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Programme motion agreed to.
Motion to sit in private agreed to.
Written evidence (Reporting to the House) motion agreed to.
Examination of witnesses.
Adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 14 March 2020

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The Committee consisted of the following Members:

_Chairs:_ †Sir Roger Gale, Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Ansell, Caroline (Eastbourne) (Con)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Docherty, Leo (Aldershot) (Con)
† Edwards, Ruth (Rushcliffe) (Con)
† Graham, Richard (Gloucester) (Con)
† Longhi, Marco (Dudley North) (Con)
† McCarthy, Kerry (Bristol East) (Lab)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
† Morden, Jessica (Newport East) (Lab)
† Oppong-Asare, Abena (Erith and Thamesmead) (Lab)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Sobel, Alex (Leeds North West) (Lab/Co-op)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)

† attended the Committee

Adam Mellows-Facer, Anwen Rees, Committee Clerks

Witnesses

Signe Norberg, Public Affairs Manager, Aldersgate Group
Edward Lockhart-Mummery, Project Convenor and Principal Investigator, Broadway Initiative
Martin Baxter, Chief Policy Adviser, Broadway Initiative
David Bellamy, Senior Environment Policy Manager, Food and Drink Federation
Andrew Poole, Deputy Head of Policy, Federation of Small Businesses
Martin Curtois, External Affairs Director, Veolia
Public Bill Committee

Tuesday 10 March 2020

Morning

[SIR ROGER GALE in the Chair]

Environment Bill

9.25 am

The Chair: Good morning, ladies and gentlemen. Ordinarily, the public would be invited in for the initial brief announcement and then have to go out again, so we thought we would save them the effort. There are a couple of preliminary points. Please turn off your mobile phones. I have a tendency to send Members to the Tower if they allow their phones to ring. I am checking my own, as well. I am afraid that tea and coffee are not allowed, so those who want a tea or a coffee will have to go outside to have it.

We will consider the programme motion and the motion on reporting written evidence for publication and then have a quick chat in private. It is easier than yanking people in and chucking them out again. We will try to take the motions without too much debate.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 10 March) meet—

(a) at 2.00 pm on Tuesday 10 March;
(b) at 11.30 am and 2.00 pm on Thursday 12 March;
(c) at 9.25 am and 2.00 pm on Tuesday 17 March;
(d) at 9.25 am and 2.00 pm on Thursday 19 March;
(e) at 9.25 am and 2.00 pm on Tuesday 24 March;
(f) at 9.25 am and 2.00 pm on Thursday 26 March;
(g) at 9.25 am and 2.00 pm on Tuesday 30 March;
(h) at 9.30 am and 2.00 pm on Thursday 31 March;—

(2) the Committee shall hear oral evidence in accordance with the following Table:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Witness</th>
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<tr>
<td>Tuesday 10 March</td>
<td>Until no later than 10.30 am</td>
<td>Aldersgate Group; Broadway Initiative; Food and Drink; Federation; Federation of Small Businesses; Veolia</td>
</tr>
<tr>
<td>Tuesday 10 March</td>
<td>Until no later than 11.25 am</td>
<td>Local Government Association; Natural England; Wildlife Trusts; Country Land and Business Association; NFU</td>
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<tr>
<td>Tuesday 10 March</td>
<td>Until no later than 2.30 pm</td>
<td>National Federation of Builders; Greener UK; Greenpeace; Royal Society for the Protection of Birds</td>
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<tr>
<td>Tuesday 10 March</td>
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<td>Until no later than 4.00 pm</td>
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<tr>
<td>Tuesday 10 March</td>
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(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 21; Schedule 1; Clauses 22 to 45; Schedule 2; Clause 46; Schedule 3; Clause 47; Schedule 4; Clause 48; Schedule 5; Clause 49; Schedule 6; Clause 50; Schedule 7; Clause 51; Schedule 8; Clause 52; Schedule 9; Clauses 53 to 63; Schedule 10; Clauses 64 to 69; Schedule 11; Clause 70; Schedule 12; Clauses 71 to 78; Schedule 13; Clauses 79 to 90; Schedule 14; Clauses 91 to 100; Schedule 15; Clauses 101 to 115; Schedule 16; Clauses 116 to 122; Schedule 17; Clauses 123 and 124; Schedule 18; Clause 125; Schedule 19; Clauses 126 to 133; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 5 May.—(Leo Docherty.)

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(Leo Docherty.)

The Chair: Written evidence will be made available in the Committee Room. I take it that the Committee is happy to receive it.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(Leo Docherty.)

9.27 am

The Committee deliberated in private.

Examination of Witnesses

Signe Norberg, Edward Lockhart-Mummery and Martin Baxter gave evidence.

9.30 am

The Chair: Good morning, ladies and gentlemen. Thank you for joining us. We shall now hear oral evidence from the Aldersgate Group and the Broadway Initiative. Before we start, I would be grateful if you would be kind enough to identify yourselves for the benefit of the record.

Signe Norberg: I am Signe Norberg. I am the public affairs manager at Aldersgate Group.
Edward Lockhart-Mummery: I am Edward Lockhart-Mummery, convener of the Broadway Initiative.

Martin Baxter: I am Martin Baxter, chief policy adviser at the Institute of Environmental Management and Assessment. We are home to the Broadway Initiative.

The Chair: Thank you—and thank you for giving your time this morning. We have limited time, as you are aware, before I will have to draw the sitting to a close. Concise answers—I have already urged my colleagues to ask concise questions—will help us to get through the business.

Q1 Dr Alan Whitehead (Southampton, Test) (Lab): Good morning. I would like to start with some thoughts about the Office for Environmental Protection. You will have seen from the structure of the Bill that the office will be set up by the Government, essentially, and will have certain powers, but many people say that, in other areas, it lacks independence or teeth. What is your view about the Office for Environmental Protection?

Martin Baxter: I might as well go first. I think we would share some of the concerns around independence. I think there is an opportunity for greater independence, particularly in the appointment and removal of the chair. The Office for Budget Responsibility has a confirmatory vote for the appointment of its chair, and I think a similar mechanism could be put in for the OEP. It has a wide range of powers and duties. Potentially, some of the powers could become duties, particularly if there are changes to targets, but, largely, it is a body that could have strategic effect in helping to drive improvements in environmental performance.

Signe Norberg: We would agree that the OEP will have a wide remit, and some of its powers are really welcome. We share the view that there are some aspects, with regard to its independence, that we would like strengthened, particularly on matters explicitly to do with funding and the commitment that the Government made previously, in the pre-legislative scrutiny on the previous draft Bill, to having an explicit five-year budget on the face of the Bill, to make sure that there would be long-term certainty. We also support calls for Parliament to have a role in the appointment of the chair of the OEP—making sure that the relevant Select Committee was involved in the appointment process.

Edward Lockhart-Mummery: I would just make a wider point, from a business perspective. I think that the OEP has an important role to play because it gives confidence in the overall system. That is why independence is important. I just wanted to fill in that gap as to why business thinks that independence is important in terms of having a really credible body. That can also be achieved in the way that it operates. I found this with the Committee on Climate Change. One of the important things is the appointment of the first chair—and, actually, the second chair. The chair can determine how a body like that works in practice—it’s credibility, the things it chooses to pursue, how it gives strategic advice, and things like that. So I think it is also very much the way, and the type of person who is the chair, that are important.

Q2 Dr Whitehead: You reflected on the independence of the OEP and have suggested that concerns might be raised about its funding and funding cycle. Are there amendments you would like to see to the Bill to establish that independence in a clear cut way? Along with the OEP’s potential independence, would you like to see something specific in the Bill that protects its remit and funding cycle so we can be assured that it will not be subject to the vicissitudes of the Department or the Exchequer?

Signe Norberg: With regards to the specific areas of the Bill, there could be strengthening amendments to schedule 1, which sets out the appointment process. A paragraph in there to specify the role of the Select Committee in appointing the chair would strengthen the Bill, because the OEP’s chair has the power to select the other members. Within that, there is also a funding section, which could establish the five-year process. The important thing is that the OEP, with its formidable remit, will have independence and certainty in the long term. That should go beyond this Government, secure in the fact that successive Governments will deliver on the commitments. It should have a baseline budget to operate from, regardless of economic circumstances. If the funding mechanism in schedule 1 is strengthened, that would be welcome and really bolster the OEP’s ability to do its work.

Martin Baxter: In terms of a specific amendment, paragraph 2(1) of schedule 1 could be changed. It says: “Non-executive members are to be appointed by the Secretary of State”, but you could add to that, “with confirmation from the Environmental Audit Committee and/or Environment, Food and Rural Affairs Committee.” That would give Parliament enhanced power in that appointments process. That is a targeted, small amendment that could enhance independence in the process.

Q3 The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): Thank you so much for coming in; it is really appreciated. I have two points to pick up, one of which was raised by Ms Norberg. I think you suggested that the Office for Environmental Protection, the overarching body that will hold public bodies to account, ought to be more like the Office for Budget Responsibility, but that body does not have the enforcement functions that the OEP will have. Do you have any views about that?

Signe Norberg: The point about appointing the chair is more about ensuring that there is scrutiny around who is appointed as chair. We fully recognise that the OEP will have a different remit compared to the OBR. It is more about ensuring that Parliament has a role in appointing the chair.

Q4 Rebecca Pow: The OBR and what we are proposing for the Office for Environmental Protection are quite different in terms of functions. The Office for Environmental Protection is more like the Equality and Human Rights Commission and very much set up on those lines. Do the others have views on that?

Martin Baxter: Given the importance of the OEP and questions about independence and holding public authorities, including Government, to account, stakeholders feel that that enhanced independence is very important. The model of having a confirmatory vote from the appropriate Select Committee in that appointments process is something that the OBR has in its remit, and we think that could be transferred across to the OEP as well. That is not to say that they do not have very different functions as bodies; we fully accept that.
Q5 Rebecca Pow: Could I widen it out a bit? Industry and business have been very engaged in the development of the Bill, which is much appreciated. One of the strong messages we got from your two groups, in particular, was that you wanted legally binding targets and strong direction in the Bill. Why do you feel that is so important? Can you help the Committee understand whether the Bill is strong enough and why you want that?

Edward Lockhart-Mummery: You are absolutely right. We have been working on this for about two or three years with a wide group of business organisations. We have got 20 of the main business groups, covering all sectors, from the Federation of Small Businesses to the CBI, Make UK, Water UK and the Home Builders Federation. Consistently across that group, the notion of a long-term framework for the environment is incredibly important.

We did a bit of research looking at the timescales over which businesses take decisions, whether it is project cycles, investment cycles for capital, or whatever. A lot of the investment cycles are very long. Unless you have a long-term framework for the environment, it is difficult to make the kind of improvements that we would all like to see.

In the past, we have often had very short-term decision making on the environment, which makes it difficult for business to adjust. If we are constantly in that cycle of responding very quickly and introducing policies on a one or two-year basis, it is very hard for business. Everyone—human beings—wants to see a clean and good environment. Business supports that as much as everyone else. If they have clarity over the long-term direction of policy and a clear set of targets, they can start designing. Whatever sector you are in, you can start designing.

Let me give you a quick example. We are working with the home building sector on a sectoral plan for all new houses, for the environment, because we have got the clarity of net zero and because we are getting clarity on targets through the Environment Bill. The sector can suddenly sit down and start saying, “Right, these are the long-term things we need to plan for—water efficiency, flood resilience and air quality.” They can start investing in the R&D and driving innovation.

We think that is very important, and we advocated very strongly right from the start. We put together a blueprint for the Environment Bill. We have advocated very strongly to Treasury and others that that long-term framework is important. We think it is a game changer, in the sense that, as soon as you have that, rather than environment being a compliance issue within firms, it becomes a strategic issue within firms, sectors and local areas, where everyone can build this into what they are doing.

In principle, we think targets are fantastic and we really welcome them in the Bill. We also think that there are some small changes that could be made to the target-setting framework that would be win-wins. They would improve the ability to achieve environmental outcomes but also reduce costs and increase certainty for business. I will focus on two—so that I am not hogging the microphone, I might then hand over to colleagues. One is that we would really like to see clear obligations in the Bill. At the moment, there is a target-setting mechanism, but it is not exactly clear. It says that four targets will be set in four areas, but it is not clear exactly what targets would be set. It would give greater clarity to have objectives that consistently show what kind of targets are going to be set and give that long-term clarity for everyone.

We have often made the point that, in the past 10 years, we have had eight different Secretaries of State at the Department for Environment, Food and Rural Affairs. If they all set their own targets, depending on what they are interested in, you could end up with a patchwork of targets. We would really like to see clarity on the objectives. This is the kind of thing we are talking about. If the Bill said something like environmental objectives would be to have a healthy, resilient and biodiverse natural environment, an environment that supports human health and wellbeing for everyone, and sustainable use of resources, those would be high-level objectives but would give everyone clarity, as to how targets would be set.

Rebecca Pow: May I just interrupt you there for a second? I might bring the other gentleman in from the Broadway group—

The Chair: Minister, if anybody brings him in, it will be me. May we please finish hearing what is being said and then you can come back in?

Edward Lockhart-Mummery: One thing we did with IEMA is a big survey of about 370 people working in businesses and different organisations. I think 95% of them supported having objectives in the Bill. That is that one.

The other thing is to have a clearer duty right at the start that environmental improvement plans have to enable the targets to be met. At the moment, the targets are legally binding in the sense that if you miss a target, Government have to make amends and take action, and there is a reporting mechanism. What is missing—and is in the Climate Change Act 2008—is what we call a day one duty, something that says there is a duty on the Secretary of State to make sure that they are putting in place the right policies to support this. These two things would underline that clarity and long-term certainty for business and reduce long-term costs for business to achieve the outcomes.

The Chair: Ms Norberg, do you wish to add anything before I go back to the Minister?

Signe Norberg: I would like to add that our business members, who represent around £550 billion of global turnover, do support the Bill. They really want to see a robust environmental regime, because they fundamentally believe that environmental policies make clear economic sense for them. It is also better for the overall environment.

On why businesses want to see that happen, it does not just make clear economic sense; it also provides a stable environment in which they can invest in their workforce and in green products and services, and innovate their business model. If the Bill clearly sets out what is expected and by when, and what the targets are in the intermediate term to meet these objectives, it will help businesses to adjust their business model, where needed, but also to go beyond the targets.

We would certainly support some of the points that Ed has made about objectives. We would also like to see the interim targets strengthened further, because when you have certainty about what is going to happen in the next five years, it helps you also to look at the long-term targets that are 15 years ahead. If there is also something
around remedial actions—so that when it looks like the intermediate targets are going to be missed, action will be taken—that will give businesses certainty around what is expected of their sector, but also about how they fit within the overall environmental framework.

Q6 Kerry McCarthy (Bristol East) (Lab): Leading on from what you were saying about the interim targets, how do you strike the balance? At the moment, you have very long-term targets of at least 15 years. I accept what the other witnesses were saying about how that gives business certainty, because decisions are made on a long-term basis, but if your target is way into the future, the danger is that you do not drive progress in the interim. The Aldersgate Group clearly supports interim targets.

Signe Norberg: Certainly, and that stresses the importance of the interim targets, with the long-term targets being, as they should be, long term and indicating the direction of travel. The interim targets help to drive progress in the intermediate term, but also help us to see where we are and what we need to do to put us back on track. If we achieved the interim targets, that will certainly be something that we know our businesses would welcome, because it not only provides the direction of travel but helps them look at their own model.

Martin Baxter: We fully support long-term targets because they give the strategic predictability and confidence for business to invest over the long term. The importance of interim targets is that they determine the pace at which we need to make progress, hence the need for a robust process for setting the long-term targets and involving businesses in the interim targets, to ensure absolute clarity about the likely investment needed to achieve progress at the rate we need. If we want to speed up progress, the question is, “How much will it cost and where will the cost fall?” We have to make sure that businesses are part of owning some of these targets, because they are the ones that will have to make the investment to deliver them. They have to understand what changes will be needed and what policy mechanisms might need to be introduced to ensure that that can all be achieved. That is where the role of interim targets and their link to environmental improvement plans, and the robustness with which those interim targets will be set, is really important.

Q7 Kerry McCarthy: Mr Lockhart-Mummery, you also spoke about objectives. I am interested to know how those objectives would fit with targets and interim targets, and how that would pull the whole purpose of the Bill together. Perhaps in your answer you could say a little bit more about that as well?

Edward Lockhart-Mummery: Absolutely. The objectives would guide how the targets and interim targets were set. The Secretary of State, when setting targets, would have to think how those targets would contribute to meeting the long-term objectives. That would be the legal mechanism. When stakeholders were having discussions with Government, everyone would understand the purpose of those targets and that would temper the discussion. Because everyone would have a clear vision for what they were.

Objectives could also determine how principles and environmental improvement plans are applied in the Bill, so that when you are developing environmental improvement plans, you are also thinking, “What are we trying to achieve through this Bill?”, when you are applying principles and when the OEP is exercising its function. Thus, everyone is clear on the purpose of all those processes in chapter 1 of the Bill, which is the governance framework, and those objectives link to how the Government applies those processes, so that it is clear externally what we are trying to achieve. Then businesses, local authorities and other organisations know what we are trying to achieve through the Bill and know that when Government pull all those levers, it is all trying to go in a particular direction.

Q8 Kerry McCarthy: But you would also support interim targets further downstream?

Edward Lockhart-Mummery: We definitely support strengthening the targets. This is something we have discussed a lot in our group, and there are slightly different views of exactly how you do it. Some people would support the targets’ being legally binding, and others say that the final targets should be legally binding, but on the interim targets there needs to be more transparency. Then, if an interim target is not met, it could be that it triggers more of a reporting process, where the Government say, “We have missed the interim target. This is why, and this is what we’re doing about it,” rather than their being legally binding.

Potentially, if you made those interim targets legally binding, it could have perverse effects. Government might be a little less ambitious in setting interim targets, because it is always harder to know exactly what you are going to be able to do in the shorter term, particularly when some things require a lot of capital investment. If the target is to increase recycling rates, that requires a lot of capital investment or whatever.

There are some questions about exactly how you would set those interim targets. Because they are nearer term, it is more likely that the same Government will be in power when they are met, so what you do not want is for them to end up being very unambitious in setting the targets. A transparency mechanism would certainly be very good.

Q9 Richard Graham (Gloucester) (Con): Can I come back to Mr Baxter first? In the brief you gave us before this sitting began, you mentioned two ways that you thought the Bill could be improved. Although you raised earlier the importance of the selection or election of the OEP chairman and so on, your focus in the written evidence was more on structural issues. Could you flesh out what you meant by “enhancing the coherence between the different governance elements so they are mutually supportive and aligned to drive environmental improvement to a common purpose”? That sounds like management-speak. Can you try to bring it alive and explain what you really have in mind and what the benefits of it are?

Martin Baxter: Certainly. There are three key elements in the governance section of the Bill. First is the process for setting legally binding targets, and underpinning that is the significant improvement test in the natural environment. The environmental principles have a slightly different objective, on environmental protection and sustainable development. The Office for Environmental Protection has a different set of objectives as well. We think there is a real opportunity to set a common purpose in terms of clear objectives, as Ed has outlined,
and to point all aspects of the governance process into achieving those. That is where we think you could get far greater coherence and cohesion between the different elements.

Q10 Richard Graham: Can I just explore that a bit more? On page 13, in part 1, the principle objective of the OEP is pretty clear:

“to contribute to—
(a) environmental protection, and
(b) the improvement of the natural environment.”

Page 1 of the Bill is about making provision to improve the natural environment and environmental protection. Those two seem to be very closely aligned, are they not?

Martin Baxter: In part, they are, but they could be further brought together. The real test of the targets and the EIIPs is whether significant environmental improvement is being met. It is that test that underlies why we are setting targets and it forms the basis on which environmental principles will be applied, potentially, and also the role of the OEP. We think that could provide greater cohesion, via all things pointing to that common purpose.

Q11 Richard Graham: Mr Lockhart-Mummery, you said early on that the Bill needed clear objectives at the beginning. Given what Mr Baxter has just said, do I take it that you want to see a fleshed-out opening paragraph that talks about not just improving the natural environment but what the benefits that we are looking for from that should be?

Edward Lockhart-Mummery: Exactly. Improving the natural environment is a good start. That could be clearer. For example, improving health is not there clearly in “improving the natural environment”, yet quite a lot that we would want to do—improving air quality, nature and so forth—is about health. Being really clear that this is also about health and wellbeing is important. Then there is sustainable resource use. At the moment, there is a big focus on single-use plastics, very rightly. If, in the very short term, we only thought about single-use plastics, we would not necessarily drive holistic sustainability overall. We might rush out of plastics into aluminium or other things, whereas what we really want to know is, right at the top, that this is about using the resources that we have sustainably. If that is clear at the top of the Bill, everything drives that. We do not take siloed short-term decisions, but we are clear that when we are setting targets we are looking to use our resources sustainably overall to contribute to a healthy, resilient, biodiverse natural environment, to health and to wellbeing for everyone. Those three objectives capture almost everything you could want to do through this Bill, alongside decarbonisation, which is the territory of the Climate Change Act 2008, but both are mutually supportive.

Q12 Richard Graham: That sounds as if what both of you are saying is that you want to see an introductory paragraph that lays out, before the stuff that is quite process-y, the benefits that we are trying to drive out through this Environment Bill a bit more clearly.

Ms Norberg, your earlier statement was slightly different. It was less on the ambitions of what the output would be and more on further improvements to strengthen the regulatory framework and the target-setting process. There is quite a lot of detail in terms of the targets and interim targets, is there not? How much more process can a Bill really have?

Signe Norberg: I would begin by saying that we also support Broadway’s ask around an objective. We thoroughly support that because we think it gives the long-term direction—which is set out here, but an objective would provide a little more detail. In terms of the processes around interim targets and the target-setting process, this is not so much about adding in more process—as you say, what we have is already quite a heavy process document—but more about clarifying some aspects, which would be quite welcome. We have touched a little today on the interim targets. It is not about changing them but about maybe clarifying that when intermediate targets look to be off track, there is recourse to put them back on track or the Secretary of State looks at how we will get back on track by updating them. There is a little bit there, but this is about adding further language to clarify a point like that. This is not about adding further process; it is more about adding clarification.

Q13 The Chair: Thank you very much. Mr Graham, I am conscious of the fact that there are a number of other Members who want to come in. I cannot allow one Member to dominate the entire proceedings. I am going to do something now that I should have done at the beginning—I apologise for this. Before I bring in Deidre Brock, will Ms Norberg and one or others of you gentlemen, very briefly, identify whose interests you represent?

Signe Norberg: We represent an alliance of businesses, non-governmental organisations and academic institutions. They cover several different industries, work across economies and have scale. We look at their specific industries. All of that comes together to create a holistic environment for businesses and the natural environmental flow.

Edward Lockhart-Mummery: The Broadway Initiative brings together the mainstream business organisations across sectors from the Federation of Small Businesses to the CBI, as well as groups covering each important sector that touches on the environment. That is our core group. We also work with professional bodies such as the IEMA and academic bodies, and we work closely with environmental groups. We are committed to the outcomes committed to by the Government through the 25-year plan and net zero. We are keen to explore how we can really make that work through the economy.

The Chair: Thank you very much. I apologise; I should have asked that at the beginning for the record, and because there are people in this room who may not read everything that they should have read into just the bald titles.

Q14 Deidre Brock (Edinburgh North and Leith) (SNP): Returning to the OEP, what are your thoughts on the relationship between the OEP and the environmental governance bodies, including the Committee on Climate Change, the Environment Agency and Natural England? Major budget cuts have clearly been made at Natural England recently, and the organisation has expressed concerns about its ability to monitor environmental breaches. What are your thoughts on how that works, or does not work, in the Bill?
**Martin Baxter:** We support the creation of the OEP. Its role in ensuring that public authorities fulfil their duties under environmental law is important. That remit is quite different from the role of the Environment Agency, Natural England and the Committee on Climate Change. That committee has an advisory role; it does a lot of analysis and a lot of fantastic work, but it does not have a role in holding public authorities to account for the delivery of net zero commitments. That is an important distinction to make between the OEP and the Committee on Climate Change.

Ideally, the OEP will be a strategic body able to look at where our governance system might either need to be strengthened or become more effective, and then make recommendations. It has an important monitoring and scrutiny role that extends into progress towards achieving long-term targets and looking at environmental improvement plans, so at least we will have a transparent and independent view of that, which is important. We welcome that.

The OEP also has an ability to advise on the implementation of environmental law. That implementation role is critical, because the effectiveness of environmental law is often in the extent to which it might be properly enforced. In terms of monitoring the implementation of environmental law, the OEP has the power to comment on whether there are sufficient resources in place for those laws to be properly implemented, enforced and delivered. There are the right hooks in the Bill, in terms of the OEP’s role and remit, to allow that to go forward.

**The Chair:** Ms Norberg, do you want to come in?

**Signe Norberg:** Martin summarised it fairly well. There is a recognition that these bodies will have to have some level of co-operation. That will be important in terms of the practical aspects of these bodies.

**Q15 Deidre Brock:** You sound a wee bit equivocal or dubious about whether the OEP has sufficient powers to enforce this properly. That is the impression I am getting; correct me if I am wrong.

**Martin Baxter:** No, it has the powers to be able to do it. The question is how it chooses to use its powers. In setting up the OEP, one of the first things it has to do is develop its strategy, which will be absolutely crucial in determining the direction that it sees for itself, in terms of implementing the powers and duties that it has. If it chooses to utilise those powers to help to drive systemic change where there may be weaknesses in our system of environmental governance, that would be really welcome. That is what we expect it to be able to do.

**Q16 Bim Afolami** (Hitchin and Harpenden) (Con): Ms Norberg, in the event that, in the future after the passage of the Bill, the British Government—for whatever reason—do not perform very well and do not do the things that we believe they should, who should be the main accountable individual or group of individuals for that?

**Signe Norberg:** Within Government?

**Q17 Bim Afolami:** I am trying to say that you presumably want the Government to be accountable for this, through Parliament and, ultimately, to the electorate in our elections. Do you agree?

**Signe Norberg:** Yes.

**Q18 Bim Afolami:** So, going back to what we were talking about at the beginning around the Office for Environmental Protection, and thinking about accountability, what is your sense of giving more power to Parliament, as opposed to the Government? My reading is that that might actually impact on that accountability.

**Signe Norberg:** I am not entirely sure that I agree with that. The Bill gives a lot of powers to the Secretary of State to provide an overall framework to meet targets, working with the chair of the independent OEP. With regard to having Parliament as part of that, that is just an additional mechanism to give further authority to the OEP. It is not necessarily to act as a hindrance; it is more about the Bill giving Parliament a role in the OEP’s setting up, to make sure that it is truly independent, because it is meant to be for the ages. As you rightly put it, we do not know what will happen in the future, so this is more about ensuring that the setting up of the OEP, and particularly the chair, because of the essential role of the chair, is robust enough.

**Q19 Bim Afolami:** You mentioned independence. Do you think there is a danger that if you were to increase the distance between the OEP and the Secretary of State and the Department, you might end up in a situation in which the Government are trying to do one thing and the OEP is trying to do something else? Obviously, in all government there is a natural tension all the time, but I suppose my point is: do you not feel that, in our parliamentary system, we should hold the Secretary of State to account fully for all the decisions that get made, including those relating to the chair and the nature of everything we are talking about? Do you not worry that if you were to increase that distance, you might reduce accountability for that individual, because they may say, “Look, the Office for Environmental Protection did this, but I did not agree”?

**Signe Norberg:** The purpose of the OEP is to hold public authorities to account. Because of that, it should have a little bit of distance from the Secretary of State. That does not mean that it is completely separate. Through its annual reporting and so on, it should be able to criticise the Government where appropriate. Surely they should also work together. I am not necessarily sure that I agree that it would limit the effectiveness of the system itself. The OEP should be a critical, independent friend of the Government, to achieve that natural improvement.

**Q20 Bim Afolami:** So it should be a bit like an environmental National Audit Office, which is the way I like to think about it?

**Signe Norberg:** Yes, I would not disagree with that characterisation.

**Edward Lockhart-Mummery:** There is a relationship between Government and the electorate every five years. The OEP has an important role in making transparent just what is going on in the interim period so that the electorate has the right information every five years and can see transparently what has been going on, what the Government have been doing, how that has affected the outcome, whether the Government have been pulling the right levers and that kind of thing. That is a role that the CCC plays very effectively on climate change. People are increasingly aware of how the Government are performing. There is a role. The CCC is playing that role with probably less independence than the OEP currently has.
I take your point that there is a question. You do not necessarily want to go to an extreme on independence. Somehow you need to get the balance right. The question of Parliament having a say over appointments is quite interesting, partly because when a Secretary of State is appointing a chair, they are thinking, “Is that a chair that the EFRA Committee and the EAC across all parties will accept?” I think that is quite an interesting discipline. It removes any fear that it might just be the Secretary of State appointing their chums, if they know that it will be properly scrutinised across parties. That degree of independence would be quite effective, but I take your point.

The CCC is not particularly independent, but putting forward the advice on net zero was a bold thing to do. It was able to do that. The role of transparency and making clear to the electorate what is going on could be the body’s most important function.

I would also expect that an effective body would not take Government enforcement action all the time. What you do not want is a body constantly doing that. What the OEP might effectively do is make clear from the start, “These are the types of cases we are going to take and why.” That would send a clear signal to Government and then you would hope that there would not be loads of enforcement cases, with the OEP taking public bodies to court.

Q21 Alex Sobel (Leeds North West) (Lab/Co-op): Following on from that question, clearly the duties of the OEP in investigation and enforcement are very important. We have a regulatory environment that finishes in December this year. The OEP will not be up and running in January next year. Do you have concerns that there will be a governance gap in the interim? How do you feel about the independence of enforcement, investigation and action that is taken on potential breaches in that interim period?

Signe Norberg: From what I understand, there is a Government ambition to prevent that being the case, and that is why we have seen the inclusion in the Bill of the interim chief executive officer. In so far as that is a safeguard to ensure that we have the OEP set up by 1 January, I think that is welcome. It stresses the importance of ensuring that this is robust enough and that you get on with appointing the permanent chair and the permanent executive directors of the OEP as quickly as possible.

Martin Baxter: If you look at the role of the European Commission, which is where in part the OEP comes from in terms of its functions and that watchdog role, the Commission moves very slowly. It does not take rapid action. It does not instigate infraction proceedings against member states. There is a build-up of a process by which you can start to see the Commission giving a warning shot across the bows, where there might be a member state that is not in a position to achieve everything. I do not see a huge challenge in terms of a governance gap with the OEP becoming set up in the timescales that are being discussed. I do not think that is a material weakness.

Q22 Alex Sobel: This is a different subject, but something you alluded to earlier was the need for a broader strategic aim. Other countries have an overarching environmental objective as part of their environmental legislation. The shadow Minister, my hon. Friend the Member for Southampton, Test, has tabled an amendment that at the start of the Bill there should be a clause stating an environmental objective. Do you think that would improve and strengthen the Bill?

Martin Baxter: Definitely; I think we made that clear in our earlier comments. We see that internationally. The Dutch Environment and Planning Act has a clear set of objectives that frame the purpose of the legislation. I think you also see that in the Environment (Wales) Act 2016. This is not without precedent in the UK and internationally. It provides that direction of travel and the opportunity to think about the different parts of the Bill as a coherent whole.

Q23 Ruth Edwards (Rushcliffe) (Con): I am interested in the witnesses’ views on the whole system of environmental governance and how well it works together, including the targets, the environmental protections and the Office for Environmental Protection. Do you think that it works together holistically? Are there any gaps? It would be good to get your views on that.

Martin Baxter: We have touched on the issue of coherence, which is fine. The key elements of a national framework are there, at least for England, because the governance aspects do not stretch into all parts of the UK. It is important to recognise that. There is a certain rhythm between the process for setting targets and the development of an environmental improvement plan, which is aligned to achieving the targets. Then there is a process of implementation and reporting by the Secretary of State, and commentary and reporting by the Office for Environmental Protection. That is good.

There is potentially a question from our perspective over the transmission mechanism from national policy, targets and plans down to what this means in the spatial context. That has not been brought forward in the Bill. We have local nature recovery strategies, which are in the nature chapter. We have requirements on water management plans, which are in the water chapter. But there was the potential to bring together, at a local level, to ensure coherence to environmental improvement strategies in places, which can be contextualised to local environments and provide the basis for local people to be able to engage in democratic processes in helping to set priorities. That is where we would look at completing a full governance framework. That is the direction of travel that we would like to see.

Q24 Marco Longhi (Dudley North) (Con): You referred to objectives earlier. Is there not a risk that you could look at these objectives and set targets a little too early—putting the cart before the horse—before we have had a chance to delve into the detail and heard everybody’s expert advice?

Edward Lockhart-Mummery: I take your point. Like many organisations that we work closely with, we argued strongly not to have set targets on the face of the Bill, because it is really important that there is an inclusive discussion about what the right targets are, which targets will build on what people already do, how quickly we can meet targets and how much they will cost. We think that having a target-setting process in the Bill is the right way to go, and then there can be a discussion about what targets are appropriate.
If you do not have something guiding what you are trying to achieve from those targets, then it is not clear what the targets are for. We would not support two pages or 10 pages setting out in detail what you are trying to achieve. We need something saying that it is about a healthy environment, the health and wellbeing of people, and sustainable resource use. We think that is the right level of detail to guide target setting.

I have worked in environmental policy for 20 years. Those three things are always the purpose of environmental policy. That is not second guessing or putting the cart before the horse, because we know from experience that those are things we are trying to achieve. If we put those on the face of the Bill, it will be clear.

Having knowledge of all the Secretaries of State over the past 10 years, any self-respecting Secretary of State would have wanted to put a target in. However, if a Secretary of State was really interested in butterflies or single-use plastics, you would end up with targets all over the place. What you want is clarity about what you are trying to achieve through targets, and we feel that something high level would be helpful.

**The Chair:** On the assumption that it is on the same subject, I call Ms Edwards.

**Q25 Ruth Edwards:** You talk about having a healthy environment as an objective. How would you legally define a healthy environment? If it is on the face of the Bill, we need legal certainty about what the concept means. Otherwise, are we not just creating legal confusion and vagueness?

**Edward Lockhart-Mummery:** It is something that has precedent in Welsh law. There would need to be a process of defining in more detail what it means. There are other terms in the Bill that need to be defined, such as the significant improvement test for the targets. There would need to be a process. I would argue that that would be quite a helpful process, because then we would have a public conversation about what we mean by “healthy”. Is it that people going about in their daily lives and going to school should be able to do so without dying? What does it mean, and what is the proportionate, sensible definition for that? You are right that it would need to be defined in this context, but the process of defining it is probably an important step towards achieving the outcome.

**Q26 Dr Whitehead:** One thing we have not heard this morning, in the context of how the OEP and the targets that are to be set might work, is the fact that all this is taking over from the environmental protections that were there through the European Union when we were members. Do you think the Bill allows for the transition of those protections to a UK context to be sufficiently enforced and, ideally, enhanced? Or do you think there needs to be anything else in the Bill that can perhaps ensure that there is no regression in standards as we move forward with these new arrangements?

**Signe Norberg:** With regard to whether or not it would sufficiently transfer protections into a UK context, it is important, as Martin pointed out earlier, to note that the Bill itself predominantly applies to England. There must be processes through which the devolved Administrations set up their independent supervisory bodies, but they will all need to work together. Through that, the Bill has the right building blocks; it will be about how those bodies co-ordinate among themselves.

In and of itself, the Bill does not inherently prevent future regression from standards, but there could be mechanisms within the Bill to clarify that. For instance, if you had strong language in the objective about maintaining high environmental standards, that would clearly set out that it should not be a regression. We recognise that there is not an intention for a regression to take place, but that could be an example of how you would potentially safeguard against that.

**Edward Lockhart-Mummery:** On day one, of course, we roll over all existing standards, and then we have the OEP in place to enforce. That gives us the starting point. With a few tweaks, this governance framework ensures that we at least maintain and improve, because you have that process of setting targets that always have to improve, and because the governance process is set out with the environmental improvement plans and principles, with the Office for Environmental Protection overseeing everything.

If that works, we are in a better position and we can really think creatively here. What are the structures, what are the plans, what are the partnerships that are needed to achieve those objectives? I would put a “potentially” in front of that, because potentially we have a better basis for achieving, but there are probably some tweaks that can be made to the Bill during its passage. Implementation, and how everyone works together on achieving the outcomes, is also important.

The transparency mechanism that was inserted into the Bill between its first and second iterations is helpful, because it allows proper, transparent consideration of whether we are doing something that regresses and how we look compared with international standards. That is a useful way of driving transparency within Parliament about what is happening. Clearly, the Government have moved quite a distance on this. We are driving from the private sector perspective to try to make all of this work and support the direction of the Bill. We are doing it in hope, to some extent.

**The Chair:** Thank you. In the light of all of that, are there any final questions from the Minister?

**Q27 Rebecca Pow:** On a related point, do you think it is important to have an equivalent governance framework to the OEP in Scotland and Wales? Northern Ireland is already committed to joining the OEP, as is set out in the Bill. The other two have close liaison with all the teams and countries, but at the moment they have said they are going to set up their own bodies. How important is it, from a business point of view, that they function in the same way as possible?

**Martin Baxter:** In terms of functioning, the really important thing is common standards driving common outcomes. Businesses are working across the UK and beyond, so having a harmonised approach to the environmental outcomes we are looking to achieve is very important.

In terms of the governance mechanisms, the Scottish Government announced last week that they were looking to create an independent body and watchdog. For Northern
Ireland, there are obviously the provisions in the Bill. Wales is perhaps on a slightly different track at the moment. I am not entirely sure where it is in terms of an independent body.

There is clearly an opportunity to drive efficiency by having a common framework, maybe for an overarching view. Yes, I agree with common governance frameworks and ensuring that there is co-operation and collaboration, so that where we have shared environments, such as shared catchments, we are managing those and setting targets and objectives for improvement on a common basis. That is very important.

I also think there is the potential within the UK that, if we start to set different standards, we will shift burdens from one place to another. If you end up with very different policies on waste, for example, you might end up shipping waste from one part of the UK to the other, just because it happens to be easier or cheaper. Those overarching mechanisms of co-operation and collaboration are very important.

**The Chair:** Thank you very much indeed. Ladies and gentlemen, that brings this session to a conclusion. Ms Norberg, Mr Lockhart-Mummery and Mr Baxter, thank you all very much indeed for coming along and affording the Committee the benefit of your observations. We are deeply grateful to you.

**Examination of Witnesses**

*Martin Curtois, Andrew Poole and David Bellamy gave evidence.*

10.30 am

**The Chair:** Once again, good morning. We now hear oral evidence from the Food and Drink Federation, the Federation of Small Businesses and Veolia. We have until 11.25 am when the House will sit. For the benefit of the record, I would be grateful, gentlemen, if you identified yourselves and the nature of the organisation you represent, starting with Mr Curtois. I hope I have pronounced your name correctly. If not, please correct me.

**Martin Curtois:** Sure. Good morning, everyone. It is Martin Curtois. I am executive affairs director at Veolia. We employ 15,000 people and are heavily involved in both the collection and recycling and treatment of waste, and very much involved in resource efficiency.

**Andrew Poole:** My name is Andrew Poole. I am deputy head of policy at the Federation of Small Businesses. We are a membership organisation representing 160,000 small business members and, more broadly, small businesses right across the country.

**David Bellamy:** I am David Bellamy. I am senior environment policy manager at the Food and Drink Federation, the principal trade body for the UK food and drink manufacturing industry, which is the largest manufacturing sector in the UK.

**The Chair:** Thank you, gentlemen. We are grateful to you for coming along and giving us the help that we are likely to need. We will start with Dr Whitehead.

**Q28 Dr Whitehead:** Good morning, gentlemen. The Bill is generally recognised as having some good bits, on recycling materials and end-of-life concerns about materials in the part on waste and resources, but it has been widely criticised because it concentrates on those particular elements of the waste hierarchy rather than looking at ways in which the waste hierarchy could be driven up, as reflected in the waste and resources White Paper. Do you have any views on that? Do you think that there are any ways in which the Bill could be strengthened to emphasise the point that, actually, recycling is not the end of the road, as far as waste is concerned, and that other things—reuse, redesign and minimisation—have an equally important part to play?

**Martin Curtois:** In terms of the Bill, the resources and waste strategy that DEFRA devised is very strong—you are absolutely right—because what it does, in a number of different ways, is try to improve the whole process. It incorporates things such as “polluter pays”, so it puts the onus on manufacturers to design better. The inclusion of modulated fees in the extended producer responsibility puts a clear onus on manufacturers and producers to design for recyclability, and that will ultimately reduce waste, which is what we all want. Obviously, it involves elements including better segregation, for example, of food waste, which should reduce the carbon impact. It talks about taking the burden away from local authorities and putting it more on manufacturers.

You are therefore absolutely right to say that that is a strong element of the Bill, but I think possibly there should also be other things. As you say, at the top of the hierarchy are elements such as reuse. We operate many sites across the UK where we have voluntary arrangements, for example in Southwark with the British Heart Foundation, where there are various items that can be reused and that is done for charitable benefit. It may be that that ought to be looked at, possibly in the detail of the Bill, just to see where it can be done, because obviously it ultimately is the best way forward. It should at least get some consideration, because everything focused around the resources and waste strategy is primarily, as you say, on the recycling side. There is not much emphasis on residual waste, which obviously we need to avoid because we need to avoid landfill. I therefore think there could be some consideration in terms of reuse.

I also think that one of the best ways in which you can reduce waste right at the outset is by designing better. The Bill reflects that element of the resources and waste strategy, which we see in a very positive way, because so many manufacturers and producers have come to our site—some from not far away in south-east London—to see how they can design their products with perhaps less composites, in a better way, which will ensure that they are at least recyclable at the outset. That is the very start of the process, which we have to get right if we are to make significant change.

**The Chair:** Mr Bellamy, does the FDF have a view on this?

**David Bellamy:** Yes, we do. I think what we would argue is this. As the previous contribution outlined, we obviously expect the extended producer responsibility reforms and the accompaniments to that in terms of consistency, and the focus much more on producers paying full net costs for the end-of-life management of packaging, to focus minds a lot more on the prevention side in itself. Having said that, we must not lose sight of the fact that it is a legal requirement, for those who...
handle waste and convey it to another person in the waste transfer system, to have regard to the waste hierarchy. That is a legal requirement; it is in the law as it stands at the moment. It is also a legal requirement in respect of packaging waste and packaging under the essential requirements regulations that producers who pack food products must have regard to using the minimum amount of packaging to maintain the necessary levels of safety, food hygiene, etc., and consumer acceptance. That is also a legal requirement that is enshrined in the legislation. In that sense, there are already legal requirements around maintaining a focus on prevention, in the sense of how we regulate the waste hierarchy. While it is right that there is a lot of focus on recycling in the resources and waste strategy, we feel that that is part of a bigger picture.

We should not lose sight of voluntary activity around this space. Our members’ commitment to reducing food waste has been documented in some figures that the Waste and Resources Action Programme recently published that show that the food and drink manufacturing sector has reduced food waste by 30% since 2011. Half that reduction has been achieved between 2015 and 2018. That is on a per capita basis measured against the target of the sustainable development goal of the United Nations. So there is a focus on source reduction, whether through legal mechanisms that are already in place, but also in terms of the voluntary work that our members are engaged in.

The Chair: Thank you. Does the FSB have a view, Mr Poole?

Andrew Poole: I agree with the assertion that reuse and reduction are equally important to recycling. It is worth bearing in mind the sheer diversity of the small business audience, which operates across myriad different sectors and in very different ways from one another. It is also worth bearing in mind that many small businesses operate as both producers of materials and consumers. It is worth understanding the very different issues that they face. For many, particularly those operating as consumers within the parameters set by the business, it is clear that recycling will be some low-hanging fruit. When we compare our recycling rates with other countries in the world, clearly some rapid improvements should be made. However, I take the point that it is equally important to look at reuse and reduction as well.

Q29 Dr Whitehead: Clause 52, in the context of recycling and minimisation of waste, provides for charges for single-use plastic items. Do you think this clause clarifies its purpose sufficiently? Is it about minimising single-use items, or is it about reducing the role of plastic in single-use items? First, do you think that a clause such as this would work in reducing single-use items in the food and drink industry, for example? Do you consider that it might be prudent to concentrate on the fact that single-use items can be made of more things than plastic and that amendments to the Bill might make that clear in terms of how the single-use environment might develop?

The Chair: Mr Bellamy, food and drink have been mentioned, so perhaps you might like to have the first crack at this one?

David Bellamy: Our comments are framed around single-use plastic packaging items, which is our interest in terms of plastic. Basically, our view is that a better way to achieve this kind of outcome would be to deal with this within the refinements to the extended producer responsibility system and the reform programme, in the sense that you could do this through modulated fees, as a much better way of achieving the same sort of outcome. In that way, we would be sure that the money raised from such an approach would be used to improve the system. That is a vital principle of FDF: that the money we raise through increased producer fees are used to improve the system of recycling and that those moneys do not get channelled off into other expenditure demands. That is a very important principle that we hold dear in FDF. We have to be mindful that alternatives to plastic materials may also have an impact; it is not only plastics themselves. If you switch to some other materials, you have to look at their life cycle, including perhaps at how they are mined. They all have impacts that we need to consider.

In terms of the clause in the Bill for this, we suggest that any introduction of a charge should be subject to some form of public consultation. We are a little bit concerned that this could be taken forward in a way that did not involve any public debate or allow interested stakeholders to make representations.

Andrew Poole: It is really important for the Government, through the legislation, to make clear the objectives of requirements such as this and what they want small firms to do differently from what they are doing already. When looking across environmental legislation, I will talk a lot about pathways to change. We want to set out not only the reasoning behind the legislation but what businesses should be doing differently, and how the Government see them doing it differently.

In terms of single-use plastics, we can compare that to the carrier bag charge, which has worked fairly successfully. Businesses, on the whole, were quite happy to adopt that. It was clear that the outcome was to be a reduction in those bags. There were also some obvious ways of doing things differently that could have achieved the same outcome. It is just about making clear what that outcome needs to be and what businesses should be doing differently to achieve the same thing.

The Chair: Finally in response to this point, Mr Curtois.

Martin Curtois: On the point made earlier about plastic, post the David Attenborough programme and others, there was almost an overreaction against plastic, in the sense that people to some extent forgot its value in food preservation and were effectively looking to ban it. One problem we have to take into account was the plastic bottle. On the point made earlier about single-source product—with one plastic used for the bottle top as well as the bottle, for example—that would make it a great deal easier to recycle. For example, we have a plant in Dagenham, in east London, where we effectively recycle many of the plastic milk bottles used.
in London, turning them into plastic pellets. Obviously, from our point of view, that single-source aspect is very important. That element needs to be taken into account.

I can understand why the focus has been on single-use plastic items first, because it has been the biggest element that the public have leapt on, in terms of recycling and in terms of wanting change, so I can see why priority has been given to that. If we can start to get that right and start to make changes that mean—for example, we have developed some kit that recognises the black plastic used in TRESemmé shampoo bottles, because of the pigment within it, which allows us to recycle that more efficiently. Significant changes can be made that could start to reduce the environmental impact quickly, which I think we all want.

Q30 Rebecca Pow: Mr Bellamy clearly highlighted the legal requirements already in place on a lot of waste and recycling issues. There is the waste strategy, which has the reuse, recycle, longer-life element to it, which is very strong. Will you give us business’s point of view on how the Bill will move us towards what we call the circular economy? What opportunities will that provide for businesses in particular? Maybe you could give special thought to the Bill aligning all local authority recycling collection services across the country. What sort of opportunities might that, among other measures, offer businesses?

The Chair: Mr Bellamy, you appear to be in the firing line this morning.

Rebecca Pow: Sorry about that.

David Bellamy: Clearly, the powers in the Bill on extended producer responsibility, introducing a deposit return system and collection consistency—provided these systems are developed holistically together, and are joined up—will, combined, revolutionise our recycling system in the UK. As I say, we need to be mindful of unintended consequences. That is why they need to be developed holistically, so we have a coherent system.

Consistency is an essential piece of this jigsaw that we do not want overlooked in taking these reforms forward. If producers are asked, for example, to label their packaging as either recyclable or non-recyclable in a binary system, it is vital that we bring the public with us on that journey. The collection system needs to be in line with that change, and consistency will need to be in place, ready, in time for this new producer responsibility system. That is vital for the FDF and its members. We support that approach.

We would also like a very early signal from Government that they plan to include plastic film in that core set of materials, for consistency. We may even be able to accelerate that faster than the work of the UK plastics pact, which I think is looking at 2025. We may be able to do that sooner with the right co-operation in the chain. We would like to be ambitious in that regard. By that, we mean mono-material and multi-material films, and we include cartons in that aspiration as well. We would like the Government to be more ambitious on that. Let’s get this right from the start, so the local authorities have the right signals from Government about the consistency in the core set of materials, and develop the infrastructure accordingly from the outset. That is very important to us.

I mentioned earlier that it is important that all the money raised by producers in this new system goes towards improving the system. That is why we have separate issues with the plastics tax; it does not adhere to that principle, because we have a policy of non-hypothecation in the UK. We are not in support of a plastics tax; we are in support of reforming the producer responsibility system through a few modulated fees, which would then be used to improve the system.

One specific issue we have is the exponential cost our members face in buying the packaging recovery notes. You may be aware that these prices have gone up exponentially over the past year or so for plastics and aluminum. There is no evidence that this additional money—our members are paying hundreds of millions of extra pounds in these costs—is going towards improving the recycling system. We are happy to pay the extra money, but we want to see the improvements in the system. We would like a meeting with the Minister as soon as can be arranged to discuss a range of options that we have set out in a written submission to Government about things that can be done in the shorter term to address this PRN crisis, as we regard it, within our membership. We would like the Minister to reconsider our request to have that meeting as soon as possible.

The Chair: There is no requirement on everybody to answer every question, but gentlemen, do either of you wish to add anything to that?

Andrew Poole: From our point of view, one of the things that has become abundantly clear over the past few years is that our members as small businesses are saying that they want to do the right thing, and they want to demonstrate to their customers that they are doing the right thing. Talking about the holistic approach to waste and recycling, a lot of these issues are pragmatic. How do we make it easy for small firms to play their role? On local authorities, obviously, small businesses are not allowed to take their waste to municipal sites. They are not eligible for municipal waste collections in the way that many domestic householders are, despite many of them not using many more different types of waste than those households. Again, that is in the spirit of making it as easy as possible for small firms to comply and play their role. That would be one element of it.

