clause 158 at page 188, line 22.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 188, line 22, at end insert –

- “(e) make different provision for different purposes or different areas (including different plants within an area).”

*Member's explanatory statement*

*This amendment clarifies that regulations under the new section 96F(5) of the Water Industry Act 1991 may make different provision for different areas, plants or purposes.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 188, line 22, at end insert –

**“96FA Nutrient pollution standards determined through environmental permitting**

- (1) The Secretary of State may designate a sensitive catchment area as a catchment permitting area.
- (2) In determining whether to make a designation under subsection (1) or to revoke such a designation under section 96FB(3)(c), the Secretary of State may take into account, in particular, advice from, or guidance published by, the Environment Agency or Natural England.
- (3) Where the Secretary of State makes a designation under subsection (1), the Environment Agency must –
  - (a) review the environmental permits for the plants that discharge treated effluent into the catchment permitting area that are –
    - (i) nutrient significant plants, and
    - (ii) such other plants that the Environment Agency considers appropriate (including such plants within an area that may be determined by the Environment Agency), and
  - (b) impose conditions on those permits relating to nutrients in treated effluent discharged by those plants –
    - (i) under Chapter 3 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016, and
    - (ii) for the relevant purpose.
- (4) The “relevant purpose” is ensuring that, on and after the applicable date, the overall effect on the habitats site associated with the catchment permitting area of nutrients in treated effluent discharged by all the plants that discharge treated effluent into the catchment permitting area is less significant or the same as the overall effect on the site of nutrients in treated effluent that would be discharged by those plants if –
  - (a) the standard concentration applied to nutrient significant plants, and
  - (b) the nutrient significant plants were (on that basis) meeting the nutrient pollution standard on and after the applicable date.

- (5) For that purpose, a condition imposed on an environmental permit in pursuance of subsection (3)(b) may, in particular –
  - (a) require, or have the effect of requiring, that the concentration of nutrients in treated effluent discharged by a plant is higher or lower than, or equal to, the standard concentration;
  - (b) relate to any or all of the plants mentioned in subsection (3)(a), including the concentration of nutrients in treated effluent discharged by those plants.
- (6) In subsection (4) –
  - (a) the “applicable date” means –
    - (i) where the designation under section 96C(1) or (2) of the area that is the catchment permitting area takes effect during the initial period, 1 April 2030, or
    - (ii) where that designation takes effect after the initial period, the date specified under section 96C(4)(d) in that designation;
  - (b) a habitats site is “associated” with a catchment permitting area if water released into the area would drain into the site.
- (7) The duty in subsection (3) applies in relation to the grant of an environmental permit for a plant that discharges (or will discharge) treated effluent into the catchment permitting area as if –
  - (a) paragraph (a) were omitted, and
  - (b) in paragraph (b) – for “those permits” there were substituted “the permit”; for “those plants” there were substituted “the plant”; for “Chapter 3” there were substituted “Chapter 2”.
- (8) It is for the Environment Agency to determine the overall effect on a habitats site of nutrients in treated effluent.
- (9) Regulations made by the Secretary of State may specify how such determinations are to be made.
- (10) In this section “nutrients”, in relation to an area designated under –
  - (a) section 96C(1), means nutrients in water comprising nitrogen or compounds of nitrogen;
  - (b) section 96C(2), means nutrients in water comprising phosphorus or compounds of phosphorus.

#### **96FB Section 96FA: procedure and revocations**

- (1) A designation under section 96FA(1) or revocation of such a designation under subsection (3)(c) –
  - (a) must be in writing,
  - (b) must be published as soon as practicable after being made, and
  - (c) takes effect in accordance with subsection (3) or (4) (as appropriate).
- (2) A designation under section 96FA(1) may be made at the same time, or at any time after the time, that the designation under section 96C(1) or (2) of the area as a sensitive catchment area is made.