Q31 Abena Oppong-Asare (Erith and Thamesmead) (Lab): I want to follow up on the Minister’s question about a more collaborative, joined-up approach. Obviously, Andrew, local authorities will be your key partners, and you touched on small businesses and the challenges that they may face. Can you go into detail about your resourcing, and the support needed to deliver on the recycling targets?

Andrew Poole: Businesses do not have access to waste collection services provided by local authorities, which means that they have to arrange the collections themselves. That incurs a cost, but one thing that is often overlooked is the opportunity cost for small businesses; the issue is not so much the waste collection service itself. How do you identify a trustworthy waste collector? How do you know what they are doing with that waste? Do they provide all the different types of recycling that you need? Will that come at an additional cost? Do they collect on the right days, when you need it? All of those things that businesses need to think about could be
made easier. Giving them access to more domestic-focused waste collection would be one way of looking at that for certain businesses below a certain threshold.

Another thing is pragmatism. If you are talking about a deposit and return scheme, for instance, with which many of our businesses will be involved, do they have the space to do it? Is there practically and pragmatically enough space? Those issues could easily be got over, but they need to be thought about. It comes back to the theme of what we can do, within the existing infrastructure, to make it easier for businesses to comply, even before we start to think about what new things are required. A lot of things could be done today to make it easier for businesses to recycle more, in particular.

Martin Curtois: Owing to the emphasis in the resources and waste strategy on domestic infrastructure and building facilities here, so that we can treat our waste and recycling within the UK, the industry estimates that there is a £10 billion business opportunity for investment in the UK, because there are gaps in regional infrastructure. It is important that we treat as much of both our re-cyclate and residual waste as possible in the UK. To be honest, some of the borders are closing in terms of waste being treated overseas in northern Europe. Obviously there is public demand for more plastic reprocessing in the UK, because that is best from an environmental point of view. That is really important.

Consistent collections will make things easier for households, because whatever part of the country you are in, you will essentially have the choice to recycle paper and card; plastic bottles; pots, tubs and trays, which at the moment many councils do not recycle; and steels and aluminium. There will also be separate glass and food waste. That will make it easier to recycle and easier, to be frank, to generate revenue from those materials, because they are collected separately. You can imagine that for the anaerobic digestion industry, separate food waste will be beneficial—or if it is food and green, that is used for in-vessel composting. There is a logic in that.

As for individual businesses, as my fellow witnesses will know, there will be mandatory collection of food waste above a certain limit. That is another good way to reduce carbon impact. In terms of the commercial collection schemes that we run, sometimes you can have economies of scale if you collect within a certain commercial trading estate and offer a service to all businesses within that estate. The obvious point, which really I should have made at the start, is that everyone thinks about municipal recycling and what everyone leaves outside their property, but business recycling is just as, if not more, important; there might be more waste involved. Anything we can do to simplify the system for businesses, so that it is less onerous and allows us to reduce our carbon impact quicker, has to be the right move.

The Chair: Mr Bellamy, do you want to add anything to that?

David Bellamy: I agree with Martin Curtois about the importance of developing the infrastructure in the UK. This goes back to the point I raised about the PRN crisis. It would be helpful to have an early signal from the Government about their export policy and the fact that we want to gradually reduce exports over time and build up the UK’s capacity to recycle materials. We should also look at how we can work together much more on quality standards for materials; ex-MRFs are another way to help the situation and develop more end markets. Those sorts of things should be looked at. Plus, of course, an early signal on our approach to collection consistency would be helpful. We do not necessarily need to wait until 2023. The earlier we can get signals from the Government about the direction of policy, the more it will help the market to invest, and it would provide certainty going forward.

Q32 Robbie Moore (Keighley) (Con): We have talked a little bit about recycling this morning, but I am interested in the steps taken by the food and drink industry and the small business sector to reduce the use of plastics. From your perspective, what are the unintended consequences of reducing plastic use, and how will the Bill support you with those unintended consequences?

David Bellamy: On reducing plastic use, there is a presumption there that plastic can be substituted by equivalent materials; that is the challenge. Obviously the industry is happy to look at alternative materials, but they must provide that equivalent functionality. Plastic is a very efficient material for getting products through the supply chain. The issue really is plastic waste, not plastic per se. An element of responsible disposal comes into this discussion as well.

We support the work of the UK plastics pact, which looks at not only phasing out non-essential plastic items, but how we can make plastic more recyclable, compostable or reusable, and generally reducing that waste. This is a combination of things, and looking at potential alternatives to plastic, where there are equivalent materials that provide equivalent functionality. We must not end up with unintended consequences, either for food safety or for food waste. It is about finding that sweet spot and functionality.

Also, we need to look at how we improve plastics as they are used now, perhaps moving towards alternative types of plastic and looking at how we can increase the recyclability of existing formats. There is not a one-size-fits-all approach; it has to be evaluated in the round. We have to make sure we do not move to unintended consequences. Also, we need to keep focused on the fact that plastics per se are not the issue; it is plastic waste. It is about keeping plastics in the circular economy and out of the environment. The measures in the Bill to give producers full responsibility for the system, at full cost, will make it a lot easier to deliver change.

Andrew Poole: I back up what David said. On the unintended consequences, it is worth looking at associated opportunity costs. Presumably one of the unintended consequences relates to not putting businesses out of business. Coming back to the point about carrier bags, a cost was put on bags, and the business community as a whole welcomed that, but one issue was really hard to communicate, it seemed. It was not that businesses did not want to charge for the plastic, because they could manage that; they could swap and do alternatives. However, one unintended consequence, particularly for smaller retailers, was the reporting requirements on top. We need to look underneath the physical changes that the businesses have to make, and examine the bureaucracy that underpins those changes, such as any onerous reporting burden that is not balanced or proportionate. That is often quite hidden, but so often, the opportunity cost for businesses outweighs the up-front cost.
Martin Curtois: Most major brands have focus groups based on consumers—you and me—and there has been a significant change in how brands are responding to the issue of sustainability, because they understand that the public get it and want us to improve environmental performance. We can see that in supermarkets: we now have refill options, which are great ways to encourage reuse and reduce waste from the outset.

We have agreed on most things so far. However, from a reprocessor’s point of view, the great benefit that I see arising from a plastic tax that insists that products contain 30% recycled content is that it gives certainty to invest in more plastics reprocessing facilities. That will ultimately mean that the plastic is more sustainable at the outset, because you are using less virgin plastic and more recycled content. Before this Bill has even come on to the statute book, brands that always thought of sustainability as a nice-to-have—likely with a small financial incentive as well—now think of it as a must-have. That is significant and positive, because it will mean we are getting it right at the start of the process, which reduces the carbon impact.

It has even been shown through research that if the public are offered a water bottle with clearly labelled recycled content that costs £1.24, as opposed to a bottle without it that costs £1.20, they will pay the little bit extra to have a sustainable container. We have to make sure we exert the influence that the public want us to have when it comes to performing better in this area.

Q33 Alex Sobel: I will speak to two areas. First, when I engage with people in both the food and drink industry and the waste compressing industry, one issue is the lack of reprocessing facilities, but the second—and usually more important—issue is the quality of the bales of material. When they show me a bale from France and a bale from the UK, the French bales are much cleaner than the UK ones. Are the provisions in the Bill going to improve that so we can have better recycling?

Secondly, you alluded to the market in waste pushing up the cost of these bales, which is a disincentive to invest in reprocessing. Do you think that the provisions in this Bill will pull that back? As an adjunct, there is the issue of transfrontier shipments of waste—that is, waste being sold overseas. Again, do you think the provisions in this Bill will help us end that practice and engage in reprocessing in order to create a circular economy in the UK?

Martin Curtois: There are a couple of elements that we have to bear in mind. First, due to the changes in China and many other markets, the emphasis in those countries is on a race to the top. They are insisting on premium quality, and if we provide premium-quality bales it is much easier to have a market, so the way that has changed has actually been beneficial to some extent. Also, the overall value of these commodities has fallen, as with many others, so it is even more important that the product you are producing is of a premium quality. It is very important that we get that right at the start.

The Bill’s emphasis on encouraging more investment without the reprocessor’s point of view, the great benefit that I see arising from a plastic tax that insists that products contain 30% recycled content is that it gives certainty to invest in more plastics reprocessing facilities. That will ultimately mean that the plastic is more sustainable at the outset, because you are using less virgin plastic and more recycled content. Before this Bill has even come on to the statute book, brands that always thought of sustainability as a nice-to-have—likely with a small financial incentive as well—now think of it as a must-have. That is significant and positive, because it will mean we are getting it right at the start of the process, which reduces the carbon impact.

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facilities. As you can imagine, we receive thousands of tonnes of materials a year. Anything that can be done to ensure that people are sorting it more efficiently at the outset will make our job of reprocessing it more straightforward.

Andrew Poole: For me and for small businesses, a lot of this legislation is generally about trust. The problem is that, if we do not get these things in place, everyone knows that the stick will come. There is an opportunity at the moment to be on the front foot. A lot of our engagement around the Bill has been about keeping businesses on the front foot and steering the legislation in a way that is beneficial to everyone. It is a case of giving all of these things a consistent approach, including labelling, for example. It is about trust in the outcomes of the legislation, and about making the right decisions. It is about trusting what they can see and seeing that the decisions are the right ones. It is important to have that transparency around the whole Bill.

Q35 Kerry McCarthy: Can I ask the FDF about food waste? It is mentioned peripherally in the Bill in terms of the separate collections and so on, but there is nothing more. There is a food strategy being worked on by Henry Dimbleby and others, which may have stuff in it. Is there scope for more specific provisions in the Bill? For example, Courtauld is still voluntary. Progress is being driven by the good guys rather than there being an obligation on everyone. You referred to the figures produced by WRAP. Could the Bill do more on that?

David Bellamy: We have not identified any shortcomings to date. Obviously, there are voluntary approaches. You mentioned WRAP, and there is also the UK food waste reduction road map. Companies are signing up to that in increasing numbers and manufacturers are making good progress. We are expecting a consultation on food waste reporting from the Department for Environment, Food and Rural Affairs soon, and there is no need for primary powers in the Bill to do that. There was talk of the potential for powers on setting targets down the road map. I am not sure where the Government are on that at the moment.

We have not identified any shortcomings as such. The inertia is there with the UK food waste reduction road map, and knowing that food waste reporting is going to come in as planned as a legal requirement in line with the road map.

Q36 Kerry McCarthy: Is that the mandatory food waste audits? When you refer to reporting, are some companies such as Tesco already doing audits of key items at least? Do you mean that at least the big companies report on the amount of food waste in their supply chain?

David Bellamy: Yes. It is defined in the consultation, but certain companies of a certain size will be required to report their food waste. The idea is that they would do that in line with what they report under the road map, or what they do under Courtauld currently continues, so that there is no disconnect.

Q37 Kerry McCarthy: So basically it is making mandatory what some companies do on a voluntary basis.

David Bellamy: Yes. That is my understanding of the Government’s proposals.

Andrew Poole: Making it mandatory would be a sign of failure potentially at a certain level, in the sense that we can encourage them to do it voluntarily. I come back to the idea of making it easy for people to do it. Once we get to the mandatory stage we would then be arguing about issues. We picked on the reporting requirements of things like that. It was risk-based and proportionate, that would be the way to go. We would hope that businesses in particular would be doing this voluntarily, to begin with.

Q38 Kerry McCarthy: What often happens, though, is that some companies do it. There has been an issue in the past over things being reported in aggregate rather than identified specifically, and there has been no naming and shaming of individual supermarkets. Anecdotally, some supermarkets are clearly driving down those food waste figures while others are not doing their bit. That is always the problem with the voluntary approach.

Andrew Poole: It is quite important with those big producers that many of these requirements are not pushed down through the supply chain. If you are a small supplier supplying a big supermarket, one of the requirements is to deal with a proportionate and risk-based reporting mechanism. That has to be borne in mind if you are targeting big supermarkets such as Tesco. They have to report everything, and the burden is passed down through those that supply them as well.

Q39 Kerry McCarthy: Are you saying that it is not a good thing?

Andrew Poole: I am saying it would have to be looked at quite carefully, so that the requirements were proportionate and the supply chain was taken into consideration as well.

Q40 Saqib Bhatti (Meriden) (Con): Mr Poole, you spoke a lot about trust and transparency, and the Bill has a careful balance between detail and direction, but a lot of details will be prescribed through secondary legislation. I just wanted to garner your opinions on the importance of public consultation, so that we can garner expert views to develop detailed policies through secondary legislation.

Andrew Poole: I come back to the point I keep making, which is that small businesses are signed up to this—in the broad concept. They want to do the right thing for the environment. They are human beings. What is increasingly important is that they want to demonstrate to their customers that they are doing the right thing. They are aligned with the broad concept of the Bill.

When it comes to those granular details, that is obviously what is going to make or break the Bill. Government must see small businesses as a partner for delivery at every stage where those decision have to be made. I suggest that the outcomes of this Bill will not be achieved without a fully engaged small business community playing a very active role in it. It is a plea to policy makers and legislators that small business views are taken into account fully when those decisions get made, at each stage.

Q41 Richard Graham: Can I come back, Mr Curtois, to your earlier point that you thought there was masses in the Bill in terms of recycling, but less on residual waste and how that should be treated. What would you hope to see in the Bill that would cover that?
The situation in the UK in terms of residual waste is that it is virtually impossible to export refuse-derived fuel now in a viable way, because particularly in mainland Europe the cost of that is making it prohibitive. For obvious reasons, landfill is at the bottom of the waste hierarchy, and from what I can see from the resources and waste strategy the overall aim is to prevent waste where possible, recycle more and landfill next to nothing.

So we have got to recognise that even though recycling will hopefully continue to go up—ultimately I think the aim is to get, possibly, to 65%—there is something that has not yet really been covered in depth in the resources and waste strategy, which is that we need to do something with the residual waste. We operate 10 energy recovery facilities within the UK, three of which have district heating. Bearing in mind the plans that the Department for Business, Energy and Industrial Strategy has for a heat road map, which I think is proposed for June, there is a role, which we need at least to recognise, for energy recovery, preferably with heat decarbonisation.

We are addressing the issue that the waste has to go somewhere. The landfills are running out. Therefore we need to do something with it that will also help us with generating electricity, given the fact that there will be even more intense pressure on the grid because of the number of electric cars that we obviously hope for, to reduce our carbon impact. There should be at least some recognition that it is an important component of the overall mix.

Q42 Richard Graham: Can I ask Mr Bellamy a separate question? It is really about your members and their attitudes to eliminating avoidable waste of all kinds. Do you think the introduction of charges for any single-use plastic item will incentivise a shift towards the direction that the Government want to go in, or do you think your members will resist that?

David Bellamy: The question of avoidable waste is a little bit open to interpretation, in our estimation. It may warrant a definition in the Bill. We suggest that that material might not be recoverable in any shape or form, or it might not be replaceable by something else.

Q43 Richard Graham: Would you support the traffic light system, which clearly identifies for every consumer exactly which bit of plastic can be recycled and which cannot?

David Bellamy: We support a binary labelling system to that effect. We have not looked at a traffic light scheme as such. The current proposal is more of a descriptor-based labelling system, which basically says that something can or cannot be recycled. We strongly support the concept of a binary system.

Q44 Richard Graham: Andrew, can your members respond to the challenge with the speed that is needed to achieve these net carbon targets?

Andrew Poole: The truth is that some will, and some will not. We have tried to highlight, across the piece, in terms of these environmental challenges, the requirement to understand the business audience in more detail. Small businesses are very different. There are myriad different types of organisation. We consistently challenge policy makers on that requirement to understand in more detail the business audience that is being affected.

If there are any requirements or opportunities to provide support to small businesses, that support should be targeted to those businesses that are least able to adapt. The more time that businesses are given to adapt and change the way they do things, the more likely they are to achieve those changes.

Richard Graham: In one way—

The Chair: Mr Graham, I am sorry, but I going to take a brief, final question from Ruth Edwards. I have tried to get everybody in. This will be the final question.

Q45 Ruth Edwards: Thank you. I will be very quick. I want to return briefly to the issue of public consultation. How important will that be in determining the type of deposit return scheme that would be delivered by the Bill through the secondary legislation that it will bring in?

Martin Curtois: I believe that in Scotland, they are planning to go for an all-in deposit return scheme in April 2021. We will see how that works in practice. It seems that in Scotland they have decided that is the way they will go. It will be interesting—because they have proposed an all-in scheme rather than an on-the-go scheme—to see whether they can cope with the number of materials that will involve, as far as a DRS is concerned.

There was, perhaps, some merit to an on-the-go scheme. It would perhaps have had the advantage of primarily focusing on the plastic bottles and cans that are collected, which currently go into high street refuse bins and are virtually unsorted. We could go from 60% to 95% recycling of plastic bottles, if we have an on-the-go system that works and that focuses strictly on the bottles and the cans. It will be interesting to see what happens in Scotland and how that evolves. That will be the biggest and best test.

Q46 The Chair: Mr Poole, I assume the FSB's members will have an interest in recycling.

Andrew Poole: Absolutely. Coming back to recycling or the deposit return scheme, I think it is important to understand local issues. Locality-based solutions may be required. The solution in one area, for example, on a busy high street, will be different from that required for businesses in the middle of the countryside. The importance of consultations is to bring out the granularity of different options for the different types of businesses and different types of locations. As has been said on this panel, a one-size-fits-all approach will not necessarily work.

Q47 The Chair: A final word, Mr Bellamy.

David Bellamy: Just to say at the outset, we support a co-ordinated approach to DRS, introduced on a GB-wide basis, and based on best practice, particularly in the Nordic countries, where it has already been implemented for some time. We are, obviously, mindful of the potential impacts on local authorities. We fully understand why they might be sensitive to a DRS. We feel that there will be savings to be made for local authorities. There will be less material for them to collect, potentially, and less litter for them to deal with.

With the introduction of EPR reforms alongside the DRS, we think there will be opportunities to refine the service provision of local authorities and deal with any
potential economic impacts in that way. We think that local authorities right now might be thinking about their contracts and whether they need to be reviewed in the light of the DRS coming along. We think it might be reasonable for the Government to consider some support for local authorities to help them do that at this stage. All in all, we support the DRS. We welcome a second consultation, which is important.

The Chair: Thank you Mr Curtois, Mr Bellamy and Mr Poole. The Committee is indebted to you. I am afraid that brings us to the end of this morning’s proceedings. The Committee will meet again at 2 pm.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
Public Bill Committee

ENVIRONMENT BILL

Second Sitting
Tuesday 10 March 2020
(Afternoon)

CONTENTS
Examination of witnesses.
Adjourned till Thursday 12 March at half-past Eleven o'clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 14 March 2020
The Committee consisted of the following Members:

**Chairs:** † Sir Roger Gale, Sir George Howarth

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Ansell, Caroline *(Eastbourne)* (Con)
† Bhatti, Saqib *(Meriden)* (Con)
† Brock, Deidre *(Edinburgh North and Leith)* (SNP)
† Docherty, Leo *(Aldershot)* (Con)
† Edwards, Ruth *(Rushcliffe)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Longhi, Marco *(Dudley North)* (Con)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Mackrory, Cherilyn *(Truro and Falmouth)* (Con)
† Moore, Robbie *(Keighley)* (Con)
† Morden, Jessica *(Newport East)* (Lab)
† Oppong-Asare, Abena *(Erith and Thamesmead)* (Lab)
† Pow, Rebecca *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Sobel, Alex *(Leeds North West)* (Lab/Co-op)
† Thomson, Richard *(Gordon)* (SNP)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)

Adam Mellows-Facer, Anwen Rees, Committee Clerks

† attended the Committee

**Witnesses**

Mayor Philip Glanville, Mayor of Hackney, Local Government Association

Dr Diane Mitchell, Chief Environment Adviser, National Farmers Union

Alan Law, Deputy Chief Executive, Natural England

Dr Sue Young, Head of Land Use Planning and Ecological Networks, The Wildlife Trusts

Judicaelle Hammond, Director of Policy, Country Land and Business Association

Rico Wojtulewicz, Head of Housing and Planning Policy, House Builders Association (housebuilding division of the National Federation of Builders)

Ruth Chambers, Senior Parliamentary Affairs Associate, Greener UK

Rebecca Newsom, Head of Politics, Greenpeace UK

Ali Plummer, Senior Policy Officer, Royal Society for the Protection of Birds
Public Bill Committee

Tuesday 10 March 2020

(Afternoon)

[Sir Roger Gale in the Chair]

Environment Bill

Examination of Witness

Mayor Philip Glanville gave evidence.

2 pm

The Chair: Good afternoon, ladies and gentlemen. For the benefit of the record, I shall ask our councillor guest to identify himself in a moment. I am advised that there may be a Division on the Floor of the House. That is probably slightly private information, but I do not see any reason why the public should not know what is going on. If the Division bell rings, it will not mean that an inmate has escaped; it means we will all have to go over the road and vote. There will be injury time; whatever we have to take off for the vote, which will be 15 minutes, we will add back on again.

We have half an hour for this session with the representative of local government. By the way, the other thing I have to mention, in case anybody is concerned, is that we have endeavoured to let some daylight into the room by opening the blinds. Apparently, that interferes with the broadcasting quality, so if I have ruined the picture it is entirely my fault. We felt we were enough like mushrooms as it was without having complete darkness in here.

Without further ado, the Local Government Association. Councillor Glanville, would you like to introduce yourself and explain, for the benefit of the record, what you represent, please?

Mayor Glanville: Thank you, Chair. I am Phil Glanville, the elected Mayor of Hackney and a representative of the Local Government Association. I serve on the relevant policy board covering the Bill.

The Chair: We are most grateful to you for coming in.

Q48 Dr Alan Whitehead (Southampton, Test) (Lab): Good afternoon, Mr Mayor. What consultations on the Bill have taken place while you have been a representative on the Local Government Association committee that has been dealing with Bill? Where have been the main disagreements with regard to local government interests?

Mayor Glanville: There has been extensive engagement. Obviously, the original Bill dates back to last year. Our committee has been looking at various aspects of the Bill and we have submitted our package of evidence to the Committee. We are seeing new powers and responsibilities for local government. I appeared before the waste reduction investigation that was conducted last year. There has been extensive engagement and investigation into some aspects of the Bill. The challenge for all of us is that the Bill is very ambitious and sets new targets. In some areas, such as biodiversity and air pollution, the relationship with local government and where responsibilities lie are less clear.

On areas such as waste, recycling, plastic pollution and single-use plastics, the engagement has been more extensive. It depends on the areas of the Bill we are talking about and the responsibilities that are in focus. The areas of disagreement are common to those that arise when local government takes representations. Where we take on new responsibilities, we need adequate time to prepare and adequate funding in order to do that.

We have a track record of delivering improved and innovative recycling services during a decade of funding changes as a result of austerity. We have continued to improve our recycling services, investing more than £4.2 billion of resources. If we were to move towards the types of changes suggested in the Bill, the burden could be increased by up to £700 million. We will provide further information as the LGA on that. Without that increase in resources, council tax payers will have to meet that uplift in our duties around waste and recycling, or other services will have to be cut.

Those sorts of challenges go across different parts of the Bill, whether it is the work on biodiversity and planning or the clear ambition to deal with air pollution. Some of those responsibilities do sit with local authorities and we are ready to rise to that challenge, but whole industries will see changes in regulation as a result of the Bill. We believe we can rise to that challenge, in partnership with Government and industry. I am sure that over the course of the next half hour we will explore some of those areas more specifically. The main areas of disagreement relate to having the right powers and funding to match our duties.

Q49 Dr Whitehead: That is very clear, certainly in terms of the ability of local government to deliver on the challenges set by the Bill. Are there particular areas that relate to the powers that local government has at the moment to do things that may be within, or possibly outside, some of the particular asks that the Bill will put on local government? Are there areas where local government may not have powers at the moment, for example on planning, in terms of biodiversity gain, and so on, and where further work will be needed should such aspirations be placed on local government as a result of the Bill?

Mayor Glanville: Biodiversity and how the planning system could lead to the net gain that is the priority within the Bill is one of the key areas. We have a system of local planning authorities that is well established. The system has accommodated various changes relating to energy, carbon and sustainability over a number of years, and we have adapted to those changes and adopted them within both our local plan development and the way our committees regulate development.

The planning context is really important, before I come to the detail on biodiversity. We have seen 2.6 million homes consented to in the past six years. A million of those have yet to be built, in the context of a 40% reduction in funding for local planning authorities. We have seen some improvements. We can set fees that allow us to recover the costs of fulfilling our planning responsibilities as local authorities, but there is still a £180 million gap between the cost of fulfilling our responsibilities and the funding that we receive from planning fees.
If we introduce new responsibilities for biodiversity, the challenge is whether we will close the existing gap and ensure that a new gap does not develop. We need to ensure that local authorities have the expertise to meet those new biodiversity responsibilities. That could be addressed either through the wider financial settlement for local government, or through a fees regime. As it is written at the moment, the Bill does not suggest that local authorities will be pre-eminent in collecting any additional resources if a development does not meet biodiversity standards.

Many Members who are involved in constituency casework, as I am as a council leader, will know that planning is always contested. People see the impact of a new development very much in their local community. If we are saying that the impact of new developments on biodiversity will be fully recognised, which we welcome, we want to ensure that any compensation is either held within that development, and the development contributes to a net improvement in biodiversity, or, if not, that local planning authorities can use those resources for the local community. That could be by placing extra requirements on a development, or by using our expertise in tree planting, and improving diversity and green infrastructure in the local area. As things stand in the Bill, we fear that there may well be a levy, but the levy would not be recycled back into the planning system, or would not result in the net improvement in biodiversity that we all want to see.

The Chair: I will come back to you if I can, Dr Whitehead.

Q50 The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): Thank you very much for attending—it is much appreciated. The Government are committed to funding all new burdens on local authorities through the Bill, so I want to get your view quickly on that. I would also be interested to know, in the light of that, what opportunities the Bill offers local authorities, perhaps particularly referencing the fact that lots of local authorities have committed to their own climate and environmental referencing, and/or that they have signed up to the Homelessness Reduction Act 2017. There is normally a dispute later between central and local government about what the new responsibilities are and where they are fully accommodated. You often get transition funding, which allows some adaptation and change, but the picture for long-term revenue for local government is still incredibly challenging. I know that we are all going into a spending review and some of those things might be addressed.

There are huge opportunities for local government, because when it comes to waste and recycling, we are obviously the processors of all our consumer waste. We all want to see less of that waste produced in the first place. As I said, I gave evidence last year. If we just focus on plastics and single-use plastics, that is obviously where a lot of residents and campaign organisations are focusing our minds, but with a true waste reduction strategy consumer packaging would not be produced in the first place and there would be more upstream regulation of the types of materials that go into our waste system.

Some 70% of councils have all seven common forms of plastic recycled in their waste streams, but other types of packaging that local authorities cannot process are still going into the waste streams. Consumers often think that they can recycle them and it can be frustrating for them when they find that they cannot. Those types of packaging obviously increase the amount of residual waste.

As the Bill develops and regulation flows from it, we are hoping not just that we will focus on the work that we all need to do to continue to improve the recycling end but that we will work at the producer end, which, obviously, individual local authorities and the LGA do not have the scope to focus on. That is where we can really add value. We can clarify some of the areas where the local government needs to rise to the challenge, but also where industry and consumer behaviour need to change.

Q51 Rebecca Pow: So this is very much what is termed a framework Bill. I get the impression that the local authorities would welcome more public consultation and engagement to get this right for you and for the businesses that we heard from this morning.

Mayor Glanville: Absolutely. As I said, we all face a tremendous amount of challenge from residents, consumers and activists. We all want to play our part in responding to the climate emergency. We as the Local Government Association have been doing a lot of peer-to-peer work. My board has created a climate change emergency action plan, and we are keen to continue that work. Where we would value a greater voice is at the political and officer level, if there is a taskforce linked to the Bill, especially on climate change emergency and action. I am told that there are still some details there to work through in terms of leading that full sector-led response.

Q52 Jessica Morden (Newport East) (Lab): Can I ask two things? The Minister said that all new burdens would be met. What is the figure that you said initially that local government would need to do the work set out in the Bill?

Mayor Glanville: Just on the area of waste and recycling, to meet the objectives that are set out in the Bill, we have done some internal modelling that said there would be a £700 million gap in local government funding to meet those new responsibilities and burdens. That is in the context of a total amount of around £4.2 billion
spent on processing household waste. Of that, £700 million is spent on recycling, so it is a doubling of the recycling and reducing element that is outlined in the Bill.

**Q53 Jessica Morden:** Waste crime is obviously a big problem, with organised criminals dumping vast amounts of waste. What powers, duties and resources does local government already have, and what does it need? Does the Bill address that issue adequately?

**Mayor Glanville:** The challenge when taking enforcement action is the cost of bringing cases to court or issuing civil penalties. Local government has a lot of powers in that area, but it can sometimes be challenging to prove a cost-evidence base for implementing them, so anything to improve not just our powers but the ability to ensure that the polluter pays will help. That is the element that is always the challenge for local government.

**Q54 Robbie Moore** (Keighley) (Con): Many local authorities have declared climate emergencies. How will the Bill help local authorities to address those self-declared climate emergencies?

**Mayor Glanville:** Local authorities across the country from Hackney to Hull have declared climate emergencies. The Local Government Association itself has. Local authorities are doing a lot of work outside the scope of the Bill on energy, and there is some detailed work going on at the LGA. The challenge with air pollution and some of the aspirations in the Bill is that many of the elements are reliant on industry and consumer change. There is a lot of work on clean air zones in local government. There is experimentation in places around Nottingham on levying parking charges in workplaces. Wider investment in sustainable and public transport is needed to ensure that our aspirations on air pollution can be met.

In the Bill, there is some positive work on the contribution of motor vessels on our waterways and improving regulation of them. The Bill strengthens elements relating to domestic pollution and domestic fuels, which we very much welcome as well.

We are very keen, as local government, to ensure that we do our part in responding to the climate emergency. There are some of those upstream, “producer pays” principles around waste and recycling—for example, the car industry switching to a more electric fleet, and I know there have been announcements on bus funding—but if we are talking about the types of shift that we are going to need in consumer behaviour in the way that we travel, further work will need to be done together on that.

**Q55 Alex Sobel** (Leeds North West) (Lab/Co-op): First, I am particularly concerned with the new duty in clause 54 that local authorities are going to have to collect food waste every week. Most local authorities now have bi-weekly collections. Many do not collect food waste at all, so that would be a big investment in vehicles and staff and then in anaerobic digestion facilities. You said that there is a £700 million gap for recycling. Is that inclusive of food waste or is another figure needed for local authorities to be able to fund the waste duty that the Bill puts on them?

**Mayor Glanville:** That is inclusive of food waste. You identify one of the challenges. Typologies change across the country. What is required to collect food waste and the density of infrastructure in a borough such as Hackney can be very different from what is required in large rural authorities. We are nervous about having duties that do not recognise those challenges and differences. Different local authorities have set different regulations around how often they collect residual waste. Some local authorities are still doing that weekly, some are doing it bi-weekly and some every three weeks, and they vary how often they collect recycling and food waste alongside that. Many inner London boroughs that have the challenges of density and flats are still collecting waste more often than areas where there are suburban typologies where people can store more waste in their homes. In a typology such as Hackney, where all of the residential growth has been around flats, it is often impossible to do that, given the size of flats.

We hope to see the work on the Bill and regulation recognise some of those differences and challenges and get to the position where food waste is available for everyone, but makes sure that it is done in the right way with the right change in industry and the capacity within industry to roll it out. Rolling it out everywhere weekly is part of the £700 million figure. Obviously, some local authorities have invested already. One of the challenges around burden is whether authorities that are already delivering on a weekly basis receive extra resources or will they only go to those authorities that have yet to make that investment? It is an equity, fairness and transparency question across local government.

**Q56 Alex Sobel:** I have a second question on air quality. The Mayor of London has committed to reach World Health Organisation standards by 2030. The Bill fails to set legally binding targets. What steps should local and national Government take to meet that ambition to meet WHO air quality limits by 2030? Do you think the Bill could be amended to make that happen?

**Mayor Glanville:** Local government has not come to a position on the 2030 target. Speaking from the LGA perspective, we recognise that we need to have ambitious targets. We need to have a pathway to get there, which will require quite a lot of action around industry. It is not local government that is producing the transport—we are dealing with the consequences. While you can introduce clean air zones and have the work that combined authorities and the Mayor have done around ultra-low emission zones, investing in disabled transport, walking and clean bus fleets, all that will not get us to the 2030 target unless industry moves as well. If that target were put into the Bill, we would need to have a clear pathway of getting there and the resources for doing that. Many organisations, such as Friends of the Earth and Greenpeace want to get to that 2030 target. I think targets are really important, but only if you have a plan to get there. We risk setting targets that we will not meet if we do not maintain the confidence of that wider coalition—that is the challenge.

**The Chair:** Four people still want ask questions and we have fewer than eight minutes in which to do that, so short questions and short answers, please.

**Q57 Saqib Bhatti** (Meriden) (Con): You spoke about the Bill being ambitious, and legislation such as this should be ambitious. You talked about opportunities. Local councils up and down the country are doing
things to be environmentally friendly. How does the Bill enhance the current activity? Are you looking at things such as procurement to assist in that?

**Mayor Glanville:** It can provide an excellent framework, especially on the waste and resources piece, introducing more of those principles around producer-paying deposit and reuse schemes. Setting out a clear regulatory framework for that backs up the work that local government is already doing. As I have answered in response to other questions, we cannot just look at the waste and recycling end. We need national Government to make a clearer ask of industry.

Industry also welcomes having frameworks that we can all work to. I do not think it wants to put labels on consumer products that suggest that local recycling streams can accommodate that recycling and then find out that they cannot. That confusion is something that both local and national Government want to see resolved. As long as the balance between rights and responsibilities between local and national Government are right, something like the work on biodiversity can be a real improvement to the planning system. It has to be done in the right way and work with local government and residents’ expectations of local government. While we as a sector are representing ourselves, it is often the through the expectations of our residents that we will have some control and influence around implementing these policies. If the legislation is not drafted in the right way, we will not have that and people will say: “Why, if it is supposed to be improving local biodiversity, is it not contributing to it?”

In the areas around tree management, we want to be clear about the role of, say, the Forestry Commission and what new statutory powers it is going to have and does it interact properly with the local planning and regulatory system?

**Q58 Abena Oppong-Asare** (Erith and Thamesmead) (Lab): Clauses 95 to 98 seek to create local nature recovery strategies across England. How will that help local authorities provide a more effective and joined-up nature recovery strategy? We heard evidence earlier from Veolia, which has a number of refuse and recycling centres in your patch.

**Mayor Glanville:** Can I clarify what Veolia said?

**Abena Oppong-Asare:** It was were talking about how it would like a more joined-up approach with the council and, along with others on the panel, about how businesses need more support to be able to deliver their recycling and waste strategies.

**Mayor Glanville:** In terms of setting those strategies, it is making sure that if we have a duty to set them locally, and they are backed up within the planning system, we recognise the context of where local government is at the moment with resourcing.

There were questions earlier about how local government is rising to the challenge of the climate emergency. We, and many local authorities like Hackney, are investing in our agriculturalists and in the people who work in our parks. We have ambitious targets around planting trees and green infrastructure. We are resourcing that through our planning gain, within the existing planning system, and using policies around section 106 and the community infrastructure levy.

If local government is going to be doing even more, either the system that exists at the moment is going to have to accommodate that or those new duties are going have to be explored as well. Not every local authority is going to have tree specialists or still have a biodiversity officer. Over the period of austerity they have all too often been seen as back-office functions. There are real pressures within the planning system and pressures to make sure that we continue to deliver the housing numbers within our local plans.

It is right that we refocus on green infrastructure, biodiversity and a net increase, but without resources being in place we will either have to get them from the planning system or from some other settlement, to make sure we are able to deliver on those ambitions.

**The Chair:** I fear this is likely to be the last question.

**Q59 Cherilyn Mackrory** (Truro and Falmouth) (Con): I will make it quick. Putting aside the specific issue of funding, which I believe has already been addressed this afternoon, can you tell me what else is important to ensure that local authorities can effectively deliver this Bill?

**Mayor Glanville:** It is a continuing engagement. Obviously, as we have said, it is a framework Bill, which has advantages and disadvantages. There is a high degree of discussion around the Bill at the moment, including about what should be in it and how far it should move into clearly engaging on those ambitious targets and regulations. There is an opportunity in the engagement process with a Bill to engage with local government, with industry and with campaigners.

As you move towards regulations and statutory instruments, some of the focus and the ability for scrutiny in Parliament can be lost, along with local government’s ability to influence. We are keen to make sure that there is clarity in both those positions and that there will still be opportunities to engage around some of the specifics, as we move into further discussions about waste and recycling, air pollution, how we interact with the planning system, the work around flooding and water, and other key areas. There is still a huge amount that we can do. The Local Government Association is committed to rising to that challenge and contributing to making sure that this not just ambitious but implementable legislation at a national and local level.

**The Chair:** Thank you, Mayor Glanville. Rather than chop you off mid-flow, I will terminate this session now. You are probably aware that the Committee has authorised the receipt of written submissions, so if there is anything that occurs to you that you wish us to have on behalf of your association then please put it in writing and let us have it.

**Mayor Glanville:** Thank you, Chair.

**The Chair:** Thank you for joining us this afternoon. Please could we now change over as swiftly as possible as I will try to start the next session at 2.30 pm, when it is supposed to begin.

**Examination of Witnesses**

Dr Diane Mitchell, Alan Law, Dr Sue Young and Judicaele Hammond gave evidence.

2.30 pm

**The Chair:** Good afternoon, ladies and gentlemen. We are now going to take evidence from Natural England, the Wildlife Trusts, the Country Land and Business
Association and the National Farmers Union. We have one hour, I am afraid—and that is all—to accommodate what I am sure will be a very great deal of interesting information. Without further ado, Dr Mitchell, please identify yourself and give us a flavour of what the organisation you represent does, for the benefit of the record.

Dr Mitchell: I am Diane Mitchell and I am the chief environment adviser at the National Farmers Union of England and Wales, representing about 50,000 farmers and grower businesses.

The Chair: Before we go any further, for some reason, we have a problem with these microphones. Please project if you can, and if we can crank up the sound, that would be helpful as well. Mr Law, please.

Alan Law: Alan Law, I am deputy chief executive at Natural England. Natural England is Government’s wildlife adviser. We are an arm’s length body, a non-departmental public body in the DEFRA group.

Judicaelle Hammond: I am Judicaelle Hammond. I am the director of policy and advice at the Country Land and Business Association. We represent about 30,000 members who own or operate businesses based on land in rural areas in England and Wales.

The Chair: Dr Young, by a process of elimination, you are—

Dr Young: I am Sue Young. I work as head of land use policy and ecological networks at the Wildlife Trusts. The Wildlife Trusts is a federated organisation of 46 charities, it covers the whole of the UK and provides advice on nature issues and looks after nature reserves and manages land.

The Chair: Thank you very much. I should have said this at the beginning and I will say it now: if any Members and, indeed, any guests for that matter—it seems to be a bit fetid in here—wish to take their jackets off, you are welcome to do so.

Q60 Dr Whitehead: A particular issue that concerns all of you in different ways is the nature recovery network, and it is the Bill’s intention to lay the foundation for that. Do you think that local nature recovery strategies actually do provide that mechanism to secure nature’s recovery on the land?

Dr Young: A nature recovery network is a really important part of the solution to the ecological crisis that we are facing. It is a joined-up system of places needed to allow nature to recover. To be effective, it must extend across the whole of England, including rural and urban areas, and connect to similar initiatives elsewhere in the UK. The section on local nature recovery strategies in the Bill is really good and sets an ambitious agenda that would enable us to tackle nature’s recovery. It needs to be clearer how the local nature recovery strategies will contribute to a national network and targets for nature’s recovery.

That seems to be missing in the Bill at the moment; there is not a clear description of how the components that are set out in that part will add up to a system that works ecologically. The Bill says that the strategies will identify areas that could be good for biodiversity in the future, but that really needs to be based on ecological principles, rather than being an ad hoc set of sites where habitats could be created. That will ensure that the ambition contained within the Bill to secure nature’s recovery is realised. That could be achieved with some relatively small amendments to clause 97.

The Chair: Thank you. It will not be necessary for every member of the panel to answer every question, but to set the stage and for ease of reference, I will on this occasion simply work from, in my case, right to left—in your case, left to right. Ms Hammond, please.

Judicaelle Hammond: Thank you. Local nature recovery strategies are a real opportunity to make a difference to nature. There are a few things I would like to raise in terms of how they are going to work. First, at the moment, they are just about nature. We wonder whether there is a point to them being more holistic, so that we avoid silos and manage to have a look at how land is used in a way that maximises the various benefit types, including flood management and climate change, not just nature. This is a plea for them to not just be considered in isolation.

Another aspect is the issue of who should be leading on this. The Bill provides for a multiplicity of possible responsible bodies, including local authorities. As we heard from the gentleman from the Local Government Association, local authorities are already overstretched. We have an issue over whether they have the capacity to lead on that.

Another aspect is skills, and that was raised to the Committee. Would Natural England be better placed to do that?

It is important to have clear priorities. There need to be no gaps and no overlaps with regards to local nature recovery strategies, and that needs to be an important driver from national Government. Most of the land we refer to is in private ownership, so it will be important to consult with landowners and land managers on that.

Alan Law: The Bill has the potential to be the most significant environmental piece of legislation since the National Parks and Access to the Countryside Act 1949. We have worked on conservation in this country for the last 70 years, driven by a focus on looking at the rare and putting in place protection measures for those rare site species: parks. What is exciting about the Bill and its links to the 25-year environment plan is the ambition to go from protecting small parts of the countryside—looking after the rare and the special—to trying to drive wholesale large nature recovery. That ambition around recovery is fundamental. The most important part of the Bill revolves around this nature recovery network and the links between the local and the national.

Will local nature recovery strategies alone deliver the ambition of the nature recovery network? No, they probably will not. That will not happen without further tightening up, either in the Bill or in supporting guidance or regulations. For reasons already articulated, we need to ensure that local nature recovery strategies operate within some form of national framework so that they are coherent. A national framework needs to be in place.

There need to be mechanisms for developing local nature recovery strategies so that they are quality assured and checked to ensure that they actually add up to a
part of that coherent network. We need to see clear expressions of the set national targets writ into those local nature recovery strategies. At the moment we have an ambition at the front of the Bill, that targets and we have a tool—a delivery mechanism—around local plans, but there is no hard-wired connection between the two. That is not difficult to achieve, so the issue is to tighten up around the links between targets, delivery processes, and some of the accountabilities.

**Dr Mitchell:** I have some opening words from my perspective on the Bill itself. British farmers are the stewards of our natural environment, and they have a good track record of protecting, maintaining and enhancing our environment. We welcome some aspects of the Bill, but some improvements could be made to ensure that environmental enhancement policies are carefully considered, and that food production and the environment go hand in hand. One of the key themes in the Bill and its various measures will be the need for them to work for farmers and food production as well as for the environment. Setting that context and going on to nature recovery networks and local nature recovery strategies, there is a lot of jargon around. We need greater clarity on these different phrases and how they all fit together.

How local nature recovery strategies may be used is unclear from our perspective. The suggestion is that they may be used to inform planning decisions. That makes us slightly nervous because it is some sort of designation at the front of the Bill around targets and we have a tool—a delivery mechanism—around local plans and how they link to national strategies. Clause 98(5)(b) includes a very specific reference, that the local nature recovery network strategies to go back to the local nature recovery network strategies environmental priorities.

It will be important to think about how this is implemented. Again, we are really pleased that the duty on local authorities in an earlier section of the Bill has been improved so that it is about local authorities not just having regard to the protection of biodiversity but enhancing it and having regard to local nature recovery strategies. However, in the past, “have regard” has not been a very strong term and has not led to sufficient action to halt the declines. A slight change of wording—perhaps to “act in accordance with local nature recovery strategies”—would really shift the focus from thinking to doing and taking action.

We would like local nature recovery strategies to be more clearly required to be expressed in the planning system. I think local authorities and public bodies having regard to local nature recovery strategies in their decision making about planning and spending would lead to stronger action. It would also help to a certain extent with the point that colleagues have made about consultation, because the planning system provides us with a ready-made administrative system for good consultation.

**Q61 Rebecca Pow:** Thank you for coming in. I want to go back to the local nature recovery network strategies and how they link to national strategies. Clause 98(5)(b) includes a very specific reference, that the local nature recovery strategies “could contribute to the establishment of a network of areas across England for the recovery...of biodiversity”.

That is newly added since the previous Bill, in response to engagement with stakeholders. I want to know, first, whether you welcome that and what you think about it and, secondly, going on a bit, your view of the overall measures in the Bill in driving us towards this nature recovery environmental improvement.

**Alan Law:** We welcome the insertion of that clause. I have “could” underlined, rather than a more affirmative statement on the plan to undertake it. The ambition is clearly there to develop local strategies that add up to a coherent whole, but a little bit more in some of the supporting guidance or regulation to tighten up exactly how national standards will be met should be defined, and how those can be used in terms of local strategies. A timeline for production of the local strategies, again, would be great to see coming through while the Bill is in transition.

It will be really important to have some formal mechanism for scrutinising those plans and for advising on how fit for purpose they are. They will go back up to the Secretary of State, who provides that scrutiny. Forgive us for the presumption, but perhaps a body such as Natural England could provide that sort of role.

**Dr Young:** We were really pleased to see that addition in the Bill, because it makes the link. It is clear in the explanatory notes that it is talking about a nature recovery network. I will reiterate how important a nature recovery network is to tackle the massive declines that we have seen in nature over our lifetimes.

I agree with Alan’s point that the Bill uses the phrase “could contribute”. Certainly, the Bill’s ambition is clear, but there is always a danger of the ambition not being implemented in the way the Government foresee. When resources are tight, organisations will do what they must do rather than what they should do. It would be good to see a change in some of the wording in the Bill from “may” to “must” so it achieves the ambition we really hope it will achieve. The Bill uses the phrase “a network of areas”. It would be really good if the term “a nature recovery network” were included in the Bill rather than just in the explanatory notes, so that we are really clear what we want the Bill to do and what we want people to do.

It will be important to think about how this is implemented. Again, we are really pleased that the duty on local authorities in an earlier section of the Bill has been improved so that it is about local authorities not just having regard to the protection of biodiversity but enhancing it and having regard to local nature recovery strategies. However, in the past, “have regard” has not been a very strong term and has not led to sufficient action to halt the declines. A slight change of wording—perhaps to “act in accordance with local nature recovery strategies”—would really shift the focus from thinking to doing and taking action.

We would like local nature recovery strategies to be more clearly required to be expressed in the planning system. I think local authorities and public bodies having regard to local nature recovery strategies in their decision making about planning and spending would lead to stronger action. It would also help to a certain extent with the point that colleagues have made about consultation, because the planning system provides us with a ready-made administrative system for good consultation.

**Q62 Alex Sobel:** I just have one question. I think there is general consensus that we do not want a lower standard of environmental protection after the end of the end of the transition and the implementation of the Bill. Do you feel that the Bill replicates our current level
of environmental protection—the level as it was when we were a member of the EU—or will it deliver a lower level of environmental protection?

Judicælle Hammond: There is no reason, given the way the Bill is framed at the moment, that those standards will drop. The CLA is on record as a strong supporter of high standards remaining, not least because that gives us an opportunity to use high standards as a unique selling point both in the export market and internationally. These are absolutely necessary, and we need to make sure that we maintain them.

The Committee may want to consider the kinds of issues with trade deals that are being raised at the moment with the Agriculture Bill. They apply in exactly the same way to the need to ensure that we do not get imports that are produced at much lower standards of environmental protection—and, indeed, climate change action—than would be allowed here. That is an element of the Bill on which there could be some really useful reflection.

Dr Mitchell: There are a number of safeguards in the Bill to ensure that our environmental standards are not lowered. The environmental governance aspects around target setting, the embedding of the environmental principles and the introduction of the OEP should ensure that our standards are not lowered.

One of the things that we need to consider alongside our standards is the fact that farmers are doing a lot to maintain our environment as well as creating habitats and enhancing it. We ought to recognise that as well as all the things that we do to improve and enhance our environment, there is a lot of work in terms of good day-to-day management and maintenance that farmers do to maintain our landscapes. At the moment that does not seem to be recognised in the Bill, and we would like that to be recognised a bit more.

Alan Law: There are two aspects here—differentiating ambition from certainty. On the one hand, the Bill provides the mechanism through target setting to go beyond existing standards. That is entirely welcome. As yet, we do not have the clarity around those targets, but it is entirely welcome. The other area is around potential regression. There is a protection in the Bill through clause 19 around primary legislation, but that does not apply to secondary legislation, so conservation regulations in that area could be subject to regression.

Q63 Ruth Edwards (Rushcliffe) (Con): My question is particularly directed at Dr Young and Mr Law. Do you believe that 10% is the correct level of improvement for the biodiversity net gain targets?

Alan Law: I would reframe the question to say a 10% minimum. The work that we have done with stakeholders around those thresholds suggests that many are indeed willing to go higher than that, but there is a sense that applying a mandatory higher level at this stage would be counterproductive. We are content with it, but we apply it as a minimum. I would also say that it is 110%, of course, rather than 10%—it is 10% on top.

The Chair: You are saying that 10% is the minimum but also the maximum.

Alan Law: No, 10% is the minimum.

The Chair: Any advance on 10%, Dr Young?

Dr Young: It is important that 10% should not be a cap on the ambition for net gain. Net gain can make a really good contribution to nature’s recovery and we certainly welcome seeing it in the Bill and that it is mandatory. Having quoted 10%, however, we would not want to limit the ambition of those developers and local authorities that would like to go higher.

Dr Mitchell: Net gain provides an opportunity for some farmers who can be the deliverers of it, which is important to consider, but we should not forget that farmers can be developers themselves. They may want to replace a farm building, which may require them to meet the net gain requirements.

We are pleased to see in the Bill that there is an exemption from the need to provide net gain for permitted development. That is really helpful and important, especially for smaller developments on farms that farmers can do through the permitted development rights. We have to remember that in some areas of high environmental value, going beyond 10% might be quite difficult for the farmers, because they are doing 110%, which means that they may have to contribute quite a lot or they may have to get someone else to do the biodiversity credits for them.

We are conscious that in some areas, permitted development rights may not apply for some reason—for example, in national parks. In those areas, farmers would be disadvantaged. Not only would they have the additional costs of applying for planning permission, but they may have additional specific design requirements to meet in that national park area, and they would have to meet the net gain requirements on top of that, so they are already possibly at a disadvantage. One suggestion we have is to broaden the exemption that I just talked about to deliver the net gain to areas where the permitted development rights do not currently apply.

Q64 Richard Graham (Gloucester) (Con): I want to come on to the thorny issue of conservation covenants and potential abstraction compensation. May I start with one question to Mr Law of Natural England? From your point of view, what could conservation covenants deliver on the ground? If you could be as concise as possible, that would be great.

Alan Law: At the moment, we have a range of tools available to us to deliver conservation outcomes. We can designate sites, we can offer incentives and we can engage through the planning system to try to deliver planning gain. Conservation covenants would provide another tool we could use that would be between some of those existing tools.

Q65 Richard Graham: You clearly see it as a positive. Can you give us one example of what could be delivered? Bring it alive for anybody watching this great programme.

Alan Law: We could have conversations with landowners about new agri-environment agreements. Our ambition is to see public investments in public benefits in perpetuity. We could explore the desirability of a covenant with the agreement of the landowner to secure the long-term value of that investment. We could alternatively use a covenant as a different means of ensuring an area is protected in the long term, as an alternative to designation.

Q66 Richard Graham: That is not quite a specific example, but it gives us some structural ideas. Ms Hammond, you welcomed the idea; you are in favour of it. Can you give us an idea of how your members would benefit from conservation covenants?
Judicelle Hammond: Yes, as you say, we welcome the idea. Depending on how they are set up, we think that covenants are a flexible way to ensure that conservation aims are advanced. They enable two parties to enter into a contract for the long term, which my members value, because most of them will think of their business in multigenerational terms. This is an opportunity for our members to deliver some of the ambitions.

Q67 Richard Graham: And access to an enhanced environment for members of the public, as well.

Judicelle Hammond: Yes.

Richard Graham: Thank you, Dr Mitchell—

The Chair: Just a moment, before we move forward, you are quite entitled to ask specific questions of specific people, but does anybody else want to comment on the issues that have been raised so far? Yes, Dr Young.

Dr Young: I think conservation covenants provide a really useful tool for securing long-term environmental gains. Our concern about the effectiveness of this is that net gain, for example, which they could work well with, ought to be secured in perpetuity. It should not be too easy to discharge a covenant and risk the loss of biodiversity and other public goods. The terms used in the circumstances for modifying or discharging them ought to be clear enough to give that confidence.

The Chair: Right, Mr Graham, if you would like to carry on.

Q68 Richard Graham: Dr Mitchell, in your written evidence you expressed, as did Ms Hammond, considerable concern about the powers to amend or revoke licences for the abstraction of water. As I read it, the changes recommended in clause 80 are all about where the modification is to protect the environment. For example, you might have a member who owns land high up in the Welsh hills, and it may be thought helpful for people living in Shropshire, Worcestershire and Gloucestershire to have a catchment area or enlarged reservoir for water, to avoid people being flooded downstream. In that situation, is it right that your members should be compensated?

Dr Mitchell: Yes, we do have concerns about the provisions in the Bill to revoke or amend abstraction licences. I think that is the clause we are talking about.

Q69 Richard Graham: It is very specific about the situations. The Bill spells it out clearly:

“No compensation where modification to protect environment”. It then goes on to specific issues and I gave you an example of one. Surely, in the situation I gave you, it would be wrong to expect the taxpayer to compensate the farmer?

Dr Mitchell: What we are concerned about is not only the fact that the abstraction licence can be withdrawn or amended without compensation, but if you look at the tests to assess harm or impact on the water environment, there is a low evidential bar. They are broadbrush proposals, so there are dual concerns about this.

Q70 Richard Graham: So it is a general concern rather than a specific issue.

Dr Mitchell: It is a general concern.

Richard Graham: Is that the same for Ms Hammond?

Judicelle Hammond: We share some of the NFU’s views, particularly about how the reason for the necessity of the variation or removal is framed. In the Bill, it is very broad and it is not clear that it will be evidence based. That is certainly a concern that we share. I would add that abstraction licences are a business asset and there are property rights, so from our perspective removing them without compensation is an infringement of property rights.

Richard Graham: Okay, point understood.

Q71 The Chair: Are there any wildlife implications, Dr Young?

Dr Young: This is not an area that I work on, but I am happy to consult colleagues and provide information to follow up.

The Chair: That is fine. I just want to make sure you are not missing out on something.

Dr Mitchell: To add to what Judicelle said, if the proposals go ahead as currently drafted, they will create a lot of uncertainty for some of our members. They could potentially undermine business liability and productivity for some of our members.

Q72 Richard Graham: I understand, but that is a hypothetical risk. You have not given a specific example of one, although I gave you a specific example where I think the public interest would be at stake.

Dr Mitchell: Yes, but they are clearly broadbrush proposals and the evidential bar is low. Abstraction licences are important for business security and certainty. Years’ worth of investment has gone into some businesses to ensure that people have access to water. That investment has been made in the knowledge that they have permission to abstract. It could create a lot of uncertainty for a number of our members.

An additional aspect that we are concerned about is the excess headroom provisions, because we are unsure how you could develop an equitable system to assess the underuse of water. There are various reasons why you might not use your licence, including the weather or crop rotation.

The Chair: It is a significant issue, but we are going to have to move on.

Q73 Jessica Morden: The Bill loads lots more powers and responsibilities on bodies such as Natural England. Given the big cuts you have faced, how much more do you anticipate you would need to take on the new responsibilities?

Alan Law: Fortunately, there is a spending review coming up. We are looking at refocussing our organisation in a way that aligns closely with the ambitions of the Bill and the 25-year plan to focus on nature recovery. That means looking to operate at a larger landscape scale and to use our statutory powers at a local authority scale, rather than solely focused at the end-of-pipe development control scale.

We welcome the powers and the ambitions set out here. I was being slightly flippant about the spending review, because wherever that money goes it goes, but our ambitions will be to refocuss our organisation to use our incentive, convening, statutory advice and regulatory functions in ways that allow us to build larger-scale nature recovery.
A point was made earlier about whether we should focus on existing areas of high value for nature or wider areas. The point I want to emphasise is that we know—basic ecology tells us—that trying to protect small isolated sites over time does not work. Over the last 50 years, we have been exercising a regime that is effectively holding back the tide, stemming species extinctions on these sites. Unless we extend beyond those sites, it is inevitable that we will see losses of further species interest on these sites as the pressures from the environment and people’s activity continue to grow. This is something that we have to do and it is about rebalancing our focus to what the challenges are for the environment right now, rather than what they were 50 or 60 years ago.

Dr Young: I do not want to repeat what Alan just said, but I totally agree. I want to stress how important we feel Natural England’s role is in developing and helping to deliver the local nature recovery network and local strategies. It is able to convene partnerships, it has a wealth of knowledge and we really think it should play a central role.

Dr Mitchell: I think I mentioned this before. My question is whether it is appropriate for local nature recovery strategies to be used to target funding for environmental land management. I say that because if the local nature recovery strategies had been set up for a different purpose—say, for a special planning purpose—and ELM is being bolted on, do we have the same principles and an underlying objective behind the strategy? As I think I said before—I hope I did—farmers get very nervous when lines are drawn on maps, and they get very nervous if there is a postcode lottery and they may be excluded from taking part in a future scheme.

Q74 Bim Afolami (Hitchin and Harpenden) (Con): Dr Young, what role could local nature recovery strategies play in targeting funding under the environmental land management scheme? How could those two things interact?

Dr Young: There is a real opportunity to integrate policy delivery where there is a need for action to be geographically targeted. Some of the options that will be developed under environmental land management will be much more effective for the delivery of public goods and for nature if they are targeted in particular places and form a connected network. Local nature recovery strategies have a mapping element that shows opportunity areas, so they can be used to help with targeting and alignment with other policy areas, such as water policy, so that we can see multiple benefits from delivering particular actions and therefore get more value for money.

Alan Law: Your question is absolutely fundamental. It is imperative that local nature recovery strategies provide an effective mechanism for drawing together different funding streams into a coherent delivery pattern on the ground. Whether it is ELM, net gain or potentially water company investments—a whole range of sources—we need to be able to target coherently. To do that, we need a degree of consistency of standard in place around those local strategies, because how could you offer—

Bim Afolami: Otherwise it would be apples and oranges.

Alan Law: Absolutely; farmers in one part of the country would be operating under a totally different regime from those in another part. It is really important that that consistency is put in place and that we have a network of local strategies.

The thing I want to emphasise, though, is that I am not advocating national prescription. This is not about some ivory tower in the centre coming up with a land use map and saying, “There you are—that is what has to take place on the ground.” It is about standards and principles and applying those locally, because for these plans to work, they have to be owned by local people, and particularly by the land management community on the ground.

Q75 The Chair: Dr Mitchell, do you want to say something on farms operating under different regimes?

Dr Mitchell: From the NFU’s perspective, we think that the ELM scheme will be really important in future, but it has to work hand in hand with food production. The measures tied are management. I say that because if the ELM scheme remains accessible to all farmers and that the payment rates act as an incentive or are encouraging. As I say, they need to be designed alongside food production and they need to work for farmers as well as for the environment.

Can I add a point on conservation covenants? I think it came up in relation to ELM previously. We have concerns about conservation covenants. We have no objection to—indeed, we support—farmers working collaboratively, but we have a number of technical concerns about covenants. We have talked to various people, including non-governmental organisations, and I do not think our proposed changes are very controversial or change the objective of the Bill.

First, we think there ought to be clarity in the Bill to ensure that landowners do not sign up inadvertently to a conservation covenant, which I think is a danger. The Bill, as drafted, says that an agreement only needs to meet certain tests or criteria for it to be a covenant, but it does not need to state explicitly that it is a covenant. We think that ought to be addressed in the Bill. Farmers need to be aware of the seriousness and significance of signing up to a covenant. It is not a contract; it binds successors in title, and farmers need to be aware of that.

Secondly, the design of covenants needs to be sufficiently flexible. Specifics such as the length of the agreement and modifications or variations that can be made to the covenant need to be considered by the landowner and the third party. The points are quite technical, but hopefully they are not controversial and would not change the objective of the Bill.
Q77 **The Chair:** Ms Hammond, you are nodding. Before we move on, do you want to comment?

**Judicelle Hammond:** Yes, thank you for that. We agree that such a clarification would be helpful. The Bill could be tightened in that regard. The one thing I would add on conservation covenants before I answer Mr Afolami’s question is that we have reservations about covenants being de facto, by default, in perpetuity, not least because of climate change and the fact that what you do with a piece of land, given the topology and given what we know is going to happen with climate change, regardless of our success in containing it, might mean that in 30 years’ time it might make sense for nature to do something slightly different with it because the habitat has moved. That is something we need to continue being flexible about.

As for your questions about—this is my way of rephrasing Mr Afolami’s question, I hope I get it right—how we knit together food production and the environment, we do not see a divergence between the two. This Bill and, indeed, the Agriculture Bill give us the opportunity to bring the two together. There are three critical elements if this is going to work. First, clear standards and long-term targets will be provided by the Bill. The second element is advice—something that perhaps we are not talking about enough in farming and the environment. That reflects the findings of the review that Dame Glenys Stacey carried out into the future of agriculture and the environment. That is something we need to continue being flexible about.

Q78 **Deidre Brock** (Edinburgh North and Leith) (SNP): In your view, is there sufficient clarity in the Bill regarding the OEP and its role, particularly its relationship with environmental governance bodies, including Natural England, the Environment Agency, the Committee on Climate Change and so on? If you do not think there is sufficient clarity, what would you suggest might be included to make that happen?

**Alan Law:** From our point of view, we think there is. The Environment Agency is a regulator. What the OEP brings is a body that looks at the operation of public bodies in relation to our environmental ambitions and duties. We do not see an inherent tension. I think there will be areas where we both have a legitimate interest in providing advice to Government. When the national planning policy framework is revised and revisited, we would probably both have inputs to make around that, but we would seek with the OEP to set out under a memorandum of agreement where our respective boundaries lay and avoid any duplication. That is certainly the intention.

**Dr Mitchell:** I want to add a quick point on the OEP because I think the Bill largely addresses some of the concerns we had about how the new regulator would work with the existing regulatory bodies. I think that is largely sorted out. We think that the OEP should be required to act proportionately. At the moment, the OEP is required to act objectively and impartially, and we think that ought to be extended to proportionately. At the moment, it only has to have regard to act proportionately. It seems to be an omission, so that is one of our asks.

Q79 **Deidre Brock:** Given the experiences of Natural England and, so far, little detail around the setting up of the OEP and its funding—I know there is a commitment to multi-year funding, and so on, but little real meat to flesh it out—are there safeguards in the Bill to ensure that the funding will be protected?

**Alan Law:** The Bill has provisions for the OEP to advise on the adequacy of funding. I am not sure there is much more I can add to that. Clearly, there is a requirement on the Secretary of State to report regularly.

Q80 **Marco Longhi** (Dudley North) (Con): My question is for Dr Mitchell. To clarify a point you raised earlier around covenants, as I understand it, the Bill suggests that these are voluntary. That for me is the key point. You raised a concern about farmers inadvertently signing up. Do you have any further thoughts about that? I assume that they will be advised by the legal profession about what they will be taking up in that respect.

**Dr Mitchell:** Yes, you are right; they are voluntary agreements, and they have to be between a third party and a landowner. Our concerns are based on the fact that you could be signing up to a covenant, but it does not have to state expressly that it is one. So long as it meets certain tests or criteria, it could be considered to be a covenant, but if it does not state expressly that it is a covenant, farmers may not actually know that it will be a covenant.

I realise the Bill is not in place yet, but we had a recent example where farmers were being asked by a charity to put in ponds and to maintain them over a certain period of time. To all intents and purposes, if you looked at that letter of agreement, it could be considered to be a covenant. We are concerned that, unknowingly or unwittingly, farmers may sign up to one. Clearly, they are quite serious; they could be in perpetuity, but they certainly bind successors in title. We want to make sure that farmers are absolutely clear about what they are signing up to. A small amendment to the Bill, setting out that if something is a covenant it has to state that, would be really helpful.

Q81 **Robbie Moore** (Edinburgh Central) (SNP): I want to return to nature recovery strategies to clarify a point that was made earlier. Do you agree that nature recovery strategies are only part of the picture when it comes to ensuring biodiversity recovery? For example, biodiversity net gain, tree-planting measures and so on will all be key. It was mentioned earlier that clause 98 contains the word “could”. Do you agree that it is appropriate to use “could” rather than “should” because this is part of a wider range of measures to reach the end goal?

**Alan Law:** Yes, to be absolutely clear, not all wildlife will be in a nature recovery network or a nature recovery strategy, but what we are looking for in the nature recovery network and local expressions of those plans are the skeleton and vital organs of a healthy organism. We would still expect, of course, to see wildlife and
other environmental features beyond that, outwith the nature recovery network itself, but we are trying to design something on a scale that can be healthy and resilient—that can deal with pressures, variation, pollution, climate change and so on—and that cannot be done on a small scale on its own. However, that is not at all to say that we are designing everything into this network and that everything outside the network does not need to be worried about.

**Judicaelle Hammond:** To add to that, nature recovery networks are certainly one really important and very useful element, but they are not the only one; for example, what is being set up under the ELM scheme is another way, and covenants are another way. This gives us an opportunity for a more consistent and better joined-up way of delivering what is in the Bill.

We are really strong supporters of the Bill, but if there is one thing that is probably missing from it in comparison with what is in the 25-year environment plan, it is any reference to heritage. I mention that now because for me it is part of thinking about land issues in the round and not just looking at nature, climate change or other things. Heritage is the sixth goal in the 25-year environment plan, but it does not appear anywhere in the Bill. If you think about it, heritage is part of the natural environment; it contributes to making places distinctive and has a lot to do with wellbeing and people’s enjoyment of the natural environment, but things that do not have an obvious economic use are not necessarily paid for.

People want parkland, stone walls and archaeological features, but they are not necessarily prepared to pay for them, and they can be quite expensive. We have already lost about half the traditional farm buildings. If they are not in the Bill, they will not be measured. If they are not measured, will they be reported on? If they are not reported on, will they be funded? That is an issue we had under the common agricultural policy regime and we are quite keen on avoiding that being the case under the post-Brexit regime.

**The Chair:** We are expecting a Division in about two minutes.

**Q82 Saqib Bhatti:** I will try to be quick. We started the discussion by talking about more clarity on local nature recovery strategies. As the discussion has evolved, it has become clear how complex these things are. My challenge is that the Bill is not the place to have further clarity; it is in the secondary legislation where you will have public consultation and contributions from experts.

**Dr Young:** We would like to see local nature recovery strategies as a holistic response to the current biodiversity crisis. I agree that there is provision in the Bill for some of the things we have talked about in terms of a consistent strategy for nature. [Interruption.]

**The Chair:** Order. Ladies and gentlemen, you will have noticed that there is a Division in the House. Because we are within two minutes of the end of this session, I invite witnesses to submit any written evidence that you may feel you have not aired. Thank you for your attendance. We will resume after the vote, with injury time added.

3.27 pm

*Sitting suspended for Divisions in the House.*

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**Examination of Witness**

*Rico Wojtulewicz gave evidence.*

4 pm

**The Chair:** I apologise for the delay, which was due to Divisions in the House. I am afraid there may be a Division on Third Reading as well, but we will cross that bridge when we come to it. Good afternoon, Mr Wojtulewicz. For the benefit of the record, please identify yourself and the organisation that you represent.

**Rico Wojtulewicz:** My name is Rico Wojtulewicz. I am head of housing and planning policy at the National Federation of Builders and the House Builders Association.

**The Chair:** Thank you very much. I apologise again for keeping you waiting.

**Q83 Dr Whitehead:** Good afternoon. Before our break, we were talking about local nature recovery strategies. There is obviously a requirement in the Bill to have regard to such strategies in planning, but not a duty to use them. Do you feel that that is likely to translate into clear requirements on developers, or might there need to be some clarification in the Bill about how that might proceed?

**Rico Wojtulewicz:** Clarity would be very helpful. Developers really struggle with wishy-washy comments from planners and local authorities that perhaps do not have an established strategy that they can follow. That is definitely one of our concerns about this sort of approach. It is really important that developers can be part of the strategy and are not asked to deliver somebody else's strategy. That is vital going forward.

**Q84 Dr Whitehead:** In the context of recovery strategies, one suggestion is that permissions for, say, residential building could require a target of a specified percentage of canopy cover on developments. As a number of people have said, it is significant that the section in the Bill on trees deals with cutting them down but is silent on planting them. Do you think that a target for a specified percentage of canopy cover on developments might be welcome among builders if it could be incorporated into plans in a clear way?

**Rico Wojtulewicz:** Ideally, yes. The difficulty is that every site will be very different, so if you specify a particular type of site, it might be quite difficult. In somewhere like London, where you desperately want an increased density, if you specify a particular type of canopy cover, it might be very difficult to deliver that, whereas in somewhere like Cornwall you might be able to deliver increased canopy cover with less concern.

It also depends on the type of canopy cover that you are looking at. If, as part of your biodiversity strategy, you know that you would like to encourage a particular type of species to visit that site, and maybe encourage a nature network to improve, you need to know what species of tree or plant you would like to use. That information is very scant, which is a real difficulty for developers. The majority of the people I represent are small and medium-sized builders, although we have some larger ones, and they win work on reputation, so a good site is vital. That is almost part of the sales pitch in the end, but unless you have that feed-in knowledge it is very difficult.
We work with an organisation called the Trees and Design Action Group, with which we have been partnered for a while. It produces a document called “Trees in Hard Landscapes”. That allows us a better idea about what we can do on sites. That expertise is not necessarily shared across the wider industry and specifically among local planning authorities.

**Q85 Rebecca Pow:** Welcome. Thank you very much for coming. I know that many house builders have already done some really excellent work on biodiversity and net gain, voluntarily, off their own bat. What is your view about mandating it to get environmental improvement? Do you think the 10% specified in the Bill is the right level?

**Rico Wojtulewicz:** I honestly could not—I do not think anyone could—give an honest answer to that. When we were approached, we welcomed biodiversity net gain because we recognise it is vital. We recognised that 10% might feel like an arbitrary figure, but if it is deliverable, why should developers not go for it?

We are at the start of understanding what we can deliver and how. I can give three perfect examples of that. We have the great crested newt district licensing scheme, which has only really come to fruition in the past few years. We worked with Natural England on that. That eDNA tests newts in a local area, which means you do not have to do a ginormous survey. That is a very new technology and has only just been introduced. Two other ones are bee bricks and swift bricks. Those allow more bees and swifts to visit a site and be part of the network of biodiversity on that site. Those are new technologies. It seems amazing that we could not incorporate those before in developments, but we are really at the early stages.

From our point of view—whenever I speak to our members—we will do as much as needs be, as long as there is an industry out there. If you look at ecologists, do we have enough ecologists in local authorities to offer advice and guidance? Do we have the right network of information, so that it is simple and easy to use—so that all developers, whether self-build or building 2,000 homes, can understand what to do on site to reduce the burden on professional ecologists, who might want to tailor a scheme to make it unique.

**Q86 Rebecca Pow:** The Bill is a framework Bill, so the 10% is signalling that this is the direction of travel. I just want to hear you say whether you are pleased about that. Is there a good direction of travel? All the nitty-gritty about exactly what you are asking will be set in the regulations and secondary legislation, and I hope you will put into that. I have met lots of house builders, and my impression is that they welcome this because it signals a paradigm shift in the way our development will go.

**Rico Wojtulewicz:** Broadly yes, but of course, again, it is site specific. Not every site can deliver. There will still be exemptions, and that is part of the Bill. Small sites have not been exempt, and we do not want them to be. This should be uniform across the whole industry, and we should all be trying to have an ambition. If that ambition is 10%, it is 10%, but Government and partners must do all they can to assist builders to deliver that, preferably on site rather than off site.

**Q87 Abena Oppong-Asare:** Currently, the Bill is not explicit enough about irreplaceable habitats. There is some concern about unique habitats, which can be paved over, as long as developers can show net gain overall. How well founded are those concerns?

**Rico Wojtulewicz:** As far as I understand it, protected habitats will remain protected. The work we have done with Natural England identifies that. They have been very keen for us to ensure that that occurs. Small developers will typically be the ones who are delivering on those sites more often than the larger house builders, because they might lose one particular site within a larger site. A lot of the larger developers specifically will be delivering on agricultural land. It is on those smaller plots of land that there perhaps may be more danger of those protected wildlife sites being lost. We think that Natural England will put the right protections in place so that it cannot just be offset.

**Q88 Saqib Bhatti:** Following on from the Minister’s question, I would like a bit more clarity. I understand that the biodiversity net gain concept is being embraced, and you welcome that. It is a minimum of 10%, so there is potential, if a developer wants to go higher than 10%, that they can do that. As a federation, you are not against that; you are embracing that. Am I clear about that?

**Rico Wojtulewicz:** Yes, absolutely. If we can go higher, we will. Help us to get there.

**Q89 Alex Sobel:** The Bill creates space, as you said, for local nature recovery strategies, which can be used in both the planning and development phases. During those phases, who will have responsibility for ensuring that those strategies are being followed?

**Rico Wojtulewicz:** We assume it will be the local authorities, with their guidance and local plans. We hope it will be. All developers really want is clarity.

**Q90 Alex Sobel:** And you are not finding it in the Bill as yet?

**Rico Wojtulewicz:** No, we are not. The difficulty is that you need to ask yourself whether a local authority really knows what it wants to deliver and how it wants to deliver it. The Bill can say whatever it likes if local authorities cannot deliver it and do not understand how to deliver it. We do not even have the right information; for example, we do not know what migratory flightpath certain birds might take. How can you deliver all that without having all the information first? That is where the Bill has to be a developing document that changes, because at this stage it is the first step to understanding how we can deliver something really special.

**Q91 Cherilyn Mackrory:** On that point about the importance of clarity, as an ex-councillor myself I understand the differences between local authorities when it comes to the planning process, although there are guidelines, such as the national planning policy framework and so on, that they can refer to. This is a framework Bill, as the Minister has already said, and it shows the direction of travel. One important point is the consistency that will be established between local authorities and the mandatory net gain. Will that be helpful for developers? Can you outline the opportunities that you think your sector can gain from that direction of travel?
Rico Wojtulewicz: The duty to co-operate between local authorities will be vital. You cannot control where a particular species will be migrating, moving or living, so that is really important for the development industry.

If we look at something such as a wildlife corridor, which could stretch across a few local authorities, some people would perhaps say we should not build on any of that wildlife corridor, but we do not necessarily take that view.

We think that, depending on the species that utilise the wildlife corridor, we could be part of improving the opportunities for them to utilise it, such as by undercutting hedgerows or raising hedges so that hedgehogs can travel across the entire site. Perhaps there is a particular type of bird that utilises that corridor. How can you encourage more of that biodiversity in the plants you plant? Is it food? Is the right type of lighting used to attract them? Maybe you have a particular type of bat that does not like a particular type of lighting.

Developers can be part of that and encourage it, to ensure that we are delivering a better network. The difficulty always is that the minute a developer is announced as being part of any wildlife stretch, corridor or site—even just an agricultural piece of land that perhaps does not have strong biodiversity—the automatic reaction is, “This is going to be damaging for biodiversity.” It does not necessarily have to be.

Q92 Cherilyn Mackory: Does that mean that there is an opportunity there for the sector to up its game a little bit in how it demonstrates, particularly to people at a parish council level, how they can enhance the natural environment? I am thinking particularly of more rural areas, where you have developments going up on the edge of a village. That can be very contentious, as I am sure you are aware, but if developers were given the opportunity to say, “Because of this legislation, we are now going to do this,” do you think that would potentially help those relationships?

Rico Wojtulewicz: Yes, in a perfect world, but not always, because local parish councils perhaps become set in their ways in believing that a particular thing will damage their area. A great example that you mentioned is building on the edge of a village. We would love to be able to build on the edge of a village. Unfortunately, opposition from parish councils is so strong that many developments end up going quite far away from the parish. Then people say, “Now we don’t have the right infrastructure in place.” That is because if you are building, say, 20 homes in a community, you may get more opposition than if you are building 200 on the outskirts.

So, yes, while that could be the case, it has to be about accepting that developers are trying to do the best thing, and not simply about having extra regulations or extra ideas put on top of them. When you go back to the beginning of the planning process, we already have the issue whereby 30 homes can take three years to get permission, and 500 homes three miles away might take six months. You think to yourself that you want the homes and you want more dense communities so you can use these bus services, and maybe even train services, and you get better commercial opportunities, but you are not really understanding the process for that. So, yes, hopefully.

Richard Graham: Mr Wojtulewicz—if I have pronounced your name correctly.

Rico Wojtulewicz: Perfect.

Q93 Richard Graham: Thank you for joining this session. For all of us, housing and planning is such a massive constituency interest and concern. My experience of the past 10 years as MP is that, time and time again, developers appear to have been behind the curve. When you look at the provision of broadband, so often houses were built without it. When we look at solar panels, the same thing. Electric charging, the same thing again.

There are outstanding exceptions to that. For example, a housing association called RoofTop based in Evesham has done some things in my constituency that are largely social and affordable housing that have solar panels and electric charging points. However, it is not always the norm and the Bill seems to me to open the way for house builders and developers to think proactively about what sort of contribution they can make to a net zero carbon future. How do you think this Bill might help house builders and developers adopt that approach and come up with creative ideas that deliver the homes we want while boosting the goals of this Bill to protect and improve the environment?

Rico Wojtulewicz: I will take each one of those individually. If you are trying to put broadband into a site, you may ensure that you can have high-speed broadband throughout the whole site. It is not your job to be the BT or the Openreach of that world. You cannot connect that site, typically. It is more difficult to do that and, especially in rural communities, there are smaller groups living there. You can make sure your site is broadband ready but somebody else has to connect it.

We had the same issues with electric charging points. Many of our members have had to pay for substations to be put in when, effectively, the energy company was making money in perpetuity. Mr Graham said contributions: it is not contribution, it is cost. It is increasing the value of the property and increasing delays. We need a strategy for local authorities to do a better job of understanding where those areas will be connected and why.

Q94 Richard Graham: Just to be clear, that does risk sounding a bit like “Well, we’re not going to do that sort of thing because it all costs us a little bit of money and our profits will be reduced slightly.” Looking at the salary of Persimmon’s chief executive, one wonders whether all of that story is necessarily accurate. Don’t you think there is a case for house builders to get ahead of the curve and do things that everybody wants to see and people expect in their houses now, and if they have got it already, their houses would be more popular and sell for more money?

Rico Wojtulewicz: In essence, you may be correct, but if you have built a site that is high-speed broadband ready and Openreach cannot come in to connect that site for two years, and they are the only provider available—

Q95 Richard Graham: That is a separate issue, isn’t it?

Rico Wojtulewicz: It is a key issue.

Q96 Richard Graham: What we are talking about is retrofitting on developments that were not ready.

Rico Wojtulewicz: No, it is not retrofitting, it is connecting the initials.
Q97 Richard Graham: I am encouraging you, Mr Wojtulewicz, to look at the positive opportunities for your members and for you to identify what they are, rather than complaining about the additional cost that might be involved.

Rico Wojtulewicz: You cannot separate the two because it is not necessarily about the cost. The cost is also in delay. It would be great in a perfect world, but if you have to connect that site up and nobody can move into that site unless it is connected up and you have to wait for somebody to connect it up for you, that is a delay that ends up being a cost. You may have to pay council tax on each one of those properties until it is inhabited. The cost—you cannot separate the two. It would be great if we could. It would be great if we had all the right opportunities in place.

I will pick on solar panels as a great example. Many of our members install solar panels. It is easy for housing associations to do that because they maintain the site themselves. When a developer does it, we have no issue about putting in solar panels, but when we look at it, we say: “Wouldn’t it be better for that money to be contributed to a district scheme where the maintenance is either done centrally by the developer or the local authority takes it over, so that in five or 10 years’ time, those solar panels are maintained and can also be replaced?” If it is a homeowner’s choice to do that, we find that they do not get replaced or maintained and are not part of the fabric of the building. That is why in the part L regulation on energy efficiency, we encouraged using the money that might be used to enforce solar panels to be used on a district system, because solar panels themselves are an add-on, not part of the fabric. If they are part of the fabric, absolutely, but this is not a cost. What you are asking is: “How can we retrofit solar panels in the future?” We need to have an energy system that works for that neighbourhood so that we have local energy generation.

Q98 Richard Graham: Do you want to have one last go very briefly at identifying what opportunities you see from the clarity of the Environment Bill on house building or carry on with a series of negative comments?

Rico Wojtulewicz: If you accept the realities of what I have said, absolutely. The opportunity also needs to be strategic. If local authorities can play into the strategy of their neighbourhood, there are many opportunities to deliver cleaner air by having electric chargers; to have local energy generation because house builders are playing their part. Those are the fantastic opportunities that we need to have a conversation about and how we deliver them, and not simply put it on the developer, because it is not as deliverable as you might think it is.

Q99 Richard Graham: We will interpret that as meaning that your members are ready to play their part.

Rico Wojtulewicz: To play their part, yes.

Q100 Dr Whitehead: On a slightly different topic, the question of building waste wood in the waste stream has been a live issue for quite a while, and the extent to which legislation should be introduced to ban waste wood from the waste stream—that is, other things need to be done to it higher up the waste hierarchy. That issue particularly involves wood that has been used in building. Very often builders just put their wood in waste streams when they have finished building the property or properties. Do you have a view on that? Do you think legislation is required, possibly in this Bill, to ensure that that wood does not go into the waste stream and is used higher up the hierarchy or are there things the building industry could do to make sure it does not happen?

Rico Wojtulewicz: It is definitely not my expertise, but if it is a real concern, the industry would support measures to ensure that that does not occur.

Q101 Kerry McCarthy (Bristol East) (Lab): To go back to the 10% target, I thought you were being quite enthusiastic about quite a lot that could be done from the house builders’ side of things. As parliamentary species champion for the swift, I was glad that you mentioned swift boxes, which are great, but there has been a 57% decline in swift breeding pairs since 1995, according to the RSPB. That is just one example, but if you look at biodiversity loss across the board, some people would argue that 10% is only really keeping things at a standstill. Do you feel that if you were pushed to do more, you would be able to respond and try to meet a higher target? If a 20% target was in the Bill, what would be needed from your point of view to enable you to help with that?

Rico Wojtulewicz: Guidance on what we could do to increase the swift population, such as on what trees and food they might like and what lights do and don’t attract the food that they enjoy eating. All these little things actually make a big difference. If that knowledge is there, it feels quite isolated. I think we are very enthusiastic about the things we can do, which will effectively make our sites better at delivering what people want.

The difficulty is that sometimes politicians perhaps do not understand the development process and what occurs. We in the development industry need to ensure that we have a greater understanding of what we can do on site. Perhaps you would have a particular target in an area that you know would encourage more swifts. Perhaps you could issue specific guidance for that local authority, as part of the network.

Kerry McCarthy: I think Brighton and Hove has just done it, and Exeter. I am working on Bristol.

Rico Wojtulewicz: They have. I am from Brighton.

Q102 Kerry McCarthy: On the skills side, it is one thing for a developer to bring in an ecologist or someone to advise on these measures at the smaller scale of things. To what extent is any of this taught at construction college? Should it be? Should we teach builders about biodiversity and things that grow, instead of just teaching them about bricks and mortar?

Rico Wojtulewicz: I think that is a really good point. The majority of our members are small and medium-sized, where someone might be a bricklayer one day and a site manager the next. They are trained to a high level—typically level 3, with more of them taken on than level 2. This is absolutely an opportunity to ensure that the education is there, not only because it would allow for better building approaches but because it would reduce the burden on a local authority always to have an expert.
The more that the development industry can do to deliver what we can, the better. That means that local authorities can be certain that what is being delivered is correct and right for their local area. That is a great idea, and it would absolutely have the support of the National Federation of Builders.

The Chair: We will have one final, brief question from Saqib Bhatti.

Q103 Saqib Bhatti: Building on whether it is 10% or 20%, the fact of the matter is that, whether for the house-building industry or other industry, the tier 1 suppliers and operators lead innovation and set the standards that trickle down through the industry. Certainly, if a single small business of constructors achieves a net biodiversity gain of 10%, that will not trickle up immediately. It will take time. Is it not better to have a minimum of 10%, letting those who want to do more to do so and letting the skills from tier 1 guys, like Barratt Homes, who have been doing this, trickle through and become the industry standard?

Rico Wojtulewicz: No, I think you actually have that wrong way around. It is the small and medium-sized companies that push this information up. We see that with bricks such as swift bricks, which were not developed by Barratt but by some smaller organisation that thought, “Can we utilise these on site?” Many of our members are now considering how to use a SUDS—sustainable urban drainage systems—pond to encourage better wildlife and better sites.

A lot of innovation comes from the bottom. Berkeley Homes is a great example of a company that really pushes to innovate. However, look at—I mentioned part 1 earlier—the use of air source heat pumps, which is a great way to decarbonise our grid. The majority of people using them are small and medium-sized developers. Many of our members use them. They have perhaps historically not been used as much on the very large sites.

There is a part to play for both, but we typically get into this idea that it is always the big boys helping the rest, whereas I actually think it might be the other way round. Having more education for builders is a good example. Four or five construction apprentices could be trained by a small or medium-sized developer. If they take on more level 3 apprentices, they would probably have a better knowledge than the level 2s. Already you can see that the skills element is filtering up, not down.

The Chair: Mr Wojtulewicz, thank you very much for enlightening us with the information you have given the Committee, to enhance our understanding. Thank you also for your patience in staying with us during the Divisions. We are most grateful to you. Can we now have a swift change of team, please, for the final session of the afternoon?

Examination of Witnesses

Ruth Chambers, Rebecca Newsom and Ali Plummer gave evidence.

4.30 pm

The Chair: Good afternoon, ladies. I apologise for starting half an hour late, from your perspective, but we will finish at 5.30 pm on the dot. For the record, may I ask you to identify yourselves and the organisation for which you work, and its purpose?

Ruth Chambers: I am Ruth Chambers, and I represent Greener UK, which is a coalition of the big 13 environmental non-governmental organisations in the UK, including Greenpeace and the Royal Society for the Protection of Birds. We have come together to ensure that Parliament and Government hear from the sector in a united way, so that our asks are presented with clarity and purpose.

Rebecca Newsom: My name is Rebecca Newsom. I head up the political affairs unit at Greenpeace UK. As Ruth said, we are a member of the Greener UK coalition.

Ali Plummer: I am Ali Plummer. I am a senior policy officer at the RSPB.

The Chair: Thank you all very much indeed for joining us.

Q104 Dr Whitehead: I know that there has been a considerable amount of discussion among environmental and green groups about how the Office for Environmental Protection will work within the Bill, and to what extent it will be sufficiently independent to carry out the function that is widely regarded as the function that it should carry out on environmental protection overall. How do you think the OEP could be strengthened in the Bill, and do you think that the Bill has it right regarding the teeth that the OEP will need to hold the Government and public authorities to account?

The Chair: It is not necessary for every member of the panel to answer every question, but in answer to this first question it may be helpful for you to set your stall out a bit as well.

Ruth Chambers: That is a very important question. There are three ways in which the independence of the Office for Environmental Protection will be ensured. The first is through the legal foundations provided by the Bill. The second is through its culture, which we will not talk about today. The third is through its organisational design, and the initial budget that it will get. Again, that is not relevant to the Bill, but it is a very important issue to ensure that we get the OEP off to a good start, so that it is not hampered from the get-go.

In terms of the legal foundations, there are two main ways in which the independence of a public body can be assured through law: how it gets its money and where its members come from. At the moment, although there have been some welcome strides forward, the Bill unfortunately falls down in both those regards. In terms of where it gets its money from, we welcome the commitment that the Government made around October that the OEP will have a multi-year annual funding framework for five years, ring-fenced in each spending review. That is very helpful. We see no reason why that could not be enshrined in the Bill, to give those guarantees on an enduring basis. The route by which the OEP gets its money is also very important. We have argued that it should be able to submit its own estimate directly to Parliament in the way that other public bodies, such as the National Audit Office, can.

Secondly, where the body will get its chair and other members from will be entirely at the discretion of Government Ministers at the moment. For a body of this import, which is meant to be independent not just at the start but for the duration, we think that greater involvement from Parliament would be very helpful. We
are not asking for something unprecedented. Indeed, there are very good models where that is the case in practice. The National Audit Office and the Office for Budget Responsibility have already been flagged before the Committee. They are two examples of how you could crack the same nut in a slightly different way. Either way would be better than what the OEP has at the moment.

In terms of teeth, finally, we think that the way the enforcement functions are configured at the moment is certainly a step forward but there are some serious flaws, particularly in clause 35. One example is the upper tribunal being constrained in the types of remedies that it can issue and grant, should a public authority be found to be in breach of environmental law. We think it should have more freedom to impose the remedies as it sees fit.

Rebecca Newsom: I echo everything that Ruth just said. From Greenpeace’s perspective, we have concerns around the OEP’s independence, funding and enforcement powers, which definitely need to be closed. The scale of public concern for getting this right is such that over 20,000 Greenpeace supporters have been in touch this week with their MPs about this and other issues relating to the target-setting framework.

Ali Plummer: We share the concerns Ruth has outlined. I would add that part of getting a robust watchdog in place is the likeliness of its acting at its most effective. We welcome the escalating processes in the Bill, and there are opportunities to look to resolve issues before they get to full enforcement. To our mind, the way those remedies and escalating processes work most effectively is when you have a robust stop at the end, which encourages action before you have to get to that point. We welcome and share everything Ruth said in terms of strengthening the OEP in respect of both its independence and its ability to act as a true deterrent. We need to make sure that we are remedying any environmental damage or failure to comply with environmental law.

Q105 Dr Whitehead: Following on from that, the OEP is substantially seen as the guarantor, as it were, that the standards of environmental protection that existed when the UK was a member of the EU will not only be continued but will be enhanced. Do your concerns about the OEP’s independence and other such matters relate to ensuring that we have that proper standard of environmental protection following the UK leaving the EU? Or do you have other concerns about the question of regression or otherwise in terms of environmental law, as we are now on our own in environmental law rather than substantially under the carapace of EU directives?

Ruth Chambers: That is an important question. Independent accountability and oversight will definitely be crucial in ensuring that our environmental laws are not only maintained but enhanced in the future, as the Government have said they want. That is an important element, but so are environmental principles—there are clauses that embed those principles in law, but again there are flaws in how that would be done. We can come on to those later.

There are also some potential loopholes in the Bill where standards could be weakened, almost accidentally. We will not talk about it today, but clause 81 in relation to chemicals in water is a good example of that. We feel that there are a lot of good work and good standards in this Bill but there is a lot of wriggle room as well. We hope that the conversations we will have today and throughout the passage of the Bill will enable some of those loopholes to be closed.

An example of where there could be some wriggle room is in the section on the REACH regulation and chemical standards. It is a wide-ranging power, and extra oversight and accountability could ensure that the power is exercised in a faithful way. We are clear that clauses 19 and 20 are not tantamount to a binding commitment to non-regression. They are welcome and important transparency mechanisms, but that really is what they should be seen as. There are modest, pragmatic ways in which they could be improved. For example, we think that clause 19 is modelled on human rights legislation, but the way in which the Human Rights Act 1998 ensures that human rights are factored into new legislation and new policy is a little bit more stringent and strategic. There are ways in which those clauses could be tightened as well.

The Chair: Before we proceed, Ms Chambers, you indicated that we would not talk about a particular clause today. In so far as we have the time you are entirely within your rights to comment on anything that is relevant.

Ruth Chambers: Thank you.

Ali Plummer: If I could just add something, there are two parts to that question. One is about maintaining the robustness of enforcement mechanisms; what we are really looking for through the independence of the OEP is maintaining that in longevity. It is not necessarily about the intent of the body as it is being set up, but making sure that it maintains that independence and robustness going forward.

I guess a watchdog and enforcement body is only as good as the law it is able to uphold, which comes to the second part of your question. There are lots of welcome provisions within this Bill that should allow us to go much further and to build on existing environmental protections, but we would be looking for much more robust reassurance that that floor—those existing protections—will remain for us to build on. The second part is making sure that we are able to secure existing environmental legislation so that the OEP can continue to uphold that.

Q106 Rebecca Pow: Welcome, everyone, and thank you for coming. I just wanted to get some clarification, because there seems to be a view that in leaving Europe we are going to have lower environmental standards, but the whole point of this Bill and, indeed, the OEP is that it will enable us to have higher standards. First, we will roll over all the environmental law; we will then create our own measures, and it is quite clear to me that the Bill enables us to do so. At EU level, the Commission can issue judgments on a breach of law, but they are not legally binding on member states. Do you not think that the court order remedy in this Bill would be stronger than that?

Ruth Chambers: I would go back to my previous answer about the lack of remedies that the tribunal will have at its disposal. It is severely constrained by the clause, if you look at the small print.
Q107 Rebecca Pow: But it can ultimately issue fines if it so desires, and before that, the OEP will try to remedy any problems through discussion, advice, analysis and scrutiny. It will only go to the upper tribunal if it really needs those extra teeth, and that opportunity is there.

Ruth Chambers: We very much support your vision for how the enforcement system would work, where it is front-loaded, if you like, and the OEP acts as a strategic intervener and litigator rather than a serial nit-picker. Nobody wants a busybody poring over every single decision of every public authority; that is nobody’s vision for how this body will work.

However, at the moment when we get to the end of the process, if a public authority is found in breach of environmental law after all of the good work that the OEP will necessarily have done, what we are left with is a statement of non-compliance. It is very hard to know exactly what bite that non-compliance will have, factoring in the upper tribunal not having a very effective or strong set of deterrents. It is helpful to have your reassurance, Minister, that the tribunal will be able to impose a financial penalty if it sees fit. It would be even better to have that reassurance written into the Bill so that there is absolute clarity on it, and stakeholders and public authorities know that there is bite to this process. That will provide the deterrent that we all want, so that things are sorted out early on.

Ali Plummer: It is also worth reiterating that the ability to levy fines is really welcome, but what we are actually looking for is to either prevent environmental damage in the first place or remedy it. Although a fine is a welcome part of that, we are really looking for remedial action, or the ability to ensure that the public authorities or others are taking the actions needed to remedy the environmental damage. While a fine can provide for some of that, it is not necessarily—

Q108 Rebecca Pow: But as I hope I made clear, that is the last step; remedy is the first step of the OEP. I hope it is very clear now that we have left the EU, and as a sovereign nation we will be responsible for setting our own environmental laws. It is then the role of Parliament to scrutinise those laws.

That leads me on to the whole issue of the targets, and what we will be scrutinising in order to improve the environment, which is the focus of the Bill. We have a triple lock within the system, and I just wanted your views on how you think that will work. We call it a triple lock because we have five-yearly improvement plans; we have annual reporting on how those five-yearly plans are going to get to the long-term targets; and we have the Office for Environmental Protection analysing all of that to drive environmental improvement. We think that is very strong, so I wondered what your views on that were.

Rebecca Newsom: The thing that I would want to say about that is that reporting and analysis are really important, but are not the same as interim targets actually having a legal force. It is a top priority from all of our perspectives to ensure that the short-term interim targets are leading towards end goals and have that legal bite, so that there is absolutely no wiggle room in terms of the requirement on public authorities to ensure progress straightaway to meeting that long-term goal.

That is really important, particularly also because there is a track record for voluntary targets set by Government not being met or being abandoned—for example the 2020 target of not using peat in horticulture has not been met. Another example is that site of special scientific interest targets have also now been dropped, and they were voluntary. It is really important that we have that safeguard in the Bill, guaranteeing that the interim targets will have that force.

Q109 Rebecca Pow: To get our SSSIs, the 75% in good and favourable condition, is in our 25-year environment plan. The first phase of the Bill is the 25-year environment plan. It is called the environmental improvement plan. That is what I call the second side of the Bill. It is in the Bill. This actually provides all the levers and all the tools to do exactly what I think you all want us to do.

Rebecca Newsom: I think we are agreed to a large degree on the vision. The difference is that the environmental improvement plans are not legally binding. It is good to have a policy document, but it needs to have legal force. That is what is going to guarantee the drive forward of change in the short term.

Q110 Rebecca Pow: But targets will be the legal force; the setting of the targets is the legal duty.

Rebecca Newsom: Long-term targets definitely, but the interim targets will not have that force, as the Bill is currently set up.

Q111 Rebecca Pow: But wouldn’t you agree, on the environment, it is an ever-changing, flexible scene? That is why we have interim targets.

Rebecca Newsom: Yes, absolutely. It is really important to recognise that, in different environmental areas, change towards long-term goals, and progress towards meeting them, does not always happen in a linear way. We recognise that, but that is not an argument not to make the interim targets legally binding. It is an argument for the Government to apply some flexibility in the type of interim targets they might set.

For example, in some areas, such as bird species abundance, you could have an interim target that relates to the planting of wildflower meadows or to particular types of tree planting in certain areas, because there is that flexibility and non-linearity towards the long-term goal. In other areas—for example, pesticide pollution in rivers—it would be much easier to do an outcome-based interim target. In both cases, they need to be legally binding. The Government could apply that kind of flexibility to the type of target, without compromising on the legally binding nature of it.

The Chair: Thank you. The Minister invited you to set out your concerns, and you have done so very lucidly, if I may say so. We cannot engage too long, however, in a bilateral discussion.

Q112 Deidre Brock: I would like to direct this to Ruth Chambers. In your submission to the Committee, Greener UK points out that the requirement to have due regard to the environmental principles policy statement does not apply to decision making but is also subject to wide-ranging exemptions. I am speaking specifically of those mentioned in clause 18 regarding the Ministry of Defence and HM Treasury. It specifies “the armed forces, defence or national security”
and “taxation, spending or the allocation of resources within government”. Could you elaborate a little more on your concerns regarding that? Perhaps Ms Newsom and Ms Plummer would have something to add.

Ruth Chambers: I think the environmental principles clauses are really important and, in many ways, are a slightly overlooked part of the Bill, because everyone is interested in the OEP, and many people are interested in targets. The principles have become a little bit forgotten, so I am really pleased that question has been asked today.

They should be the bedrock of the Bill going forward. We were pleased to see the Government and the Minister say that they are intended to place environmental accountability at the heart of Government. That is a shared vision for what they should do. Unfortunately, we do not think that the framework as configured in the Bill will do that, for a number of reasons. You have highlighted one very important reason, which is that there are lots of carve-outs and exclusions. For example, the duty will not apply to the Ministry of Defence and will not apply to decisions like resource allocation and spending and so on. Already, we seem to be absolving quite a large part of Government from the principles.

Secondly, the duty is quite weak. It is to have due regard not to the principles themselves, but to a policy statement. The trouble is that none of us has yet seen what the policy statement says. Ever since it was first mentioned, we have been asking to see what it is, so that we can have some comfort that it will be a helpful tool for policy makers and for stakeholders. The sooner that it can be published—ideally, that would be during the Bill’s passage—the better.

The third reason is that this part of the Bill will apply to England only. We have questions as to what will happen to the principles in the rest of the UK and how trans-boundary decisions will be guided by the principles in the future.

Finally, on the policy statement, if you look at comparable arrangements for how policy statements on, say, national energy projects are endorsed and approved by Parliament, you see that they are subject to a motion that is voted on by Parliament. There is no such thing for this policy statement. We think that, if it really is that important, there should be some tighter parliamentary oversight of it.

Q113 Robbie Moore: I want to turn the conversation back to the OEP. Can you explain why the Committee on Climate Change and the Equality and Human Rights Commission have similar independence, if not slightly weaker, to the OEP? Have those bodies not clearly shown that the independence of the OEP set out in the Bill is credible?

Ruth Chambers: It is an interesting question about the EHRC. We recently came across something that, if it would help the Committee, we could provide a short note on. I think that last year the Government undertook what is called a tailored review of the EHRC. In its evidence to that review, the Equality and Human Rights Commission itself was arguing for greater independence, more accountability to Parliament and a slightly different model, but the Government said that they did not think that was appropriate for that body. So even a body that the Minister this morning was drawing some comparison with is saying that it feels that it is not sufficiently independent from Government.

We would not say that, for us, in the NGO sector, that is the best comparator. The two bodies that we think are more comparable in this space are the National Audit Office and the Office for Budget Responsibility—not necessarily in terms of their form and function, but in terms of how their independence is delivered via laws, both now and in the long term.

Ali Plummer: It is worth saying that what we are looking for here, ultimately, is that the OEP will hold the Government to account on meeting their environmental obligations, so building in some independent safeguards just to make sure that there is that gap between what the OEP can do, in terms of holding Government to account, and how it is set up is really important. As Ruth said, there are clear examples of that happening in other places, so what we are calling for is certainly not unique or unheard of in other places. I think that it would make sense to apply it to the OEP as well.