- (3) A designation under section 96FA(1) –
- (a) if made before the time that the designation under section 96C(1) or (2) takes effect, takes effect at the same time as that designation;
  - (b) if made after the time that the designation under section 96C(1) or (2) takes effect, takes effect on the day specified in it;
  - (c) may be revoked.
- (4) A revocation under subsection (3)(c) –
- (a) takes effect –
    - (i) on the day specified in the revocation, or
    - (ii) if none is specified, on the day on which it is made;
  - (b) has no effect in relation to the designation of the area under section 96C(A1), (1) or (2);
  - (c) may specify the upgrade date that is to apply in relation to nutrient significant plants (see section 96E(2A)).
- (5) In determining whether an upgrade date should be specified under subsection (4)(c), the Secretary of State may take into account, in particular, advice from, or guidance published by, Natural England or the Environment Agency.”

***Member's explanatory statement***

*This amendment allows for a catchment area to be designated as a catchment permitting area. Compliance with the nutrient pollution standard will be determined through the collective performance of all plants that discharge into the area.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 188, line 23, leave out “sensitive”

***Member's explanatory statement***

*This amendment is consequential on the second amendment in my name to clause 158 at page 184, line 32.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 188, line 26, at end insert –

“(za) all the nutrient affected catchment areas,”

***Member's explanatory statement***

*This amendment requires all nutrient affected catchment areas (designated under the duty created by the second amendment in my name to clause 158 at page 184, line 32) to be displayed on a map maintained by the Secretary of State.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 188, line 30, before “sensitive” insert “nutrient affected and”

**Member's explanatory statement**

*This amendment is consequential on the second amendment in my name to clause 158 at page 184, line 32.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 189, line 1, leave out “the figure specified in section 96F(1) or (2)” and insert “where the associated catchment area for a plant is not a catchment permitting area, the figure specified in section 96F(1)(a)(i) or (2)(a)(i), under section 96C(4)(e) or 96D(4A) or by virtue of regulations made under section 96D(7A)”

**Member's explanatory statement**

*This amendment is consequential on the amendments to clause 158 at page 185, line 20, page 186, line 13, and page 186, line 25.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 189, line 4, leave out sub-paragraph (iv)

**Member's explanatory statement**

*This amendment is consequential on the amendment that substitutes Schedule 13.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 189, line 11, at end insert –

“(c) all catchment permitting areas.”

**Member's explanatory statement**

*This amendment is consequential on the second amendment in my name to clause 158 at page 188, line 22.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 189, line 36, after “96B” insert “or 96FA”

**Member's explanatory statement**

*This amendment is consequential on the second amendment in my name to clause 158 at page 188, line 22.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 189, line 43, leave out “that section” and insert “those sections”

**Member's explanatory statement**

*This amendment is consequential on the second amendment in my name to clause 158 at page 188, line 22.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 190, line 20, leave out “96F(1)” and insert “96F(1)(a)(i)”

***Member's explanatory statement***

*This amendment is consequential on the amendments to clause 158 at page 185, line 20, page 186, line 13, and page 186, line 25.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 190, line 20, leave out “lower” and insert “different”

***Member's explanatory statement***

*This amendment allows for section 96F(1) to be amended to specify a different nutrient concentration.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 190, line 22, leave out “96F(2)” and insert “96F(2)(a)(i)”

***Member's explanatory statement***

*This amendment is consequential on the amendments to clause 158 at page 185, line 20, page 186, line 13, and page 186, line 25.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 190, line 22, leave out “lower” and insert “different”

***Member's explanatory statement***

*This amendment allows for section 96F(2) to be amended to specify a different nutrient concentration.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 190, line 27, leave out from “apply” to “which” and insert “for different purposes or different areas (including different plants within an area), the regulations may amend section 96F(1)(a)(i) or (2)(a)(i) to specify those concentrations and the purposes or areas for (or plants within an area to)”

***Member's explanatory statement***

*This amendment clarifies that regulations under the new section 96I(4) of the Water Industry Act 1991 may make different provision for different areas, plants or purposes.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 190, line 38, leave out “and 96K” and insert “, 96K and 96L”

**Member's explanatory statement**

*This amendment is consequential on the amendment to clause 158 at page 192, line 33.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 190, line 39, leave out “and 96K” and insert “, 96K and 96L”