Q114 Kerry McCarthy: Could I ask about the global footprint issues? As you may have noticed, I have tabled a couple of amendments: 76 and 77. There are two aspects to this. One is our consumption—the consumption of commodities, how they are produced overseas and the fact that we are contributing to climate change, environmental degradation and deforestation as a result. The other side of the coin is that we are financing. British companies are financing or UK Export Finance is financing quite a lot of this work as well. Do you think that there is a case for going global in terms of this Bill? I am trying not to ask too leading questions, but my view would be that there is not much point in putting your own house in order at home and talking about planting trees here if the Amazon is being razed to the ground because of British consumption or British financing. I think that Greenpeace put something about this in its note to the Committee.

Rebecca Newsom: Absolutely—we totally agree with what you have just said. We have to think about our global impact, as well as getting things right here. There is a major problem with the UK’s global footprint at the moment. A lot of the products that we consume on the UK market often, when it is related to meat and dairy, are somehow connected, through the supply chain, to deforestation. For example, 95% of chickens slaughtered in the UK are farmed intensively in a way that means they are fed on soya, and half of Europe’s global deforestation footprint is in relation to soya. We know that it can be tracked back, but, at the moment, there is not that kind of transparency.

The way to deal with this issue is twofold: first, reduce how much meat and dairy we are consuming in the UK, because we need to be freeing up agricultural land globally to give back to nature and allow abundance to be restored. We know the Government are very keen on nature-based solutions for climate change, and a key part of the puzzle is giving land back to nature. That requires a shift in our consumption habits. A global footprint provision in the Environment Bill to allow targets for this would enable that to happen.

The other piece to the puzzle is sorting out our supply chains and putting a requirement on corporations to clean up the supply chain and conduct due diligence.
That can be delivered through the amendment you tabled on enforcing the 2020 deforestation deadline; the Government have backed that previously, but it needs legal enforcement, and also the establishment of due diligence legislation in six months’ time, which would set up that framework to enable it to be delivered.

**Ruth Chambers:** Can I add one thing to that? Again, this is a vital issue. If we take a step back and think about the journey of this Bill, it has been on a journey, and we have been on a journey with it. Its existence came from draft provisions from the European Union (Withdrawal) Act 2018, which were intended to close the environmental governance gap I have already talked about that arose as a result of EU exit. Then the Government took a very welcome step and decided to take the opportunity to enshrine domestic ambition in law through the Environment Bill, which came out in October and was re-published in January. This is the missing piece of that trilogy.

We totally understand that the Bill has been on a fast track—rightly, because nature’s decline cannot wait a moment longer. We understand why it has not been possible until this point in time to include measures in the Bill, but we hope the Government will do all they can to ensure these important issues are addressed, whether substantively or by using the Bill as a very important springboard ahead of the international summit later this year.

Q115 Bim Afolami: I want to ask our visitors about regulatory complexity when it comes to environmental regulation. I do not know how many bodies there are, including Natural England and this new OEP. I would like you to describe how you feel it works. Do you think we need fewer? Do you think the OEP can help bring together some of this work? I am interested in your views on that.

**Ali Plummer:** From my perspective, one of the things the OEP can do is help bring a strategic overview of how some of this is working, to really drive and make regulation work a bit better in this country. One of the things regulation suffers from is underfunding and under-investment, to be honest; that applies particularly to bodies such as Natural England and the Environment Agency. Natural England has suffered huge budget cuts, and when it comes to its ability to properly regulate the things it is supposed to, it is struggling to fulfill some of its statutory duties. As a result, one of the things the OEP can do is take a much more strategic overview and hopefully provide a bit of insight and guidance—and enforcement, when needed—to make sure regulation is working effectively. It is not the OEP’s role to step in and perform the roles of these regulators, but it can take a much broader view and make sure the regulators are doing what they are supposed to be doing, and are properly upholding environmental law.

Q116 Bim Afolami: That makes sense to me, but do you not fear, as a lot of businesses, landowners and farmers do, that there are so many different types of environmental regulator that it is difficult to keep up? It creates its own inefficiencies. Might it be easier if we had a more simplified structure? That does not mean you regulate more or less; it means you regulate more simply. Is that something you think would benefit the environmental outcomes? It is my contention that it would, because it would be clearer and easier for everybody, from Government to individuals, to follow what needs to happen.

**Ali Plummer:** For the most part, when we have seen reviews of existing regulators and the implementation of environmental law, what tends to be lacking is proper implementation. It is not necessarily a question of rewriting, simplifying or restructuring stuff; it is making sure that there is access to the information and guidance that business and industry need in order to comply. I am not sure that simplifying and trying to bring those bodies together would resolve that issue. We need up-front investment in regulators and to ensure that everyone has access to information and understands what they need to do to comply.

**Ruth Chambers:** To my mind—again, it is an important question—the clarity and shape of the future delivery landscape are very important. That seems beyond the scope of the Bill and the provisions that we are talking about. The Bill does include how the OEP can and should relate to some of the bodies in the existing landscape. There are provisions relating to how the OEP and the Committee on Climate Change should co-operate to ensure that there is no duplication and overlap, so that they operate seamlessly. We welcome the Government amendments in that space, too.

We spoke earlier about the UK. The OEP will be a body for England and potentially Northern Ireland. The Scottish and Welsh Governments are bringing forward their own legislation with their own versions of environmental governance. We hope that some of those proposals will be live at a time when this Bill is still live. There would be considerable merit in looking at them side by side, to see how they work across a UK-wide delivery landscape.

Q117 Bim Afolami: You have anticipated my next question on the UK. Do you think it would be simpler, from a regulatory perspective, and more effective, if the Scottish, Welsh and Northern Ireland devolved Governments worked with the Office for Environmental Protection that we are setting up, rather than setting up duplicate versions of their own?

**Ruth Chambers:** It might well be, but that ship has sailed, unfortunately. The Scottish and Welsh Governments are now making their own devolved governance arrangements. I think the Scottish legislation will be coming shortly. It is less clear when Welsh proposals will be out, but we hope that will be shortly. It is important to look at them side by side, to ensure that they interrelate on things such as transboundary issues. There is a clause in the Bill that requires future environmental governance bodies to co-operate and share information. I think that is very important.

To go back to Northern Ireland, if I may, we spoke about environmental principles being a slightly forgotten part of the Bill; we also feel that way about the Northern Ireland clauses in part 2. Again, we talk about the OEP and principles, but the Northern Ireland environmental governance provisions are a game-changer for Northern Ireland. We should not underestimate their importance. We hope that they get due consideration in the Committee, either in the oral evidence sessions or when amendments are proposed. They are vital; we cannot stress that enough.

**Ali Plummer:** On the issue of co-operation across four governance bodies, it is really important for citizens to be able to access complaint mechanisms. It should be
clear that if they make a complaint to one body, and that is not the right place, it will be shared with the four country bodies. If there are four mechanisms, they need to work in co-operation, because they will all be upholding devolved environmental legislation. It is important that if a citizen makes a complaint to one point, they can have confidence that it will be looked at, no matter where in the UK they made it, and that it will get to the right place, without them necessarily needing to understand the interaction between these systems.

Q118 Abena Oppong-Asare: I want to go back to the brief conversation about the interim and long-term environmental targets, which you touched on, Rebecca. As you know, provisions on that will be in the Bill. Do you think the clauses give a sufficiently clear direction of travel on the sort of targets that will be set?

Ali Plummer: Not currently, the way the Bill is written. The provisions to set targets in priority areas are welcome. We are looking for slightly more clarity and reassurance in two areas: first, on the scope of targets that will be set, to ensure there are enough targets set in the priority areas, and that they will cover that whole priority area and not just a small proportion of it; and secondly, on the targets being sufficiently ambitious to drive the transformation that we need in order to tackle some big environmental issues.

While there is a welcome duty to set targets—on, for example, the priority area of biodiversity—I think we are looking for more confidence that the Government’s intent will be carried, through the Bill, by successive Governments. I am not sure that that sense of direction is there. While there is a significant environmental improvement test, I do not think that quite gives us the confidence that the Bill will really drive the transformation that we need across Government if we are to really tackle the issues.

Q119 Abena Oppong-Asare: I am putting you on the spot here, and the Bill is quite broad, but are there any specific, target-related things that you want to see in it?

Ali Plummer: If I can look at the biodiversity provisions for a bit longer, we really want targets that drive the recovery of biodiversity across the board. With the way the Bill is drafted, we have concerns that you could see quite narrow targets set in some areas to do with biodiversity. For example, you could see targets set around habitat extent that would not necessarily speak to the quality of that habitat. They might not necessarily drive the improvement that we need in order to not just halt the declines in biodiversity but drive recovery.

We would want broad targets around species abundance, populations and the quality of habitat, as well as the extent of the habitat. I appreciate that the Bill is framework legislation, but we want to make sure that when targets are set and revised, it is within a strong and ambitious framework, with a clear vision of what we are trying to achieve, which, ultimately, is recovery of our natural world and our environment more broadly.

Abena Oppong-Asare: Thanks, Rebecca?

Rebecca Newsom: I echo everything that Ali has said. In terms of the target-setting framework and making sure that the long-term and interim targets are comprehensive enough, that really comes down to amendment 1, which would require an appropriate number and type of targets to be set in each priority area. Also, amendment 81 is about requiring the taking of independent advice, and full public consultation, which will inform the target-setting process. Finally, there is the one on ensuring that global footprint is included in the list of priority areas, so that there is a holistic view of the environment nationally and internationally, and improvement across the board is being pushed through that target-setting framework.

While those changes are absolutely vital, there are two areas where, in our opinion, such is the sense of urgency, the evidence base and the public demand for action in the short term that two short-term targets need to be put in the Bill. The first one is the 2020 deforestation target, which I have already touched on. The second would be a 50% plastic packaging reduction target by 2025, which is basically about providing a level playing field for retailers and suppliers, off the back of the voluntary commitment that Sainsbury’s has made, but no others have, and off the back of calls that retailers have made to us. They say they would support a plastic packaging reduction target in law, to allow the drive towards reuse as a level playing field in that sector.

Abena Oppong-Asare: That is really helpful.

Ruth Chambers: Very briefly, because I think my colleagues have covered the position extremely well, all I would add is that what we are seeing is not a different policy objective from the one that the Government are set on. We very much agree with the policy objective, which is to ensure that ambitious, enforceable, legally binding targets are set to drive environmental improvement; there is nothing between us on that. I think our difference is on how the framework is configured to achieve that, and whether what is written in the Bill is sufficient and gives the right signals, not only to business, as you heard this morning, but the public, and future Governments in which current Ministers may not have such an active role. It is about that clarity and the clear direction of travel, which we do not think is there, for the reasons that my colleagues have explained.

Abena Oppong-Asare: That is really helpful; thank you.

Q120 Alex Sobel: I have just one question—I know we have had a long sitting, because of the vote. The clauses on environmental principles have been widely criticised for being creatures of policy, with many carve-outs and exclusions. Do you agree with those criticisms, and if so, what would your recommendations be to improve the Bill and ensure that we do not have carve-outs and exclusions?

Ruth Chambers: As we discussed with Deidre, the carve-outs are not helpful, because they absolve much of Government from applying the principles in the way that they should be applied. The most simple solution would be to remove or diminish those carve-outs. We do not think that a very strong or justified case has been made for the carve-outs, certainly for the Ministry of Defence or the armed forces; in many ways, it is the gold standard Department, in terms of encountering environmental principles in its work. There seems to be no strong case for excluding it, so remove the exclusions.

There are also proportionality and other limitations on how the policy statement should be taken forward. Again, we do not see a strong case for those being embedded in the law. As I mentioned, we should strengthen
the duty, so that it is not just a duty to have due regard to a policy statement, which is a next-step-removed duty, but a duty in relation to the principles themselves. To repeat the point, it would be brilliant if we could see the policy statement soon, so that we can help the Department and the Government shape it into a really helpful vehicle for everybody.

Q121 Robbie Moore: How important do you think it is that businesses are brought on board throughout the process in relation to meeting the global footprint target and in relation to the due diligence requirement?

Rebecca Newsom: It is really important. There have been indications from companies that they are interested and support the idea of a due diligence framework. Again, it is about setting up a level playing field. There have been voluntary commitments over the last decade through the consumer goods forum to deliver deforestation-free supply chains by 2020. Those commitments have not been met or delivered on, basically because it has been a voluntary framework and the mechanisms have not been in place to deliver on it. The Bill is an opportunity to do that, and to set it in law and give the direction of travel. There is business interest in doing that because it means that the companies that want to move ahead and be progressive are not going to be at a competitive disadvantage.

Ali Plummer: More broadly, getting business on board across the whole Bill is really important. As we have talked about quite a lot, it is a bit of framework legislation. An awful lot will need to be delivered through actions taken elsewhere—for example, actions coming through the Agriculture Bill and through house builders. You had a session earlier on planning. It is about getting business on board and getting understanding. This will need to be delivered across society. It is beholden on us all to contribute to delivering the ambition of the Bill.

Getting understanding and input from business, particularly in the target-setting framework in terms of what will need to be in place to deliver that, is really important—not just for the global footprint bit but for the Bill more broadly. Finding that coherence and narrative between the first and second half of the Bill, and in other Bills including the Agriculture Bill and through house builders. You might resolve the issue simply by setting a date for the banning of plastic exports, provided we have the resources and plant to recycle and reprocess plastics within the UK. Do you have a view on that? If so, what date do you think that a ban might properly be introduced, taking into account what we would need to do in the meantime to accommodate that ban within the UK?

The Chair: Ms Newsom? You are nodding. Rebecca Newsom: I do not have a specific recommendation on a waste export ban date, but it is important to remember the big picture. Plastic production globally is set to quadruple, at the same time as a lot of countries across the world are due to enforce their own plastic waste export bans, coming from the UK. The only way to deal with the problem without causing a massive spike in incineration is to reduce how much plastic is used in the first place. That is why we have placed the emphasis on the reduction side of things. We need to emphasise the waste hierarchy. Reuse needs to be at the top of that, without emphasising as much on the recycling side because of course we need infrastructure there. But there is no way that the UK’s recycling infrastructure, even with a lot of extra investment, will be able to cope with the anticipated rise in production and with the waste export bans, so we need to turn the tap on the production at source.

Q124 Dr Whitehead: So you might favour something in the legislation that requires attention to the waste hierarchy, for example, in terms of the passages on waste and resources.

Rebecca Newsom: Definitely. As Ruth said, we would support making sure that there are reduction targets stemming from the waste priority area across all materials. Such is the urgency specific to plastics that Greenpeace
would support a plastic reduction target for packaging in the Bill in the short term, with an emphasis on reuse to avoid unintended environmental consequences.

Ruth Chambers: I definitely agree with all of what Rebecca has just said. Certainly one of the schedules in the Bill talks about disposal costs, which does not seem to sit readily within the strategic framework that Dr Whitehead has outlined. I do not have a view on the date, but you should certainly put that question to my colleague Libby Peake when she gives evidence on Thursday.

Finally, to reinforce a point that was made in the discussion, a key to ensuring that such a ban is to be enforced effectively is resourcing—the resourcing of bodies such as the Environment Agency. That point has come up a few times now in the discussion. It is obviously not an issue that the Bill has much ability to direct—but that it keeps coming up. If the Bill is to matter and to be delivered and implemented successfully, the resourcing needs to be there to match that over the long term.

The Chair: I need to bring the Minister back in. Ms McCarthy, do you want to come in briefly?

Kerry McCarthy: We are having a sitting on Thursday, when we may be looking at things such as the waste hierarchy, so I can probably save my question for that. It was mentioned earlier today that, because there is already technically a waste hierarchy that is enforceable in law, we do not need anything here. I would like to return to that, but I think we can do it at the Thursday sitting. I am flagging it up now in case Thursday’s witnesses are listening.

The Chair: Final questions or statements from the Minister.

Q125 Rebecca Pow: Thank you all for your input. I know that all your organisations have engaged previously, and it is invaluable. We have had a lot of talk today about targets. I partly get the impression that you think we should have much stricter, tighter and more defined targets set in the Bill. We will set legally binding targets in the four areas specified as well as the PM. Do you feel that the intention is that we fully engage further with NGOs, the public and experts to set these targets as we go through, and potentially learn lessons from other areas where targets have been set but have not worked very well? What is your view on that, in order to help us get the right targets? Do you think that is the right way to do it?

Ali Plummer: I think they are really welcome and vital. This area of the Bill is quite sparse. The targets are difficult. We are trying to tackle some challenging and difficult issues. One of the things that we will be looking for is the welcome conversation that the Government will open with experts, practitioners on the ground and stakeholders to make sure that we are genuinely setting achievable and ambitious targets. We are setting a high level of ambition but we are also clear what we need to do in order to achieve those targets. Those two conversations need to go hand in hand. We cannot set high-level ambitious targets without having a genuine conversation about how we are going to get there. Otherwise, we will end up setting long-term targets and potentially arguing for the next 15 years about how to do it and then have to start the whole process over again.

We are looking to build some of that Government intent into the Bill. We then have certainty and clarity that not just this Government but successive Governments will continue that intent and make sure that the Bill is going in that direction—in particular, on the advisory function, making sure the Government have access to good-quality expert advice. It follows more of the model we see in the Climate Change Act 2008, where there is a “comply or explain” mechanism built in. The Government can take this expert advice, which is public, transparent and clear, and comply with it, or give a good, clear explanation why not. Those are the sorts of things we are looking for. As Ruth reiterated earlier, I think we are as one on this. We totally recognise the Government intent. We are looking for a Bill that will make sure that successive Governments hold that intent. That open dialogue, where we can all have a genuine conversation about what we need to put in place to tackle these issues, is welcome.

Rebecca Newsom: I basically fully agree with what Ali has just said. I am also grateful for the intent; it is about translating it into a robust legal framework. I would add that, alongside getting the advice functions right, it is also about the public consultation through the target-setting process. As you said, continuing this conversation through formal consultation processes is key for the ongoing target-setting framework.

Ruth Chambers: Again, I endorse what my colleagues have said. I want to say two final things. First, we are asking for some of the very good intentions and objectives that we have talked about today to be more explicit, rather than implicit, so that whether we are a business, a member of the public or a future Minister, we have that clarity going forward.

Minister, you helpfully referred to the target development process, which will not form part of this Bill but will nevertheless be an important match to it. It will happen over the next few months, and if the targets in the first tranche are to be set by 2022, although that sounds a long way away, we all know from the way Governments work that it is actually not that far. The sooner that process can start in earnest and the sooner there can be clarity about how stakeholders can be involved, how we can feed in and when the consultation is going to be, the better, so we can make sure that we play a full and meaningful part in that.

The Chair: Thank you very much indeed. I think that brings the proceedings fairly neatly to a conclusion. As I have said to everybody else and will say to you, earlier this morning the Committee passed a resolution agreeing to accept written submissions. If there is anything that you feel you missed out or wish you had said, please put it in writing and let the Committee have it, and it will be taken into account.

Ms Chambers, Ms Newsom and Ms Plummer, thank you very much indeed, both for your patience and for the information you have given to the Committee. We are all grateful to you, and look forward to a successful resolution.

Ordered, That further consideration be now adjourned.

—(Leo Docherty.)

5.25 pm

Adjourned till Thursday 12 March at half-past Eleven o’clock.
Written evidence reported to the House
EB01 49 Club
EB02 Coca-Cola European Partners
EB03 Local Government Association
EB04 Society of Independent Brewers (SIBA)
EB05 The Royal Town Planning Institute
EB06 Cycling UK
EB07 Building Engineering Services Association (BESA)
EB08 Girlguiding
EB09 United Kingdom Onshore Oil and Gas (UKOOG)
Public Bill Committee

ENVIRONMENT BILL

Third Sitting
Thursday 12 March 2020
(Morning)

CONTENTS
Examination of witnesses.
Adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 16 March 2020

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The Committee consisted of the following Members:

**Chairs:** Sir Roger Gale, † Sir George Howarth

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Ansell, Caroline *(Eastbourne)* (Con)
† Bhatti, Saqib *(Meriden)* (Con)
† Brock, Deidre *(Edinburgh North and Leith)* (SNP)
† Docherty, Leo *(Aldershot)* (Con)
Edwards, Ruth *(Rushcliffe)* (Con)
† Graham, Richard *(Gloucester)* (Con)
† Longhi, Marco *(Dudley North)* (Con)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Mackrory, Cherilyn *(Truro and Falmouth)* (Con)
† Moore, Robbie *(Keighley)* (Con)
† Morden, Jessica *(Newport East)* (Lab)
† Oppong-Asare, Abena *(Erith and Thamesmead)* (Lab)
† Pow, Rebecca *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Sobel, Alex *(Leeds North West)* (Lab/Co-op)
† Thomson, Richard *(Gordon)* (SNP)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)

Adam Mellows-Facer, Anwen Rees, *Committee Clerks*

† attended the Committee

Witnesses

Sarah MacFadyen, Head of Policy and Public Affairs, Asthma UK and the British Lung Foundation Partnership

Liam Sollis, UK Head of Policy and Advocacy, UNICEF

Katie Nield, UK Clean Air Lawyer, ClientEarth

Professor Alastair Lewis, Chair, Air Quality Expert Group

Stuart Colville, Director of Strategy, Water UK

Ian Hepburn, Chair, Blueprint for Water

Chris Tuckett, Director of Programmes, Marine Conservation Society
Public Bill Committee

Thursday 12 March 2020

(Morning)

[SIR GEORGE HOWARTH in the Chair]

Environment Bill

11.30 am

The Committee deliberated in private.

Examination of Witnesses

Sarah MacFadyen, Liam Sollis, Katie Nield and Professor Alastair Lewis gave evidence.

11.32 am

The Chair: Good morning. I thank the witnesses for attending. This is an important Bill, and it is important that we have the opportunity to hear expert evidence. You are probably aware that members of the Committee have already received the briefings that you issued, so I do not propose to request that you go through yours; you can assume that people have read it, so we will go straight into questioning. I ask each witness to introduce themselves for the record, from left to right—purely topographically—and to say which organisation you represent.

Liam Sollis: Hi everyone. My name is Liam Sollis. I am the head of policy at UNICEF UK.

Katie Nield: Hello. My name is Katie Nield. I am a clean air lawyer at a charity called ClientEarth.

Sarah MacFadyen: I am Sarah MacFadyen. I am the head of policy and public affairs at the British Lung Foundation.

Professor Lewis: Hello. I am Alastair Lewis. I am a professor of atmospheric chemistry. I am here as the chair of the Department for Environment, Food and Rural Affairs advisory group on air pollution—the air quality expert group.

Q126 Dr Alan Whitehead (Southampton, Test) (Lab): Good morning. This may be a bit of a challenge, but for the Committee's edification, could you—between you, or one or two of you—give us a little scene-setting about the effect of air quality on human health, with regard to asthma rates, disability, causes of death and so on, and then briefly set out for us where you think we are at this moment?

Professor Lewis: It is worth unpacking that air pollution is not one thing: it is a whole range of different chemicals and entities. We may get into more detail on that. Broadly speaking, in the UK we are concerned about particulate matter, which is the small, fine, respirable particles—small droplets or small solids—that can get into your lungs and cause irritation. The health impacts have been described.

There is also a gas, nitrogen dioxide, which is brown—you see it as a haze. That has been covered a lot around diesel engine emissions, and it has similar effects. The third gaseous pollutant is surface ozone, which causes harm and irritation to the lungs and causes damage to crops and plants and reduces agricultural yield. Each of those has its own effect and each needs its own solution, so it is always worth breaking air pollution apart to understand which of the pollutants we are talking about, and which actions will bring about improvements.

Liam Sollis: Infants are likely to breathe as much as three times as much air as adults, because they breathe faster, and for other reasons, so children are particularly vulnerable to the impacts of air pollution. We have heard about some of the health impacts of that. There is growing evidence every single day about the impact on lung health, the propensity for risk of cancer, and how air pollution can affect a child's lung development.

There is new evidence that suggests it may have an impact on child brain development as well. When it is seen through the crystal clear lens of the impact on child health, we see it really needs to be prioritised.

I say that partly because about a third of children in the UK—4.5 million children between the ages of zero and 18, and 1.6 million children under five—are growing up in areas with unsafe levels of particulate matter. Those are huge numbers. When we reflect on the Bill, and the extent to which we should push for high levels of ambition on what we can achieve, in relation to the targets set and the implementation plans that follow, we need to keep the impact on the most vulnerable people in our society right at the front and centre of our thoughts.

Katie Nield: To add to that, and hopefully bring this back to the opportunity that is on the table through the Bill, all that makes it really clear that we need a legal framework that sets a meaningful ambition to protect people's health, as well as requiring action to achieve and deliver on that ambition. We already have legal limits for air quality and the emission of certain pollutants in law, but what we have does not achieve them.

Most specifically and starkly, the legal limits we have for particulate matter pollution—one of the most harmful pollutants to human health—are not strong enough to protect our health, and the health of children and vulnerable people. Those limits are more than two times higher—that is, two times less strong—than the guidelines...
that the World Health Organisation set back in 2005. That is why we are really keen for the Environment Bill to provide the opportunity for setting a higher level of ambition when it comes to protecting people’s health, and the opportunity to commit the Government to achieving those World Health Organisation guideline levels of particulate matter, and to putting a plan in place to show how they will do that.

**Q127 Dr Whitehead:** I guess you were surprised that the Bill does not require legally binding targets to be set until October 2022 and does not go any way towards ensuring that the UK meets World Health Organisation clean air emission limits, for example. Are there particular measures that you think should be put in the Bill to enable those things to be addressed properly? How might we ensure that the limits are properly reflected in the legislation?

**Professor Lewis:** I will comment on the setting of targets, which is obviously an area in which a lot of people have an interest. It is worth understanding that there are quite a few components to what setting a target means, and there is more to that than simply crossing out an existing 20 or 25 and writing in 10. Although there is probably universal agreement that we want to head for a limit value of around 10, from a scientific perspective, we have to be absolutely sure that we have all the other parts in place at the same time, particularly the means to assess progress. It is no good setting a limit if we are not confident that we can measure progress towards it. That is considerably harder than picking the number that you would like to shoot for.

I have some sympathy about the timescales, if the timescales are to allow us to get the assessment framework right, because I suspect that will take a bit of time. The UK is potentially going into a place, in terms of the limit value, where no other large developed country has been before, so we are likely to need infrastructure, methodologies and so on to assess progress towards that, for which there is no blueprint. The WHO does not tell you how to do the assessment side. If all that is wrapped up in the discussion of what is a target and setting a target, we need to be a bit cautious about trying to do things too quickly, in case we do not get the assessment part of the equation right.

**Katie Nield:** I mentioned that the existing legal limit for particulate matter is too weak. It is great that the Bill acknowledges that, because it is the only target that is specifically required by the Bill—a new binding target for PM$_{2.5}$ pollution. It is really positive that the Bill, in that respect, recognises the current weaknesses.

What the Bill does not do and does not tell us, however, is how that target will actually be set to better protect people’s health. As you alluded to, the decision on that is kicked down the road for another two and a half years. Issues around finding out exactly how it will be assessed aside, we are frustrated because we know that we need action to tackle this pollutant now. We have heard from the other panel members the impacts that it is having on people’s health now. We do not want the ambition to take urgent action to tackle this pollutant to be stalled for another two and a half years.

There is evidence that it is possible to achieve the WHO guidelines for this pollutant by 2030. The Department for Environment, Food and Rural Affairs released a report last year that concluded that. London is arguably the city in the country with the largest-scale problem when it comes to particulate matter, but it is also said to be possible in the capital too. With all the evidence there, despite the ins and outs of exactly how the target will be assessed, and the fact that it might be set out in subsequent secondary legislation, the Bill provides a real opportunity to set out the Government’s stall now, and show that they are committed to real ambition to protect people’s health now, rather than delaying action any further.

**Sarah MacFadyen:** We fully understand that the Government’s intention with the legislation is to allow them to consult with the right experts on the environment and health to set the right targets, but we feel that, with air pollution, the World Health Organisation has made its recommendation very clear, and it is the expert on this. There is a really strong case for taking that guideline and committing to it in the legislation, in addition to doing the work around that to set out exactly how we will reach it and monitor our progress.

**Liam Sollis:** The logic that underpins the WHO recommendation is to set a benchmark that says, “If the PM$_{2.5}$ levels exceed this level, you will be doing irrevocable harm to people’s health.” We need to make sure that we target below that, because it has been designated by health experts as the very maximum that we can legitimately see as permissible. That level of ambition needs to be front and centre, because health is the common purpose that underpins the air quality component of the Bill.

On the timing of the targets, some important points have been made. We want to make sure that the process of setting the targets and the assessment processes that will follow will not stall action and implementation and hold things up any longer than they need to. We need action now, because people are falling ill and dying now. The more impetus there is, and the quicker we can move towards that, the better for people’s long-term health.

**The Chair:** I shall bring in the Minister responsible for the Bill, Rebecca Pow.

**Q128 The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow):** Thank you all for coming in. I want to pursue this subject a little further. It is clear that we recognise how damaging PM$_{2.5}$ is to human health, as we have made it the only legally binding target in the Bill. I hope you welcome that.

I want to address Professor Alastair Lewis first, from a more scientific perspective. While the WHO has said that it might be possible to get to that target quicker, it did not say how to do that or what the economic impacts were. I would like you to go into the detail of why that is so difficult to do right now. One key aspect of the Bill is that experts will be involved in consultation right the way along the line. How important is it that we do not rush into something, but take important guidance and expert advice?

**Professor Lewis:** There is quite a lot in there. The first issue is what the WHO is really telling us. One technical point that we need to be clear about is that harm from air pollution does not stop magically at 10 micrograms, and it does not say that it does. That is set as a benchmark that we should all aim for, but harm continues below that. If someone lives in a house and their
exposure is 10.1 and someone else lives in a house where it is 9.9, the health impacts are basically the same. We have to think about continuous improvement everywhere, not just the limit values in isolation. The WHO is not suggesting that if we all got to 9.9, we should stop thinking about air pollution. We have to think about that component.

The reason it is particularly challenging the lower you get is that less of the pollution comes from obvious sources. Most of us visualise air pollution as something coming out of a car exhaust or a chimney. In terms of particulate matter, we would consider that a primary emission—you can see it coming from the source. More and more particulate matter that we will breathe in over 2025 and 2030 will be secondary particulate matter. Those are formed in the atmosphere from reactions of chemicals from the wider regions around us. It becomes harder because we cannot just work on the sources in the cities themselves and go to the bogeymen sources we have gone at before; we now have to work across a much broader spectrum of sources. The chemistry of the atmosphere works against you because, often, that is non-linear chemistry. You have to take a lot of pollution out to begin to see relatively small benefits. None of those are reasons not to have action now, but there are some underlying fundamental issues around reducing particulate matter.

**Q129 Rebecca Pow:** Some of it comes from Europe, doesn’t it?

**Professor Lewis:** Europe will be a significant component. You cannot reduce particulate matter without the co-operation of your neighbours, because it is quite long-lived in the atmosphere and it blows around. It is particularly significant in the south-east and London. Other sources come in from suburban areas, from agriculture and so on.

There are a lot of areas that will need to be worked on simultaneously. It is rather different from how we have dealt with air pollution in the past, where you could get a really big hit from closing down some coal-fired power stations or working on one particular class of vehicle, which is what we have been doing for nitrogen dioxide. As we look over the next decade for particulate matter, we will have to have actions all the way across society, from domestic emissions—what we do in our own homes—to how we generate our fuel, how industry operates and so on. This is about not underestimating the scale of the task.

Your final point was on how achievable this is. The WHO does not tell you whether 10 micrograms is achievable in your country or not. In fact, in many countries in the world, it will not be achievable, because of natural factors—forest fires and so on. In the UK, whether it is 100% achievable—meaning that every square metre and person in the UK can be brought under that limit—is probably questionable. If you ask me whether the vast majority of the UK could be brought under that limit value, the answer is probably yes.

That has implications on how you choose the right targets to set. The limit value is one, and it very much focuses the mind on what you are trying to achieve. However, we have seen perversities around only having a limit value, because it means that more and more attention is placed on to a smaller and smaller number of places, which does not necessarily always deliver the largest health benefits. The Bill sets out the headline of potentially 10 micrograms per cubic metre, but alongside that we want to see a long-term target around continuous improvement, measured across the population as a whole. We do not want to see pollution simply smeared out a little bit, to artificially get underneath the limit values. I have said quite a lot, so I will probably stop there.

**Q130 Rebecca Pow:** Just to encapsulate that, is it right to have the legally binding PM$_{2.5}$ target and to set the other targets when we have more evidence, given that we all want to be really ambitious for the health aspects?

**Professor Lewis:** Obviously we will need this target around population improvement. However, even when setting the limit value now, we have to be quite clear about how we will assess that. It is technically quite a challenging thing to do. Nobody would want to set a target, discover that we came up with the wrong way to assess progress, and then potentially argue in the courts over whether progress had been made. Having real clarity now about how we will measure progress towards the specific 10 microgram per cubic metre limit value is really important, and we will want to take quite a lot of expert advice on that, because nobody has done this before.

**The Chair:** There is no obligation to do so, but if any other witnesses want to add anything to that, they are very welcome to.

**Katie Nield:** I will take a step back and think about the purpose of the targets. Obviously, we already have legal limits and emission-reduction commitments within existing law, and we are hearing that the Government are committed, quite rightly, to improving on those, which is great. However, I am concerned that the actual architecture of the Bill does not provide us with that comfort.

There is a requirement for the Secretary of State to review the targets periodically, but only against a requirement that a change would significantly improve the natural environment. There is a huge omission in that statement: there is no mention of human health or of the need for these targets to be there to protect human health. That seems to be a really stark omission that could be quite easily fixed within the Bill. Surely the whole purpose of these air quality targets is to protect people’s health. At the moment, there is not enough comfort in the Bill to make sure that that is the case.

We are talking about long-term targets. There will definitely be a need to review and change things as evidence and the means of assessing things go forward. We need a Bill that constantly requires those things to be the best that they can be, to protect people’s health. At the moment, the Bill is kind of silent on that point, which is a major concern.

We also talked about the importance of expert evidence. The Bill requires that the Secretary of State obtains expert evidence before setting targets, but it could provide that mechanism in a much more transparent and meaningful way. There is no requirement for the Secretary of State to take that advice into account, for that advice to be published, or for the Government to respond to or to explain why they are doing things contrary to that advice. To set a meaningful, long-term framework, tying up those gaps within the Bill is really important.
The Chair: Thank you. Diedre Brock, do you have any questions?

Diedre Brock (Edinburgh North and Leith) (SNP): Not particularly at this time.

The Chair: In that case, I call Robbie Moore.

Q131 Robbie Moore (Keighley) (Con): Professor Lewis, what sorts of measures would you expect the Government to have to implement to meet the World Health Organisation levels by 2030?

Professor Lewis: The Government have a clean air strategy. It is quite a lengthy document, and necessarily so because of the problem with needing to reduce emissions effectively all the way across society’s use of chemicals and so on. We have made significant progress on reductions in emissions from vehicles, but there is still some way to go on that. One area that we will have to look at is, even when the vehicle fleet is electrified—by 2030, the majority of passenger cars may be electric—vehicles will still be a source of particle pollution from brakes, tyre wear, road wear and so on. Although electrification has huge benefits for air quality and will hopefully completely eliminate nitrogen dioxide, simply buying electric cars in isolation will not completely solve their contribution to air pollution. We will need measures to try to get cars out of city centres and so on, even if they are electrified. That is one thing.

A major component of particulate matter forms from the chemistry that I have talked about, involving ammonia from agriculture. That has been a persistently difficult source of pollution to reduce; it is very diffuse and comes from all sorts of agricultural processes. That is a sector that has not seen many declines. There will have to be substantial reduction in agricultural ammonia emissions to meet that target. That is the one area where I have some concerns, because historically we have not made an awful lot of progress on that.

Another contributor to the formation of particles in PM$_{2.5}$ is our consumption of chemicals. A lot of the reactive chemicals that we use and consumer products that the industry uses go on to react in the atmosphere and form PM$_{10}$. We will all collectively have to work to reduce our consumption of those.

Then we get to sources that are very hard to reduce. That is why we may be left with some very stubborn areas. You cannot completely remove PM$_{10}$, because in the end it is generated from friction, and it is very hard to live a life that does not involve some form of friction and the wear of surfaces. Food and cooking are sources—it would be hard for any Government to commit to banning food.

I have touched on a few contributors, but I could probably have listed 15 more. Individually, they all sound quite small; in combination they have a large effect. We will be facing some that will be very difficult to reduce, just because they are so integrated into our lifestyles, particularly in the most densely populated cities, where the sheer volume of people and activity is in itself a generator of PM$_{10}$. I would not want anyone to go into setting a target without being very clear that there are some activities that we undertake where you cannot totally eliminate emissions. But as I say, the vast majority of the UK could, you would hope, be brought under a 10 micrograms limit.

Liam Sollis: To build on that, there are so many different areas that potentially contribute to air quality in the country, so it is all the more important that there is a cross-governmental duty to ensure that different Departments of Government and different areas of life across the UK are all working towards that common ambition. We must think through how that can be articulated in the Bill, making sure that there is co-ordinated action that is not led just by DEFRA, but that brings together a whole number of different Departments to meet those common aims.

There is mention in the Bill of the environmental improvement plans—that is very welcome. I do not think that there is any explicit mention that air pollution needs to be included within those EIPs. Ensuring that air pollution is a priority throughout all elements of cross-governmental co-ordination on the environment is definitely something that we would like to see.

The Bill contains emphasis on local bodies and local government action to make sure that we reduce air pollution. That will become a reality only if there is a national action plan ensuring that there is co-ordination and adequate levels of support and funding. I know that some money was announced in the Budget yesterday that links to this issue. We would welcome more information on how that is being focused and prioritised to make sure that the allocation of that money is linked to where the greatest health impacts are across the country and to make sure that the most vulnerable people are being protected.

The only other thing I would add to that in this broader, more holistic approach to tackling air pollution is the impact from European countries, which the Minister mentioned. As we get further along the line and reduce air pollution more, that will become an increasing factor on air pollution in the UK. We have the opportunity of COP 26 later this year—a real marker in the sand whereby the Government can take leadership and start to bring other countries along with it in relation to air pollution.

As we get further down the line and get closer to 2030, we are trying to get much further along with the air pollution targets. It will become increasingly important that we are able to galvanise action from our European partners as well. This year is a really important moment for that. The signing of this Bill and the follow-on plans that will come afterwards are a really important way of galvanising that action, so we should prioritise that.

The Chair: I am going to start taking questions in twos because we do not have a lot of time left, but is there a follow-on question specifically on that?

Q132 Jessica Morden (Newport East) (Lab): How does what the UK does to tackle air pollution compare to other countries?

Professor Lewis: It depends how you want to measure success. We do quite well in terms of the concentrations that people are exposed to relative to other European countries, but we have the great advantage of a massive Atlantic ocean upwind of us, so that is probably not a fair measure of success. We have some natural geographic advantages.

Another measure of success is national emissions. There are a basket of air pollutants with which we have targets under both the Gothenburg protocol and the
national emission ceilings directive. They set the tonnages, effectively. On those, the UK meets its targets reasonably well. It does not stand out as being an overperformer, but it is not a laggard either. Most of the large European economies have seen their emissions reduced broadly at the same rate, but we do slightly better in terms of concentrations and exposures just because of geography.

The Chair: Thank you. I will take two questions now. Perhaps the witnesses will decide between them who is the most appropriate person to respond in each case. I know that might be asking a bit much, but try and think about that.

Q133 Abena Oppong-Asare (Erith and Thamesmead) (Lab): I want to ask about the respective contributions to air pollution made by road, air and sea transport and incinerator plants, wood burning and ammonia from farming.

Professor Lewis: I was very interested when you talked about the different chemical reactions and the effect of agriculture upon the PM2.5 particles in the air, and how we should be fully aware that it is not just car exhaust fumes. Bearing that in mind, would you be cautious about putting into law something that the Government would not necessarily have control of or the ability to fully manage themselves, and might potentially end up as a big problem?

Professor Lewis: I can answer that directly now. You certainly would not want to put in promises to control things that are outside your control. There are things such as natural emissions. For example, there are chemicals emitted from trees that contribute to air pollution when they mix with other things. You certainly would not want to commit to controlling those.

If you are alluding to ammonia being an uncontrollable emission, I do not think it is. Ammonia is something that can be controlled. There are a lot of interventions that can reduce those emissions. There is probably a minimum level of ammonia that you would argue is uncontrollable, but we are way away from that at the moment.

On each of those pollutants and each of the ones that contribute to the chemistry, you do need to sit down and think very carefully about which bits are under your control and which bits are not.

Bim Afolami: And indeed the interaction between different bits.

Professor Lewis: It is a lot of detail, but the contribution from ammonia, for example, comes when it mixes with some of the end products of emissions from car exhausts. So you have two completely dissimilar sources that are not even geographically located together, but when the atmosphere brings them together, the acid and the alkaline react. That is why you need to look right across the emissions sources and not be too focused on just dealing with one.

The Chair: And on Abena’s point?

Professor Lewis: I can answer on the contributions, because this is the sort of thing that is reported in the national atmospheric emissions inventory; there is a lot of detail on the individual contributing sources. This is where the world will change in the next 10, 12 or 15 years, because at the moment we have a huge contribution to urban air pollution from vehicles, and particularly nitrogen dioxide, but that will slowly move out and we will see the mix change. With other transport sources, such as trains and aeroplanes, we imagine that train contributions will decrease and aeroplanes will probably stay the same. It will evolve over time.

Katie Nield: It is worth stressing that although there could be many, many different sources of particulate matter pollution, so many of them are controllable. As you were saying, emissions from road transport are controllable, as are those from agriculture and domestic burning. There is a huge amount left to be done to control those emission sources. The concern I have with the Bill is that, although there are environmental improvement plans and it is great to have something to point to show what the Government are doing to achieve the targets, I do not have enough comfort from the Bill that that is what those plans will achieve for air quality.

I have two main concerns with respect to those plans. First, there is no mention of the need to protect human health. Again, the requirement in the Bill is to set out steps to improve the natural environment. There is nothing about the need to protect human health as part of that. Again, that seems to be a stark omission.

Secondly, although the plans must include steps to improve the natural environment, there is nothing up front that requires that those steps are sufficient to be likely to achieve the targets that the Government commit to. It seems that the plans should be the vehicle for achieving the targets, so I do not see why the law does not recognise that.

From an air quality point of view, the Bill represents a bit of a step back from what the law says at the moment with respect to current air quality targets, because the plan-making provisions that we have in the current law to meet targets are much stronger than those that the Bill provides for. That is a major concern for us.

Sarah MacFadyen: Regarding the mix of sources and where the emissions are coming from, the British Lung Foundation is generally most concerned with emissions from transport, because that is the primary source in busier towns and cities, which is where the majority of people are living, working and breathing. That is why that partnership between national and local government is so important on this issue, because the situation will look different in different places.

We have quite a lot of patient groups based in cities and towns along the south coast, for instance, who are very concerned about air pollution. Obviously, shipping is a big contributor when you are on the coast. We need to be able to look at this issue in local areas and see what the biggest contributors are there. We need both the national strategy and the support for local government to tackle what is going on in their areas.

The Chair: I will take two more questions. We really are pushed for time, so if Members could make their questions as concise as possible, that would be really helpful. We will start with Kerry McCarthy and then go to Cherilyn Mackrory.

Q135 Kerry McCarthy (Bristol East) (Lab): My question is specifically directed at ClientEarth. You have taken the Government to court over their failures on air...
pollution three times now. Do you feel that the Bill gives sufficient powers to take action against the Government if there are future failures? Also, my concern is about the burden being passed to local authorities to a large extent. In the wider picture, I have just heard that Bristol has finally got its directive from the Government today, but unless funding is released for transport, housing and all the things that go with it, it will be very difficult for local authorities to do what is required, so where is the balance? Who should be held to account, and can they be held to account under the Bill?

Q136 Cherilyn Mackrory (Truro and Falmouth) (Con): I suppose that my question follows on from that. I am lucky enough to represent a coastal rural community. My confusion is about how we measure these targets. I do not know what success looks like where I live, compared with London, for example. We might also set targets in the Bill, but where I live might have met them already while London has not. Who are we setting the targets for? I find it a bit too complex, which is why I am leaning towards using secondary legislation to manage that. Following Kerry’s question, I would also like to hear a little more about the role of local authorities.

Katie Nield: I will go first, given that the first question was directed at ClientEarth. The cases that ClientEarth has taken against the UK Government have been key both to driving action to meet the legal limits we already have and to highlighting this as a serious issue and highlighting Government failures so far. It is really important that the Bill allows people to continue to do that against these new binding targets. They need to be meaningful, and that means that the Government need to be held to account against them. That is key.

What is also key is that we should not have to rely on organisations such as ClientEarth or individuals to take action. That is another reason why it is really important that the Office for Environmental Protection—the new environmental watchdog set up by the Bill—has adequate teeth to do that job and scrutinise Government actions. I assume you heard in previous evidence about the shortcomings of the Bill in that respect, so I will not repeat that.

In terms of action from local authorities, what has come out in the discussion so far has been clear: air pollution is a national problem and there are a huge number of different sources that need to be dealt with. It is not a localised issue with just a small number of hotspots that need to be cleared up. What we are concerned about is pushing the burden of responsibility on to local authorities to deal with this problem—that will not be the most effective way to tackle this national public health crisis. We need the Bill to reflect that, and we need the environmental improvement plans to reflect that.

At the moment, the Bill provides some new powers to local authorities, and those are very welcome, but it risks putting the burden of responsibility on them. This goes back to the point Liam was making earlier about the opportunity to introduce a broader ranging duty on all public bodies across different levels of Government and different Departments from the central level to ensure that they are doing their bit to contribute to those targets.

Professor Lewis: I would like to comment on assessment in a rural environment, because that is really important. Most people potentially live in places that will not be anywhere near a measurement point. It has been possible to bring action on nitrogen dioxide because there was a very good way of assessing it: we knew where the pollution was—at the roadside—and there was a network of measurements and, crucially, an ability to predict, model and fill in the gaps in between, where everybody else lived. That provided you with the evidence base with which you could say, “These areas exceed; these areas don’t.”

It is harder with PM$_{2.5}$ because it does not come just along the roads, although there are sources there; it comes from many places. You might rightly ask, “How will I know if it is getting better in my constituency?” The answer is that if we do adopt things like a 10 microgram target and continuous improvement, we will have to do more measurements, because we will not have the evidence to present to say whether it is getting better or not. There is a fundamental difference as you go lower and lower: the challenge in proving that things have got better, and particularly in places that historically we would not have thought of as pollution hotspots, is pretty hard. People should go in with their eyes open that there will be more of a burden in demonstrating that progress is being made.

Katie Nield: I suppose setting am ambition for that target also provides an opportunity for us to better assess it and better understand the impacts it is having on our health, so it is an opportunity.

The Chair: I am afraid we have time for only one more question, and I am not sure that we will have adequate time for all the witnesses to respond. Alex Sobel, please be very brief.

Q137 Alex Sobel (Leeds North West) (Lab/Co-op): I will try. My city, Leeds, has some of the worst air quality in Europe. We are getting a clear air zone, but it is nine months late due to Government methods. A DEFRA fact sheet says that NOx—nitrogen oxides—emissions fell by only 33% between 2010 and 2018, and PM$_{2.5}$ by only 9%. The NOx limits are the same for the EU and the WHO, but the WHO’s PM$_{2.5}$ limits are much lower than the EU’s. How can we get to a safe level by 2030, given where we have got to at this point and what we can do with the Bill?

The Chair: Very quickly.

Sarah MacFadyen: I think we have covered a bit of that already, but the actions laid out in the Government’s clean air strategy are going in the right direction. We need to look across all sources. Within Leeds, a huge part of that will be road transport, but it is not the only part. We know that clean air zones are a step in the right direction, and that the modelling around them shows that they will reduce nitrogen dioxide and some particulate matter. To reduce PM further, we will need to consider having fewer cars on the road—not just newer or electric models—and look at investing further in clean public transport and in walking and cycling. We will also need to look at wider sources, such as fuel burning, industry and agriculture.

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions. On behalf of the Committee, I thank the witnesses for their forbearance. I know it has been
difficult to squeeze in all the information, but I am sure the whole Committee has found it very informative and helpful in shaping our views.

Examination of Witnesses

Stuart Colville, Ian Hepburn and Chris Tuckett gave evidence.

12.17 pm

The Chair: Good afternoon. We will now hear evidence from Water UK, Blueprint for Water and the Marine Conservation Society. We have until 1 pm, but it has been very difficult to get through all the questions in the time allocated. As Members of the Committee do not seem to understand what “concise” means, I ask them to condense their questions. Our witnesses are very welcome. Do not feel that you have to answer every question if you do not have anything to add to what the others have already said.

Q138 Dr Whitehead: Good afternoon. I want to start with some thoughts about water efficiency, and specifically the extent to which it is widely thought that the Bill perhaps misses the opportunity to strengthen water efficiency targets and encourage homes and businesses to reduce their water usage. Do you think there should be powers and targets included in the Bill to enable those efficiency measures to be expedited?

Stuart Colville: My name is Stuart Colville and I am from Water UK. The position of the water industry is really clear on this. Looking at the second half of this century, we are starting to see projections of water deficits in every part of England, and water efficiency is clearly part of the toolkit for dealing with that. We would like to see some of the Bill’s resource efficiency clauses used to bring forward a scheme to label water-using appliances—dishwashers, washing machines and that kind of thing—coupled with minimum standards. We feel that is really important. The modelling shows that if you do not do that kind of thing, you end up having to bring forward a lot of supply-side measures, such as strategic transfer schemes or desalination plants, which are not only very expensive, but quite carbon-intensive. That is the kind of measure we are looking for from the Bill.

Ian Hepburn: I am Ian Hepburn of Blueprint for Water, which is part of the Greener UK coalition. We entirely support and endorse the view that there should be opportunities for water consumption reductions in the Bill. We have identified a couple of parts of the waste and resource efficiency element of the Bill that could allow for the relevant reduction opportunities to be put in, in the form of mandatory water efficiency labelling and setting standards. There is an absence of a target, and if this Bill could be used to produce a target for water efficiency, we would be very supportive of that.

Q139 Dr Whitehead: I want to touch on the other aspect of water that we have heard rather a lot about recently, namely flooding, and observe that the Bill likewise holds no powers or duties on flood defence or work on drainage of waste water to reduce flood risk. Do you think that is an omission in the Bill, or are there other ways in which such measures could be reliably incorporated into legislation?

Stuart Colville: From a water industry perspective, the most serious omission, or the thing we would most want addressed, is a recognition in statute of these things called drainage and waste water or drainage and sewage management plans. There is no adjacent duty on those others in the water industry to co-operate and collaborate in the development of those plans. Those plans are slightly technical, but we see them as fundamental to our long-term ability to deal with increased rainfall patterns, climate change and so on, to ensure that there is enough capacity to meet that.

At the moment, the onus is placed on water companies, which is correct because they are at the heart of that planning process, but there is an absence of any requirement on other operators of drainage systems to be part of that. In practice, we are already seeing that leading to some variability across the country in the quality of co-operation, whether with strategic road operators or local authorities. The most serious omission for us is that lack of obligation on others to be part of that process, to be around the table and to think about how these very long-term plans will work.

Ian Hepburn: If I could add briefly to that, one of the big opportunities missed in this Bill is to provide for a strategic catchment-scale management of water. Without that, we have lots of little piecemeal bits of mechanisms, bits of legislation, the flood and coastal erosion risk management strategy, the resource management plans that are coming in—a whole host of different elements, none of which are joined up. That join-up cuts across to the Agriculture Bill and the opportunities there under the environmental land management scheme to generate natural flood management opportunities.

If none of those are joined up and it is not dealt with in a strategic way, we will still be doing things using a very piecemeal, bitty approach, and that is not the way water works. Water falls, it moves, it goes into the sea; that is what you have to manage. You are managing the issues that we will increasingly face, too much water and too little water. We have to manage for that. We have to manage so that we are able to take out water for our own communities and purposes, while having enough left for the environment.

Chris Tuckett: I am Chris Tuckett from the Marine Conservation Society. I entirely agree with what Ian says about the connectivity between different parts of the environment. Yes, if you are managing the environment in terms of waste water and drainage, that also means that potentially preventing things such as bathing water quality impacts down at the sea. It is about looking at the different aspects in a more integrated way. Some of it is in the Bill—certainly in part I, which is quite general and integrated—but the connection is quite often missing. It should not be missed; in thinking about the Bill, we should think about the connections in our environment.

The Chair: Minister, would you like to add to our proceedings?

Q140 Rebecca Pow: I would love to. I want to be clear about resource and water efficiency, which was mentioned earlier. That is catered for in clause 49. I take the points about needing to look at the wider issues of all water
resources. We have to set a water target in part 1 of the Bill. I am interested to know your thoughts on what sort of target you would like to see, because we have that opportunity in the Bill.

**Chris Tuckett:** First of all, I am delighted to be here. I am quite surprised I am here, because the Bill does not actually mention marine—it mentions the Marine and Coastal Access Act 2009, but it does not talk about the marine environment.

**Rebecca Pow:** But it mentions the natural environment, and to be clear, that includes marine. That is why you are here.

**Chris Tuckett:** Yes, which is great, and I really appreciate that. We would really like a little bit of clarity, and for the Bill to mention marine, because 55% of our territory in England is under the sea, yet the Bill does not mention the words “sea” or “marine.” There are some simple changes and a few amendments that I know have been agreed that can fix that very simply.

As far as targets go, it is incredibly difficult to look at the different parts of the environment—water, biodiversity, land and air—and put one target on them. For the marine environment, the best we have at the moment is good environmental status. That is to be achieved by the end of 2020. We are pretty certain that it will not be. Following the assessment at the end of last year, 11 out of 15 indicators of good environmental status are not at green; they are failing. There is a lot of work to be done.

In terms of the target for water, good environmental status is probably as good a measure as we can get. That needs to be there. It will not be met by the end of 2020. Thinking further about the value of the environment, particularly the marine environment from a climate point of view, do the indicators to achieve good environmental status need to be upped a bit more, to make sure we take account of climate change and the role that the marine environment has in that? For water, we need a basket of measures.

**Ian Hepburn:** I cannot argue with any of that. It is quite difficult to pick one target, because there are many targets for the water environment that we would want to see. The most obvious target is the water framework directive target for good ecological status or potential for all waters by 2027. I seriously doubt we will meet that; most people think we will not. That is only one part.

I would like someone to invent a target that integrates all needs for the water environment. I have not seen it yet. I could not pick one particular target right now that I would like to see. There is a need for a multitude of targets. Picking one will not be sufficient.

**Stuart Colville:** Do you mind if I add two quick things? First, it is clearly right to have more than one target for water in the Bill. My personal preference would be to have a distribution input target, which is a technical thing that simply measures the amount of water taken away from the environment, whether for residential or commercial purposes or so on. Placing a target aimed at the ecological outcome—or the impact most associated with the ecological outcome, the removal of water—would drive a bunch of incentives and behaviours by water companies and others that would promote good ecological outcomes. There is something there around abstraction that is quite interesting.

There is clearly also something on ecological status or ecology. The targets we inherited from the water framework directive will expire in 2027. We are not really having a debate yet about what should come afterwards. However, if you look at the investment lead times of the water industry, for example, you are talking about 10 or 15-plus years, so we really need to have a debate now about what comes after 2027, regardless of the percentage compliance that we actually achieve under that. We already need to start planning those longer-term investments.

The third area, which is perhaps more difficult, because it is newer, is the idea of public health. All the existing legislative framework around protecting waterways, and the environmental outcomes around waterways, are predicated on the protection of invertebrates and species and biodiversity. If you look at the water framework directive, the urban waste water treatment directive and so on, that is the outcome that they aim at. We are increasingly seeing society expecting to have the ability to bathe, swim and paddle in inland rivers, or to go down to the local pool of water and splash around with a dog or whatever. The gap in how we—the industry and Government regulators—react to that is between whether we take that inherited legislation, which is clearly based on environmental parameters, or whether we think about protecting public health in that environment, because that will trigger a lot of investment and money, and a lot of carbon.

**Q141 Rebecca Pow:** Can I quickly follow up on something? In the light of what you have all said, we already have a pretty heavy legislative framework for water and the water space; we already have water management plans, catchment plans—a raft of information—which is why a lot of that is not reiterated in the Bill. The message I am getting from you is that there are myriad targets that we could set. I would say that the Bill offers the opportunity later to set any targets that we want. Do you agree that it is good that a water target will be set in the beginning? I think our marine lady particularly welcomed that. This shows how complicated setting targets is, and that we would need to take a great deal of advice in the secondary stage of the Bill in order to do that. This is what the Bill offers us the opportunity to do. Do you welcome that general approach?

**Stuart Colville:** Yes, I completely agree.

**Chris Tuckett:** Yes. If I could add to that, the additional thing that the Bill will potentially bring is teeth to some of those targets. The water framework directive target is for 2027. Who knows whether we will get there; we have missed a number of points along the way. It is the same with the marine strategy framework directive. When I talk about good environmental status, that is related to marine strategy. The targets are there—that is a ream of targets—but the regulatory bite and the consequences of the targets not being achieved is missing. If we could bring that through, that would be great, and a huge improvement.

**Ian Hepburn:** I would add very quickly that the opportunity for interim targets to be set and managed over a shorter timescale than the one global target ought to be taken advantage of.

**Q142 Deidre Brock:** I have been doing quite a lot of work examining issues around munitions dumps around the coast of the UK. In fact, I called for an environmental
audit—on both land and sea—of the Ministry of Defence’s activities. Clause 18 excludes “the armed forces, defence or national security” and “taxation, spending or the allocation of resources within government” from the scope of the policy statements. I am interested to hear your thoughts on that.

**Chris Tuckett:** I have to confess that it is not something that I have scrutinised. I should have. Munitions dumps, disused landfill sites, unclaimed landfill sites are potentially a risk to the environment in the round. Where there is coastal erosion, they are absolutely a risk to the marine environment. If there are loopholes in the Bill in relation to those sorts of risks, and there is the opportunity to deal with those loopholes here, we absolutely should. But we must look at it in the round, because there are a number of different sorts of sites that are like that.

**Ian Hepburn:** I do not see a reason for having gaps in terms of responsibility. There is a potential impact on the environment. They may be treated slightly differently, perhaps because of their special positions, but I do not see a reason why there should be a gap.

**Q143 Deidre Brock:** You think a blanket exemption is not appropriate.

**Chris Tuckett:** The environment does not see any difference, does it?

**Q144 Saqib Bhatti (Meriden) (Con):** Mr Colville, you spoke about the water industry. Do you agree the Bill is a step forward with respect to the regulation of the water industry? Obviously, the current process can constrain water companies and increase uncertainty about regulation and so on, but bringing the process in line with other sectors can strengthen Ofwat’s ability to improve the way water companies operate and the information they receive.

**Stuart Colville:** We are referring specifically to the changes to licence amendments and the process around that.

**Saqib Bhatti:** Yes.

**Stuart Colville:** This is clearly an area that needs to be approached with caution, because the licences that water companies hold are extremely important to the way that they operate and for attracting investment, essentially. We think the Bill broadly strikes a reasonable balance between the powers that the Government and the regulator feel that the regulator needs, while maintaining protections for investors and continued investment.

**Q145 Marco Longhi (Dudley North) (Con):** I am interested in the panel’s views on the role of local government and, more broadly, on the regulatory framework once we have decided what the medium and longer-term targets may be. As I observe the water economy—if I could use those terms a little loosely—it seems very fragmented. We have water providers, water treatment, marine, canals, x, y and z. How do you see the regulatory framework, as that develops, once we have decided what those targets should be? I just want to make sure that we do not put the cart before the horse, if that makes sense.

**Stuart Colville:** I think the role of local authorities is crucial. We are seeing an increasing move towards catchment-based planning across the UK. Local authorities bring a sort of accountability that industry and regulators cannot. Involving local authorities more in the medium-term or long-term plans around some of our most important river catchments is really important—bringing them into the partnerships that are being constructed to think about how best to maintain and improve water quality, flood resilience and so on.

I do not necessarily see a role for the Bill in promoting that. I think it is already happening to some extent, and we are seeing work quite well in particular areas. It requires a proof of concept and a scaling up of what is already happening.

**Chris Tuckett:** Absolutely, it is complicated. The Bill is huge. The governance framework is also huge.

**Q146 Marco Longhi:** It follows on from Mr Hepburn’s comments earlier on integrated thinking. Given the fragmentation of the whole environment around water, it is a complicated equation.

**Chris Tuckett:** The systems thinking around governance, as well as the environmental system itself, is really important. There is a specific example I have around local government. The inshore fisheries and conservation authorities that operate around England, at six or 12 nautical miles—the inshore area—get their funding through local authorities. We know that due to the situation local authorities are in, some of that funding is lost along the way. It just happens.

The funding position there is pretty dire, so from a marine point of view, to regulate the inshore and to do this job properly and recover our marine environment, we need the regulators to be in place to have the power and, bluntly, to have the funding to be able to do the job. That goes for the Association of Inshore Fisheries and Conservation Authorities and for the Marine Management Organisation.

With local authorities, you of course also go on to the waste and resources side of things, which I think you will be talking about later. It is important to think about their role on such things as deposit return schemes versus what would happen within a new system that is set up. I am sure DEFRA is absolutely on the case with thinking about governance arrangements, the flow of money and how all that works as part of this, but it is vitally important.

**Q147 Kerry McCarthy:** Can I just ask a quick question about chemicals in the water supply and whether the Bill does enough to increase the monitoring of pesticides and other pollutants in the water? You are all nodding, but nobody is answering.

**Ian Hepburn:** It is not something I have looked at in depth, but certainly there seems to be concern—this is from other organisations that support and work with Greener UK—that there is a large number of substances out there that will be risky as far as human health is concerned, let alone the health of the environment. That will need to be regulated. I do not see within the Bill that there is necessarily the right framework to do that monitoring.

It is also probably worth touching on the fact that if one puts that responsibility on the Environment Agency, which has had fairly significant depletion of its resources, it may be that there is no capacity, even if you include that responsibility in the Bill, to get that monitoring done. I think that is something that we need to bear in mind when developing something that will help us
watch these novel substances, both alone and in how they operate together in the environment, because they do pose risks.

Stuart Colville: I would just observe that regulators and the water industry itself have a programme of research into what I suppose you would call novel contaminants or novel pollutants within watercourses and water bodies. That is funded at a reasonably high level and will continue. In fact, the next round, between 2020 and 2025, is about to start. That looks at things such as microplastics, antimicrobial resistance and exotic chemicals that may be leaching into watercourses from various forms. I suppose the question is whether there needs to be some duty or obligation through legislation to formalise that somehow. My sense is that the current system, which is overseen by the Environment Agency, is reasonably effective at keeping an eye on those substances and trying to work out what is actually in the environment.

Chris Tuckett: Clause 81 of the Bill, which relates to water quality, gives the Secretary of State powers to look at the substances that are regulated through what is now the water framework directive. That is good, and we do need flexibility on the sorts of chemicals that are monitored. It is slightly different for pesticides, but it is important to adapt as new chemicals come on to the market. What we would say about that clause is that there should be absolutely no regression on standards. Those standards that are there should not be reduced in any way.

Stuart Colville: Just to be clear, we would agree with that.

Q148 Abena Oppong-Asare: There are a few requirements for consultation on water quality in the Bill, but they are only to ask the Environment Agency. If any changes made under this section of the Bill are subject to the negative resolution procedure, do you feel that that level of scrutiny is enough, or do you think it should be extended? I just wanted to hear your general thoughts on that.

Ian Hepburn: This is on clause 81?

Abena Oppong-Asare: Yes, I should have been clearer.

Ian Hepburn: It is an important issue. There is no overall requirement for non-regression, so changes could occur in either direction; they could reduce the standards and they could remove substances. We consider that that is highly inappropriate. There must be a degree of protection in there. We would certainly want to see a general improvement in the way in which any move to alter the substances or the standards is addressed. It will need to have specialist advice. There is an obligation to consult the Environment Agency, as you say, but it needs to go beyond that; it needs public consultation, and it needs an independent organisation like the UK technical advisory group—UKTAG—which currently advises on the water framework directive. That would need to be incorporated, and I believe it would need the affirmative procedure and proper parliamentary scrutiny alongside that.

Abena Oppong-Asare: You said parliamentary scrutiny.

Ian Hepburn: Yes.

Stuart Colville: I completely agree with all that. The clause gives quite a lot of power to the Secretary of State in ways that we cannot really predict, sitting here today, so we want to see a bit more structure or a few more checks and balances within that. The affirmative procedure is one way of doing that. Consultation and a requirement to talk to the experts are all helpful in that context.

Chris Tuckett: The scope of the water framework directive goes out to 1 nautical mile, so it goes into the sea. When you are talking about chemicals and where they are going, it is going to impact there as well.

Q149 Alex Sobel: The River Wharfe in my constituency and in Robbie’s has significant sewage outflows when it rains, with E. coli levels 40 to 50 times the EU bathing water limit. Only 14% of our rivers are, by EU standards, in a good ecological state. Considering that track record, do you think the Bill will improve the quality of our rivers? Chris alluded to this earlier, so perhaps she wants to respond.

Chris Tuckett: Absolutely; it needs to be managed as a system. The targets need to be there and need to bite. You talked about E. coli and bathing waters. To be fair, good progress has been made on bathing water quality, but absolutely, there are some exceptions, like the one you talk about. Stuart mentioned the temptation to use bathing waters year-round in different places—swimming in rivers and all that sort of thing—so the need is there, from a recreational point of view, to do more. The biting part of the Bill around targets is pretty crucial.

The measures around waste water management and the need for planning for waste water management are also really welcome. Obviously, Stuart will come in on that. For a long time, there has been a requirement to plan around water resources, but not around waste water management. It is necessary to plan ahead on that, and to understand what the volume of water is likely to be under climate change conditions. It will increase. Having a sewerage system that works and can cope with that kind of capacity is a big ask, but it needs to be planned for. So yes, I think there are things here that will help.

Stuart Colville: Perhaps I could add two things. I agree with all that. First, on E. coli, that speaks to my earlier point that the legislation is aimed at ecological outcomes, not public health outcomes, which is why that issue is there. For me, there is the long-term question to address—probably through the target-setting process—of what we as a society and legislators feel about that.

The second point I would make is that one of the principal causes of spills of sewage into rivers at the moment is blockages, and the main cause of those is wet wipes congealed with fat, oil and grease within the sewerage network. One of the things we are calling for is for some of the producer responsibility powers in the Bill to be used to do something about that. We know it is an increasing problem. It costs £100 million a year and it is a direct cause of several pollution incidents we have seen across the country. That is why we hope this framework will at least address that element of the cause of what you describe.

Ian Hepburn: You have alluded to the fact that we have not done desperately well in terms of achieving good ecological status for water bodies. In England, 61% of the reasons why water bodies are failing are down to agriculture, rural land management and the water industry. I believe that the Bill does a lot to
address the water industry aspects; it does not seem to
do very much on the agriculture and rural land use
aspects of the pollution. Of the 37% of reasons for
failure that are attributed to agriculture and rural land
management, 85% are down to, effectively, diffuse pollution
from farm land and rural land use. It is a big issue, and
has been for a long time. We have not got around to
dealing with it. We need join-up between the Environment
Bill and the Agriculture Bill to ensure that we deal with
that sector.

We have been talking about clause 81 and the need to
have it framed in a way that does not allow regression.
There must be a temptation somewhere down the line—not
necessarily in this Parliament, but in future—to lower
the bar because of the levels of failure. We need to resist
that, and ensure that under the framework, that is
unlikely to happen.

Q150 Robbie Moore: I have a question for the Marine
Conservation Society, although I am happy for the other
witnesses to comment. How important do you
think that the waste and resource efficiency measures in
the Bill are as a means of tackling pollution in the
marine environment?

Chris Tuckett: They are really important. As I said
earlier, it is about systems thinking. What is happening
on land, what is happening at source, and where does
that go through the environment? Ultimately, quite a lot
ends up in the sea. We welcome the waste and resources
clauses. I think you have a session this afternoon in
which you will go into more detail on the ins and outs of
what is needed.

The clauses are absolutely welcome, particularly the
enablement of deposit return schemes. That needs to
happen as soon as possible, please. That would be great.
A lot of other countries have done it, and there are
figures of up to an 80% reduction in litter as a result of
having deposit return schemes in place, through
improvements in recycling. That is really important.

We also very much welcome extended producer
responsibility. The emphasis within the waste and resources
portion of the Bill should be very much on the waste
hierarchy—reduce, reuse and recycle—but very much
on the “reduce” bit to start with. Obviously, there has
been a lot of discussion on marine plastics—the “Blue
Planet” effect—and some measures have come in as a
result of that, but not an awful lot. The Bill takes all of
that forward, which is great and we welcome that. The
sooner it happens, the better.

For the deposit return schemes that the Bill enables,
we really hope that the legislation will be passed as soon
as possible. It will be a comprehensive system that
includes all types of containers—drinks containers—and
all sizes. We at the MCS have been picking up litter
from beaches for more than 25 years. It is not getting a
lot better. We really hope that it will do soon as a result
of the Bill.

Q151 Cherilyn Mackrory: I believe clause 81 sets out
the same powers that we already had under the European
Union with regard to ensuring that water quality is
maintained. The only way is up, in my opinion, on that.
I wanted to come back to the run-off from agricultural
land. I believe that that is covered more in the Agriculture
Bill than in the present Bill, with incentives given for
good stewardship of land, and so on. I wanted to get
your feelings on that. It does not change the wider
regime for assessing and monitoring water quality that
is enshrined in English law under the 2017 environment
regulations. Do you feel that the Bill sufficiently sets out
the direction of travel on leaving the European Union?

As I say, the only way is up. Does it give you sufficient
comfort that there will no regression?

Ian Hepburn: The problem is that we do not see
non-regression. The way could be up or down, given the
way the Bill’s provisions are set out. There is nothing to
stop the Secretary of State from changing the substances
listed or the standards for those substances in the same
way that there would have been had we been part of the
EU and, alternatively, had we had a non-regression clause
within the withdrawal Act. Again, that has gone. As my
colleagues have made clear in earlier sessions, we consider
that clauses 19 and 20 do not amount to non-regression
obligations. That is the risk that we see. We think that
some amendments to clause 81 could soften the impact
of the risk and of going in the wrong direction.

Q152 Cherilyn Mackrory: To my mind it feels as
though the Secretary of State is able to leave that open
to do things differently from before, and that it is not an
intention to regress.

Chris Tuckett: I absolutely would like to think that. I
really would, and I think we all agree this is a significant
piece of legislation under this Administration. I am sure
this Administration would absolutely think that this
was about non-regression, but for the future, for the
continuity of the Bill and what happens under the next
Administration and the one further on, making that
very clear would be extremely helpful.

Stuart Colville: I will make one quick comment on
agricultural run-off, if I may. Incentives being put in
place through the Agriculture Bill, which are really
important, need to be coupled with a decent regulatory
baseline. At the moment there is mixed evidence about
that baseline. One option might be to set a target
through the Environment Bill, not just on water and
some other sectors, and to think about how that works
with agriculture. That refers back to the integration point
that we discussed.

Rebecca Pow: We have a couple more minutes. This is
not a question, but an observation. The whole purpose
of the Bill is to significantly improve the natural
environment; that is why the targets are set there. They
should achieve what has just been referred to. We have
not touched on water abstraction, on which there is a
measure in the Bill.

The Chair: We will have to be very quick.

Q153 Rebecca Pow: Do you agree that amending the
water abstraction licences regime will help us to better
manage our water resources? Perhaps our water company
specialist might comment.

Stuart Colville: Our view is that it will help a bit. It is
a necessary but not sufficient condition for managed
abstraction in the long term. Ultimately we will need
investment to develop the abstraction sources, as well as
in potential projects to move water around and store it
in different ways, but it is helpful.

Ian Hepburn: My very quick point is that it is good. It
is essential. We need to keep it, accelerate it and bring it
forward. The issue is with things like chalk streams,
Abstracting from the aquifers has been going on for so long that it needs action now. You could easily build in mechanisms through minor amendments to the Bill that would allow a 2021 date to be set, and then a negotiation period to be set for the individual organisations that would be affected. We must remember that this will not happen everywhere; it is only for the habitats and sites that are most threatened by abstraction. The bottom line is that for the sake of some of these scarce habitats, we just need to get it done, to borrow from an overused phrase, really quickly.

The Chair: Order. That brings us to the end of the time allotted for the Committee to ask questions. On behalf of the Committee, I thank the witnesses for the very thorough and informative way in which they have responded to the questions.

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
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Examination of witnesses.
Adjourned till Tuesday 17 March at twenty-five minutes past Nine o'clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 16 March 2020
The Committee consisted of the following Members:

**Chairs:** SIR ROGER GALE, † SIR GEORGE HOWARTH

Afolami, Bim (Hitchin and Harpenden) (Con) † Morden, Jessica (Newport East) (Lab)
† Ansell, Caroline (Eastbourne) (Con) † Oppong-Asare, Abena (Erith and Thamesmead) (Lab)
† Bhatti, Saqib (Meriden) (Con) † Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Brock, Deidre (Edinburgh North and Leith) (SNP) † Sobel, Alex (Leeds North West) (Lab/Co-op)
† Docherty, Leo (Aldershot) (Con) Thomson, Richard (Gordon) (SNP)
† Edwards, Ruth (Rushcliffe) (Con) † Whitehead, Dr Alan (Southampton, Test) (Lab)
† Graham, Richard (Gloucester) (Con) Adam Mellows-Facer, Anwen Rees, Committee Clerks
† Longhi, Marco (Dudley North) (Con) † attended the Committee
† McCarthy, Kerry (Bristol East) (Lab)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)

Witnesses

George Monbiot, Journalist and Environmental Campaigner

Dr Richard Benwell, Chief Executive Officer, Wildlife and Countryside Link

Libby Peake, Head of Resource Policy, Green Alliance

Richard McIlwain, Deputy Chief Executive, Keep Britain Tidy

Dr Michael Warhurst, Executive Director, CHEM Trust

Bud Hudspith, National Health and Safety Adviser, Unite

Nishma Patel, Head of Policy, Chemical Industries Association

Lloyd Austin, LINK Honorary Fellow and Convener of LINK’s Governance Group, Scottish Environment LINK

Alison McNab, Policy Executive, Law Society of Scotland

John Bynorth, Policy and Communications Officer, Environmental Protection Scotland
Public Bill Committee

Thursday 12 March 2020

(Afternoon)

[SIR GEORGE HOWARTH in the Chair]

Environment Bill

Examination of Witnesses

George Monbiot and Dr Richard Benwell gave evidence.

2 pm

The Chair: We now come to the first panel of witnesses this afternoon. We will hear oral evidence from Mr George Monbiot, a journalist and environmental campaigner, and Dr Richard Benwell, chief executive officer of the Wildlife and Countryside Link. Welcome. I have already introduced you, but can I invite the two witnesses to say a few words about who they are and what they bring to proceedings?

George Monbiot: George Monbiot; I have a long-standing interest in wildlife, environmental and countryside issues. Many of those wildlife issues are covered by this Bill.

Dr Benwell: Wildlife and Countryside Link is a coalition of 56 organisations working to improve the natural environment, animal welfare and people’s access to a healthy environment.

The Chair: We have until 2.45 pm before we reach the end of this session. I will call Dr Alan Whitehead to open up with one or two questions and then go to the Minister.

Q154 Dr Alan Whitehead (Southampton, Test) (Lab): Good afternoon. A pretty direct, straight initial question: do you think this Bill is up to the task of protecting the living world? If you do not, what do you think is missing from the Bill that would enable it to do that job better?

George Monbiot: There are several areas that are clearly missing, because of the scale of the impacts and a long-standing failure to engage with them. One is the unlicensed release of game birds. They amount at some times of year to a greater biomass than all the wild birds put together and have a massive ecological impact, yet their release is unregulated and uncontrolled.

George Monbiot: I am so sorry. Associated with that is the widespread use of lead shot. It is completely incomprehensible and unacceptable that in the 21st century we are still allowed to spray lead shot all over the countryside with, again, significant environmental impacts. We have also, as a nation, completely failed to get to grips with phytosanitary issues; as a result, we are in a situation where just about every tree will eventually meet its deadly pathogen, because we are so successfully moving tree and other plant diseases around the world.

A previous Environment Minister, Thérèse Coffey, said that one dividend of Brexit would be that we could set much tighter phytosanitary rules. Well, I think we should cash in that dividend and see how far we can push it. There might be an option to say, “No live plant imports into the UK that are not grown from tissue culture.” At the moment, ash dieback alone is likely to cost around £15 billion in economic terms. The entire live plant trade has an annual value of £300 million, so in raw economic terms, let alone ecological terms, it makes no sense to continue as we are.

A fourth issue that I would like to introduce as missing from the Bill is the release of the statutory environmental agencies from the duty imposed on them in section 108 of the Deregulation Act 2015: to “have regard to...promoting economic growth.”

Dr Benwell: I would like to start by saying that this is not a run-of-the-mill Bill; it is a really, really exciting piece of legislation that has the potential to be amazing. It has a huge job of work to do. The latest “State of Nature” report found that 44% of species are in long-term decline and that 15% of species here in the UK are at risk of extinction.

The trend of the decline of nature has been going on for a very, very long time. To put a Bill before Parliament with the aspiration of finally bending that curve to improve nature is a really big aspiration, and this Bill has many of the building blocks to start doing those things. It is really exciting; in particular, the promise of legally binding targets for nature is a tremendous step forward from where this Bill started—we really welcome it, so thank you for that. I hope that the Committee is forward from where this Bill started—we really welcome it, so thank you for that. I hope that the Committee is excited about the prospect of considering a Bill that, hopefully, people will talk about for a very long time.

That said, of course, I think that improvements need to be made to realise that ambition. If we were able to talk about two areas of improvement and one area of missing provisions, I would be very grateful.

The second area that I would like to turn to if possible this afternoon is the nature chapter, in which there are, again, some really positive provisions. The system of local nature recovery strategies has the potential to start directing how we spend our natural environment money with much greater efficiency. At the moment, we spend our environment money in separate silos in the most inefficient manner imaginable—we spend our flood money here, our biodiversity money there and our air quality money there, and all that is usually tagged on after the end of the development process. In those local nature recovery strategies, we have the chance to align development planning and environmental spending in a way that can really up value for money and improve the way we use our cash.
The second bit in the nature chapter that really has good potential is the promise of net environmental gain in development. I have always thought of this as a sort of Jekyll and Hyde policy: if it is done badly, it can be a licence to trash, but if it is done well, it can be extra money from development to internalise some of that environmental cost that at the moment is not factored into the damage of development.

Again, those areas need a couple of improvements. Particularly on net gain, we need to ensure that it is properly covering the whole of development. At the moment, major infrastructure projects—nationally significant infrastructure projects—are not included. That is a big lacuna.

On local nature recovery strategies, the things that we need to tighten up are the duties to use those strategies. At the moment, there is a duty to do five-yearly planning and policy making, but that does not necessarily feed through into day-to-day planning and spending decisions. Focusing in on that duty, which is the one that also operationalises the local nature recovery strategies, is another really important way to fix the Bill.

If that can be done, not only can we start to think about bending that curve here in the UK—it is really important to remember that some big international negotiations are coming up this year: in Glasgow in November and before that, in autumn time, in Kunming, for the convention on biological diversity, where the world will come together to set biodiversity targets.

If we can fix this Bill and make it one that genuinely says, “Here in the UK, we will have a legal commitment to restore nature and the tools to do that”, not only could we start to bend the curve here but we could once again set a model for improving nature around the world.

Q155 Dr Whitehead: Thank you for that; it very much coincides with my general thoughts about the Bill. I guess that, as part of your homework for your appearance this afternoon, you may have had the misfortune of having to read through the entire Bill, from end to end.

I wonder whether you have any thoughts on how the Bill, though its various clauses and powers and permissions, actually does the task that it needs to do between Administrations and different stages of the process of protecting the environment, which will take place over a number of years. I am talking about how the Bill really does the job of surviving between Administrations and perhaps doing something like the Climate Change Act 2008 is doing—not necessarily binding future Administrations, but standing there as something that has to be done, so that an Administration must have very good reasons why they should not do the things subsequently, even if they are not as well disposed towards environmental improvement as the one we have at the moment.

Dr Benwell: I will make three points on that: two about the targets framework and one about the Office for Environmental Protection.

We want the targets framework to be a legacy framework—one that will keep having statutory force from Administration to Administration and ensure that the suite of targets can work for the natural environment as a system in place over time. That is why, even if this Government intend to set a really strong set of targets, we need to ensure that the duties in the Bill are strong enough so that when we come to a period of review later, any gaps that emerge are once again filled.

We talked earlier about the marine strategy framework directive targets, which end in 2020. We talked about the water framework directive targets, which end in 2027. We have thought about the ambient air quality directive targets, which end in 2030. The Bill needs to do the heavy lifting of ensuring that when those targets come and go, future Governments are obliged to revisit them and see which need to be put back in place.

I thought the Minister started a really fun game earlier of, “What’s your favourite target?”

Caroline Ansell (Eastbourne) (Con): You should chip in!

Dr Benwell: Thank you; I could do a little list now.

On biodiversity, we would have species abundance, species diversity and extinction risk. On habitat, you would have habitat extent and quality. On waste and resources, you would have resource productivity and waste minimisation. On air quality, you would have SOx, NOx—sulphur oxides and nitrogen oxides—ozone and ammonia. And on water, you would have biological quality, chemical status and abstraction. There is a great set there, but some of those exist in law at the moment, so we do not need them now. What we do need is a framework that will ensure that when they come and go, future Governments have to fill that gap.

There are several ways to do that. You have heard about the options in relation to an overarching objective that could be a touchpoint for setting targets. You could simply list those targets in the Bill and say that they all have to exist somewhere in law. Alternatively, you could look at the significant environmental improvement test in clause 6 and make it clear that it needs to achieve significant improvement for the environment as a system—not just in the individual areas listed, but across the whole natural environment. That is so we know that we will have a strong set of targets now and in the future.

I will be briefer on the next points, but that was point one. Point two would be about ensuring that action actually happens. The environmental improvement plans should link to targets. There should be a requirement for environmental improvement plans to be capable of meeting targets and for the Government to take the steps in those plans. And the interim targets to get you there should be legally binding.

Point three—I promised I would be faster—is about the Office for Environmental Protection and ensuring that it has the independence and powers to hold the Government to account on delivery.

I have just remembered one thing missing from the Bill, in response to Dr Whitehead’s first question: the global footprint of our consumption and impacts here in the UK. Adding a priority area for our global footprint and a due diligence requirement on business would be a really remarkable step, again, to show our leadership around the world.

George Monbiot: All I would add to that brilliant and comprehensive review is that there has been an extraordinary failure on monitoring and enforcement of existing environmental law in this country. We see that with Environment Agency prosecutions and follow-ups, and similarly with Natural England.

You can have excellent laws in statute, but if the resources and the will to enforce are not there, they might as well not exist. At every possible opportunity in the Bill, we need to nail that down and say, “That money...
will be there, and those powers will be used.” That is particularly the case with OEP, but it also applies to the existing statutory agencies.

Q156 Rebecca Pow (Taunton Deane) (Con): Thank you so much for coming in. How lovely to have some enthusiasm. We will build on that enthusiasm for a second. I know there are probably lots of things that people think ought to be tweaked. Overall, can you sum up what you think the opportunities from this Bill will present to us?

Given that we have left the EU, I personally see this being a much more holistic system. I would like your views on that. You might also touch not only on the opportunities for improving the overall environment, but how this will touch on our society and business; we have to bring those people along with us.

George Monbiot: I think there is a fantastic opportunity in clause 93, which inserts the words “and enhance biodiversity”. That is something we can really start to build on. We find ourselves 189th out of 216 countries in terms of the intactness of our ecosystems. We have seen a catastrophic collapse in wildlife diversity and abundance, yet for far too long our conservation mindset has been, “Let’s just protect what we have”, rather than, “Let’s think about what we ought to have.” I would love to see that built on.

We can further the general biodiversity objective by saying, “Let’s start bringing back missing habitats and species to the greatest extent possible.” With the reintroduction of keystone species, many of which we do not have at all in this country, others of which we have in tiny pockets in a few parts of the country, but we could do with having far more of.

We could re-establish ecosystems that might in some places be missing altogether, such as rainforests in the west of the country; the western uplands of the country would have been almost entirely covered in temperate rainforest, defined by the presence of epiphytes—plants that grow on the branches of the trees. There are only the tiniest pockets left, such as Wistman’s wood on Dartmoor or Horner wood on Exmoor. Those are stunning, remarkable and extraordinary places, but they are pocket handkerchiefs. They would have covered very large tracts.

We need to use this wonderful enhancement opportunity, which the Bill gives us. There is a lot to build on in clause 93. We can say, “Okay, let’s start thinking big and look at how we could expand that to a restoration duty and, hopefully, a reintroduction and re-establishment duty.” That harks back to clause 16, where we have five duties. “That is the promise here.

There are two other big opportunities, if you are asking where we could get excited about with the Bill. We need to think about the benefits of the environment for human health. If we could get a handle on the World Health Organisation target regarding the 40,000 premature deaths from air pollution a year, and demonstrate to the Government that there are wide-ranging benefits from environmental improvement, that would be thrilling.

On the business point, it is such a cliche but it remains true that what businesses really want is certainty. In the natural environment sector, they have never had anything more than fluffed aspiration. So many environmental policies of the past have said, “Ooh, we’ll do nice things for nature and we might see some improvement.” If we nail it down with a strong set of legally binding targets, businesses will know that they need to start changing their practices and investing money, and we will see some change on the ground.

There are lots of particular provisions in the Bill that could work well for businesses, such as net gain—at the moment, it is a patchwork from local authority to local authority, but we can standardise that now—and local nature recovery strategies, where we will know about targeting business investment in the future. There are big opportunities. We just need to tighten up those few provisions.

George Monbiot: To pick up on Richard’s second point about health and connectedness, almost all Governments have always agreed that outdoor education is really positive, yet nobody funds it. There is a massive loss of contact between schoolchildren and the living world, and I hope the Bill might be an opportunity to put that right. That is another thing that I would add to the shopping list.

Rebecca Pow: Thank you very much, gentlemen. The 25-year plan is being enacted through the Bill, and the plan does touch on the area that you mention, but thank you.

Q158 Deidre Brock (Edinburgh North and Leith) (SNP): I will ask two questions that I put to previous witnesses. The first is about clause 18, and the exemptions for the armed forces, defence or national security, and...
for taxation, spending or the allocation of resources within Government, and whether you think that is appropriate. I have been doing some work on munitions dumps around the UK coast. I have also called for environmental audits to be done of the Ministry of Defence’s activities—for example, on land and sea—so I would be very interested to hear your thoughts on that.

On clause 20, and the requirement in the Bill for the Secretary of State to report on international environmental protection legislation every two years, do you think it might be more appropriate for the OEP to do that, and to decide what international legislation is really important, rather than the Secretary of State?

Dr Benwell: On the exemptions from the principles policy statement, it is important to think about the weaknesses in that section as a whole. It is unfortunate that the legal duty attached to the principles is to have due regard to a principles policy statement, rather than some sort of direct duty on the principles themselves. I am hopeful that the principles policy statement, when it comes out, will do some beneficial things, if it reaches into all Government Departments and sets a clear process for the way the principles should be considered. I hope that the Department will be able to share its thinking on the principles policy statement as we go. Engagement has been very good, on the whole, with the Bill, but it would really help to see that principles policy statement in public.

The exemptions are very wide-ranging. It perhaps makes sense for certain activities of national security to be exempt. However, there is no reason to exempt Ministry of Defence land, for example, which includes areas of extremely important biodiversity. In fact, that is probably one area where we will see net gain credits generated on public land under the net gain clause, so it is strange that that is exempt.

Perhaps the weirdest exemption is the one that essentially takes out everything to do with the Treasury. When we are thinking about things like the principle of “the provider is paid and the polluter pays”, it is very strange that nothing to do with taxation or spending will be considered in the principles policy statement.

As for clause 20, I think you could do both. It would be perfectly possible for the Government and the OEP to consider international examples, and I think it would be very useful to benchmark both primary legislation and secondary legislation, in terms of non-regression. The Bill as a whole can make sure that we never have to rely on that if it is strong enough and brave enough.

The Chair: Mr Monbiot, do you have anything to add?

George Monbiot: No, that was a lovely answer.

Q159 Caroline Ansell: Dr Benwell, thank you for sharing your favourite targets and your points. I want to pick up on two points that you made. One was around operating as a system, and the other was around opportunity. Clearly, through the Bill, the Government are looking to lead on this, but I think it is widely acknowledged that it is going to take everybody. In terms of local nature recovery strategies and their production, what role and opportunities do you see as part of that system for your organisation and for the wider partnerships?

Dr Benwell: The opportunities are to align spending in a much more targeted manner and to build in environmental thinking at a much earlier stage in development and other decision making at the local level. At the moment, there is no real strategic planning for nature above the local authority level. This is an opportunity for local know-how to combine with national priorities in a way that will help to bake in the environment right at the start. That should explicitly link to policies such as environmental land management, so that farmers who invest in measures that make sense for the local environment will be paid more. That is a very sensible way to target agri-environment schemes and a very good way to target things such as net gain spending.

The problem is that, at the moment, the duty to use local nature recovery strategies is a duty to have regard to local nature recovery strategies in the exercise of the new biodiversity duty, which itself is a duty only to make plans and policies. There are several levels before anybody actually has to use a local nature recovery strategy. The worst-case scenario is that we put a new obligation on local authorities to come up with these plans.

Q160 Caroline Ansell: Is that where your organisation might step in? How will your organisation and the wider partnerships contribute to that production?

Dr Benwell: We hope that all sorts of stakeholders will be involved in the production. We hope that Natural England will sign off the plans, to show that they are ecologically rational, and that non-governmental organisations will come together with water companies, developers and local businesses to make it happen. However, all of those need to be sure that the plans will actually be used in day-to-day planning and spending decisions; otherwise, they will waste a lot of time and money putting together things that will just sit on the shelf. The duties to actually use them are not quite there at the moment.

Q161 Kerry McCarthy (Bristol East) (Lab): I must have revised the questions I was about to ask about 20 times, Richard, because you just kept saying, “And another thing,” so I was like, “That one is gone.” There are a couple of things that you both touched on, but not in that much detail.

We heard from one witness that the Bill is slightly lacking an overarching vision, which they thought could be addressed by having not just environmental objectives but objectives on health and wellbeing—I see that they are debating that in the Lords today—a bit like in the Well-being of Future Generations (Wales) Act 2015. The other issue mentioned was resource use, because there is stuff about reducing single-use plastics but not about consumption patterns overall. Decarbonisation was mentioned as well. Do you feel that the Bill could encompass those things without being unwieldy?

The other thing, which is slightly connected, is the global footprint, and I have put down some amendments on that. I entirely agree that there is not much point in doing things here if you are buying in stuff that causes environmental degradation elsewhere, or if we are funding it. I wonder whether you can say a bit more. George, on that point, one of my amendments would add to the four priority areas of the global footprint. What would be the sort of targets that we would be looking at? What would be the first things that we would address on that front?
George Monbiot: Of course, footprinting is now quite a technical and well-documented field, in which we can see what our footprint is as a proportion of our biological capacity. In land use, for example, we are using roughly 1.7 times as much as the agricultural land that we have here. A fantastic objective—it would be a long-term one—would be to bring that down to 1. If we were to look at living within our means as far as key ecological resources are concerned, that would be a wonderful overarching objective for anyone.

Dr Benwell: On global resources, we should set out with an aspiration to deal with the UK’s entire environmental footprint eventually, including embedded water, embedded carbon and all those sorts of things, but for now it is very difficult to come up with reliable metrics for everything, so we should start where we can. One of the most straightforward ways is dealing with products in the supply chain that cause deforestation. It is basically the point that George was making. We know what those products are—it is things like leather, beef, soya, cocoa—

George Monbiot: Palm oil.

Dr Benwell: Palm oil, of course. It is perfectly possible to measure that footprint and set a target for reducing it. Businesses themselves came up with a voluntary commitment back in 2010, and it has had no real effect on the UK’s impact on global deforestation in some of the most amazing areas of the world. It is time to back that up with a regulatory commitment, and that would be good for the businesses that have shown a lead. At the moment, the only ones who properly investigate their supply chains, disclose what they find and take due diligence are the ones that are trying really hard. Unfortunately, it makes them look bad when the ones that are doing the worst and most damaging practices are just not bothering to report.

We should start off with a priority area for the global footprint being a metric for deforestation. Then we should have a due diligence duty that requires all businesses to look across their supply chain for deforestation risks and, crucially, to act to reduce those risks where they find them. That would be a massive step forward. It would be such an unlocker in international negotiations, where the refrain is always that developed countries are not doing their bit, but are just exporting their harm. If we show that we are not going to play that game anymore and are actually going to take responsibility, that would be an amazing thing to lay on the table in international talks.

George Monbiot: To Richard’s list of commodities with very damaging impacts, I would certainly add fish. We currently import all sorts of fish with devastating by-catch rates. The Fisheries Bill aims to improve performance within UK waters, although it is pretty vague at the moment. It would be profoundly hypocritical if we were to carry on importing fish from places with very poor environmental performance.

Q162 Kerry McCarthy: On the health and wellbeing point, it was mentioned as a possible objective, but we took evidence this morning about air quality and water quality, and witnesses in both sessions suggested that we were ignoring the impact on the human population. Should there be something in the Bill that talks about people, or should it be a Bill that talks about the environment? Should we bring people into it as well?

Dr Benwell: It should definitely be in there. I think there is full potential for that to be covered in the Bill. If there is not, it should be broadened out. Yes, definitely, we should think of our approach to the natural environment as serving wildlife and people. Setting an overarching objective is one way to do it, or you could deal with specific areas.

George Monbiot: And specifically listing children and future generations as people for whom there is a particular duty of care in terms of protecting the natural environment.

Q163 Cherilyn Mackrory (Truro and Falmouth) (Con): Thank you for your evidence so far, which has been really informative. I want to take you back to the discussion on targets—we are hearing about these things quite a lot from different stakeholders—and to your example of Dartmoor, if I may. You might know more about this than I do, but it is my understanding that about half a millennium ago Dartmoor was actually an ancient woodland, and they cut down the trees to make the ships to build Henry VIII’s navy. I do not know whether I am right about that, but that is what I have heard. I do not know whether the target for somewhere like Dartmoor should be to keep it as moorland or to regenerate it to woodland, if that was case.

I feel that the Bill is the overarching framework for a positive way forward, and that were we to try to lock in all sorts of specific targets it would lose what it is trying to achieve, because there would be so much going on. What is your opinion on taking the matter to secondary legislation in the future so that we could listen to experts? I do not know what the experts would say about somewhere like Dartmoor. They might have differing opinions, and then how would we know what success looks like?

George Monbiot: You raise the fascinating issue of baselines. What baseline should we be working to? Should we be working to an Eemian baseline—the previous interglacial, when there were elephants and rhinos roaming around, with massive, very positive environmental effects, and there was an identical climate to today’s? Should we be aiming for a Mesolithic baseline, when there would have been rainforest covering Dartmoor; a Neolithic one, when it would have been a mixture of forest and heath; or a more recent one, which is basically heath and grass, with not much heath left?

The truth is that baselines will continue to shift because we will move into a new climatic regime. All sorts of other environmental factors have changed, so we will never be able to recreate or freeze in time any previous state. That is why I think that a general legislative aim should be restoration and the re-establishment of missing species, without having to specify in primary legislation which ones they will be. The restoration of missing habitats, as well as the improvement and enhancement of existing habitats, is the bit that is missing from clause 93. We could add in habitats that we no longer have but could still support. However, we should not lock it down too much.

A big problem with existing conservation, particularly with its single-species and interest-features approach, has been to lock in place previous instances of environmental destruction. You will go to a site of special scientific interest and it will say, “The interest feature here is grass no more than 10 cm high.” Why is that the interest feature? Because that is the condition in
which we found the land when we designated it as an SSSI. Is it the ideal condition from an ecological point of view? Certainly not.

We need flexibility, as well as the much broader overarching target of enhancing biodiversity and enhancing abundance at the same time. We could add to that a target to enhance the breadth and depth of food chains: the trophic functioning of ecosystems, through trophic rewilding or strengthening trophic links—"trophic" meaning feeding and being fed upon. Having functioning food webs that are as deep as possible, ideally with top predators, and as wide as possible, with as many species at every level, would be a really great ecological objective.

**Dr Benwell:** You are right: we would not want to set detailed targets for the condition of Dartmoor in the Bill. That would not make sense. Nor, indeed, do we necessarily want to set numerical targets for anything else. What we need is the confidence that the suite of targets will be comprehensive and enough to turn around the state of nature. In the Bill at the moment, that legal duty could be fulfilled by setting four very parochial targets for air, water, waste and wildlife. I do not think that is the intention, but when it comes down to it, the test is whether the target would achieve significant environmental improvement in biodiversity.

You could imagine a single target that deals with one rare species in one corner of the country. That could legitimately be argued to be a significant environmental improvement for biodiversity. Unquestionably it could, but what we need—I think this is the Government’s intention—is something that says, “We are not going to do that. We are going to treat the natural environment as a comprehensive system and set enough targets to deal with it as a whole.”

I can think of three ways of doing that. You could set an overarching objective that says what sort of end state you want to have—a thriving environment that is healthy for wildlife and people; you could list the different target areas, as I had a go at before, on the basis of expert advice, and make sure that those are always there; or you could look again at the significant environmental improvement test and make it clear that it is not just talking about individual priority areas but about the environment as a whole, on land and at sea. It does not matter how the Government do it. I think that is their intention. However, at the moment, we are not convinced that the legal provisions in the Bill would require that sort of overarching improvement. I will leave it at that, because I am hopeful that in 3.5 minutes, we might return to net gain.

**Q165 Abena Oppong-Asare:** George, do you have any comments on that?

**George Monbiot:** No, I will leave the space for—[Laughter.]

**Q166 Marco Longhi (Dudley North) (Con):** Building on what you said a few moments ago, do you feel that the Bill sufficiently empowers all Government Departments to protect and improve our environment?

**Dr Benwell:** “Empowers”, possibly; “requires”, not quite yet. We are hoping that the environmental improvement plan will be cross-departmental, and that it will contain specific actions that are demonstrably capable of reaching a target, just as we do with carbon budgets. That environmental improvement plan should set interim targets that are binding, and it should say, “These are the steps we are going to take to get there in the Department for Transport, in the Ministry of Housing, Communities and Local Government, and in the Department for Environment, Food and Rural Affairs.” That will give us the confidence that stuff is going to happen, rather than waiting 14 years and then realising we are going to miss it.

**George Monbiot:** To add one small and specific thing to that, clause 86 contains what appears to be a very heavy reliance on internal drainage boards and a potential enhancement of their powers. Those drainage boards are not accountable to any Government Department, so there is a remarkable democratic deficit there. If you go ahead with clause 86 in its current form, you are effectively letting go of governmental control over a very important and large area. They are a quite extraordinary, almost feudal set of organisations; for instance, there is a property qualification for voting in internal drainage board elections. They really are effectively a law unto themselves, with appalling environmental credentials and very poor flood prevention credentials as well. If you want departmental responsibility, I would disband the internal drainage boards—as they have done in Wales—and bring their duties into the Environment Agency or another statutory agency.

**The Chair:** I am afraid there will not be time for any further questions; we have to move on. [Interruption.] Well, I am afraid we have a very tight timetable. I will try to make it up subsequently to those who were unable to get in, but we have to conclude this session by 2.45, and it is now 2.44 and 35 seconds. Anybody who asked a question would be unlikely to get anything like a coherent answer in the time available, so we have to close this session.

I thank our two witnesses for the benefit of their experience and the advice they have given. We are very grateful. It has been useful and helpful to our deliberations.

**Dr Benwell:** Thank you.

**Examination of Witnesses**

**Libby Peake and Richard McIlwain gave evidence.**

2.45 pm

**The Chair:** We will now hear evidence from Keep Britain Tidy and the Green Alliance. We have until 3.15 pm for this session. I ask our witnesses to briefly introduce themselves and their organisation.
Richard McIlwain: I am Richard McIlwain, deputy chief executive of the charity Keep Britain Tidy. We work on issues of litter, resource and waste consumption, sustainable living and the improvement of quality places. We ultimately want to see a zero-litter and zero-waste society.

Libby Peake: I am Libby Peake, head of resource policy at Green Alliance, which is a charity and think-tank focusing on ambitious leadership for the environment. To achieve that, we work with other NGOs, including through the Greener UK coalition, as well as businesses, to identify the most resource-efficient policies.