**Member's explanatory statement**

*This amendment is consequential on the amendment to clause 158 at page 192, line 33.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 191, line 10, at end insert –

““catchment permitting area” means a sensitive catchment area designated under section 96FA(1) for the time being;

“environmental permit” means a permit granted under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016; and a reference to a condition imposed on such a permit is to be construed in accordance with those regulations;”

**Member's explanatory statement**

*This amendment defines terms introduced by the second amendment in my name to clause 158 at page 188, line 22.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 191, line 31, at end insert –

““nutrient affected catchment area” means an area designated under section 96C(A1);”

**Member's explanatory statement**

*This amendment is consequential on the second amendment in my name to clause 158 at page 184, line 32.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 192, line 11, at end insert –

““standard concentration”, in relation to the nutrient pollution standard that applies to a plant, means the concentration specified in section 96F(1)(a)(i) or (2)(a)(i) on the date that the designation of the associated catchment area as a sensitive catchment area takes effect;”

**Member's explanatory statement**

*This amendment defines a term introduced by the amendment to clause 158 at page 185, line 20.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 192, line 30, leave out “96F(1) or (2)” and insert “section 96F(1) or (2) or section 96FA(4)”

*Member's explanatory statement*

*This amendment is consequential on the second amendment in my name to clause 158 at page 188, line 22.*

## BARONESS SCOTT OF BYBROOK

Clause 158, page 192, line 32, at end insert –

**“96L Setting and enforcing nutrient pollution standards**

- (1) The Secretary of State may by regulations make provision about the setting and enforcing of nutrient pollution standards.
- (2) The Secretary of State may only exercise the power under subsection (1) if the Secretary of State considers that the provisions about the setting and enforcing of nutrient pollution standards will be at least as effective as the provision already in force under sections 96B to 96K, the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 810/2015) or this section as a result of the exercise of this power, including in relation to –
  - (a) overall environmental protection (within the meaning of section 45 of the Environment Act 2021),
  - (b) nutrient pollution levels discharged by plants or across catchment areas,
  - (c) enforcement, or
  - (d) costs.
- (3) The regulations may, in particular –
  - (a) amend, repeal, revoke or otherwise modify –
    - (i) sections 96B to 96K,
    - (ii) the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, or
    - (iii) provision made under this section;
  - (b) provide for a sewerage undertaker’s compliance with the duty under section 96B (or an equivalent) to be determined by reference to matters other than the concentration of nitrogen or phosphorous in treated effluent discharged by a plant;
  - (c) include provision applying or corresponding to any provision in sections 96B to 96K (with or without modifications);
  - (d) include provision about the establishment of schemes involving sewerage undertakers and others for the purpose of encouraging or requiring sewerage undertakers to arrange or contribute to action in respect of the effect of nitrogen or phosphorous (from any source) on a habitats site;
  - (e) make different provision for different purposes or different areas.”

***Member's explanatory statement***

*This amendment confers a power on the Secretary of State to make provision about the setting and enforcing of nutrient pollution standards.*

BARONESS SCOTT OF BYBROOK

Clause 158, page 192, line 34, leave out “96I,” and insert “96I, 96L,”

***Member's explanatory statement***

*This amendment requires that all regulations under the new section 96L of the Water Industry Act (inserted by the amendment to clause 158 at page 192, line 33) are subject to the affirmative procedure.*

**Clause 159**

BARONESS SCOTT OF BYBROOK

Clause 159, page 193, line 3, leave out from the first “to” to end of line 4 and insert “make provision about the effect of nutrient pollution in waste water in relation to certain duties and decisions under those Regulations.”

***Member's explanatory statement***

*This amendment, which is consequential on the amendment that substitutes Schedule 13, revises the description of the provision made by Schedule 13.*

**After Clause 159**

BARONESS SCOTT OF BYBROOK

After Clause 159, insert the following new Clause –

**“159A Regulations: nutrients in water in England**

- (1) The Secretary of State may by regulations make provision about the operation of any relevant enactment in connection with the effect of nutrients in water that could affect a habitats site connected to a nutrient affected catchment area.
- (2) The regulations may make any provision which the Secretary of State considers appropriate, including provision that –
  - (a) disapplies or modifies, in relation to a relevant enactment, any effect of nutrients in water;
  - (b) confers, removes or otherwise modifies a function (including a function involving the exercise of a discretion) under or by virtue of a relevant enactment;
  - (c) affects how such a function is exercised, including the extent to which (if any) the effect of nutrients in water is taken, or to be taken, into account;

- (d) provides for an obligation under or by virtue of a relevant enactment to be treated as discharged (in circumstances where, but for the provision, the obligation may not have been discharged);
  - (e) amends, repeals, revokes or otherwise modifies any provision of a relevant enactment.
- (3) A “relevant enactment” means –
- (a) an enactment comprised in or made under an Act of Parliament, or
  - (b) retained direct EU legislation,
- so far as it relates to the environment, planning or development in England.
- (4) The enactments referred to in subsection (3)(a) do not include –
- (a) this section;
  - (b) Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012).
- (5) Neither regulation 9 nor 16A of the Conservation of Habitats and Species Regulations 2017 applies in relation to this section.
- (6) In subsection (1) “habitats site” and “nutrient affected catchment area” have the meaning given in section 96J(2) of the Water Industry Act 1991; and a habitats site is connected to a nutrient affected catchment area if water released into the catchment area would drain into the site.
- (7) In this section “nutrients” means nutrients of any kind.
- (8) The power under subsection (1) may not be exercised after 31 March 2030.”

***Member's explanatory statement***

*This amendment confers a power on the Secretary of State to make regulations affecting the operation, in connection with the effect of nutrients in water, of enactments concerned with the environment, planning or development in England.*

**Schedule 13**

BARONESS SCOTT OF BYBROOK

Leave out Schedule 13 and insert the following new Schedule –

“SCHEDULE 13

Section 159

AMENDMENTS OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017:  
EFFECT OF NUTRIENT POLLUTION IN WASTE WATER

**PART 1**

INTRODUCTORY

- 1 The Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) are amended as set out in this Schedule.

**PART 2**

## PLANNING

- 2 Chapter 2 of Part 6 (assessment of plans and projects: planning) is amended as follows.
- 3 In regulation 70 (grant of planning permission), after paragraph (4) insert—  
“(5) See regulation 85A for provision about the effect of nutrient pollution in waste water.”
- 4 In regulation 71 (planning permission: duty to review), after paragraph (9) insert—  
“(10) See regulation 85A for provision about the effect of nutrient pollution in waste water.”
- 5 In regulation 77 (general development orders: approval of local planning authority), after paragraph (7) insert—  
“(8) See regulation 85B for provision about the effect of nutrient pollution in waste water.”
- 6 In regulation 79 (special development orders), after paragraph (5) insert—  
“(6) See regulation 85A for provision about the effect of nutrient pollution in waste water.”
- 7 In regulation 80 (local development orders), after paragraph (5) insert—  
“(6) See regulation 85A for provision about the effect of nutrient pollution in waste water.”
- 8 In regulation 81 (neighbourhood development orders), after paragraph (5) insert—  
“(5A) See regulation 85A for provision about the effect of nutrient pollution in waste water.”
- 9 In regulation 82 (simplified planning zones), after paragraph (6) insert—  
“(7) See regulation 85A for provision about the effect of nutrient pollution in waste water.”
- 10 In regulation 83 (enterprise zones), after paragraph (6) insert—  
“(7) See regulation 85A for provision about the effect of nutrient pollution in waste water.”
- 11 After regulation 85 insert—

**“Decisions where nutrient pollution in waste water is relevant: general**

**85A—(1)** This regulation applies where—

- (a) a competent authority makes a relevant decision,
- (b) the potential development is development in England,