Q167 Dr Whitehead: The framework I am looking for, particularly in the waste and resources section of the Bill, is something that encompasses all the stages of the waste hierarchy, and particularly reflects how that waste hierarchy is put forward in the waste and resources White Paper, which is supposed to be taken on board as part of the Bill. Do you have any thoughts about the extent to which the Bill focuses on the design, reuse and minimisation stages of the waste hierarchy? If you think that it does not fully do that, are there ways that it could be made more useful in that respect? Do you have any particular thoughts on how the Bill might be pointed more in that direction?

Libby Peake: I think you are absolutely right. We would certainly welcome the framing in the resources and waste strategy, which is trying to maximise resource use and minimise waste—we think that is the right strategy. There are some things in the Bill that would lead in that direction. The resource efficiency clauses could be very useful. One of our concerns is that these are enabling measures and we are not entirely sure how they will be used.

In terms of what has been talked about and debated, the focus has overwhelmingly been on municipal waste and plastics. To give a bit of perspective, it is worth remembering that plastics make up about 10% of municipal waste; municipal waste makes up about 12% to 13% of all waste; and waste is the final stage of the material cycle. Looking at the overall material impact that the UK is responsible for, 81% of the materials that meet final UK demand occur outside the UK. In terms of measures that we would like to see in the Bill, which we think could improve things, it would be really useful to take greater account of the global material footprint. That would send a powerful signal.

There are some simple measures in the Bill that could potentially be changed quite easily. The extended producer responsibility clauses are welcome. The clauses themselves look at things such as preventing material becoming waste and products becoming waste. The overall framing of it, however, is still on end of life and disposal costs, which does not necessarily point people in the right direction in terms of preventing waste and respecting the hierarchy.

I am sure that we will come on to the single-use plastics charge, which is also potentially worrying because it applies just to plastics. There are lots of other materials with impacts that could be avoided if the Bill took a bigger view towards that sort of thing.

Richard McIlwain: I completely agree. In many respects, all the key words and phrases are in the Bill, but it is about looking for the joined-up flow from a waste hierarchy perspective.

To go back to clause 1, where it sets the idea of long-term targets at 15 years-plus, it is very brief about waste and resource. I wonder if there, in terms of painting a picture, it could outline the sorts of issues that we are looking to push targets towards, such as becoming more resource efficient, reducing the amount of waste we produce overall, and improving our recycling rates across the whole range of wastes.

As Libby says, when we talk about recycling rates, we often talk about household waste and municipal waste, but a lot of inert waste and soil still go to landfill. There is an opportunity there to look more broadly across the whole piece.

Libby touched on a number of points, including the specific detail about extended producer responsibility and charges for single-use plastics. There are opportunities there to frame the language a bit more and, as Libby said, to be specific when we are talking about things such as charges for single-use plastics. We should not get hung up on the issue of plastic. Plastic pollution is an issue, but plastic itself is a valuable material. We want to reduce consumption of it but keep what is in the system going round and round as far as we can. That is where the targets that look at resource use, waste minimisation and recycling will be key.

Q168 Dr Whitehead: Those are excellent succinct responses. The circular economy directive already exists, but we are not bound by it, as we are not an EU member. Do the measures in the Bill reflect the UK moving on from that directive—capturing what is in it and moving ahead of it? Are there things that could be done in the Bill to ensure that that happens?

Libby Peake: The Government have said that they are going adopt the measures in the circular economy package, but we have not determined yet whether we are going to exactly match what the EU does in future. Yesterday, the EU published a circular economy action plan, which we will not be bound by. It is really welcome that the Government have said on multiple occasions that they want to at least meet, and preferably exceed, what the EU does, but there are some ways in which the document that was released yesterday is potentially more ambitious than the measures laid out here.

One of the things in that document is that the EU is planning to regulate and tax single use and planned obsolescence, and it is not focused specifically on plastics. If the UK wants to get a jump on the EU, there is an opportunity to do that by simply changing the language in the Bill so that we are tackling single use, rather than just single-use plastics.

Richard McIlwain: I agree that the EU has already talked about an ambition, even by 2030, to halve waste produced. That is very ambitious, granted, by 2030, but that is the level of ambition it is looking at.

As is always the case with enabling legislation, primary Acts, the devil will be in the detail of the statutory instruments, but there may well be some framing to do in the Bill to set the level of ambition about where we are ultimately trying to get to on the materials we consume, the amount we recycle, and the amount of waste we produce.

Even in the circular economy package, there are some targets that have been talked about in the resources and waste strategy, such as 65% household waste recycling. We are currently bumping around 45%, so we have
some way to go, but Wales is up above 70%. Perhaps we should be looking across at Wales as a leader, as much as we look to the EU.

**Libby Peake:** An earlier leaked version of the circular economy action plan that was released yesterday included a much more ambitious target, which was to halve resource use—not just halve residual waste. That did not make it into the final version, but it would have been revolutionary. It was widely applauded by the environment sector. It has not made it into the EU legislation, but that does not mean that the UK cannot aim for that and up its ambition. That is certainly something that we would like to see in the targets.

**Q169 Rebecca Pow:** On that point, one of the ideas is that we can do our own thing on our environmental targets. We do not have to do what Europe says, and potentially our targets could be better.

Yesterday, we had some business interests explaining how the measures in the Bill would help them change the design of their products so that they are more reusable and recyclable, longer lasting and so forth. What are your views on measures in the Bill that would help consumers to take more considered actions towards reducing waste and recycling? I am thinking particularly about the requirement for local authorities to be more consistent in their waste collections.

**Libby Peake:** I would say that, in terms of recycling collections, a lot of the things that the Government have proposed will certainly correct some of the long-standing shortcomings of the system we have had in the UK. We have a postcode lottery, because people do not necessarily know what can be recycled and it is quite confusing.

In terms of getting people to feel responsible for their decisions and the materials they create, the main mechanism in the Bill that does that is the deposit return scheme, because that is the one thing that will indicate to people that the material they have actually has a value; it is not just a waste material that you need the council to take away. We would certainly encourage the Government to come forward as quickly as possible with plans for an all-in deposit scheme that can encourage such thinking.

**Richard McIlwain:** I completely agree. There has been an awful lot of focus over the last few years on how we incentivise business to do the right thing. Often, that is about economics and the bottom line, and we sometimes forget that that is equally important for the citizen. We often come up with campaigns and ways to raise awareness—they involve pictures of dolphins and whales—and we appeal to people’s sense of morality rather than making it cheaper for them to do the right thing.

Libby mentioned a deposit return scheme, which works brilliantly in over 40 countries and regions around the world. We should absolutely be doing that on time, by 2023; we should not be delaying. Charges on single-use items, not just single-use plastics, is another economic nudge for people. On recycling, there are twin sides of the coin. We need to extend producer responsibility and simplify the types of packaging material, which will hopefully all be recyclable. On the other hand, having a harmonised collection system that allows people to collect those at home will make a big difference.

One further step that could ultimately be considered is whether you could place an economic incentive in the home through a scheme such as “save as you recycle”. Once you have harmonised people’s collection systems, you would make waste a separate chargeable service, so people pay for what they have taken away—in the same way that, if you are on a water meter, you pay for what you use. That would really focus minds. There is a real relationship between the producer’s responsibility and the citizen’s responsibility, but we need to incentivise both—not just businesses.

**Libby Peake:** That is a logical extension of the “polluter pays” principle. It is great that that is part of the Bill and that part of Government thinking is that the polluter must pay. At the moment, however, you are tackling only one side: the producers. People’s decisions produce waste as well, and not having “save as you recycle” variable charging, or what is traditionally called “pay as you throw”, puts people off a bit. Not having that does not necessarily carry through the logic of producer responsibility and “polluter pays”.

**Q170 Rebecca Pow**: I have a quickfire question. We have our resources and waste strategy, which sets our long-term targets for reducing waste and for sending zero biodegradables to landfill by 2030. Overall, do you see the measures in the waste and resources section of the Bill, which is large, as a big step forward in putting all this together?

**Libby Peake:** I think it is a really big step forward in sorting out the long-standing problems of the recycling system. It is not yet clear how it will deliver the Government’s commitments and aspirations on waste reduction and resource use reduction. In a way, it is slightly unfortunate—not that I would want to the delay the Bill—that this has come out before the waste prevention plan update, which was due last year and which I understand will be consulted on soon. Hopefully, that will set out some more ambitious policies for how resource use and waste will be minimised before we get to recycling.

**Richard McIlwain:** That is a fair point. Absolutely, from a Keep Britain Tidy perspective, we welcome the measures in the Bill. The extended producer responsibility, DRS and charging for single-use items—we hope it is not just single-use plastic items—are big steps forward. As Libby says, in terms of extended producer responsibility, it talks about promoting not just recycling but refill. You would hope that the modulated sums applied to each piece of packaging would be far less if an item can be refilled or reused rather than simply recycled.

There does not seem to be much in there in terms of how we reduce our material footprint overall and how we reduce our waste overall. That is probably an area that we need to consider.

**Q171 Deidre Brock:** I want to ask about the targets timeframe. In the Bill, the targets do not have to be met until 2037. Does that date reflect the urgency of the situation we find ourselves in?

**Richard McIlwain:** In a word, no.

**Q172 Deidre Brock:** What do you think might be a realistic but slightly more ambitious target?
Richard McIlwain: The Bill allows for five-year plans and for interim targets within that. I do not believe they are statutory targets. We should be looking at statutory targets that are within a parliamentary cycle.

It is all very well having long-term, 15-year targets—that is absolutely the right way; the Climate Change Act 2008 is a classic example of that—but having statutory targets that are agreed at the beginning of each Parliament and then enforced through that Parliament will be key, not just in terms of arriving at the 15-year target, but in terms of giving investors, business and others confidence that they can invest in things that are not ultimately going to be stranded assets.

Libby Peake: It is quite difficult to say, because we do not know what the targets are going to be. Obviously whatever the targets are, we want them to be as ambitious as possible, and we want to have interim statutory targets to make sure that we are meeting them, like you get with the Climate Change Act.

The Chair: We have 14 minutes left and six people who want to use up that time. It is highly unlikely that I will get all six people in, but those who do get the opportunity to ask questions, please be as rapid as possible.

Q173 Marco Longhi: Do you feel that sufficient consideration has been given to the impact the Bill has on local authorities?

The Chair: That is exactly what I mean by a well-targeted question.

Richard McIlwain: I guess it depends what you mean by the impact on local authorities. If extended producer responsibility transfers the costs of dealing with packaging—whether it is in the recycling stream, the residual waste stream or as litter—and if that is a 100% net transfer and is fairly apportioned, that is a win for local authorities.

I do think there is a transition period; we need to look at how we transition from the systems we have towards the systems that we may well need, for instance in terms of harmonising waste collections. There is a role for the Government in looking at where they can overcome some of those transition needs, such as in contractual matters—for example, if local authorities look to break contracts early to comply with the harmonised systems, because some of them will be in longer-term contracts with the waste providers—to ensure that the costs do not fall unfairly on local authorities.

Ultimately, what I say in my role—we work a lot with DEFRA officials—is that local authorities should look at this very positively. There are a lot of benefits coming down the line, not just in terms of the cost transfer but in terms of the service that they can provide to citizens, such as allowing people to recycle more and better, as long as those material cost considerations are ironed out early on.

Libby Peake: We know that local authorities are concerned about the impacts of the Bill, but as Rich said, what they need to remember is that the extended producer responsibility reform could really help them. We are moving from a system where local authorities and, ultimately, taxpayers pick up about 90% of the costs for our recycling system to a system where the producers pay 100% of the costs.

Certainly, in terms of how DEFRA officials have been looking at it and the consultations we have seen so far, they are very aware that they do not want to negatively impact local authorities. If you look at things like the commitment to bring in universal food waste collections, which is an incredibly important bit of this legislation, they have said that that will be fully funded. That is really important.

Q174 Alex Sobel (Leeds North West) (Lab/Co-op): The Government have brought forward legislation to ban certain types of single-use plastics, including straws, cotton buds and stirrers. Last year I ran a campaign in my constituency called “Sachet Away”, which reduced the use of single-use sauce sachets. How do you think the Bill could help in that? You mentioned charges, Richard. What do you think the effects of the Bill will be?

My second question, quickly, is that on the Environmental Audit Committee we had a lot of evidence, including from Zero Waste Vietnam, that our waste that was being exported was not being recycled or reprocessed, but was literally being dumped. Do you think that the Bill can raise people’s confidence that that will no longer happen?

Richard McIlwain: Yes, that is ultimately what we should strive for the ambition to be. When we talk about single-use plastics, we must also remember cigarettes and cigarette butts, which are a form of single-use plastic. By count—by the number of them—they are the most widely littered item across the country. There is no reason, for instance, that an extended producer responsibility scheme could not be applied to the tobacco industry as much as to the packaging industry. Let us get some money in to sort that issue out, and plan prevention campaigns to stop that sort of littering.

Evidence from Cardiff University, Wouter Poortinga and others suggests that citizens respond more strongly to the idea of a loss than a benefit. I would argue that is why there is single-digit use of refillable coffee cups, as compared with paper cups. The discount is not attractive to people, and not many people know that if you turned that into a charge, every single person buying coffee would be subject to that charge, and it would get home much more quickly.

We did some YouGov polling—it is two years old now—which suggests that once you get to a 20p or 25p charge, not many people say that they would like to continue paying that for the benefit of having a paper cup. If we get this right and we look across the spectrum of single-use items, plastic items and cigarette butts, and apply extended producer responsibility charging and deposits correctly, those economic incentives could make a big difference, and we could take the public with us.

Libby Peake: I would like to add to the bans and charges point. Bans on stirrers, cotton buds and straws absolutely make sense, because those things are likely to wind up in the ocean. In advance of those bans coming in, we have seen lots of shifts to other equally unnecessary single-use items made from other materials. McDonald’s is now switching from plastic straws to 1.8 million straws a day that are made out of paper and are not recyclable. We know that bans will cause environmental problems down the line that could be avoided if we used foresight now. It would be great if the Government took
that stance and did not simply look at plastics. They can anticipate the perverse outcomes that we know are coming, and that can be prevented right now if we introduce the possibility of charging for all materials.

In terms of waste dumping, it is important to remember that it is absolutely illegal for the UK to send polluting plastic and polluting waste abroad. We are an independent signatory to what is called the Basel convention, which obliges wealthy countries such as the UK to ensure that we are not sending any material abroad if we have reason to believe that it will not be reprocessed in an environmentally sound manner. It is welcome that the Government are saying that they want to stop the practice, but what really needs to be done to stop it is much better resourcing of the Environment Agency and the other sorts of regulatory bodies. The EA’s funding went down by 57% from 2010 to 2019, and that has had the knock-on effect of not allowing it to carry out the necessary inspections and ensure that this sort of waste crime, or this sort of contamination, is not leaving our shores. In 2016-17, it only carried out about one third of the targeted inspections of recyclers and exporters. In 2017-18, it only carried out three unannounced inspections. There is a vanishingly small possibility that exporters. In 2017-18, it only carried out three unannounced inspections. There is a vanishingly small possibility that people who are deliberately exporting contaminated waste are going to get caught. I think that speaks to the importance of properly regulating and resourcing all the regulators and the Office for Environmental Protection going forward.

The Chair: We are really running short of time now, so I am going to take two questions and put them to the witnesses. First, Richard Graham, and then Jessica Morden.

Q175 Richard Graham (Gloucester) (Con): My questions will be very quick, but they are separate ones for you both, if that is all right, Chairman, and please—swift answers.

Richard, you have said how important it is to have the cost of collecting waste separated, so that people know what they are paying for, are incentivised and so on. Do you think that those opportunities are actually in the council tax? That is what people are really paying, is it not?

Richard McIlwain: Yes, they are under council tax, and because they are under council tax—

The Chair: Sorry, I did say that we would take two questions first. Jessica Morden.

Q176 Jessica Morden (Newport East) (Lab): Very quickly, as a Welsh MP, thanks for pointing out that there are lessons to learn on recycling from Wales, as the fourth best recycling nation in the world. Are the provisions in the Bill effective in tackling fly-tipping and organised waste crime?

Richard McIlwain: My question was only for Richard.

Richard McIlwain: It is within the council tax—absolutely. People sometimes think that they pay an awful lot for waste disposal, when actually it is quite small as an overall approach to council tax. I would perhaps like to see local authorities being more obvious about the way that council tax breaks down. I know that sometimes you get a letter with your council tax bill and a nice little pie chart, but I think we could be more active in explaining to people exactly what that tax does, which would then allow us at some point to break out waste as a chargeable service, as people would be used to it by then and would see the cost. Also, potentially, they would see the benefits of reducing their waste and having a smaller residual waste bin, because it will save them money.

Do you want me to say more, on fly-tipping?

Q177 Jessica Morden: Yes, fly-tipping and organised waste crime.

Richard McIlwain: The Bill touches on elements of fly-tipping. I think the electronic waste tracking will be a big step forward, but again there are some people who simply do not bother with a written transfer or an electronic system, no matter what. I think it will make the system more effective and more efficient, but I also think that there is work to do to think about how we drive down 1 million fly-tipping incidents every year.

What we need to do, in my opinion, is reform the system of carriers, brokers and dealers, so that it is much harder to become a registered waste carrier. I would then have a big national campaign that makes people aware that if they give their waste to anyone who is not a registered waste carrier, they can receive a £400 fine, or potentially a criminal conviction, because far too few people are aware of that. Make the system better and more robust, and make people aware that they should ask about the system, and I think you could cut off the source of waste to fly-tippers at the very beginning.

Richard Graham: Next, for Libby, if I may—

The Chair: Sorry, is this an additional question?

Q178 Richard Graham: Yes, I had one question for Richard and one for Libby.

Libby, clauses 49 and 50 spell out in huge detail the opportunities for businesses to consider redesigning their products in a more environmentally friendly way. The Bill also talks about food collection, not only from households but from businesses. What encouragement do you think that gives to businesses to redesign products, and also to local councils to get stuck into anaerobic digesters?

The Chair: Before you answer that, can I bring in Abena Oppong-Asare to ask a very quick question, and then it will be the final two?

Q179 Abena Oppong-Asare: Mine will be very quick, Chair. What powers, duties and resources does the Bill need to clean up litter on highways and road verges?

Libby Peake: The resource efficiency clauses are welcome, and they are very broad. They are deliberately broad, and they can affect lots of things throughout the materials life cycle. At the moment, it is really difficult to say what sort of impact that will have on businesses, because there is no clear timeline yet for implementing any of these powers; they are enabling powers, and we do not know how they will be used.

One thing that is slightly concerning, which I hope the Government can clarify, is whether or not these sorts of powers and this sort of ambition will also apply
to energy-using products—to creating resource-efficient, durable, repairable electronics. That is one of the fastest growing waste streams. Those are the areas that you would most likely think would be useful. They have been deliberately left out of the Bill, on the grounds that those powers are coming to the UK through the withdrawal Act, but I do not think it is yet clear whether the ambition on energy-using products matches the ambition and the potential in the Bill to change how materials and products are used and made.

The Chair: Can we have a 10-second answer to Abena’s question, if possible?

Richard McIlwain: Very quickly, roadside litter is an absolute disgrace. Most people agree on that. I would like Highways England to be given the powers and resources to enforce against littering. Local authorities need more resource to undertake the necessary work, because it is a very transient crime. A deposit return scheme, given that lots of cans and bottles get thrown out of cars, may damp down littering. Picking litter up is one thing; preventing it from being thrown in the first place is another.

The Chair: Thank you very much.

Examination of Witnesses

Dr Michael Warhurst, Bud Hudspith and Nishma Patel gave evidence.

3.16 pm

The Chair: We will now hear oral evidence from the CHEM Trust, the Chemical Industries Association and Unite. We have until 4 pm. I ask the three witnesses to introduce themselves briefly and state which organisation they represent.

Dr Warhurst: My name is Michael Warhurst. I am the executive director of CHEM Trust, which is an environmental charity that works on chemicals health and pollution at UK and EU levels.

Bud Hudspith: My name is Bud Hudspith. I am the national health and safety adviser for the trade union Unite.


Nishma Patel: Okay. For us, it is about the detail behind how the schedule will be implemented. At the moment, there is no clarity on consultation and how that will take place. We would like to know the policy behind UK REACH, how it will be implemented, and exactly how it will work—not just the protected parts, but the entire UK REACH regime. We, as industry, see a number of issues—perhaps others see them as well—on which further consultation will probably be required. For us, it is about clarity on the process behind it.

Bud Hudspith: I think there are some broad requirements in the Bill to consult, but they are very broad, and specify something like “other possible stakeholders”. We would like to see much more formal and arranged consultation. In the area I largely work in, health and safety in the workplace, we are used to being consulted. We think it is a very useful way for Governments to find out what is actually going on on the ground, so we would welcome that. I agree with you: we would like to see a slightly tighter indication of who should be consulted and when.

Dr Warhurst: The CHEM Trust position is that we agree with that. The consultation is limited, and the consultation on this measure as a whole has been limited; for example, there was no consultation on which protected articles should be in there, and there has been no rationale as to why those are protected and others are not. We are very involved in EU-level work on chemicals, and we find that process is a lot more open and consultative than the UK process.

Q181 Dr Whitehead: On the subject of protected articles, I share your view. I am somewhat mystified as to how those have landed on the Bill in this way, and about what is protected and what is not. Are there particular areas that you consider ought to be in the Bill as protected articles, in addition to the ones that we have at the moment, and are there any ways in which you think the protection element of REACH regulations—securing proper standards, inter-trading of chemicals and so on—might be better reflected in the Bill, or do you think the protected articles that there are at the moment fulfil that requirement?

Dr Warhurst: On the protected articles, REACH is a huge piece of legislation. You could decide to protect everything, but that might cause some problems. One of the things we particularly noticed is that article 33 of REACH is about consumers’ right to know about the most hazardous chemicals in the product, and article 34 is an obligation on the supply chain to report problems with chemicals up the chain. Those would certainly be added to what we would view as protected.

However, it goes beyond that; as you said, it is about the level of protection for the public. The problem with chemicals regulation is that we are dealing with tens of thousands of chemicals in millions of different products. It is a very complex area, and it has been very challenging over the decades as Governments and regions have tried to control them. EU REACH is the most sophisticated system in the world, but it still has a huge amount of work to do. There are a lot of chemicals to be got through, because when one chemical gets restricted, the industry moves to a very similar one. Our worry is that some of the decisions around that require huge amounts of work and data, and are subject to legal challenge by industry. We do not see any way in which the UK can
replicate that system. In many ways, it would be more straightforward—although possibly not in terms of legal challenge—to be more focused on following what the EU does, rather than trying to create another system that to some extent may be a bit of a hollow shell, because there is not the resource to really control new chemicals.

**Bud Hudspith:** I pretty much agree with that. I do not think I need to add much to it.

**Nishma Patel:** Again, this comes back to the process and detail behind the Secretary of State being able to consult, who the consultation is with, and how it would take place. One point to consider is that anything that would be changed under UK REACH overall—any article—would have to be in line with article 1 of REACH, which is about providing the highest standard of environmental protection to consumers, as well as reducing testing where possible. It is not about the principle of “Is there a possibility for the regulations to digress, because a justification needs to be provided?” It is about how that will be consulted on, and how that information will inform policy making in the UK through various stakeholders.

**Q182 Rebecca Pow:** Thank you very much for coming in to talk to us. Obviously, exiting the EU provides us with opportunities for industry, such as integrating the most current scientific knowledge into the decisions we make concerning chemicals. In the Bill, we have the flexibility to amend REACH while retaining its aims and principles; I just wondered whether you could summarise what you thought the right balance was.

**Nishma Patel:** From an industry perspective, if we look at the trade of chemicals leaving and coming back to the UK, 50% of our trade goes to the European Union and 75% comes to the UK. To work from two pieces of legislation, which go in the same direction, communicate with each other and co-operate, makes sense from a commercial perspective, as it does from an environmental perspective.

The opportunities are there, in terms of doing something differently or making amendments. As it stands, however, we see that the need to stay close to the European chemicals regulations far outweighs the opportunities.

**Bud Hudspith:** I think we are coming from a similar position. We start from the basis that alignment is one of the most important things. We have interesting problems. We have members in the south of Ireland as well as in the rest of the UK. It would be pretty unacceptable to us if there were different protections, in terms of chemicals, for those two groups of people. That extends from a broader view across the whole of Europe among people at work.

I would agree with Nishma that alignment is most important. We accept that in theory there could be improvement made through the UK position, but I suppose I am a bit cynical about whether that is likely to happen. Therefore, we would be supportive of—I think an amendment was proposed—making it clear that the Minister needs to improve on what is there. Clearly, however, consultation about what we believe is an improvement and what is not is quite important, because an improvement to someone may not be seen by others as an improvement.

**Q183 Rebecca Pow:** So do you welcome the requirement in schedule 5 for consultation?

**Bud Hudspith:** Yes, we welcome that. That was the point made before. Parts of it are fairly vague and we would like it to be much clearer as to who should be involved. There should be clear consultation with the chemical industry—the people who work in the chemical industry and the people who represent them.

**Dr Warhurst:** The principles sound good, but the point of principles is how they are interpreted—not just the political decisions about interpretation, but these capacity issues. The problem we see is that it is very difficult for the UK to be in a position, even if it wanted to, to go ahead of the EU, which we have not seen as very likely. In parallel areas, such as chemicals and food contact materials, where the UK could have gone ahead of the EU, it has not, even though countries such as Germany, Belgium and France have.

I will give a practical example. Perfluorinated chemicals are in all our bodies. They are in our blood. They were talked about in a recent film, “Dark Waters”. They are in food packaging, ski wax and textiles. The EU is proposing to do a general restriction on these chemicals for non-essential users. This is thousands of chemicals. That will be a huge job for the 600-person ECHA and member states around the EU. There will be challenges from industry. We know that Chemours is already challenging a decision on one of the chemicals in the group.

We do not see it as credible that a UK-only agency, which will have to spend a lot of time just administering the registration system that is set up or the applications for authorisation, will really have the potential to copy that. But we would obviously like the Government to make a commitment that they will follow this and ban these chemicals.

**Q184 Kerry McCarthy:** I want to pursue the question about whether we would be better off in or out of REACH. Do you think there are concerns that the new regime would not provide the same level of consumer environmental protection? There is a particular issue about keeping pace with changes in the EU and whether our standards would fall below it. Do you have concerns?

**Bud Hudspith:** I would follow on from Michael’s point. We have concerns about the resources available to the Health and Safety Executive and the technical ability of people in the HSE to mirror what has gone in the European Chemicals Agency, its size and extent, and the amount of work that has gone on over many years to get to the position that it is in now.

It seems as though we will be in a situation where we will start again from scratch. Even if we achieve what has been achieved in ECHA, it will take us many years to get there. We are worried, especially about that intervening period. Where will we be? I do a lot of work with the HSE, and I am aware of the kind of pressures it is under. It is easy to say that the HSE will do this, or that the HSE will do other things, but unless it is given the resources and people to do that, it is words rather than action.

**Q185 Kerry McCarthy:** There is a balance between getting up to speed dealing with current regulations and keeping pace with innovation, which presumably will have an impact on some of the industries that you might be involved in.
**Bud Hudspith:** Yes. The position with the EU—ECHA—is that it has come an awful long way. We are getting to the stage where it is probably working better than it has before, and I do not want to wait another five years to get to that position in the UK. It may take more than that—I do not know whether or not it will be five years.

**Q186 Kerry McCarthy:** This is part and parcel of the same question—

**The Chair:** Sorry, Kerry, but we are a little short of time.

**Kerry McCarthy:** I was trying to clarify what I was asking about.

**The Chair:** Very briefly.

**Kerry McCarthy:** The UK, in “The Future Relationship with the EU” document, talks about “the separate regulatory requirements of the two markets”.

What impact would that have on the chemicals industry, if there is that level of divergence—or is it about trying to keep up?

**Nishma Patel:** Following on from what Bud said, REACH has been there for 10 years, and a big chunk of the work under REACH has been done in the past 10 years. The UK contribution has been second in that, in terms of registrations and in providing the data behind the chemicals. To start that process again would put us on a behind path on EU REACH and REACH in general.

The annex, in what we see of the UK position at the moment, allows for the two regulations to co-operate, to talk to each other, if that is the way the negotiations go. It might also allow a mechanism to share data, evidence, on the input put into the European Chemicals Agency database. It is not completely negative. The door is still open in terms of starting from the same evidence base and regulating chemicals; it is just how UK REACH will work—that will depend on what is negotiated in that annex on chemicals, and the extent of the co-operation.

**Dr Warhurst:** We would agree with many of the points that have been made. We have to remember that, at the beginning of the process, the UK will essentially have an empty database and will be asking for material to be submitted to it from industry. There are already a lot of complaints from industry about the new costs that that will generate—for the chemical companies that are used to doing it, and then for all the people who import substances registered in REACH in a different country, who will suddenly have to register as well. There is a lot of cost to get a database that, even when it is full—in two years or however long—will be much less detailed than the EU one.

It is worth saying that the UK is already not good at enforcing chemicals laws at the moment. We talk a lot about the risk-based approach in the UK regulations, but we did a survey a couple of years ago of how councils were enforcing the laws on the safety of consumers—toys with illegal levels of phthalate chemicals, for example—and we found that large numbers of councils do no testing at all, and that even the ones that do some testing do not do much. Yet, when they do testing, they find lots of failure. We know that banned chemicals are on our high streets and in our markets, now. That really does not give us confidence that somehow there will be this amazing leap in UK capacity to implement and enforce these laws.

**Q187 Marco Longhi:** What are your views, please, on the safeguards in the Bill to protect against deterioration of chemical standards?

**Bud Hudspith:** I must admit that I was not clear what the safeguards were. Broadly speaking, we are supportive of the Bill and the things that it is trying to do. Our doubts lie with how deliverable that is and what resources and expertise the UK is able to apply. As I saw it, there did not seem to be too many safeguards. I was aware, again, of the amendment whereby at least there is some effort to institute safeguards.

Clearly, large parts of the REACH regulations are being transferred into the UK position. An example is that the stuff on data sheets, which is currently held within the EU REACH regulations, is going to be transferred into the UK REACH regulations, and that is fine. There are lots of things that we are happy with in respect of the change. I suppose that, on a broader level, we would like to see huge improvements to the speed at which things are done and the way things are regulated, but whether that is going to happen is, I think, questionable.

**Dr Warhurst:** We would back that position. The problem is that the Bill is so much about a process, and the process itself has no targets and timelines. It does not say, “You will assess this many chemicals each year. You will check this many chemicals.” This is a problem at EU level. There has been pressure, and now it has set its own targets and is doing much more.

The danger is that you end up with this sort of hollow system here. It exists in theory, but if the system does not say, “Actually, this chemical is not adequately controlled so we are going to restrict it,” it could essentially just sit doing very little, dealing with all the things that it needs to exist, and you end up with something that is hollow.

We are already in a situation where you can have a chemical such as bisphenol A in till receipts; you ban that; and then the industry moves to bisphenol S. This is demonstrated with tonnage data. That is what has happened in the EU, and the EU has not yet restricted bisphenol S; it is just going to define it as a reproductive toxin, hopefully in the next few months. These things are happening. Movement is happening. The market is moving from one chemical to another. Will the regulator move? We have no evidence. There is no obligation in the Bill for the regulator to actually do new restrictions or new authorisations.

**The Chair:** I think that this might be the last question to these witnesses.

**Q188 Richard Graham:** There has been quite a lot of discussion about the value of creating a UK REACH, but in a sense the principles behind those decisions have already been established, so the key thing now is really all about implementation. I welcome the fact, Mr Hudspith, that you are broadly supportive of schedule 19, which is really all about—

**Bud Hudspith:** We are broadly supportive of the whole Bill. We have lots of interest in other aspects of the Bill as well.
Richard Graham: Good. But you are supportive of it, I think you said.

Bud Hudspith: Broadly.

Q189 Richard Graham: So what is there in schedule 19 that causes you concern, other than the greatest fear being fear itself? You have made a huge contribution to REACH. It has not always been popular with UK businesses. There have been plenty of complaints over the last decade. REACH has not done anything and everything perfectly, as we all know, so surely you have confidence that, with the range of businesses that we have in this sector, we can create a regulatory body that can do a good job—or do you think that we are now so incompetent that we cannot?

Bud Hudspith: In principle, REACH has been more popular with people such as Unite and various trade unions than it has with many parts of the UK chemical business. What is interesting is that, in spite of all the complaints in the past about REACH, once REACH was under threat it was clear that industry was much more supportive of its continuance. We support very much what people such as the Chemical Industries Association are saying and what the chemical business is saying. Obviously, we have members who work in the chemical industry and we want a strong, thriving chemical industry, because we want it to employ people whatever.

On a secondary level, we are also concerned about some of the things that Michael was raising about the hazards of various chemicals. Although REACH is predominantly environmental, that has a knock-on effect for workplace requirements. If you have a chemical that is on the list or is banned—those things need to happen—it affects our members.

Q190 Richard Graham: I get that, but I am interested in why you think that will be more dangerous under UK regulations than the existing REACH ones.

Bud Hudspith: Predominantly because of the resources and the expertise.

Q191 Richard Graham: But the resources, in terms of the councils that Dr Warhurst was just describing, have not been there as it is. Why will it suddenly deteriorate?

Bud Hudspith: Do we accept a position where things do not happen—and everything perfectly, as we all know, so surely you have confidence that, with the range of businesses that we have in this sector, we can create a regulatory body that can do a good job—or do you think that we are now so incompetent that we cannot?

Q192 Richard Graham: No, but you could take the view that this is an opportunity to increase and do things better.

Bud Hudspith: I think I have already said that, in theory, that is the case, but we are very doubtful about whether that will actually happen.

Q193 Richard Graham: Dr Warhurst, what is your position? You have said that you are worried that there are chemicals on the high street that are not great, because we do not have people from the council wandering around having a look at them and so on. What is your solution to that?

Dr Warhurst: There are two different issues. There is the enforcement of the laws, which is about what the councils are doing and the fact that there is no real national co-ordination of that. That has been entirely the UK Government’s decision, inasmuch as it has been an active decision. That is different from the broader regulatory system. The councils example shows that the UK has not been very effective in this area so far.

On the broader regulatory system, you can put a lot of people in an agency, but they will start with an empty database, and we are dealing with more than 20,000 chemicals in many applications. It is also wrong to assume that there is no opportunity for close collaboration with REACH. The UK currently talks about some sort of memorandum of understanding. Our view would be that it needs to go further up from the countries that it is mentioning at the moment that do not have access.

Q194 Richard Graham: That is a lobbying opportunity, effectively, for you in the chemicals sector, with the negotiators and so on. At this stage, in terms of what is in schedule 19, is there anything that gives you concern?

Dr Warhurst: Yes, a lot of it gives us concern, because we are not convinced that it will provide the protection of public health. The consultation is very limited. The idea that you can replicate REACH—

Q195 Richard Graham: How many UK officials are there in REACH at the moment?

Dr Warhurst: I do not have the figures. I know that ECHA is about 600 at the moment. It was said, a year ago, that the EA and HSE would have something like £13 million a year in full operation. You are dealing with 23,000 chemicals and however many registrations.

Q196 Richard Graham: Nishma Patel, in your view—it is the easiest thing, and I understand it, for everyone to say, “We’re very worried it won’t turn out quite as well as the Government hope it will,” and, “What’s in the Environment Bill looks fine, but how’s it actually going to work?”. What is the opportunity, rather than just the concern?

Nishma Patel: In terms of UK REACH in particular?

Richard Graham: Yes, in terms of UK REACH, the Environment Bill and the measures in it.

Nishma Patel: We think the measures in the Environment Bill are adequate and appropriate, primarily because we have article 1 in REACH, which protects the regulation itself. In terms of opportunities, the biggest opportunity for UK REACH is essentially to try to look at what the national issues are, in terms of environmental protection, and to look to address them. That could potentially be in the UK chemicals strategy that is being developed and is under consideration.

The Chair: I think this will be the last question.

Q197 Alex Sobel: It is interesting that this is the first panel where we have had representatives from the ownership and the workforce of the industry. The chemicals industry is huge in this country, with a turnover of £32 billion and more than 100,000 workers. It also has a lot of workers who are highly skilled and on good wages and terms and conditions, as I am sure Bud would agree. Does the Bill go far enough, first, to protect jobs and workers in the industry and, secondly, in terms of the business and the potential additional costs to business that could affect the industry?
Nishma Patel: For us, the Bill and some of the amendments that we have seen so far are doing what is intended around environmental protection. The only other thing that I would ask to be considered is the other justified reasons, for which, as we have seen under EU REACH and under UK REACH so far, regulations that the Bill does that job, or are there things that could be done to ensure that people are talking to each other and that the links we have are maintained.

The Chair: We do not have any further questions, so I thank the three witnesses. It has been a really useful session, and we are very grateful for the expertise that you brought to our deliberations. Thank you very much.

Examination of Witnesses

Lloyd Austin, Alison McNab and John Bynorth gave evidence.

3.47 pm

The Chair: I welcome the three witnesses. Thank you for taking the time and trouble to come and act as witnesses before the Committee. I hope that starting slightly earlier has not inconvenienced you too much. The session has to conclude by 5 pm, although it does not have to go on until then if there are insufficient witnesses before the Committee. I hope that starting to take the time and trouble to come and act as witnesses before the Committee. I hope that starting slightly earlier has not inconvenienced you too much. The session has to conclude by 5 pm, although it does not have to go on until then if there are insufficient questions. We will open the questioning with Dr Alan Whitehead.

Q198 Dr Whitehead: Good afternoon, ladies and gentlemen. The Bill contains many sections that run on from a central theme and have what looks like pretty comprehensive legislation for the Scottish Government, the Welsh Government and the Northern Ireland Administration. I appreciate that you may have to act as a proxy for everybody rather than just for Scotland.

One of my concerns, about which I do not know enough, is the extent to which we are putting things in the Environment Bill and expecting everything to happen in the same way in all the different Governments and Administrations within the UK, which all clearly have quite different practices. Are you confident that the Bill, certainly as far as Scotland is concerned, will enable us to have UK-wide environmental protection standards that are good for everybody, bearing in mind that species, waste and various other things do not worry too much about borders and are of particular concern to the whole of this part of the world? Are you happy that the Bill does that job, or are there things that could go into it to better reflect the particular circumstances in different parts of the UK, particularly for the Scottish Government?

The Chair: Before anybody answers, I neglected to ask people to introduce themselves, so would you perhaps make up for my deficiency by introducing yourselves as you go along?
Alison McNab: I am Alison McNab. I am a policy executive with the Law Society of Scotland. We are the professional body for solicitors in Scotland and have an interest not only in representing our own members but in acting in the public interest.

Your question raises an interesting point. It is important, of course, to bear in mind that deviation is a natural consequence of devolution. Equally, I agree with the comments by both Lloyd and John that there is merit in consistency and coherence in the approach. We know that, in attempting to avoid regulatory tourism, there are aspects where Scotland may be said to be slightly ahead. In Scotland, we have seen regulations on the introduction of a deposit and return scheme.

In terms of the Bill, Lloyd made a point about the environmental principles, and how reserved functions of UK Ministers in Scotland will be dealt with. We anticipate Scottish legislation in the coming weeks. That may give some clarity around that. There may be opportunities where the consistency of the work of the Office for Environmental Protection can be strengthened. There are provisions in clause 24 of the Bill about a requirement for the OEP to consult, and an exemption from the restriction on disclosing information in clause 40. There is potential scope for strengthening those provisions.

In relation to everything else in the Bill and common frameworks around environmental matters more generally, the extent to which consistency is sought is somewhat of a political matter for the Joint Ministerial Committee to give consideration to. At the moment, it appears clear that there is a desire to achieve consistency on at least a number of environmental matters.

Q199 Rebecca Pow: Thank you for coming. We have had extensive consultation already with all the devolved Administrations, which you welcome. Each of the areas is choosing to opt in or out of different parts of the Bill. The Scottish Government have opted in to some areas. How do you think being part of the Bill would benefit citizens of Scotland?

John Bynorth: Obviously, there are different laws in Scotland, particularly regarding regulation. They should definitely work more closely together, liaising between the Office for Environmental Protection and the body that has just been announced by the Cabinet Secretary for Environment in Scotland, Roseanna Cunningham, which will be set up as a similar sort of regulatory and enforcement body. It will be good to have the two talking to each other, so they can learn from each other’s experiences. We should not have two distinct bodies that do not pick up the phone and talk to each other between Edinburgh and Bristol, or wherever the OEP will be based. We can see closer co-operation between the two, just to ensure that the whole of the UK is covered.

Things such as air pollution do not respect boundaries—it is a bit like the coronavirus, except it does not even respect inequality: it affects the poorest and those with underlying health conditions more than anyone else. Anything that is learned or being put into place by the UK Government should be taken up by the Scottish Government and vice versa, because they are doing a lot of work to improve air quality through air quality management areas. There are 38 in Scotland; they are introducing four low emission zones for the main cities in Scotland, to reduce the amount of transport pollution. I see a lot of opportunities there. Politics should not come into it; whether there is an SNP Government, or a Conservative Government here, should be disregarded, because air pollution and the environment affect people’s health. We are talking about it more from an air quality perspective. There are other views as well.

Rebecca Pow: Potentially, water would be the same.

Lloyd Austin: First of all, I agree with John about the need for the OEP and the Scottish body whatever it is called, to have stronger powers and duties to co-operate and liaise. If a citizen of Scotland wishes to raise an issue and they go to the wrong body, it is very important that that body is able to pass on their complaint or concern. That relates to my earlier point about reserved matters. It is obvious that the citizens of Scotland will look to the UK Government and the Bill to address any reserved matters that fall within the definition of environmental law under the Bill.

It is not for us to say whether a matter should or should not be reserved. We would like what is reserved to be more transparent. There are quite a lot of discussions about which areas of environmental law are reserved. That is not very clear to citizens at this stage. The OEP will be responsible for reserved matters under the Bill as drafted, but as I indicated there is a lack of clarity about the application of the principles to them. The Committee might want to look at that, to see whether that gap could be filled.

As was commented on earlier, devolution leads to differences. There were differences between Scotland and the rest of the UK before devolution, when we had the Scottish Office and administrative devolution, and that has continued. From an environmental point of view, we would like those differences to lead to a race to the top rather than a race to the bottom. The more that each of the Administrations can lead the way and encourage others to follow suit, the better.

For instance, you indicated, Minister, that the Scottish Government have opted in to some and not other parts of the Bill. I think that is fine. It is very welcome that they are moving faster on a deposit return scheme. On the other hand, it looks as though there is agreement on extended producer responsibility, and all Administrations will move together. I hope that the race to the top will encourage all Administrations to move faster. The fact that the Scottish Government have moved faster and further on a deposit return scheme will encourage the other three, and vice versa. In relation to England, the Bill does some very positive things regarding biodiversity and the recovery of nature, and the setting of targets. I would argue that the Scottish Government could learn from that and then go beyond it.

Q200 Rebecca Pow: I am sure we will learn some lessons from watching your deposit return scheme. That will prove useful.

Alison McNab: I echo the comments made by Lloyd in relation to the OEP. I suppose the key thing is that the benefit to consumers may come in clarity on who is dealing with what, where they seek assistance, where they take complaints, and so on. It is important that the law is clear and that people are able to guide their conduct based on a clear understanding. That will be important to achieve in the context of the Bill and all that comes from its enabling provisions in particular.
Q201 Rebecca Pow: Will you welcome as much alignment as possible through your version of the OEP? We have made it clear who comes under that and where people go to report. Would you like to see a similar body?

Alison McNab: What is important is that whatever is set up can work well alongside the OEP. Perhaps there is scope for strengthening provisions in the Bill for the OEP to work alongside bodies in the devolved Administrations to ensure good working relationships, consistency, the sharing of information, and so on.

Q202 Deidre Brock: Good afternoon, and thank you for coming down. The Bill leaves a number of things out of its scope, including tax and spend and allocation of resources by the Treasury, and MOD activities, among others. Do you think that is a sensible way to go about things? Perhaps I should not say sensible. What are your thoughts on those exemptions?

Lloyd Austin: From the point of view of environmental NGOs, we agree. Greener UK colleagues made this clear earlier in the week, and we support those comments. The definition of environmental law is perhaps too narrow. We are interested in policies and measures that have an impact on the environment; because we are interested in environmental outcomes and achieving good environmental objectives. That is the key thing. If any policy or piece of legislation has an effect, whether good or bad—many things are good, and many may not be so good—it should come under the remit or gamut of somebody considering the impact on the environment. Therefore, the definition should be as broad as possible.

In reality, we accept that there will be exceptions. Those exceptions should be based not on the kind of broadbrush things indicated, but on a degree of justification for why—reasons of national security or whatever—the environmental issue has to be overwritten. Nobody thinks the environment will always trump everything but, on the other hand, where the environment is trumped, there should be a good reason, and that reason should be transparent to citizens.

John Bynorth: The question of exemptions may be for the military. I understand that they currently apply the principles of environmental law, but why should they be exempt? They use a huge amount of machinery and there are air quality issues there. It seems that the Secretaries of State will have the final decision on which targets are implemented, so there are concerns about that. It is a bit arbitrary and unjustified that the military, for example, should not be subject to the same conditions as everyone else.

Alison McNab: Without touching on the specific exemptions, it strikes me that there may be scope for greater specification within the Bill about what the exemptions are to be. If memory serves me correctly, when the Bill was consulted on at draft stage in late 2018 and early 2019, there was an additional exemption around anything else that the Secretary of State considered should be exempt. We have come some way from that view. There may also be greater scope for scrutiny within the Bill on the exemptions, which the Committee may wish to consider strengthening. Essentially, there are opportunities for more specification and more scrutiny.

Q203 Caroline Ansell: While recognising that devolution can mean deviation, and that that can have some positive effects, some of those opportunities can also turn into risk because the environment is transboundary and business is transboundary too. What do you see as the risks if the Scottish body took a fundamentally different approach to that of the Office for Environmental Protection?

Alison McNab: I referred to environmental regulatory tourism earlier on—call it whatever you wish. There will always be issues around people trying to beat the system, and that is a risk if there are varying standards. However, on the flip side, there are opportunities to drive improved performance or improved outcomes. There may be commercial interests that need to be taken into account, so it may not be viable to do a different thing in one jurisdiction from another.

Q204 Caroline Ansell: Do you think that is a problem of clarity? It is incredibly important for people to understand exactly what the protections, standards and targets are, in order to be compliant.

Alison McNab: Absolutely. I referred earlier to clarity’s being key for both individuals and businesses in determining how they conduct their business.

Q205 Caroline Ansell: Could that difference be confusing, if there were different standards and different targets?

Alison McNab: There is the potential for it to be. I suppose what is important is that there are clear routes for people to be directed to—not only legislation, but guidance and other information on how to take things forward. It is important to bear in mind that there may be opportunities to support businesses in how they work cross-boundary, and opportunities in the context of the Bill to think about the functions. One that springs to mind, for example, is the function of the OEP to advise Ministers. Of course, it may be advising on matters that relate to English or reserved matters, but that may have a cross-boundary effect, and it is important that that is considered.

Q206 Caroline Ansell: On that risk, what do you see as the most important areas for both Administrations to work most closely on together?

Alison McNab: Do you mean in terms of specific topics?

Caroline Ansell: No, areas within the Bill.

Alison McNab: The OEP is probably key. The environmental principles raise an interesting issue: at the moment, the Bill provides for them to apply in England and it is not clear how reserved functions of the UK Ministers that apply in Scotland will be covered. We do not yet know the detail of the Scottish legislation, but is there potential for a gap there? I suspect yes, but we do not know the detail of that yet.

REACH is an area that the Committee has already heard about this afternoon, and there are powers within schedule 19 for the devolved Administrations to make some regulations on that in terms of the enforcement. Given the wider scope of REACH in the reserved issues, that is perhaps something that would merit collaboration.

John Bynorth: Certainly, there is no point in having two sets of rules, two sets of penalties and two sets of punishments for each part of the country. In a multinational world, there are UK-wide operators such as haulage, oil refineries and petroleum companies. We have a problem...
at the moment in Scotland with Mossmorran in Fife, an ExxonMobil-owned company, which is having problems with flaring that are affecting local communities. The Scottish Environment Protection Agency is trying to deal with it, but it keeps happening again and it is causing terrible problems for people living in the area, with noise and other issues. You need to have consistency in dealing with that between the different parts of the country.

The other issue is that if penalties in Scotland were different from those in England, companies might up sticks and move their business completely to England, which would affect the economy. Consistency is vital. The same applies with emissions: we have clean air zones down here, but low emission zones in Scotland. The types of restrictions on bringing petrol and diesel vehicles into cities, and on haulage companies, need to be very similar—I think that is happening—so that our economy is not damaged, but the rules and penalties are made clear to people and are UK-wide.

Maybe there should be a joint memorandum of understanding between the new protection body that we will get in Scotland and the OEP, once they are up and running. That could be a key part of what they do, with the civil servants from each body talking to each other and ensuring that they set out what our principles are, what we have in common and where the differences are, so that people, and businesses in particular, are clear on that.

**Lloyd Austin:** To follow on from the last thing John said, some kind of agreement about how the new bodies work together would be very useful. In terms of the Bill, that could be an amendment included within the clause dealing with the OEP’s having to set its strategy. It already sets out various aspects of what should be in that strategy, and a simple line indicating that, as part of determining its strategy, it must set out how it plans to work with similar bodies in Scotland and Wales would be very useful.

Regarding your generic question about risks, the biggest risk is the race to the bottom, as I described it before. We must try to prevent that and to encourage the race to the top.

Regarding specific issues, the scale of the risk depends on the mobility of the risk. John mentioned the issue of businesses moving waste and Alison mentioned regulatory tourism. Those are risks, and waste tourism is another. If the two Administrations are too different in terms of their waste management policies, it is very easy for businesses to stick the waste on a lorry and take it over the border, and that sort of thing. It therefore depends on mobility.

From an environmental perspective, one of the key things is specific environments that cross borders. We have a very good system of cross-border river basin management plans, which is reflected in the water part of the Bill for, in our case, the Tweed-Solway area. That is a shared environment, where the Scottish Environment Protection Agency and the Environment Agency have to work together, and the plan is jointly signed off by Scottish Ministers and the Secretary of State. There is a similar model for the cross-border areas between England and Wales, and between Northern Ireland and the Republic of Ireland. Those types of cross-border arrangements should be continued for those cross-border types of environment; that is a good mechanism.

Having mentioned Northern Ireland, when we talk about these devolution issues within the UK, it is important that we remember that we also have a border between the UK and the Republic of Ireland and the EU in the island of Ireland. The issues that you are asking us about—regarding the difference between Scotland and Wales—apply equally between Northern Ireland and the Republic of Ireland. That is a challenge that needs to be addressed.