- (c) urban waste water from any potential development could affect a relevant site, and
  - (d) that waste water would be dealt with—
    - (i) under an environmental permit granted under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016, or
    - (ii) in accordance with standard rules published under Chapter 4 of Part 2 of those Regulations.
- (2) When making the relevant decision, the competent authority must assume that nutrients in urban waste water from the potential development, whether alone or in combination with other factors, will not adversely affect the relevant site.
- (3) Accordingly, a potentially adverse effect on a relevant site caused by nutrients in urban waste water, whether alone or in combination with other factors, is not a ground for the competent authority to determine that—
- (a) an appropriate assessment is required by regulation 63(1) or 65(2), or
  - (b) the potential development will adversely affect the integrity of the relevant site or otherwise have negative implications for the site.
- (4) The assumption in paragraph (2) must be made even if a finding (however described) to the contrary is made—
- (a) in the conclusions of an appropriate assessment, carried out in accordance with regulation 63(1) or 65(2) and despite paragraph (3)(a),
  - (b) in representations made by the appropriate nature conservation body, in accordance with regulation 63(3), or
  - (c) by any other person.
- (5) A competent authority is not to be regarded as having failed to comply with a duty imposed by any provision of these Regulations or another enactment because it has acted in accordance with this regulation.
- (6) In this regulation—
- “potential development”, in relation to a relevant decision, means development—
- (a) that could be carried out by virtue of the planning permission, development order or scheme to which the decision relates, or
  - (b) to which the decision otherwise relates;
- “relevant decision” means—
- (a) where any of the following provides that the assessment provisions apply in relation to doing a thing, the decision whether or not to do it—
    - (i) regulation 70 (grant of planning permission),
    - (ii) regulation 79 (special development orders),
    - (iii) regulation 80 (local development orders),
    - (iv) regulation 81 (neighbourhood development orders),

- (v) regulation 82 (simplified planning zones), or
  - (vi) regulation 83 (enterprise zones),
- (b) where any of the following provides that the review provisions apply in relation to a matter, a decision under regulation 65(1)(b) on a review of the matter –
- (i) regulation 71 (planning permission: duty to review),
  - (ii) regulation 79 (special development orders),
  - (iii) regulation 80 (local development orders),
  - (iv) regulation 81 (neighbourhood development orders),
  - (v) regulation 82 (simplified planning zones), or
  - (vi) regulation 83 (enterprise zones);
- but this does not apply to a matter mentioned in regulation 71(4) (any review of which would be conducted in accordance with another Chapter),
- (c) a decision on an application for a consent, agreement or approval required by a condition or limitation attached to a planning permission, or specified in an order, granted under Part 3, 7 or 13 of the Town and Country Planning Act 1990,
  - (d) a decision whether to grant a reserved matters approval in accordance with section 92(1) of that Act, or
  - (e) a decision whether to approve a biodiversity gain plan under paragraph 15 (approval of biodiversity gain plan) of Schedule 7A to that Act.

**Decisions where nutrient pollution in waste water is relevant: general development orders**

**85B.**—(1) Paragraph (2) applies where –

- (a) a local planning authority (within the meaning given by regulation 78(1)) makes a decision on an application under regulation 77 (general development orders: approval of local planning authority) for approval as mentioned in regulation 75 relating to proposed development in England,
- (b) urban waste water from the proposed development could affect a relevant site, and
- (c) that waste water would be dealt with –
  - (i) under an environmental permit granted under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016, or
  - (ii) in accordance with standard rules published under Chapter 4 of Part 2 of those Regulations.

(2) When making the decision, the competent authority must assume that nutrients in urban waste water from the proposed development, whether alone or in combination with other factors, will not adversely affect the relevant site.

(3) Accordingly, a potentially adverse effect on a relevant site caused by nutrients in urban waste water, whether alone or in combination with other factors, is not a ground for the competent authority to determine that –

- (a) an appropriate assessment is required by regulation 77(6), or
- (b) the proposed development will adversely affect the integrity of the relevant site or otherwise have negative implications for the site.

(4) The assumption in paragraph (2) must be made even if a finding (however described) to the contrary is made –

- (a) in the conclusions of an appropriate assessment, carried out in accordance with regulation 77(6) and despite paragraph (3)(a),
- (b) in the opinion provided by the appropriate nature conservation body, in accordance with regulation 76(4), or
- (c) by any other person.