Equally, in relation to our marine environment, all of our marine environments have borders with other nation states—some with EU nation states and, to the north, with Norway and the Faroes. In managing our marine environment, we must work through mechanisms such as OSPAR to ensure that we have good co-ordination with Governments outside the UK, in exactly the same way that we need good co-ordination between Governments within the UK. The environmental issues—I always come back to focusing on the environmental outcomes—are in principle much the same, irrespective of whether the borders are national borders or sub-national borders, if you see what I mean.

Q207 Jessica Morden: It is getting quite complicated, isn’t it? I know that you cannot speak for Northern Ireland or for Wales but, as far as you can answer this, are you aware that there has been strong collaboration so far between interested bodies and the Government on the Bill? If you are, do you think that has been working well so far? How effectively do you think co-operation on nature recovery networks might be?

**Lloyd Austin:** We cannot really answer in terms of co-operation between the Governments; we are not the Governments. We speak to all four Governments, and sometimes we hear signs of good co-operation and sometimes we hear signs of challenges—shall I put it that way?—whereby different Governments give us different indications of the nature of the discussion.

One thing that I am certainly aware of is that through our Greener UK and Environment Links UK network, there is good co-operation between the NGOs across all four countries. I am speaking as the co-chair of the Greener UK devolution group as well; that is how I am familiar with some of the work going on in Wales and Northern Ireland, as well as Scotland. There are examples of good co-operation; equally, there are challenges.

In relation to nature recovery, one of the key challenges is that the Bill requires the Secretary of State to set a target on biodiversity, and it is unclear whether that is for England or the UK. If it is for the latter, what will be the role of the devolved Administrations in delivering that target? Will they agree the UK target, and what proportion of it would be for England and would be delivered by the English nature recovery network? There is scope for greater thinking and clarity on how the Administrations might agree some kind of high-level objective, to which each of their individual targets and recovery processes would contribute.

Perhaps as a precedent, I would point you to a document that all four Governments agreed prior to passing separate marine legislation back in 2005 or 2006. The four Governments all signed a document on the high-level objectives for the marine environment. Subsequently, the Marine and Coastal Access Act 2009 was passed by this Parliament, the Marine (Scotland) Act 2010 was passed by the Scottish Parliament and the...
Marine Act (Northern Ireland) 2013 was passed by the Northern Ireland Assembly. However, each piece of legislation contributed to the agreed high-level objectives document.

It would be beneficial to environmental outcomes if the four Governments could sign up to similarly generic, high-level environmental objectives. It would not involve one Government telling another what to do; the document would be mutually agreed in the same way as the one on marine legislation. The Secretary of State’s targets would indicate what the English contribution to those high-level objectives would be, and Scottish Ministers would have their own process for the Scottish contribution—likewise for Wales and Northern Ireland.

**John Bynorth:** Anecdotally, I hear that the Scottish Government and civil servants talk quite regularly to DEFRA and other UK organisations—it would be stupid not to.

On air quality, we have two different strategies. The UK Government have the clean air strategy and Scotland has the “Cleaner Air for Scotland” strategy, which is currently subject to a review and will be refreshed and republished later this year. Within that, you have different sources of air pollution. The Scottish Government will be talking to DEFRA and there are continuous conversations, particularly about indoor air quality. Whether you are in Scotland or England, that does not change. Having different types of properties might affect indoor air quality, but it is fundamentally a national issue.

There is concern at the moment about the rise in ammonia from agriculture, particularly in Scotland. That is an issue where they will learn from what is happening down south with DEFRA. It is not just DEFRA; even though we have now left the EU, we should not shut the door. We have to keep the door open to the EU. There is a lot of really good work going on in the Netherlands and other parts of Europe that we can learn from. We need to keep the door open, although we have now gone and cannot do anything about that. Just keep the door open and learn from it.

There is close working, but it could always be better. Hopefully, the Environment Bill will improve that, as will Scotland’s environment strategy. We need to keep those conversations going.

**Alison McNab:** I do not have much to add to the comments that have been made already. There are perhaps two things that strike me, one of which relates to the Joint Nature Conservation Committee—perhaps there is a role there. It demonstrates quite good collaboration across the UK.

Looking a bit more widely, Lloyd touched on marine issues as an example. The joint fisheries statement set up in the Fisheries Bill has the four agencies—the Secretary of State and the devolved Administrations—coming together to talk about how they will achieve the objectives. That perhaps presents quite a good model for thinking further about other things in the environmental field.

**Q208 Rebecca Pow:** I found this really interesting, actually. My general observation is that you are very keen on close co-operation, which is clearly something that this Government are very keen on, because there are no boundaries in the environment—in the air, as you have clearly explained, and water and all of those things. Would I be right in surmising that you would like as close co-operation as possible?

**Lloyd Austin:** You would be right, as long as it is co-operation. It is not for us to say where the boundaries of devolution or other constitutional arrangements should be.

**Rebecca Pow:** No, I understand that.

**Lloyd Austin:** The marine examples that I quoted and the fisheries examples that Alison quoted are areas where things are mutually agreed, and as I tried to say earlier, that applies beyond the UK as well as within it.

As John indicated, we should not forget our European partners, both those within the EU and those such as Norway, the Faroes and Iceland to our north that are not in the EU, but interestingly are all in the European Environment Agency. In terms of data collation, data reporting and environmental science, we would very much like to see some continued association with that agency, which goes well beyond the EU members. Norway, Iceland, Switzerland, Turkey, Belarus and lots of countries like that are partners in the EEA, engaging in simple sharing and publication of environmental data. It seems very short-sighted to pull out of the EEA when it has nothing to do with EU membership, so that is another form of co-operation that we would promote.

**John Bynorth:** Being in the EEA would be very good from an information and data sharing point of view, and for maintaining consistency of standards, so I definitely agree with that and support it. I go to a lot of conferences south of the border, just to find out what is going on down there regarding air quality and other environmental issues. Everyone is talking about similar things: transport emissions in urban areas, domestic burning—how we deal with wood-burning stoves and the problems they are causing with air quality—agriculture and industrial emissions. Those are all common issues, and there are nuances about the way you deal with them, but we can all learn from each other.

The Scottish Government might not be doing things right all the time, and the UK Government might not be doing things right. We should come together regularly to discuss these things and find out how we can improve and work together. We are still part of the UK, and it is very important that we do that.

**Alison McNab:** Strong collaboration between the UK Government and the devolved Administrations is essential. You have highlighted the transboundary effects of the environment, which are well recognised. Back in 2017, the Cabinet Office published a list of areas where EU law intersects with devolved powers. The revised list, which is from April of last year, highlights 21 remaining areas in which it is hoped that legislative common frameworks will be achieved. Seven of those 21 relate to environmental matters, so it is going to be crucial for there to be good collaboration between the UK Government and the devolved Administrations to achieve the desired aims regarding those matters.

**Q209 Marco Longhi:** Given what you know about the OEP’s governance framework and the concerns you have highlighted about divergence and risks—race to the bottom and that type of thing—I am trying to gauge what importance you would place on there being a structure in the devolved Administrations equivalent to the OEP here in England.
**Lloyd Austin:** From my point of view, I would say it is very important that the governance gap, as we called it soon after the referendum result, applies everywhere in the UK, and it should be filled everywhere in the UK, whether that is for devolved or reserved matters. We very much welcome the recent announcement by the Scottish Government that they will be establishing some form of body. We are yet to see the detail; we understand that detail will be published later this month. We are less clear on the proposal for Wales. Of course, this Bill addresses Northern Ireland in schedule 2. Wales is the area that still has the biggest question mark, but we would want the Scottish body to be as good as or better than the OEP.

**John Bynorth:** I would totally back that up. The Scottish Government’s environment strategy, which has only just been published, says that there will be robust governance to implement and enforce laws for their equivalent body. We do not know the detail of that—who will be leading it, and what sort of people will be on it and how they will be appointed, but it has got to be totally independent. You cannot have a body for the rest of the UK that has a different standard; they have to have the same standard and the same quality of people involved, and the same toughness to really crack down on people and organisations that breach the law. Our job as an independent and impartial organisation is to ensure that they are held to account on that, so once it is published and we know more details, we will be able to push on that.

I certainly think that having a strong figurehead for the two organisations is important—the OEP and whatever it will be called in Scotland. Personally, I think John Gummer, Lord Deben, does a brilliant job at the Committee on Climate Change. He has vast experience as a former Environment Minister, right at the top level of the UK Government. You need figures like that, who are also independent of politicians, so they can actually make decisions. Those sort of people inspire others to come on board. You need a strong staff who will stand up to organisations that flout the law—they have got to be very strong. It is up to us to ensure that whatever the Scottish Government produce is to that sort of standard. Hopefully, organisations similar to us down here will do the same with the OEP.

**Alison McNab:** I agree with the comments that have been made. It is clear that there is going to be a governance gap once we reach the end of the transition period, and it is important that there are provisions put in place to mitigate that. Whether that is done by way of a single body, as in the OEP, or by different bodies taking different roles, is a matter up for grabs. The Scottish Government have announced their intention to have a single body, which we presume will be similar to the OEP. I think what will be crucial is the way that those bodies work in terms of how they set their strategy. The OEP requirement to consult on the strategy is a good thing and will enable stakeholders to contribute to devising how that body is going to operate. I hope there will be similar opportunities for the body that is created in Scotland in terms of what direction it is going to take and how it will undertake its functions.

Q210 Deidre Brock: With a view to trying to learn from the possible mistakes of others, there is a provision in the Bill that would prevent public bodies from making complaints to the OEP. We could find ourselves with the possibility that one public body could be aware of another committing a breach of the law without having the option of raising that complaint with the OEP, or perhaps one council being aware of another council breaching the law and not being able to take action with the OEP about it. Should we be looking at amending that in the Bill?

**Alison McNab:** I would have to go away and give further consideration to that. On the one hand, there are laudable reasons for having that provision, but, equally, we recognise that there is a potential for something like a race to the bottom, where bodies are perhaps not subject to the same degree of scrutiny that they might be.

Q211 Deidre Brock: Sure. I like the idea of the race to the top that you mentioned, Mr Austin. I noticed in your briefing, John, the air quality issues and the more stringent standards that we have in place in Scotland, for example. Hopefully, folk will learn from that.

I want to ask you, Ms McNab, about clause 19. In your Law Society of Scotland briefing paper, you raised a couple of concerns that I am keen to hear a little more on.

**Alison McNab:** Absolutely. The clause you refer to relates to statements about Bills containing environmental provisions. It provides some degree of scrutiny. However, it might be somewhat limited in its scope. There is no recourse provided in the Bill if, for example, Parliament or external stakeholders felt that a matter had not been given proper consideration. Also, there is a question around how that is tested. How is the statement tested and how is it subject to scrutiny?

**Lloyd Austin:** On your first point, like Alison I need to think about it a bit more, but I see that there is some degree of logic in one public body not being able to complain about another. Public bodies should have existing mechanisms to raise concerns with central Government.

From the point of view of NGOs and our members, ordinary citizens, the really important thing to make sure exists—this applies to the OEP and the Scottish or Welsh bodies—is a mechanism that enables ordinary citizens to raise concerns with the OEP. That is in there to some degree. There are ways in which that could be strengthened, but it is vital that that exists in the other bodies in Scotland, Northern Ireland and Wales, with, as I said earlier, an ability for the OEP and the Scottish and Welsh bodies to pass one citizen’s complaint to another if that is necessary. If the citizen has inadvertently complained to the wrong body, it should be able to pass it on, and in some cases bodies maybe should be able to work together in a joint investigation. Some issues that citizens might be concerned about may be caused by both a reserved and a devolved matter, or may be caused by, as we discussed earlier, the Scottish and UK Governments not working together very well. The two bodies working together to encourage better co-operation might be one form of remedy that they would have available to them. We represent ordinary members of the public who are members of our organisation, and it is those citizens’ right to complain. Most public bodies can normally find a citizen if they want to.

**John Bynorth:** There is an increased awareness of the environment. A poll last week showed increased awareness of climate change impacts, and the poll was taken even before the recent flooding in south Wales, Shropshire...
and the midlands. People are increasingly taking an interest in these things. Communities in Newcastle, for example, and even in Edinburgh, have low-cost monitoring centres to check air pollution in the towns and streets where they live, so there is huge awareness of that and climate change as well. People will want an outlet where they can complain if they think something is wrong. The office will need to be aware of that and will need to respond to that. It is a changing environment: people’s attitudes are changing all the time.

Deidre Brock: Good points. Thank you.

Q212 Saqib Bhatti (Meriden) (Con): I welcome your comments on closer collaboration. Are there any parts of the Bill that you like and think should be adopted in Scotland?

John Bynorth: Obviously, if the Office for Environmental Protection had teeth, clout and the ability to fine people in the rest of the UK, I would want to see that in Scotland, too. In other respects, certainly the Governments work together. There are differences, as I say, but if they could work together, that would be one of the best things.

Lloyd Austin: From my point of view, the varying extent of different parts of the Bill is appropriate, because it tends to reflect the arrangements that have been agreed between the Scottish Government and the UK Government. For instance, the deposit return scheme does not apply to Scotland, and that is because they have already got their provisions in place. Those other areas, such as extended producer responsibilities, are included and, as the Minister said earlier, they have opted in. I think the different extent is a consequence of developments to date; it reflects those developments.

The biggest gap is the issue of reserved areas, or the application of EU environmental principles to decisions by UK Ministers relating to reserved matters in Scotland and Wales. Those are excluded from the Bill, and it is a gap. It may be—as stakeholders, we do not know—that the Governments have agreed to legislate for that in some other way, through Scottish legislation or subsequent Welsh legislation. However, because we have not seen that, we do not know, and there has been no statement to that effect. As far as observers are aware, that gap still remains. It may be filled by an amendment to the Bill, or by Scottish legislation with the agreement of UK Ministers or whatever—we do not know—but we want to keep highlighting that it is a gap that does need to be filled.

Alison McNab: The Scottish Government have joined where they have felt that they can, or where they have felt that to be appropriate. Certainly Roseanna Cunningham, the Cabinet Secretary for Environment, Climate Change and Land Reform, made the statement before the relevant Committee in the Scottish Parliament back in October that an agreement had been reached in relation to the extended producer responsibility. There may be other areas where harmonisation can be achieved.

As Lloyd says, there is potential for a gap in the environmental principles. There is also some uncertainty around reserved matters and the OEP, and what those matters are: there may be some matters involved that appear in schedule 5 to the Scotland Act 1998. Product labelling and product standards spring to mind; there are certain exceptions there. There may be some issues that still need to be considered. REACH is another example where there is quite a complicated mix of reserved and devolved issues. What is important is having clarity on those things. Where collaboration can be achieved, that is good, but you need to ensure that no gaps are left.

The Chair: I think this may well be the final question. Robbie Moore.

Q213 Robbie Moore (Keighley) (Con): Carrying on with the theme of collaboration, do you think that the benefits of the Bill outweigh the risks associated with having separate bodies? In my view, there are potential risks that follow from having separate legislation and bodies.

Lloyd Austin: If I could borrow a term that my colleague Ruth Chambers used earlier in the week, I think that boat has probably sailed. Two years ago, I remember, we had discussions with Governments north and south of the border, and east and west of Offa’s Dyke. We encouraged a discussion about which is the best route—separate bodies or one single body that would somehow be collectively owned by all the Governments, if you see what I mean. The challenge would be creating that sort of body that had the means to respect the devolution settlement, so that in relation to devolved matters it was accountable to the Scottish Parliament, and in relation to reserved matters it was accountable to this Parliament.

Creating a single body that is somehow accountable to different legislatures is a challenge, although I do not think it would have been impossible, because there are means of creating joint committees, and that sort of thing; but I think, given the way in which the devolution settlement is arranged, that kind of thing had to be mutually agreed. With the way in which the various Governments have proceeded, for their own different reasons, that was not possible. Therefore we are now in a situation where we have one body for England, reserved matters and Northern Ireland, because of circumstances over the years in Northern Ireland, and other bodies for Wales and Scotland. In a sense it is not for us to question the reasons why we arrived at this position. We are in this position, and the best way of addressing it is to ensure that the bodies work together in the way that we have described. I think you could answer that question with, “I wouldn’t start from here”—but we are here.

John Bynorth: There is not much we can do about it, I think. The Environment Agency and the Scottish Environment Protection Agency work together. There are common areas—noise policy, for example—and the bodies feed off the World Health Organisation, and things like that, in policy areas. With devolution, you do have to have an organisation that is accountable to MSPs in Scotland, but there is no reason why the new Office for Environmental Protection cannot work very closely with whatever is going to be set up in Scotland. You would have to have that accountability, under the devolution settlement, to the Scottish Parliament, however. I do not know whether there is much more we can do or say about that, but that is the situation. I think you are going to end up with two bodies, really.

Alison McNab: I agree with the comments made. As I referred to earlier, I suppose the extent to which consistency is achieved is really a political decision. The reality is
that it appears that we will have the OEP and a separate Scottish, and potentially a separate Welsh, body as well. What is important is looking at how that can work together now—the practicalities of that, and how the risks can be overcome. Probably the greatest way to do that is to ensure that there are strong provisions in each of the relevant pieces of legislation for the bodies to work together. That may be a requirement to work together, strengthened from what at the moment is a requirement to consult on relevant matters.

The Chair: Thank you to our witnesses. It was really important for the Committee that we got a Scottish perspective on this. I think we got that very thoroughly, and we are very grateful for it.

Ordered, That further consideration be now adjourned. —(Leo Docherty.)

4.49 pm

Adjourned till Tuesday 17 March at twenty-five minutes past Nine o’clock.
Written evidence reported to the House

EB10 Greener UK and Wildlife and Countryside Link

EB11 Game & Wildlife Conservation Trust (GWCT)

EB12 CHEM Trust
CONTENTS

Clause 1 under consideration when the Committee adjourned till this day at Two o'clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons, not later than Saturday 21 March 2020.
The Committee consisted of the following Members:

Chairs: † Sir Roger Gale, Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Ansell, Caroline (Eastbourne) (Con)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Docherty, Leo (Aldershot) (Con)
Edwards, Ruth (Rushcliffe) (Con)
† Graham, Richard (Gloucester) (Con)
† Longhi, Marco (Dudley North) (Con)
† McCarthy, Kerry (Bristol East) (Lab)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)

† Morden, Jessica (Newport East) (Lab)
† Oppong-Asare, Abena (Erith and Thamesmead) (Lab)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Sobel, Alex (Leeds North West) (Lab/Co-op)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)

Adam Mellows-Facer, Anwen Rees, Committee Clerks

† attended the Committee
9.25 am

The Chair: Good morning, ladies and gentlemen. Before we start, a couple of housekeeping matters. Please make sure that your electronics are turned off. No tea and coffee, I am afraid; you will have to go outside if you want that, as it is not allowed during the sittings. Members may remove their jackets if they wish.

We now begin the line-by-line consideration of the Bill. The selection list is available on the table if you do not already have it. We had a discussion on this during the evidence-taking sessions, but I repeat that amendments are generally put into groups on the same or similar issues for debate. Amendments are decided on not necessarily in the order in which they are debated, but in the order in which they come up in the Bill. You will find yourselves debating matters that are not immediately voted on, and there is sometimes a tendency, particularly on the part of the Opposition, to panic and say, “We wanted to vote on that.” You may well be right that we have missed something, and if we do, please remind us, but bear in mind that the vote happens at the right place in the Bill, and not necessarily because of where the amendment appears in the group. If that does not make sense, ask me and I will try to clarify it.

My policy—Sir George may have a different one—is that it is often helpful to have a fairly broad-ranging debate at the start of a group of amendments on a clause. I have no problem with that; it tends to facilitate the discussion, but—and it is a big but—for the benefit of the new Members—at the end of consideration on each clause, we have a debate on whether the clause should stand part of the Bill. There cannot be a stand part debate at the beginning and the end of proceedings on a clause, so if you choose to talk a lot at the beginning, you will not get two bites at the cherry. The Chair will decide whether there will be a stand part debate.

I hope that is clear. Nobody has a monopoly of wisdom; if you have any cause for concern, or you do not understand what is going on, please ask, and someone will endeavour to provide you with a tolerably intelligent answer.

Clause 1

Environmental targets

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 79, in clause 1, page 1, line 7, leave out “may” and insert “must”.

This amendment seeks to ensure the power given in this Bill to the Secretary of State to set long term targets is exercised.

It is a pleasure to serve under your chairmanship this morning, Mr Gale, as it will be, I anticipate, for many more mornings and afternoons. I will not say it is a pleasure every time I speak, but please take it as being one.

I would like to say a few things about how the Opposition intend to pursue matters in this Committee. As hon. Members will see, a substantial number of amendments have been tabled, and we will go through those in Committee. I hope that upon scrutiny of those amendments, hon. Members will conclude that every one is an attempt to make a good Bill better. They are not in any way intended to be subversive of the Bill’s purposes, to wreck the Bill’s outcome, or to divert the Bill from its intended outcomes. Rather, they are intended to make the Bill as good as it can be. I echo the sentiments of one of the star witnesses in our evidence sessions last week, Richard Benwell of Wildlife and Countryside Link, who said that this could be a brilliant Bill. I hope that it will be by the time we finish our considerations in Committee.

I am fully dedicated to making sure that when the Bill gets on to the statute book, it has the purposes that we all, I think, agree on, and is a serious marker of what this country has to do to develop environmental biodiversity and a healthy environment—a healthy environment in which nature recovers, and we have clean water and, in the context of the climate change emergency, everything that will allow our natural environment to be in a healthy state for the future. I want the Bill to mark this House’s contribution to that process.

I am completely at one with the Minister in that aim; I know that is what she wants to achieve. I know from her environmental commitment and credentials, which she has worn on her sleeve ever since she has been in this House—she has a fine, nature-friendly outfit on today—that she is completely dedicated to getting the Bill passed in the best possible way. I hope that our discussions in Committee, and our amendments, will be viewed in that light. Regardless of party affiliation or other considerations, I hope they will be looked at based on one criterion: do they or do they not make this a brilliant Bill? I hope that is how we will judge our proceedings; I will certainly try to conduct myself in that spirit.

That brings me to my concerns about what is in clause 1—and a number of other clauses throughout the legislation, as we will find as we go through the Bill. In addition to being a potentially brilliant Bill for now, this has to be a brilliant Bill for the future. The House, and this Committee in particular, has to turn it into legislation that will really last—that will commit future generations of parliamentarians and Governments to the actions it sets out. It has to be very robust in the instructions that it sends to those future generations, but we are particularly concerned that it simply is not, in a number of respects.

The Bill derives in substantial part from the Government’s 25-year nature plan. There is a clue there about how long its provisions are supposed to last. The things we consider today have to be robust and relevant for tomorrow. The Bill has to work in that way, and we have to know that it will work across Administrations. However, clause 1 demonstrates that it may not easily do so.

In the clause, and a number of others, the Secretary of State is given the option of implementing, by regulations, a particular part of the Bill. Throughout the Bill, a number of provisions are couched in terms of not “may” but “must”. For example, clause 92 states:

“The Secretary of State must publish information…The Secretary of State must publish reports…A report must relate to a period”,
and
“A report must set out”.
Those provisions are all clear about what has to happen, but the same is not true of clause 1 and a number of other clauses.

There is an even more worrying double lock—or double unlock—regarding the Bill’s way of doing things. When I look at a Bill, I always turn to the end. It is rather like looking at the last three pages of a novel to see what happens before starting to read it. I do not recommend doing that for a novel, but I do recommend it for this particular Bill.

Clause 131, the commencement clause, is clear. For Members who are less familiar with how such clauses work, the commencement clause sets out a number of dates on which clauses in the Bill should be taken as commencing—that is, become live legislation. Clause 131 states that a number of provisions in the Bill come into force on the day that it becomes an Act. A number of other provisions come into force two months after the Bill becomes an Act. Part 1 of the Bill, which contains clause 1 and is probably the most important part of the Bill, comes “into force on such day as the Secretary of State may by regulations appoint”.

There is therefore a double lock on the clause. The Secretary of State “may” decide to make it live—or not. If they decide not to make it live, it simply does not become real, and what is set out in the clause does not happen. Even if they decide in principle that it will happen, and the clause is live, its wording means that the Secretary of State can decide that what it sets out will not take place, and need not implement the regulatory process.

Hon. Members may be thinking, “He protests too much. This doesn’t happen in real life, surely. This is just how things are set out in legislation,” but I assure them that this does happen in real life: it has happened on a number of occasions. The statute books are not exactly littered with, but are substantially populated by, things in Bills that simply have not happened because of the way the legislation was constructed. I can give the example of the Energy Act 2013. I happened to sit on that Bill Committee. Part 5 is on the construction and designation of a strategy and policy statement, which would set out imperatives that would bind authorities and bodies dealing with low-carbon energy. When that Bill was passed, I really thought that the statement would happen; I considered that really important—and still do—in making sure that Ofgem would be guided by a low-carbon imperative.

The wording on that policy and strategy statement was couched in the same way as the provision in this Bill. The 2013 Act said:

“The Secretary of State may designate a statement as the strategy and policy statement for the purposes of this Part”.

The 2013 Act was stronger than this Bill. Part 5 of the Act became live two months after the Act became law. However, the Act was passed during the Conservative-led coalition of 2010 to 2015, and in a subsequent Administration, a Minister decided, because they could, that there was no need for a policy and strategy statement, and that it would not be produced. I have asked a number of questions about why that statement has not appeared. The situation does not help at all to ensure that Ofgem does what it should on its low-carbon commitments and imperatives. But the Minister in that Administration decided that they were not going to produce the statement, and that was it. I hope that this Administration will take a different view and finally introduce such a statement, which I think is essential.

9.45 am

The point of that little diversion is that we are talking about not just words on a piece of paper that need not be taken seriously. This is serious stuff that relates to the viability and credibility of the Bill when it becomes an Act of Parliament. Bear in mind that many people out there are looking to the Bill to provide exactly that credibility on the natural environment, biodiversity and many other things. They are looking to the Bill for robustness and sincerity on all the things that they hold so dear about the environment and all the things that go into it. If we pass a Bill that does not have that robustness, a number of people will rightly say, “How serious are you about this? Are you as serious you should be about what the imperatives should be, and about the targets and other things in the Bill?”

My reading of the Bill is that if the Minister decides that there is no need for targets, the Minister just does not implement this clause. I am absolutely certain that this Minister, who is the right Minister in the right place at the right time, with the right intentions, has absolutely no intention of doing anything other than making sure that the Bill proceeds as speedily as possible through its stages and into implementation. However—I know this is difficult to envisage—the Minister may not be there forever. A future Administration, or a future Minister, may look at the legislation and think, “Hm, I don’t have to do that. That’s a bit onerous and a bit difficult. Maybe we will put it to one side,” just as happened with the Energy Act 2013.

It would be a good idea to consider replacing “may” with “must” in a number of instances in the Bill. Some “mays” are perfectly good; sometimes it is the right word, because of the choice that people will have as to what kind of regulation they want to put in or whatever. However, “may” is not appropriate for this clause and for a number of others. In the Climate Change Act 2008, to which the Bill has often been compared, there is no such messing about with wording. The beginning of the Act quite straightforwardly stated:

“It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.”

That is quite clear. There is no messing about or resiling.

I do not suggest that we should put a series of duties into the Bill, but we should look seriously at bringing forward proposals to alter the Bill’s wording as it goes through Parliament. I will not seek to divide the Committee on this point, because it is something that all of us need to take away and think about. I hope the Minister takes this away, thinks about it and comes back with proposals, perhaps on Report, to alter that wording, so that we can have full confidence that the Bill will become the Act that we all want it to be. I shall draw attention to these omissions and shortcomings as the Bill progresses, but the Committee will be delighted to know that I will not make this long a speech every time.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): We’ll see!
Dr Whitehead: But I might do if no consideration at all is given to this particular point.

I hope that the Minister will be able to come at least some way towards me in reshaping the Bill so that the confidence we both want to have in this legislation can be seen by the outside world, and so that we can ensure that what we say in this Committee actually gets done—not just by this Minister, but by subsequent Administrations.

With that, I assure the Committee that that is the longest I am going to speak on this subject. I rest my case. I hope that the Minister has something positive on her piece of paper in this respect. We shall see how we go.

Rebecca Pow: It is a huge pleasure to have you as our Chairman, Sir Roger. Hopefully we are all going to have a long and fruitful bonding experience over the next few weeks.

I thank the shadow Minister for his opening remarks and for describing this legislation as a “good Bill”; we all welcome that tone. I echo his general comments about wanting to do the right thing for the environment. I believe everyone on this Committee wants to do that, but I do in particular. I also thank him for his personal comments. I must actually throw some similar comments back at him. He and I have appeared many times in the same Committees, environmental all-party parliamentary groups and all that, so I know that he has a great deal of experience in this area. In many respects, we sing from the same hymn sheet. I welcome his involvement, as he brings a great deal of experience to the table.

Let me turn to the detail of the amendment. I understand the shadow Minister’s desire for there to be a duty on the Secretary of State to set targets. However, such a duty would remove the flexibility and discretion needed by the Secretary of State in relation to target setting. The Bill creates a power to set long-term, legally-binding environmental targets, and provides for such targets to be set in relation to any aspect of the natural environment or people’s enjoyment of it. It is very wide-ranging, so flexibility is required. It is entirely appropriate to give the Secretary of State flexibility as to when and how the power ought to be exercised. That is the beauty of this power.

As I am sure the shadow Minister knows, primary legislation consistently takes this approach to the balance between powers, which are “may”, and duties, which are “must”. I welcome the fact that the shadow Minister has raised this point, because I have been quizzing my own team about those two words and exactly what they do, and it is quite clear to me that this is the right approach. When the Government are under a clear duty to set new long-term environmental targets, the circumstances, scenario and background to the use of the provision are clear.

In other scenarios, it might not be possible definitely to say that something must be done, due to factors outside our control—for example, if public consultation is still under way, and there will be a great deal of consultation as the statutory instruments are laid before Parliament.

The Secretary of State is already under a duty—that means “must”—to exercise this power to set “at least one” target in each of the Bill’s priority areas. That is in the next few lines of the Bill. They are also under a separate duty to set the PM$_{2.5}$ target. That is a legal requirement and the Government cannot get out of that. The Bill’s statutory cycle of monitoring, planning and reporting ensures that the Government will take early regular steps to achieve the long-term targets and will be held accountable through regular scrutiny by the Office for Environmental Protection.

The shadow Minister asked whether the system would be robust. I assure him that it will be—that is its purpose. The need for new targets will be reviewed every five years through the significant improvement test that we will come on to later. That is also a legal requirement, and the Secretary of State will use the review’s outcome to decide whether to set new long-term environmental targets.

The significant improvement test provisions of the Bill will form part of environmental law, with the OEP—the body that will be set up to hold the Government to account—having oversight of the Government’s implementation of the provisions, as it will over all aspects of environmental law. That is my summary of the shadow Minister’s queries.

Dr Whitehead: Does the Minister not accept that, as I pointed out in my analysis of the Energy Act 2013, if a number of obligations or “musts” in a clause are subservient to a fundamental “may”, they have no independent existence? That was exactly the case in that Act: the Minister had a number of musts to do, but they were all subject to the original may. As the original may turned out to be just a may, all the musts completely fell away. The Minister has given examples of some musts in the Bill, but unless we have a first must or duty—it might not be time-limited, so that the Minister has flexibility over when exactly to do it—those other things are not of any great significance. It is the first may or must that is key.

Rebecca Pow: We are muddling a lot of “musts” and “may” here—it is a good job that Theresa May is not still Prime Minister.

Dr Whitehead: It could be Theresa Must.

Rebecca Pow: It is clear that there is flexibility in the power to set long-term targets by regulations, but clause 1(2) says that the Secretary of State “must exercise the power”. That brings in the duty, which is a legal requirement to set the targets. If there is a “must” provision—and there is: to set targets in those four key areas—it must be exercised. It is quite clear.

Dr Whitehead: Mr Gale, I think you can gather that I am not terribly convinced. I do not doubt the Minister’s sincerity for a minute. Indeed, I wonder whether, had the Minister been in post during the Bill’s construction—I think this part was originally constructed in 2018—she would have gone along with that particular wording. I appreciate that she has a Bill in front of her with the wording as it is, and she has advice that the wording is as it is because that is how it should be.

Rebecca Pow: I want to point out one other thing. The Office for Environmental Protection will be able to enforce against the Government if they do not set the targets. That indicates that the process and structure we are setting up are strong.
Dr Whitehead: The Office for Environmental Protection can intervene against the Minister, but the Minister will see later on in the Bill that not even the office has to be set up under these circumstances. The word “may” is so pervasive in the Bill that a number of the things that can act to do what the Minister wants to do are contingent. That should give the Minister some concern, as well as me.

The Minister makes the strong point that once the mechanism is up and running, arguably it will be quite robust. We would like the mechanism to be a little more robust. However, if the whole thing depends on the idea that a Minister may or may not decide that it will be implemented, the rest of it does not necessarily follow strongly. I urge the Minister to please go away and think about this, despite what she said this morning, and see whether a formulation—not necessarily exactly the formulation in the amendment—can be arrived at that will give us and the outside world a much better series of assurances about the Bill’s robustness overall. I may speak on this matter again later in the Bill, but I have done my best this morning and we will see where we go from there.

The Chair: The hon. Gentleman did not make the request, but I think he indicated that he wished to withdraw the amendment.

Dr Whitehead: For the time being, yes. Amendment, by leave, withdrawn.

Alex Sobel (Leeds North West) (Lab/Co-op): I beg to move amendment 103, in clause 1, page 1, line 10, at end insert—

“(1A) The Secretary of State must exercise the power in subsection (1) with the aim of establishing a coherent framework of targets he or she considers would, if met:

(a) make a significant contribution towards the environmental objectives, and

(b) ensure continuous improvement of the environment as a whole.

(1B) Where the Secretary of State considers that a target is necessary but the means of expressing the target is not yet sufficiently developed, he or she must explain the steps being taken to develop an appropriate target.”

The amendment aims to head the target setting processes into the environmental objectives.

The Chair: With this it will be convenient to discuss the following:

New clause 1—The environmental objective—

“(1) The environmental objective is to achieve and maintain a healthy natural environment.

(2) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures arising from this Act must be enforced, allowed and followed for the purpose of contributing to achievement of the environmental objective.”

This new clause is intended to aid coherence in the Bill by tying together separate parts under a unifying aim. It strengthens links between the target setting framework and the delivery mechanisms to focus delivery on targets.

New clause 6—The environmental purpose—

“(1) The purpose of this Part is to provide a framework to enable the following environmental objectives to be achieved and maintained—

(a) a healthy, resilient, and biodiverse natural environment;

(b) an environment that supports human health and wellbeing for everyone; and

(c) sustainable use of resources.”

The new clause is intended to give clear and coherent direction for applying targets and the other governance mechanisms contained in the first Part of the Environment Bill.

Alex Sobel: I am afraid that my level of expertise does not match that of the shadow Minister, but I will do my best with the time, space and knowledge that I have to do justice to the three amendments.

Amendment 103 is listed in the names of the hon. Member for Tiverton and Honiton (Neil Parish), who is Chair of the Select Committee for Environment, Food and Rural Affairs; the Chair of the Environmental Audit Committee; and myself, as vice-chair of the EAC. It is therefore clear that these are not partisan amendments. We took it upon ourselves to table them as a result of the prelegislative scrutiny we undertook. The scrutiny applied by this Committee last week underlines the need for the amendment.

I will speak to amendment 103 and new clauses 1 and 6, and will then refer to some of the things that were said my our expert witnesses last week, which underline the need for the amendments to be included in the Bill. All three are complementary, although they all provide something slightly different to strengthen the Bill. I say to the Minister that these proposals will strengthen the Bill and give it clarity; I do not intend to wreck the Bill or change its intent.

Amendment 103 would give the Secretary of State the power to look at environmental objectives holistically, and would ensure that the overarching goal of the Bill and of the Department is the continuous improvement of the whole environment. It would also make the targets richer, as the Secretary of State must explain why targets are being set at that stage and the necessity for them.

The amendment links target setting with environmental objectives. Evidence from last week’s expert witness sessions explains why that is important and why the Bill may not yet be strong enough to ensure it. I am not saying that the Minister or Secretary of State would not do such things, but we have to legislate for future Administrations that may not be as committed as the current one.

Last week, we took evidence from Ali Plummer of the Royal Society for the Protection of Birds. My hon. Friend the Member for Erith and Thamesmead asked her:

“Do you think the clauses give a sufficiently clear direction of travel on the sort of targets that will be set?”

The amendment relates specifically to that matter. Ali Plummer responded:

“Not currently, the way the Bill is written. The provisions to set targets in priority areas are welcome. We are looking for slightly more clarity and reassurance in two areas: first, on the scope of targets that will be set, to ensure there are enough targets set in the priority areas, and that they will cover that whole priority area, and not just a small proportion of it; and secondly, on the targets being sufficiently ambitious to drive the transformation that we need in order to tackle some big environmental issues.”

The amendment speaks directly to that evidence—for me, not strongly enough, though it takes us a long way towards the goals that Ali Plummer set out.

Ali Plummer also said that “on, for example, the priority area of biodiversity... I think we are looking for more confidence that the Government’s intent will be carried, through the Bill, by successive Governments.”
We will come back to that. The amendment is not about the aim of the present Government, but about successive Governments and setting a long-term framework. She went on to say:

“I am not sure that that sense of direction is there. While there is a significant environmental improvement test, I do not think that quite gives us the confidence that the Bill will really drive the transformation that we need across Government if we are to really tackle the issues.”—[Official Report, Environment Public Bill Committee, 10 March 2020; c. 75, Q118.]

“The point about transformation being needed across Government, not just in the Minister’s Department, brings me on to a question that I asked of Ruth Chambers of Greener UK, regarding the carve-outs and exclusions in the Bill. She responded that they “absolve much of Government from applying the principles in the way that they should be applied. The most simple solution would be to remove or diminish those carve-outs. We do not think that a very strong or justified case has been made for the carve-outs, certainly for the Ministry of Defence or the armed forces; in many ways, it is the gold standard Department, in terms of encountering environmental principles in its work. There seems to be no strong case for excluding it, so remove the exclusions.”—[Official Report, Environment Public Bill Committee, 10 March 2020; c. 76, Q120.]

The amendment provides a framework to do that, although not wholly.

I will move on to new clause 1, and return later to some of the expert witness statements. I was honoured to table the new clause with my hon. Friend the Member for Southampton, Test; hopefully he will not be dissatisfied with the way I speak to it. The intention of the new clause is to enshrine an environmental objective in the Bill. The new clause complements amendment 103, because it is about achieving and maintaining a healthy natural environment. That goes very well with the point that we need continuous improvement of the environment.

The new clause also says:

“Any rights, powers, liabilities, obligations, restrictions, remedies and procedures arising from this Act must be enforced, allowed and followed for the purpose of contributing to achievement of the environmental objective.”

It would give all those powers—or duties, shall we say, as “powers” are one of the things listed—to the Secretary of State and would give the Bill an overall coherence that it lacks. It would tie things together and give confidence that there is a single unitary aim, and would start the process of tying target-setting to the aim.

That was underlined by the excellent evidence that we had from Dr Richard Benwell of Wildlife and—

Kerry McCarthy (Bristol East) (Lab): Countryside Link.

Alex Sobel: I thank my hon. Friend—Wildlife and Countryside Link. We also heard from George Monbiot in that sitting. The hon. Member for Truro and Falmouth asked last week—I am sure that it relates to her constituency—how far back we would need to go in terms of preserving Dartmoor, and they gave a good answer. Parts of their answers are useful with reference to the new clause. George Monbiot said:

“We need flexibility, as well as the much broader overarching target of enhancing biodiversity and enhancing abundance at the same time. We could add to that a target to enhance the breadth and depth of food chains: the trophic functioning of ecosystems, through trophic rewilding or strengthening trophic links”—[Official Report, Environment Public Bill Committee, 12 March 2020; c. 121, Q163.]

That, again, is a broad aim, which is included in the new clause.

Dr Benwell said in answering the same question:

“In the Bill at the moment, that legal duty could be fulfilled by setting four very parochial targets for air, water, waste and wildlife. I do not think that that is the intention, but when it comes down to it, the test is whether the target would achieve significant environmental improvement in biodiversity.”

I do not think that the Minister or the Secretary of State would set very parochial targets in those four areas, but perhaps a future Minister or Secretary of State would.

That is why I think that not only would a much broader environmental objective, as in the new clause, be welcome, it is necessary.

Dr Benwell continued:

“You could imagine a single target that deals with one rare species in one corner of the country. That could legitimately be argued to be a significant environmental improvement for biodiversity.”

For instance, our entire biodiversity target could relate to red squirrels, which now mainly reside in Cumbria. That would be our whole objective. If a future Secretary of State were obsessed with red squirrels, and did not care for any other aspect of biodiversity, that might happen. I know that the current Secretary of State does not have those views, but while I have been in Parliament, and sat as a member of the Environmental Audit Committee, there have been four Environment Secretaries, so they come and go fairly often, although I hope the present one stays longer in his role.

Dr Benwell said:

“You could set an overarching objective that says what sort of end state you want to have—a thriving environment that is healthy for wildlife and people”.

That is what new clause 1 would do. My hon. Friend the Member for Southampton, Test does not seem to be shaking his head, so I assume I am getting that right. Not much later in the sitting, the hon. Member for Dudley North asked whether the Bill sufficiently empowers all Departments to protect and improve the environment. Dr Benwell said:


New clause 1 responds to Dr Benwell’s response, and goes from “not quite yet” to now. That is why it is a necessary improvement to the Bill.

Many of the amendments and new clauses that we shall talk about later and during the passage of the Bill will bring us back to new clause 1, which is an anchoring point from which to improve the Bill. Even if the Minister does not accept it today, I hope that through in Committee and on Report she will consider taking a much broader environmental objective as part of the Bill, to help us improve it.

10.15 am

Finally, I will move to new clause 6, which has been tabled in my name and that of the hon. Member for Tiverton and Honiton. I am sure that in quieter times it would have attracted many more names, but since it was tabled, one or two other things have emerged that have taken up the attention of hon. Members across the House.
This clause is complementary to new clause 1 and overlaps with it. Again, it applies targets and mechanisms to the overarching aim of the Bill, and provides a bit more clarity about them. It states that a framework should be established “to enable the following environmental objectives… (a) a healthy, resilient, and biodiverse natural environment; (b) an environment that supports human health and wellbeing for everyone; and (c) sustainable use of resources.”

I probably covered the biodiversity point when I was speaking about new clause 1, but this clause takes care of that point, which I will call the red squirrel issue.

New clause 6 also talks about human health and wellbeing. We heard a lot of evidence, for instance, about the issue of air quality. Air quality does not necessarily relate to biodiversity or climate objectives, but it is exceedingly important to human health and wellbeing. We know that places such as London and my constituency in Leeds have some of the worst air quality in Europe, and many deaths result from that. I do not think the Bill is sufficiently strong to be mindful of that fact, or empowered to take the necessary action.

I do not want to have to remind the Minister that under the EU regulations we are leaving, the Government had to be taken to court three times by one of the witnesses from ClientEarth in order to strengthen their actions. I do not think that the clean air zones implemented in my constituency—although they are nearly nine months late—would have been introduced without that action. This Bill takes over from those EU regulations, and to set it on the right foot we need these targets and mechanisms to be front and centre, otherwise we may find ourselves unable to take the actions that have been taken in the past to safeguard and improve our air quality. I will now draw to a conclusion, and thank you, Sir Roger.

Dr Whitehead: My hon. Friend has made a powerful case for these amendments to be included in the Bill, and has said most of the things that I wanted to say about them. What I will add for the clarification of the Committee is that, as hon. Members can see, new clause 1 is very similar to new clause 6, which has the support of the Chair of the Select Committee on Environment, Food and Rural Affairs. The purpose of these new clauses, particularly new clause 1, is—as the title of new clause 6 suggests—to add an overall clarification of the environmental purpose of the Bill, and to draw together a Bill that, for all its merits, has in many ways turned up via a process of iteration.

The first two sections of the Bill originally surfaced at the end of 2018, and it was then amended to some considerable extent and appeared as part of a larger Bill in 2019. That Bill did not get through all of its stages before the election was called, although it passed on Second Reading. Significantly, between the original Bill and the 2019 Bill appearing, no less than six parts had been added, including the Office for Environmental Protection part. As a result, the Bill does not have a coherent overarching principle that applies to all its parts. Historically, that has been done in some instances by what is called a preamble clause, which is pretty obscure and has fallen into disuse when writing Bills in this country. I would have preferred a preamble clause to do the job, but an environmental purpose clause does the job just as well. Indeed, there are numerous examples in different pieces of legislation. In health and safety legislation, for example, there is a purpose clause to pull everything together.

The clauses differ only very slightly in their definitions, so I would be happy with any of them. New clause 6 brings together the purposes of the Bill within a stated framework that enables “a healthy, resilient, and biodiverse natural environment” and “an environment that supports human health and wellbeing for everyone; and sustainable use of resources.”

It defines the overall purpose of the Bill, which is important. It keeps the different elements of the different parts of the Bill’s metaphorical noses to the grindstone. It makes sure that all the things we are thinking of doing in the Bill have an overall purpose behind them: a healthy, natural environment. The Minister might say that that is a bit of a free hit for environmental lawyers who might come in on the environmental purpose and say, “You are not putting forward a healthy, resilient and biodiverse natural environment with what you are doing.” I might say that that is precisely the purpose of the amendment, which is to enable the overall objective of the Bill to be judged against the actions of parts of the Bill as they fall for individual action in any clauses that we might pass.

As my hon. Friend the Member for Leeds North West has said, that is the idea of these clauses. I think they would add considerably to the robustness of the Bill—a theme we began to talk about seriously this morning—because of the way in which they would gather everything together under an umbrella of purpose. That point is arguable. Some might say there is sufficient purpose in the Bill, and there is indeed plenty of purpose in the Bill. It is just a question of whether it is fully gathered together in the relationship between the parts of the Bill on biodiversity, water, air and waste, and gathered together into the fundamental purposes of the first part of the Bill and put together as an overall whole.

I hope the Minister will think about what I have said carefully. As you have reminded us, Mr Gale, the clauses would not come up for a vote until the end of our proceedings, so they will not be voted on today. However, we feel strongly about this, and I think we would consider dividing the Committee when they come up, if there is no reasonable response to the intent put forward in these new clauses.

The Chair: Thank you, Dr Whitehead. We will make a note, and whoever is in the Chair at the time that the new clauses are reached will take cognisance of what you have just said.

Rebecca Pow: I thank the hon. Member for Leeds North West and the shadow Minister for their input, and I acknowledge the input of the Chairs of the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee. I have a great deal of respect for both Committees, having been on both of them myself, as have some hon. Members here.

I thank hon. Members for the interest they have shown in part 1 of the Bill, which genuinely and openly talks about the new framework of environmental governance. I welcome their input and the fact that they want to look at the intention to ensure that the targets,
the environmental improvement plans, the environmental principles and the Office for Environmental Protection work together to protect our natural environment.

As this was one of the specific points raised by the hon. Member for Leeds North West, I want to touch at the outset on driving significant environmental improvement and to reassure him that through the Bill the Government will set at least one new long-term target in each of the four priority areas of water, air quality, waste and resources, and biodiversity by 31 October 2022. Those targets will be set following a great deal of robust evidence-gathering, consultation and engagement with experts, advisers and the public, and they will have to be approved by Parliament through the affirmative process when the statutory instruments are set. People will have plenty of opportunity to engage.

I also want to reassure the hon. Gentleman, since he in particular raised this matter, about other targets. I think the witness from the RSPB raised that in our session last week. I want to offer reassurance that the target-setting process is an ongoing process. It is not a one-off thing, where we set one target and that is the end of that. That is why we will also need to consider what other targets might be needed to ensure that we can significantly improve the natural environment in England—in the area of biodiversity, for example, which he mentioned, because it is complicated and involves all sorts of areas linking into each other.

We will conduct that review at the same time as the first statutory review of the environmental improvement plan, and report to Parliament on its outcome by 31 January 2023. The first environmental improvement plan is the first plan of this Bill; it will help us to deliver what is in the 25-year improvement plan. I hope that reassures the hon. Gentleman that target setting is not a one-off thing, but will be a constant, flowing landscape.

I also want to reassure colleagues that a huge amount of thought has gone into the setting of this framework, so that it is a coherent framework for environmental protection and improvement. I would say to the shadow Minister that it does have an overarching purpose: it has the environmental principles. Those principles will work with all other areas of the Bill to improve the natural environment and environmental protection. It is a huge and wide commitment. The policy statement will explain how those principles will be applied to contribute to that environmental protection and to sustainable development. In my view, we have those objectives right there at the top of the Bill.

10.30 am

I want to go into a bit more detail and to give a few more reassurances. The measures in the Bill will all form part of environmental law once it has been enacted. That means that the Office for Environmental Protection will have oversight of the Government’s implementation of their duties as it does over all other aspects of environmental law.

We have designed each governance mechanism in part 1 of the Bill with guiding objectives. I have referred to those already. They will ensure that targets and environmental improvement plans, the environmental objectives and the Office for Environmental Protection work in harmony to protect and enhance our natural environment. A raft of measures will all work together to bring about the overall environmental improvement that the shadow Minister and I agree is of the utmost importance. That is what we are trying to achieve through the Bill. Both targets and environmental improvement plans have the objective of delivering significant improvement in the natural environment. That is referred to in clauses 6 and 7.

I want to touch on what significant improvement is, because that was touched on by the hon. Member for Leeds North West. It will be for the Government, in carrying out all the reviews and procedures that happen, to determine what “significantly” means. There is no single, overarching metric for the environment—I am sure that the shadow Minister, with his knowledge of science and the environment, will completely understand this—so creating an objective test here is impossible. However, we take “significantly” to mean that only small, marginal or fractional improvement of the whole environment, or dramatic improvement in just a few narrow areas of the natural environment, would not be acceptable. We could not fudge it and get away with doing a few small things or one or two dramatic things and say, “That’s it.” That just would not work.

The Office for Environmental Protection may provide its own view when it monitors the implementation of environmental law and monitors progress in improving the natural environment in accordance with the Government’s environmental improvement plans and targets. If it disagrees with the Government’s interpretation, it can publish a report, to which the Government are required to respond.