(5) A competent authority is not to be regarded as having failed to comply with a duty imposed by any provision of these Regulations or another enactment because it has acted in accordance with this regulation.

#### **Regulations 85A and 85B: interpretation**

85C. – (1) In regulations 85A and 85B –

“nutrients” means nutrients –

- (a) comprising nitrogen or phosphorus, or
- (b) comprising compounds of nitrogen or phosphorus;

“relevant site” means a habitats site connected to a nutrient affected catchment area;

“urban waste water” has the meaning given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 (S.I. 1994/2841).

(2) In the definition of “relevant site” in paragraph (1) “habitats site” and “nutrient affected catchment area” have the meaning given in section 96J(2) of the Water Industry Act 1991; and a habitats site is connected to a nutrient affected catchment area if water released into the catchment area would drain into the site.”

### **PART 3**

#### LAND USE PLANS

12 Chapter 8 of Part 6 (assessment of plans and projects: land use plans) is amended as follows.

13 In regulation 105 (assessment of implications for European sites and European offshore marine sites), after paragraph (6) insert –

“(7) See regulation 110A for provision about the effect of nutrient pollution in waste water.”

- 14 In regulation 106 (assessment of implications for European site: neighbourhood development plans), after paragraph (3) insert –  
“(3A) See regulation 110A for provision about the effect of nutrient pollution in waste water.”
- 15 In regulation 110 (national policy statements), in paragraph (3)(a), for “and 108” substitute “, 108 and 110A”.
- 16 After regulation 110 insert –

**“Assessments under this Chapter: decisions where nutrient pollution in waste water is relevant**

**110A** – (1) Paragraph (2) applies where –

- (a) a plan-making authority makes a relevant decision in relation to a land use plan relating to an area in England,
- (b) urban waste water from the area to which the plan relates could affect a relevant site, and
- (c) that waste water could be dealt with –
  - (i) under an environmental permit granted under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016, or
  - (ii) in accordance with standard rules published under Chapter 4 of Part 2 of those Regulations.

(2) When making the relevant decision, the competent authority must assume that nutrients in urban waste water from the area to which the plan relates, whether alone or in combination with other factors, will not adversely affect the relevant site.

(3) Accordingly, a potentially adverse effect on a relevant site caused by nutrients in urban waste water, whether alone or in combination with other factors, is not a ground for the competent authority to determine that –

- (a) an appropriate assessment is required by regulation 105(1) or 106(3), or
- (b) the proposed use of the land will adversely affect the integrity of the relevant site or otherwise have negative implications for the site.

(4) The assumption in paragraph (2) must be made even if a finding (however described) to the contrary is made –

- (a) in the conclusions of an appropriate assessment, carried out in accordance with regulation 105(1) or 106(3) and despite paragraph (3)(a),
- (b) in representations made by the appropriate nature conservation body, in accordance with regulation 105(2), or
- (c) by any other person.

(5) A competent authority is not to be regarded as having failed to comply with a duty imposed by any provision of these Regulations or another enactment because it has acted in accordance with this regulation.

(6) In this regulation “nutrients”, “relevant site” and “urban waste water” have the meaning given in regulation 85C.

(7) In this regulation “relevant decision” means –

- (a) a decision whether to give effect to a land use plan, or
- (b) a decision whether to modify or revoke a neighbourhood development plan.””

***Member's explanatory statement***

*This amendment substitutes Schedule 13, which amends the Conservation of Habitats and Species Regulations 2017, to provide that certain authorities/bodies (when exercising duties or making decisions relevant to the regulations) must assume that nutrients in waste water from proposed developments will not adversely affect habitats sites.*

**Clause 160**

BARONESS SCOTT OF BYBROOK

Clause 160, page 193, line 36, at end insert –

“(3A) Where –

- (a) the nutrient significant plant referred to in paragraph (1) is a plant that discharges treated effluent into a catchment permitting area (see section 96FA of the Water Industry Act 1991), and
- (b) the sewerage undertaker has failed to comply with a condition in the environmental permit for the plant imposed in pursuance of subsection (3)(b) of that section,

the definition of “excess nutrient pollution” in paragraph (3) is subject to the following modifications.