Both the OEP report and the Government response must be laid before Parliament, so every hon. Member here will be able to see them. The OEP is also required to produce its own strategy setting out how it intends to perform its functions and would be expected, as part of that, to set out its approach to fulfilling its responsibility to monitor and report on environmental improvement plans and targets.

I hope that is clear. The Government must periodically review their long-term targets, alongside existing statutory targets—of course, we still have quite a lot of other environmental law and targets, which will carry on—to consider whether all those things collectively, both the existing legislation and the new targets, would significantly improve the natural environment in England. We refer to that as the significant improvement test, and I have just set out a lot about what “significantly” means.

If significant improvement did not occur, the Government would have to set out how they intend to use their target-setting powers to rectify that. That would most likely involve plans to modify existing targets and perhaps to set more ambitious new targets. It will be a constantly moving feast of analysing targets and checking whether they are the right ones. Should they be tweaked a bit? Should we be improving them? The significant improvement test is intended to capture both the breadth and the amount of improvement, with the aim of ensuring that England’s natural environment as a whole improves significantly.

Clauses 7 to 14 create an ongoing requirement for the Government to have a “plan for significantly improving the natural environment”.

[Rebecca Pow]
During environmental improvement plan reviews, the Government must consider whether further policies are needed to achieve targets, as I mentioned.

With regard to environmental principles, clause 16(4) will ensure that the policy statement on environmental principles contributes to the improvement of environmental protection and sustainable development. I touched on that right at the beginning. There will be the policy statement under it, explaining how it will be put into operation.

The hon. Member for Leeds North West mentioned carve-outs. I want it to be clear that the environmental principles policy statement will apply across Government—across the whole policy function of Government. When a Minister of another Department brings forward primary legislation, they have to consider the environmental principles. That is a groundbreaking introduction by the Government. There will be exceptions in a couple of areas, where it is self-explanatory that the principles could not be used appropriately. That defence is one of those, but I am sure the hon. Member will understand that.

**Dr Whitehead:** I wonder if the Minister could help me. Let us take the example of a habitat in extremely poor condition and facing further decline. That habitat could be significantly improved simply by preventing further decline and intervening to bring the habitat up to a poor but improving condition. That would be a significant improvement, but it would not constitute a high-quality or healthy habitat. Does the Minister accept that that is a problem with the definition of significant improvement? Or does she think that other elements in the Bill would define significant improvement to make that definition of a poor environment improvement—\[Interruption.\] I see the Minister has been provided with inspiration. Does she think that other parts of the Bill would make that argument superfluous—namely, that significant improvement would equate to healthy, with the other elements of the Bill being in place? I am not sure it does.

**Rebecca Pow:** The hon. Gentleman raises a good point. Before I read the inspiration that has been passed to me, let me say that the whole point of the significant improvement test, which is a legal requirement—we have other requirements to keep on checking, testing and monitoring targets through the environment improvement plan, which is also checked every five years—is that it is a holistic approach. The shadow Minister is picking one thing, but with the range of targets that will be set, that one thing will be constantly reported on and monitored. Later in the Bill, we will discuss the nature recovery networks and strategy. The point he raises will be addressed through those other measures in the Bill that, on the whole, will be the levers to raise all our biodiversity and ensure nature improvement.

We have a constant monitoring system in place where we raise up the holistic approach. Every five years the Government have to assess whether meeting the long-term targets set under the Bill’s framework, alongside the other statutory targets, would significantly improve the natural environment. That is all open and transparent; the Government have to respond to Parliament on their conclusions and, if they consider that the test is not met, set out how they plan to close the gap, setting other powers. There are many powers in the Bill for target setting, but also for reporting back. I hope that will give the hon. Gentleman some assurances that the things I believe he wants in the Bill will get into it through the levers provided in it.

Clause 22 sets a principal objective for the Office for Environmental Protection. It will ensure that the OEP contributes to environmental protection and the improvement of the natural environment in exercising its functions. Not only do we have measures for Government, we also have an overarching body checking and monitoring everything and saying what it thinks should or should not happen—whether there should be new targets or whether the targets are being addressed. All those measures are closely aligned; the idea is that they will work together to deliver the environmental protection mentioned in the amendments, concerning improvement and protection of the natural environment as well as the sustainable use of resources.

The shadow Minister said that the Bill had come and gone a few times and has grown a bit; I say it has grown better and stronger, and that we need lots of those measures. The framework now is coherent. I have done a flow-chart of how this all works together, because it is quite complicated. However, if the shadow Minister looks at all the measures together, they knit in with each other to give this holistic approach to what will happen for the environment and how we will care for it.

The hon. Member for Leeds North West and the shadow Minister mentioned this “healthy environment” wording. Clearly, there are many different views on what constitutes a healthy environment, and the Government could not assess what they needed to do to satisfy that new legal obligation, and nor could anyone else. The Government cannot support an amendment that creates such an obligation. It would create uncertainty to call just for a “healthy environment”, because everyone’s idea of that is different. The Government cannot support such a commitment, because the legal obligations are too uncertain. However, we support the overarching architecture of everything working together to create the holistic environment, and an approach where all the targets work together and we are on a trajectory towards a much better environment. The shadow Minister and I are in complete agreement with each other that that is the direction that we should be taking.

To sum up, the Government do not believe that amendment 103 or new clauses 1 and 6 are necessary. I ask hon. Members kindly to withdraw them.

**Alex Sobel:** I will not press the amendment to a vote. I beg to ask leave to withdraw the amendment.

**Dr Whitehead:** On a point of order, Mr Gale. I want to be clear that amendment 103 and new clause 6 are to be withdrawn, with no effect on new clause 1.

**The Chair:** That is absolutely the case. Let me restate, because none of us has a monopoly on wisdom: formally, only the lead amendment is moved. If any other amendments or new clauses are to be moved, we have to have an indication of that fact at the right time, when they will be moved. Only the lead amendment can be withdrawn, because only the lead amendment has been moved, at this stage. Everyone happy?

*Amendment, by leave, withdrawn.*
Dr Whitehead: I beg to move amendment 1, in clause 1, page 1, line 11, leave out subsection (2) and insert—
“(2) The Secretary of State must exercise the power in subsection (1) so as to set the appropriate long-term targets within each priority area for the purpose of achieving and maintaining a healthy environment on land and at sea”.

This amendment seeks to provide legal clarification to show that the Secretary of State’s purpose when setting targets is to maintain a healthy environment. It also seeks to explicitly include the marine environment links to which are currently sparse in this Bill.

The Chair: With this it will be convenient to discuss amendment 85, in clause 6, page 4, line 21, at the end insert—
“on land, and at sea.”

This amendment makes explicit that the review of environmental targets should consider both marine and terrestrial environments.

Dr Whitehead: We have not yet got beyond the first page of the Bill because, I suggest, it is a particularly important page for the rest of the Bill. These two amendments seek to put clearly on the face of the Bill what we are talking about in terms of the environment. They add “on land” and “at sea”, first to the targets in line 11 onwards. They do so because we think—as we have made clear by tabling an amendment to clause 6—that the Bill ought to be completely clear that we are talking about the threats not just to the environment but to the marine environment as well. The two are indissolubly linked.

Later, we will talk about beaches, which one might say are neither terrestrial nor marine, but involve a particular series of concerns about both of them. The Bill needs to be clear that that all comes within an definition of what we are talking about.

10.45 am

We all agree that the marine environment is important if we are to maintain clean beaches and water we can swim in, and to maintain fish stocks. They are all considerations that we should not forget about and that have an impact on the terrestrial environment. We must make it clear, without a shadow of a doubt, that that is what we are talking about. In a previous meeting, the Minister appeared to be amenable to explicitly including the marine environment. She may have other ways of expressing that, but there is a commonality of purpose about the importance of ensuring that the marine environment is clearly referred to in the Bill.

The amendments have different merits. Amendment 85 does not force any target changes, but focuses on the Government’s review of environmental targets. It would introduce a minimal change, so that when the Government conduct the review that they propose to “consider whether the significant improvement test is met,” they should consider the sea as well as the land. The amendments have slightly different purposes, but the same overall aim, which is to ensure—by waving a blue flag or whatever other means—that the environment we are talking about considers the sea as well as the land, and to underline that the two are indissolubly linked in whatever general targets we may have for a better environment. One cannot work without the other.

In the context of those considerations, I hope the Minister will be well disposed towards assuring us, with chapter and verse quoted, that everything is okay, and that we have everything in the Bill that we need to ensure that the marine environment is properly considered and brought into play. Alternatively, she may say, “Hmm, hang on a minute. They might have a point.” She might then think about ways in which we can ensure that those environmental concerns are properly reflected in the Bill.

Rebecca Pow: I thank the shadow Minister for amendments 1 and 85, which would include specific reference to “on land, and at sea” in clauses 1 and 6. The Bill requires that at least one long-term target is set in each of the four priority areas, as has been explained. That provides clarity and certainty about the areas on which policy setting will focus between now and October 2022.

I reassure the hon. Gentleman that the power to set targets is not limited to those priority areas alone and can be used in respect of any matter relating to the natural environment. I give him absolute reassurances that the definition of the natural environment includes consideration of the marine environment. Indeed, I welcome this being raised. The fact that we are discussing it and getting that in writing will clarify the position. He is absolutely right to raise the issue. The marine environment will be included, and it is explicitly highlighted on page 57 of the explanatory notes. The shadow Minister is not alone in calling for that; the Natural Capital Committee also wanted clarification, and we gave it reassurances.

The Secretary of State will consider expected environmental improvement across all aspects—terrestrial and marine—of England’s natural environment when conducting the significant improvement test, which is a legal requirement. That involves assessing whether the natural environment as a whole, including the marine environment, will have improved significantly. Such an approach is aligned with comments made at the evidence session. The Committee may remember that Dr Richard Benwell, the chief executive of Wildlife and Countryside Link, stated that “the environment has to operate as a system.”—[Official Report, Environment Public Bill Committee, 12 March 2020, c. 116, Q157.]

Of course, the system has to include marine and land—all aspects. Furthermore, the Office for Environmental Protection has a key role, and if it believes that additional targets should be set, it can recommend that in its annual report on assessing the Government’s progress. The OEP could therefore comment on the marine environment specifically, and the Government must publish and lay before Parliament a response to the OEP’s report.

The process ensures that Parliament, supported by the OEP, can hold the Government to account on the sufficiency of measures to significantly improve the natural environment. I hope that provides clarification and reassurance about the word “marine” and references to “on land” and “on sea.” I therefore ask the hon. Member to withdraw the amendment.

Dr Whitehead: As the Minister said, the fact that we are discussing these matters, and that our words are going on the record, is useful in buttressing what is in the legislation. I am grateful to her for her clarification, which is also on the record. On that basis, I happily beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Kerry McCarthy: I beg to move amendment 76, in clause 1, page 1, line 17, at end insert—
“(e) global footprint.”

The Chair: With this it will be convenient to discuss the following:
Amendment 77, in clause 1, page 2, line 16, at end insert—
“(10) Without prejudice to subsection (6), the global footprint target is required to be met with regard to ecosystem conversion and degradation, and to deforestation and forest degradation, by 31 December 2020.”

Amendment 78, in clause 44, page 27, line 24, at end insert—
“‘global footprint’ means—
(a) direct and indirect environmental harm, caused by, and
(b) human rights violations arising in connection with the production, transportation or other handling of goods which are imported, manufactured, processed, or sold (whether for the production of other goods or otherwise), including but not limited to direct and indirect harm associated with—.”

Kerry McCarthy: Amendments 76 to 78 are intrinsically linked with new clause 5, which we will come to, which is about the enforcement mechanism and due diligence in supply chains that would allow us to ensure that actions take place. I will try to separate the amendments from the new clause and return to this issue in a bit more detail when we get to the new clause.

Amendment 76 would add “global footprint” to the four priority areas in which a long-term target must be set. As the Minister is aware, the target is only in respect of at least one matter within each priority area. Some people may think, at first glance, our ability to know what the global picture will look like over a long period is limited, particularly given the uncertainties we face. However, as the Minister will know, this measure is about trying to drill down and find an action we can take in each priority area.

Amendment 77 is not about long-term targets but about a very short-term target we could address on ecosystem conversion, degradation, deforestation and forest degradation by the end of the year. I will come in a moment to why the date given is important. Amendment 78 would define “global footprint”, and we will come later to new clause 5, on due diligence in the supply chain, which is really important.

The amendments in the group address the climate and ecological emergencies that we all recognise. The 25-year environment plan commits to leaving a lighter footprint on the global environment, but that is not supported in any way by legislation. The overseas impact of our consumption, production and, I would add, financial investment—banks lending to the companies that are doing these things—is partly about the embedded carbon and water in the products that we produce and consume, but it is also about the depletion of natural resources, including deforestation, and it often comes with a human cost, too. We hear about indigenous people being displaced from their land and we hear terrible cases of environmental defenders being murdered or disappeared, particularly in Latin America. We hear about modern slavery in the food supply chain, or exploitation of workers.

I took part in a debate last year or the year before—I lose track of time in this place—linking up World Food Day and modern slavery. The cheap food that we consume comes at a cost. Sometimes, that is an environmental cost. Often, it is at a cost to the people who work within the food system.

If we need an economic reason to pursue this agenda, as opposed to just caring about the environment and climate change, the World Economic Forum “Global Risks Report 2020” ranks environmental risk as the greatest systemic threat to our global economy, although I suspect that the report may have been published before coronavirus hit us. It says that it “will cost the world at least £368 billion a year, which adds up to almost £8 trillion by 2050, and the UK will suffer some of the biggest financial losses because of our trading patterns, consumption and so on.”

As we all know, the extraction and processing of natural resources globally has accelerated over the past two decades. It accounts for more than 90% of our biodiversity loss and water stress and around a half of our climate impacts. That is having a particular impact on the world’s forest.

From other debates, we know about the importance of our land and our oceans in terms of carbon mitigation—acting as natural carbon sinks. Land and oceans could offer as much as one third of carbon mitigation needed globally by 2030, to contain global warming at 1.5°. We have had that debate in the UK, about tree planting and peatlands and so on, but obviously, the huge forests of the world, such as the Amazon, are incredibly important. However, the world’s intact tropical forests are now absorbing a third less carbon than they did in the 1990s, owing to the impact of higher temperatures, droughts and deforestation. In the 1990s, the carbon uptake from those forests used to be equivalent to about 17% of carbon dioxide emissions from human activities. That figure has now sunk to around 6% of global emissions in the last decade. If dramatic action is not taken now to halt deforestation, tropical forests may even become a source of additional carbon into the world’s atmosphere by the 2060s.

Much of this global deforestation is the result of agricultural production. Some 77% of agricultural land is currently used for livestock, through pasture grazing and the production of animal feed, such as soya. Soya imports represent almost half of Europe’s deforestation footprint, and around 90% of that is used for animal feed. Many of the products that we consume in the European market, particularly embedded soya in meat and dairy, as well as palm oil, cocoa, pulp and paper, are directly or indirectly connected through the supply chain with deforestation and human rights abuses in some of the most precious and biodiverse ecosystems across the world, including the Amazon and Indonesian forests. For example, 95% of the chickens slaughtered in the UK each year are intensively farmed—a model of production that relies on industrial animal feed containing soya.

The solution is to stop deforestation and to give significant areas back to nature. The 2015 United Nations New York declaration on forests committed to restoring an area of forests and croplands larger than the size of India by 2030. We need three significant interventions to meet that goal.
The first is significantly to reduce global meat and dairy consumption and to give large areas of existing agricultural land back to nature. Another is to end the use of crop-based biofuels, to prevent further land conversion away from high-quality natural ecosystems. We also need to clean up global supply chains, to limit deforestation, which new clause 5 particularly addresses. This is one way that the UK can show leadership as we approach COP26. It would also show leadership towards one of the draft targets for the Convention on Biological Diversity at Kunming in China later this year, if that goes ahead.

11 am

Amendment 77 is a short-term, binding target that we want in the Bill. At the moment, because of the way the Bill is drafted, interim targets will not be set until the beginning of January 2023. Amendment 77 would insert a zero-deforestation supply chain target for December 2020 for all commodities and goods used or consumed in the UK. The Consumer Goods Forum committed to eliminate all deforestation from supply chains of key commodities by 2020. Of course, we are now in 2020, and those voluntary commitments have failed. Greenpeace analysis suggests that some 50 million hectares of forest—an area the size of Spain—are likely to have been destroyed for production since those original commitments were made. I mentioned the link between deforestation and our consumption patterns.

Some might say that a legal deforestation target for 2020 is not deliverable, but some examples show just what can be achieved with the will to do so. Greenpeace exposed the link between Amazon destruction and the production of agri-commodities such as soy in 2006, which prompted global traders and brands, including Cargill and McDonald’s, to set up an Amazon soy moratorium, which the Brazilian Government later supported. Unfortunately, things have changed in Brazil, with a move back towards bad practices. However, in 2014, after eight years of the moratorium, almost no Amazon forest was cleared for soy.

The Government signed up to support the delivery of industry commitments to zero deforestation by 2020, both through their international commitments in the Amsterdam declaration and the New York declaration on forests, as well as via the 25-year plan. Amendment 77 would simply ensure that those commitments have legal force and would show bold leadership in supporting nature-based solutions, particularly as we approach the year of COP.

Finally, I have had a letter from the chair of the Global Resource Initiative taskforce, which is due to go ahead. The letter does not say whether I can say what is in it, so I am slightly wary of revealing of what I think will be the recommendations. I will return to that, because by the time we get to new clause 5, the report will have hopefully been published. I do not want to get Sir Ian Cheshire into trouble. However, the report sets out the case for a more strategic approach to tackling deforestation, through a package of 14 interconnected actions, and makes a recommendation for a legally binding target.

The end of the letter says:

“The science is unequivocal—protecting and restoring forests will be critical if we are to avert a climate catastrophe. The business case is also beyond doubt—UK businesses have much to benefit from establishing themselves as leaders in deforestation-free supply chains and much to lose from being left behind.

The Environment Bill provides an opportunity to accelerate this change, to provide a level playing field and to demonstrate UK leadership.”

Dr Whitehead: I apologise, Sir Roger, for having inadvertently deknighed you earlier. I do not wish to continue with that practice any further. It is a new world, but it is quite useful, I think.

My hon. Friend has made a powerful case for the amendments, which we strongly think should be supported. It would be an omission if the Bill did not recognise what the international footprint of our actions is all about and how intrinsically linked that is, in a world where sugar snap peas are grown in Kenya—[Interruption.] I am merely saying that they are grown there, Minister—our choices are our own in those respects. Things are flown around the world at a moment’s notice and flowers are put in cargo plane holds. There are the effects of our attempts at reforestation, but we then observe deforestation in substantial parts of the world as a result, quite probably, of them taking part in the processes by which we get soya milk on our tables in the UK. We might deplore such practices in principle, but actually, we substantially support them as a result of our preferences for particular things in this country. That causes those international events to occur, which we then deplore further.

The idea that we are intrinsically linked through our global footprint, in terms of what we do in this country as far as the environment is concerned, seems very important in the Bill’s successful passage through the House. Although amendment 77 makes very specific points, the amendments are more than slightly contingent on new clause 5, which we will debate later. I would like to hear how the Minister thinks that in the absence of a something that includes our international environmental footprint, the Bill can do justice to what should be intrinsic elements of concern when we talk about our domestic environment. Not only did my hon. Friend make a powerful case, but we are completely convinced that this needs rectifying in the Bill, and I hope that we can do that by not just passing the amendments, but taking serious cognisance of new clause 5 when we discuss it later on.

Alex Sobel: I have signed amendments 76 and 78 from my hon. Friend the Member for Bristol East (Kerry McCarthy), but not amendment 77—that is an oversight, however, and I also fully support it. I will talk about two specific things relating to our global footprint in the Amazon and West Papua, and it is worth declaring that I am the chair of the all-party group on West Papua, although I have no pecuniary interests.

My hon. Friend and the shadow Minister made excellent cases, but I want to add a bit more detail. Three weeks ago, Chief Raoni, one of the indigenous leaders of the Amazon, came to the House and I met him, and last week, I hosted WWF Brazil’s chief executive here. They also met the Minister’s colleague, Lord Goldsmith, while they were here, and one of their key asks was that the UK Government are very clear about the import of goods from the Amazon. The range of goods is very broad. The dangers in the Amazon are live at the moment, with concerns that in just a matter of
months, wildfires could rage in the Amazon as we saw last year, destroying millions of hectares of rainforest.

My hon. Friend the Member for Bristol East made good points about soya and cattle farming, but there is also extremely widespread mining—not just by large companies, but the wildcat mining, in which the family of the Brazilian President have traditionally been involved—for metals such as aluminium, iron, nickel and copper. The sourcing of the materials for many of the everyday products that people use involves deforestation and mining in the Amazon. That has further effects because activities such as farming and mining require infrastructure, such as roads right through the rainforest. The use of the river and of heavy diesel vehicles creates water and air degradation.

We spoke about biodiversity in the UK, but our biodiversity pales into insignificance compared with the biodiversity in the rainforests of the Amazon or West Papua. It is the Committee’s duty not to forget that the UK is a major importer of goods and a major world centre for resources and raw materials, which are traded in London and imported into the UK. That means that we have a much broader responsibility.

West Papua is a lesser-known area that is part of Indonesia and has one of the world’s largest mines, the Grasberg Freeport mine. There, beyond the loss of environmental habitat and the pollution of water and air, there are also human rights abuses. There is a well-documented history of extrajudicial killings around the operation of the mine. Offshore, BP—a British company—is involved in oil and gas resources. Our global footprint is huge and the Bill must focus on that. If we are to enshrine environmental protections in domestic law, we cannot close our borders and say, “We have to be set. Simply referring to the 25-year plan is just warm words rather than any clear commitment to action.

Rebecca Pow: I thank the hon. Lady for that intervention, and I recognise all the work that she is doing on this issue; she speaks knowledgeably and passionately about it. However, the amendment would go further by creating a legal obligation on the Government to set targets on our wider global footprint, including human rights aspects, and amendment 77 would require us not only to set a target but meet it by 31 December 2020.

Before accepting such obligations, a responsible Government, which I like to think we are, would need to be confident that we had or could develop reliable metrics and an established baseline for such targets, and a clear understanding of any potential perverse incentives that such targets could create. The proposal sounds very straightforward but, of course, there is a great deal involved in it. We are working to explore the feasibility and effectiveness of a global environment footprint indicator, which includes reviewing the existing methodologies of global impact indicators.

We cannot responsibly accept a commitment to set global footprint as a priority area, as that would entail us in setting at least one legally binding target in a timescale that does not reflect the need to build the solid foundations that are needed. However, the hon. Lady was right to draw our attention to the impact that our domestic consumption can have on our global footprint, and the shadow Minister also mentioned that. Indeed, I went berserk with my own children when I found a packet of Kenyan beans in the bottom of my fridge; that was in December, so they were not seasonal for us. Woe betide them if they ever do that again! I put said packet in the bottom of one of their Christmas stockings to make the point. Anyway, I digress.

This is such an important issue and many colleagues have touched on it. That is why it is really important that the UK establishes roundtables on palm oil and soya. Indeed, we have already done a great amount of work on some of these issues. For example, the UK achieved 77% certified sustainable palm oil in 2018, which is—staggeringly—up from just 16% in 2010. The UK has moved very fast on that issue. Eight of the UK’s largest supermarkets, representing a combined retail market share of 83%, have published new sourcing policies to deliver sustainable soya to the UK market.

We will continue to work both with those businesses, through these roundtables on palm oil and soya, and with producer countries through our UK international climate finance projects to improve the sustainability of forest risk commodities.

The hon. Member for Leeds North West starkly highlighted the example of the Amazon and the impact that we have; we must take things very carefully. However, that is not to say that, in doing all this work, we should not then harness the power through the Bill to introduce a target on our global environmental footprint. That is something that we have the option to consider.

I will also touch on the Global Resource Initiative, which was set up last year to investigate what the UK can do overall to reduce its footprint. We are awaiting the GRI’s recommendations and we will consider them carefully before responding. Any recommendations for long-term, legally binding targets will need to identify the reliable metrics, baselines and targets that I have
mentioned before. However, the Bill gives us the power to introduce a target on our global environmental footprint at any time, so such targets are definitely in the mix.

Richard Graham (Gloucester) (Con): Our global environmental footprint abroad is very important and the hon. Member for Leeds North West made an interesting point in particular about our footprint in Indonesia. I happen to know about the BP investment at the Tangguh liquid natural gas project very well. It uses two offshore platforms, and there is an absolutely amazing social responsibility programme, which I have seen in detail. It is widely recognised as one of the best in the world, both by the people of West Papua and more widely in Indonesia.

It is worth noting that we have significant renewable energy projects there, including some interest in tidal stream—we brought a delegation from Indonesia to Scotland recently. Through the Department for International Development’s climate change unit, we have worked on making their timber production sustainable and are now looking at how we can help them make the palm oil industry sustainable. The Minister makes an important point about how we can build a strong environmental footprint abroad.

Rebecca Pow: I thank my hon. Friend for that intervention.

Alex Sobel: On a point of order, Sir Roger. Does the hon. Member for Gloucester have any interest to declare in relation to the statement he just made?

The Chair: That is not a point of order for the Chair. If the hon. Member for Gloucester had any interest to declare, I am sure he would do so.

Richard Graham: I am happy to say that my only interest to declare is as an unpaid, voluntary trade envoy in Indonesia for the last three Prime Ministers.

Rebecca Pow: I thank my hon. Friend for his intervention. He speaks with a great deal of knowledge about worldwide issues, as he always does in the Chamber.

On the grounds of what I have said, I ask the hon. Lady to withdraw the amendment.

Kerry McCarthy: I will have to go back and read what the Minister said, because I am rather confused. She seems to be jumping around all over the place. On one hand, she says a global footprint target can be included in the Bill and cites some good things that have happened through volunteer initiatives and through companies—perhaps with a bit of Government pressure on them—to say that such things can be done. On the other hand, she says that we cannot possibly put it in the Bill.

I point out that amendment 77 is designed to ensure that there is an end-of-year target, which was previously a commitment. The Government have said in various different forums that they would achieve that, so it is a bit late now to say, “We need to worry about the metrics, and we need to be working on this, that and the other.”

I tried to intervene on the Minister because I wanted to ask her about the GRI recommendations, which will come forward on 30 March. If it recommends that the provision should be in the Environment Bill, will the Minister commit to table amendments that reflect the GRI recommendations? As she would not let me intervene to ask her about that, she is very welcome to intervene and tell me whether that is the case. It might affect whether I decide to push anything to a vote.

Rebecca Pow: I will intervene very briefly. I reiterate that we await the outcome of the recommendations and will consider them very carefully. Getting the metrics right is absolutely crucial, as is every target in the Bill. I said strongly that there is a power in the Bill to set targets on our global environmental footprint. I shall leave it there.

Kerry McCarthy: As I said, I want to revisit that, because I thought the Minister was making an argument against being able to pursue targets. She did not adequately make the case for not having the specific priority of a global footprint target, but we will return to that when we discuss new clause 5, which is a comprehensive clause about due diligence in the supply chain and how we enforce all this. We shall return to the debate then, rather than my pressing these issues to a vote now. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
particularly on PM$_{2.5}$ air quality, are mentioned later in the Bill, but those are the priority areas for the purpose of the Bill.

The Chair: Order. It is tiresome, but I have to interrupt the hon. Gentleman.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
Public Bill Committee

ENVIRONMENT BILL

Sixth Sitting
Tuesday 17 March 2020
(Afternoon)

CONTENTS

Clauses 1 to 6 agreed to, one with amendments.
Adjourned till Thursday 19 March at half-past Eleven o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 21 March 2020
The Committee consisted of the following Members:

**Chairs:** † **SIR ROGER GALE, SIR GEORGE HOWARTH**

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Ansell, Caroline (Eastbourne) (Con)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Docherty, Leo (Aldershot) (Con)
Edwards, Ruth (Rushcliffe) (Con)
† Graham, Richard (Gloucester) (Con)
† Longhi, Marco (Dudley North) (Con)
† McCarthy, Kerry (Bristol East) (Lab)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)

† Morden, Jessica (Newport East) (Lab)
† Oppong-Asare, Abena (Erith and Thamesmead) (Lab)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Sobel, Alex (Leeds North West) (Lab/Co-op)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)

Adam Mellows-Facer, Anwen Rees, Committee Clerks

† **attended the Committee**
Public Bill Committee

Tuesday 17 March 2020

(Afternoon)

[SIR ROGER GALE in the Chair]

Environment Bill

Clause 1

ENVIRONMENTAL TARGETS

Amendment moved (this day): 178, in clause 1, page 1, line 17, at end insert—

“(3A) Targets set within the priority area of air quality must include targets for—

(a) the ambient 24 hour mean concentration of PM2.5 and PM10;

(b) average human exposure to PM2.5 and PM10; and

(c) annual emissions of NOx, ammonia, PM2.5, PM10, SO2 and non-methane volatile organic compounds.

(3B) Targets set within the priority area of water must include, but are not limited to, matters relating to—

(a) abstraction rates; and

(b) the chemical and biological status and monitoring of inland freshwater and the marine environment.

(3C) Targets set within the priority area of biodiversity must include, but are not limited to, matters relating to—

(a) the abundance, diversity and extinction risk of species; and

(b) the quality, extent and connectivity of habitats.

(3D) Targets set within the priority area of waste and resources must include, but are not limited to, matters relating to the reduction of overall material use and waste generation and pollution, including but not limited to plastics.”—

(See Whitehead.)

2 pm

The Chair: Good afternoon, ladies and gentlemen. Before we start proceedings, I have been advised that the ambition today is to get to the end of clause 6, which as far as I am concerned is both admirable and acceptable. The Chairman’s job is to be in the Chair, and I am prepared to do that, but if we sit rather later than we might have done, I will suspend the sitting, probably for 15 minutes at 4.30 pm—for natural causes.

Dr Alan Whitehead (Southampton, Test) (Lab): For the elucidation of the Committee, I confirm that the intention of the Opposition is to get to the end of clause 6 in reasonably good order, so it will not be necessary, I hope, for the Chair to suspend proceedings, because we will already have gone home by then. We will see whether I manage to keep my remarks suitably brief, so that we can achieve that goal.

I barely started my remarks about the amendment this morning. I will first emphasise how important the amendment is to ensuring that the priority area targets are seen as targets with content, rather than targets in theory. That is important because of the frankly rather odd way in which subsection (2) is set out:

“The Secretary of State must exercise the power in subsection (1) so as to set a long-term target in respect of at least one matter within each priority area.”

That might suggest that the Secretary of State will have a lottery choice, and will say, “Well, I’ve got to set at least one target in each area, so what’s it going to be? If I go above my limit of one target per area, I might not be able to get targets in other areas,” or perhaps, “I haven’t got enough targets in this section, so I have to beef them up.”

In reality, targets are not one per customer; they are based on what targets should be set in each area. What are the themes that one would prioritise within each area in which a target might be set? What are the priorities regarding air quality, water, biodiversity and waste and resources that would cause us to say, “Perhaps in this area there should be three or four targets, and in that area two, or more than three”?

The Bill allows the Secretary of State to set more than one target, but it at least strongly suggests that it should be one target, and implies that that should be it. I hope we can be clear today that that certainly is not it, and that the Secretary of State will be charged with looking at each area and deciding, on the basis of what is needed, what the targets for those areas should be. They might or might not be numerous.

There is a rumour that there was discussion with the Treasury about how many targets might be allowed in each area, and the Treasury said, “Maybe keep it to one each. That will be okay.” I am sure that is untrue, but nevertheless the drafting of this part of part 1 seems a little odd.

In amendment 178, we have tried to say, “What would be the general priority areas?” One might say that it was our best go at answering that. If we have time to spare this afternoon, having got through our business, we could have a little roundtable and decide whether we think those are the absolute priorities, or whether we should put in others or change them around. It is an attempt, which I think is good enough to go into the legislation, to look at what the main areas are within each priority area that we could reasonably set targets on.

Within air quality, it would be good to have targets on average human exposure to PM2.5 and PM10, and annual emissions of nitrogen oxides, ammonia, the different PMs and non-methane volatile organic compounds. For water, the targets could be on abstraction rates, “the chemical and biological status and monitoring of inland freshwater” and, importantly, the marine environment, which we touched on this morning.

In the priority area of biodiversity, there could be targets on “the abundance, diversity and extinction risk of species” and “the quality, extent and connectivity of habitats”.

Later in the Bill, we will talk about recreating habitats if necessary, and ensuring, through local plans, that habitats join up with each other, so that we do not have a series of island habitants with no relation to each other. Perhaps we should have a biodiversity target on ensuring that those habitats are connected.

In the priority area of waste and resources, there could be targets on “overall material use and waste generation and pollution, including but not limited to plastics.”
As we will see later in our discussions, there could certainly be targets relating to the extent to which things are properly moved up the waste hierarchy. One of the concerns we have regarding the waste and resources part of the Bill is the extent to which there is, rightly, a concern for recycling, but not for going any further up the waste hierarchy than that.

Amendment 178 is the explanation that we would like to see after the very thin gruel served up in clause 1(3). It is by no means the last word, and we state in the amendment that the targets are not limited to those set out in it. Indeed, it would be a perfectly good idea if the Secretary of State or Minister said, “I don’t quite agree with the targets that you have set out here. There are other priority areas in these sectors, and we’d like to set targets on those instead.” We are not precious about that in any way.

I hope the Committee can accept the principle that it is not sufficient to set out single-word priority areas, particularly in clause 1(2). In the Bill, there needs to be some unpacking of the process, so that we can assure ourselves that we will get to grips with the sort of targets that we believe are necessary. That is a friendly proposal. I hope it is met with interest from Government Members, and that we can discuss how we get that right, having accepted the principle. We do not necessarily need the amendment to be accepted in its totality, but if we do not see any movement at all in its direction, we strongly feel that we ought to set down a marker to show that it is important that such a process be undertaken, and would therefore reluctantly seek to divide the Committee.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I thank the shadow Minister for seeking to specify the targets that the Government should set within each priority area. He asked if what he said was met with interest. Of course it was. He recognises that the Bill includes a requirement, which I reiterate, to set at least one long-term legally binding target in each of four important areas: air quality; water; biodiversity; and resource efficiency and waste reduction. Those were chosen because they are the priority areas that reflect where we believe targets will drive long-lasting significant improvement in the natural environment, which is the aim of the Bill.

The four priority areas were chosen to complement the chapters of the Bill, to build on the vision in the 25-year environment plan—the first environment improvement plan in the Bill—and to facilitate the delivery of comprehensive measures, with an “s” on the end, across the natural environment; we are talking about not just one thing, but a whole raft of measures. The Bill’s framework allows long-term targets to be set on any aspect of the natural environment, or people’s enjoyment of it, beyond the four priority areas in order to drive significant improvement in the natural environment. Of course, all those things will be monitored, checked and reported on to ensure that the significant improvement is achieved, and if more targets are seen to be required, then more targets are what will happen.

I would like to reassure the shadow Minister that the Government will be able to determine the specific areas in which targets will be set via the robust and transparent target-setting process that I referred to this morning. Advice from independent experts will be sought in every case during the process. Stakeholders and the public will also have an opportunity to give input on targets. Indeed, just now in the Tea Room, one of our colleague asked about giving input on the deposit return scheme. I said, “Yes, there will be a lot of engagement and a lot of consultation, through the Bill.” Targets will be based on robust, scientifically credible evidence, as well as economic analysis.

We do not want to prejudge which specific targets will emerge from the process, and the Office for Environmental Protection has a role in setting targets. If the OEP believes that additional targets should be set, it can say what it thinks should be done in its annual report when it is assessing the Government’s progress. It will do that every year. The Government then have to publish and lay before Parliament a response to the OEP’s call. Any long-term targets will be set via statutory instruments, which will be subject to the affirmative procedure. That means that Parliament can scrutinise, debate, and ultimately vote on them, so everyone gets their say. I hope that will please the shadow Minister, because he will very much be part of that. This process ensures that Parliament, supported by the OEP, can hold the Government to account for the targets they set.

2.15 pm

On air quality, we are committed to tackling a diversity of air pollutants that harm human health and the environment, including those that the shadow Minister mentioned. I remind him that we already have ambitious statutory emissions reduction ceilings in place for five key pollutants, as well as legally binding concentration limits for other pollutants, and those are already starting to drive significant improvements to air quality. Those are in legislation, and we obviously have to abide by them. The case for more ambitious action on fine particulate matter is especially strong, which is why we are creating through this Bill a specific duty to set a target for PM$_{2.5}$, in addition to a further long-term air quality target.

Far from having a thin gruel, as the shadow Minister said—in jest, I am sure—we have a substantial porridge. That porridge will provide the building block for the whole process of setting these targets, with our main ambition being to drive and enhance a better-protected environment. I therefore ask the hon. Gentleman to withdraw his amendment.

Several hon. Members rose—

The Chair: Service on a Bill Committee such as this might seem like doing porridge, but—[Laughter.] Before we proceed, the normal convention is that whoever moves the motion speaks first. There is then a pause, not because I have forgotten what to do, but so that I can see whether anybody else is excited by the debate. If I pause and nobody bothers to indicate that they wish to speak, I call the Minister. Two Members have now indicated that they wish to speak. That is perfectly in order, and I have no problem with it, but traditionally, the Minister speaks last to summarise the debate. There is then the possibility of prolonging the matter further, but that is how it is usually done.

Alex Sobel (Leeds North West) (Lab/Co-op): I apologise for not rising quickly enough before the Minister spoke. I will try to do so more quickly in future.
I reiterate that under our current regime, it took three court cases, brought by a voluntary organisation, for Government to bring forward the clean air measures that are now being introduced. Obviously, a lot of other targets are included in amendment 178, tabled by my hon. Friend the Member for Southampton, Test—my name is not on that amendment, but I will be supporting it—but the ones about air quality are particularly close to my heart.

The fact that we had to go through those court cases under the European regulations, and that those clean air targets are not in the Bill, is deeply worrying. I am sure that we have ceilings, but for a lot of people, those ceilings are too high, and people are still going to die of breathing-related and other lung-related conditions. The ceiling in this Committee Room, for example, is very high; knowing what we now know, we would not again have a far lower ceiling. The same is true for levels of particulate matter.

When we took evidence from ClientEarth last week, Katie Neald said:

“The cases that ClientEarth has taken against the UK Government have been key both to driving action to meet the legal limits we already have and to highlighting this as a serious issue and advising the Government failures so far. It is really important that the Bill allows people to continue to do that against these new binding targets.”—[Official Report, Environment Public Bill Committee, 12 March 2020; c. 95, Q136]

This amendment creates that framework. Without it, the Bill is insufficient.

Bim Afolami (Hitchin and Harpenden) (Con): I apologise, Sir Roger, for not indicating earlier that I wished to speak. I want to make a very quick point, which underpins quite a lot of my criticism of many of the amendments that have been tabled to this Bill.

“This Bill is a framework measure. The Government have already set out their priority areas, which are listed in the Bill. To get into the level of specificity in the amendment presupposes that we could know, theoretically, for 15, 20 or 25 years, all the measures we may wish to choose. There are some that might seem good now, but in future may not seem so good. Flexibility is very important and something any Government of any colour or description, or any Minister, would need in future because, as we are seeing, the science and advice can change quite quickly. Having priority areas around the broad themes set out in the Bill makes sense because air will not cease to exist—if it does, we will cease to exist. Within that, however, we need Parliament and the Government to have flexibility. On those grounds, I do not support the amendment.

The Chair: Does the Minister wish to comment on what has just been said before I go back to Dr Whitehead?

Rebecca Pow: Very briefly, thank you, Sir Roger.

I could not agree more with my hon. Friend the Member for Hitchin and Harpenden. He has hit the nail on the head in summing up the flexibility for the targets and the importance of getting and inputting the right expert advice and having the flexibility to move and change with the requirements. The environment is such a huge thing. There is no one thing; it is not a straightforward answer.

There will be lots of different targets to consider. Specifically, however, we have a requirement to set at least one long-term target.

To pick on the point made by the hon. Member for Leeds North West on air quality, we have a clean air strategy already, which the World Health Organisation has held up as an example for the rest of the world to follow. We are already taking the lead on that and have committed £3.5 billion to delivering our clean air strategy and the measures within it. They are already operating and will work part and parcel with the Bill’s new measures to have an even more holistic and comprehensive approach to air quality.

Dr Whitehead: If the Bill were just a framework Bill, it would be about a quarter as long as it is. The fact that, in various parts, it has quite a lot of detail about the things that are required within the overall framework indicates that the Bill is more than that. It seeks to set out, guide and secure a whole series of advances in environmental standards and enhancements of the natural environment in a way that hopefully we can all be proud of.

That is why I call this particular section thin gruel. I was trying to see where we can go with the porridge analogy. Although its potential is not thin gruel, the way it is set out in the Bill appears to me to turn out something that is rather more thin gruel than good porridge. Some Government Members, meanwhile, are thinking “How can we make it flower out of its bowl with all sorts of things added to it?”

Our amendment does not stop Ministers coming up with new targets—wide targets, changeover time and so on—and go with the flow of circumstances as they unfold, but it prevents the porridge from being thinner than it might otherwise be. We want to see basic, good porridge with some fruit, raspberries—

Leo Docherty (Aldershot) (Con): Nuts.

Dr Whitehead: With some nuts on top, which together makes a pleasing dish that one can understand and be secure that one is going to get a good breakfast as a result. That is the purpose of our amendment. We feel strongly about that—we all like a good breakfast. On that basis, I am not happy with the Minister’s response. I do not see how the things that she wants to get done on the Bill will in any way be undermined or diluted by the structure that we have put forward. On the contrary, I think they would be underpinned and expanded. On that basis, I will press the amendment to a Division.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 1]

**AYES**

McCarthy, Kerry
Morden, Jessica
Oppong-Asare, Abena
Whitehead, Dr Alan

**NOES**

Afolami, Bim
Ansell, Caroline
Bhatti, Saqib
Docherty, Leo
Graham, Richard
Longhi, Marco
Mackrony, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.
Dr Whitehead: I beg to move amendment 80, in clause 1, page 2, line 4, at end insert—

“(4A) A target under this section must be set on the basis of the best available evidence and any advice given under section (3)(1).

(4B) In setting targets under this section, the Secretary of State must take into account relevant international best practices and seek to improve on them.”

This amendment seeks to ensure that targets are evidence based and have considered international best practices.

The amendment deals with what the targets must specify. As the Bill stands at the moment, that is a little vague. Subsection (4) states:

“A target set under this section must specify—

(a) a standard to be achieved, which must be capable of being objectively measured, and

(b) a date by which it is to be achieved.”

We think that that formulation does not take full account of the way in which those targets should be appraised, particularly the way they should be appraised on the basis of the best available evidence and international best practices and how the UK might be able to improve on the target proposals. We therefore suggest adding proposed new subsections (4A) and (4B) after subsection (4).

We have to look at the best available evidence. I am not saying for a moment that this would occur, but a target that was set under this procedure by the Minister, which appeared to have been conjured out of thin air on a whim and did not have much support, would be gravely undermining of those people who want those targets to be achieved and those achievements to be firmly attained.

The best available evidence and the relevant international best practices are extremely important. We should be able to say that we can learn from others and incorporate that into our practices so that we leap ahead in our achievements. That is a very good guideline to inform target setting, and it is what we offer in our amendment.

Again, I would be interested to hear from the Minister whether she thinks that what is in the Bill at the moment really does the job in terms of setting targets, or whether, perhaps by using different means from the clause, there are ways in which we can make sure that the Bill stands up rather better to the target-setting task that we have set it.

The best available evidence and the relevant international best practices are extremely important. We should be able to say that we can learn from others and incorporate that into our practices so that we leap ahead in our achievements. That is a very good guideline to inform target setting, and it is what we offer in our amendment.

After giving that amount of detail, I hope that it provides some reassurance. The shadow Minister is obviously raising really important issues, but I hope that my response makes it clear that we are taking this matter very seriously. I therefore ask him to withdraw the amendment.

Dr Whitehead: The Minister has said exactly what I had anticipated she might say in the best of outcomes, and that is now on the record; indeed, our purpose principally was to ensure that that kind of statement about these targets was there for all to see. I am grateful to her for setting that out and I am much happier than I would have been if she had not said that. I am happy to withdraw the amendment.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Rebecca Pow: Of course I recognise the shadow Minister’s desire to ensure that, when these targets are set, they are based on the highest possible standards of evidence, practice and advice. However, I believe that it is not necessary to make such explicit amendments as the one that we are considering, because we have already committed to setting targets under a robust, evidence-led process. We expect the best available evidence to inform this, including, of course, scientific data, models, historical datasets and assessment of what is feasible from a socioeconomic perspective. I can assure him that absolutely nothing will be conjured out of thin air, as he was suggesting; conducting ourselves in such a way would not be a correct way for Government to operate.

I am sure that the shadow Minister will be interested to be reminded that every two years, we will conduct a review of significant developments in international environmental legislation. I think that that was one of the new additions to the Bill that was inserted during the process that he was outlining earlier, about how the Bill came and went, and fell, and various other things. This is an extra addition that I believe will be useful and will address exactly what he is talking about, because it is right that we consider what is happening across the rest of the world, to make sure that we are aligned, whether we want to be or not, and consider what other people are doing, and make sure we keep abreast of developments in driving forward our environmental protection legislation.

Of course, we will publish that review and make sure that any relevant findings are factored into our environmental improvement plan, and considered with the environmental target-setting process. We will also seek and consider very carefully the advice of independent experts before setting the targets. Additionally, our target proposals will be subject to the affirmative procedure in Parliament; both Houses will have the opportunity to scrutinise, debate and ultimately vote on the details and the ambition of the targets. We also expect the Select Committees to take an interest in this process and they will have an opportunity to scrutinise the Government’s target proposals. They might also consider the recent reviews in the way in which targets are described and the terms that are used.

Having given that amount of detail, I hope that it provides some reassurance. The shadow Minister is obviously raising really important issues, but I hope that my response makes it clear that we are taking this matter very seriously. I therefore ask him to withdraw the amendment.

Amendment, by leave, withdrawn.

Rebecca Pow: I beg to move amendment 28, in clause 1, page 2, line 15, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

This amendment reflects the renaming of the National Assembly for Wales as “Senedd Cymru” by the Senedd and Elections (Wales) Act 2020. Similar changes are made by Amendments 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 72, and 73.

The Chair: With this, it will be convenient to discuss Government amendments 29, 32 to 36, 67, 37 to 57, 72 and 73, and 58 to 64.

Rebecca Pow: Section 2 of the Senedd and Elections (Wales) Act 2020 renames the National Assembly for Wales as the Welsh Parliament or Senedd Cymru. The changes will take effect from 6 May 2020. As a consequence, amendment 28 would replace references in the Bill to “the National Assembly for Wales” with “Senedd Cymru”, and replace references to “the Assembly” with “the Senedd”—I hope I have made that quite clear. This is consistent with the approach that the Welsh Government are taking to their own legislation.
Richard Graham (Gloucester) (Con): Could the Minister clarify whether we are replacing “the National Assembly for Wales” with “Senedd Cymru” in all legislation or whether we are inserting both, as was implied in part of her statement, by saying, “the National Assembly for Wales/Senedd Cymru”? Does the National Assembly for Wales cease to exist completely, and are we always to refer to it as Senedd Cymru in all future parliamentary debates?

Rebecca Pow: That is a very perceptive question, which does not surprise me at all—my hon. Friend is always on the ball. The answer is no, the Welsh Assembly will remain. I will just add that the Government consulted the Welsh Government on how the Welsh legislature should be referred to in legislation moving forward, and using the Welsh title ensures there is a consistent approach across the statute book.

Richard Graham: For clarification, can I just confirm that we will refer to “the National Assembly for Wales” and to “Senedd Cymru” in the Bill, and that that is the format that Parliament and the Government will adopt for all legislation, and that we are not replacing “the National Assembly for Wales” with “Senedd Cymru” on every occasion?

Rebecca Pow: The answer to the first part of his question is yes.
Amendment 28 agreed to.
Amendment made: 29, in clause 1, page 2, line 16, leave out “Assembly” and insert “Senedd”.—(Rebecca Pow.)
See Amendment 28.

The Chair: I am satisfied that clause 1 has been sufficiently debated, and I therefore do not propose to take a clause stand part debate.

Clause 1, as amended, ordered to stand part of the Bill.

Clause 2

Environmental Targets: Particulate Matter

Dr Whitehead: I beg to move amendment 23, in clause 2, page 2, line 20, leave out subsection (2) and insert—

“(2) The PM2.5 air quality target must—
(a) be less than or equal to 10 g/m3;
(b) have an attainment deadline on or before 1 January 2030.”

This amendment is intended to set parameters on the face of the Bill to ensure that the PM2.5 target will be at least as strict as the 2005 WHO guidelines, with an attainment deadline of 2030 at the latest.

The Chair: With this it will be convenient to discuss the following:
Amendment 185, in clause 2, page 2, line 20, leave out subsection (2) and insert—

“(2) The PM2.5 air quality target must—
(a) follow World Health Organisation guidelines and;
(b) have an attainment deadline on or before 1 January 2030.”

This amendment ensures that the international standard on small particulate matter set by the World Health Organisation is followed, and that this target is reached by the end of the decade.

Amendment 25, in clause 6, page 4, line 21, after “England” insert—

“and minimise, or where possible eliminate, the harmful impacts of air pollution on human health and the environment as quickly as possible”.

This amendment is intended to strengthen the test against which targets are assessed, to ensure that the human health impacts of air pollution are considered, with the aim of minimising, or where possible eliminating, them.

Amendment 26, in clause 6, page 4, line 29, after “2023” insert—

“or, in the case of the PM2.5 air quality target and any other long-term and interim target set within the air quality priority area, within 6 months of publication of updated guidelines on ambient air pollution by the World Health Organization, whichever is earlier”.

This amendment is intended to allow any new targets to reflect updated WHO guidelines.

Amendment 27, in clause 6, page 4, line 31, after “completed” insert—

“or, in the case of the PM2.5 air quality target and any other long-term and interim target set within the air quality priority area, within 6 months of publication of updated guidelines on ambient air pollution by the World Health Organization, whichever is earlier”.

This amendment is intended to trigger an early review of the PM2.5 target, and other air quality targets, within 6 months of the publication of the updated WHO guidelines.

Dr Whitehead: This amendment should be discussed with amendment 185. Amendment 23 is tabled in the name of the esteemed Chair of the Environment, Food and Rural Affairs Committee, the hon. Member for Tiverton and Honiton (Neil Parish), and a number of other Members, most of whom are not on this Committee—and some of our names have been added. Amendment 185 is in the names of Members who are mostly on the Committee.

These amendments highlight a real difference between what is in the