(3B) In a case where the condition relates to the total nutrient pollution discharged by the plant specifically, references in that definition to the “upgrade date” are to be read as the “applicable date”.

(3C) In a case where the condition relates to the total nutrient pollution discharged by all plants that discharge into the associated catchment area, that definition is to be read as if –

- (a) in the words before paragraph (a), after “by the plant” there were inserted “and all other plants that discharged into the associated catchment area for that plant”,
- (b) in paragraph (a), for “upgrade date” there were substituted “applicable date”, and
- (c) in the words after paragraph (b) –
  - (i) for “that it” there were substituted “that both it and those other plants”, and
  - (ii) for “upgrade date” there were substituted “applicable date”.

- (3D) For the purposes of paragraph (3) as modified by paragraph (3B) or (3C), the “applicable date” is to be determined in accordance with section 96FA(6)(a) of the Water Industry Act 1991.”

***Member's explanatory statement***

*This amends the provision to be inserted into the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 by clause 160 so that provision functions in relation to catchment permitting areas, introduced by the second amendment in my name to clause 158 at page 188, line 22.*

BARONESS SCOTT OF BYBROOK

Clause 160, page 194, line 10, leave out “96C” and insert “96C(1) or (2)”

***Member's explanatory statement***

*This amendment is consequential on the second amendment in my name to clause 158 at page 184, line 32.*

BARONESS SCOTT OF BYBROOK

Clause 160, page 194, line 17, at end insert –

““catchment permitting area”;

“environmental permit”;

***Member's explanatory statement***

*This amendment is consequential on the amendment to clause 160 at page 193, line 36.*

**After Clause 228**

BARONESS SCOTT OF BYBROOK

After Clause 228, insert the following new Clause –

**“228A Amendments of references to “retained direct EU legislation”**

In the following provisions for “retained direct EU legislation” substitute “assimilated direct legislation” –

(a) section 156(3)(e), and

(b) section (*Regulations: nutrients in water in England*)(3)(b).”

***Member's explanatory statement***

*This amendment inserts a new Clause which provides that the references in the Levelling-up and Regeneration Bill to “retained direct EU legislation” are to be replaced by references to “assimilated direct legislation”.*

**Clause 231**

BARONESS SCOTT OF BYBROOK

Clause 231, page 272, line 40, at end insert –

“(ga) under section (*Regulations: nutrients in water in England*);”***Member's explanatory statement***

*This amendment provides that all regulations made under new clause (*Regulations: nutrients in water in England*) are subject to the affirmative procedure.*

**Clause 234**

BARONESS SCOTT OF BYBROOK

Clause 234, page 276, line 5, leave out subsection (6) and insert –

“(6) In Part 7 –

- (a) sections 158 and 160 come into force at the end of the period of two months beginning with the day on which this Act is passed;
- (b) section 159 (and Schedule 13) and section (*Regulations: nutrients in water in England*) come into force on such day as the Secretary of State may by regulations appoint.”

***Member's explanatory statement***

*This amendment provides for the commencement of the provision of Part 7 at different times.*

BARONESS SCOTT OF BYBROOK

Clause 234, page 276, leave out line 16 and insert –

“(10) In this Part –

- (a) sections 227, 228 and 229 to 235 come into force on the day on which this Act is passed;
- (b) section (*Amendments of references to “retained direct EU legislation”*) comes into force at the end of 2023.”

***Member's explanatory statement***

*This amendment provides that the new Clause (*Amendments of references to “retained direct EU legislation”*) being inserted after Clause 228 in the Minister’s name comes into force at the end of 2023.*



# Levelling-up and Regeneration Bill

---

---

AMENDMENTS  
TO BE MOVED  
ON REPORT

*[Supplementary to the Fourth Marshalled List]*

---

*29 August 2023*

---

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS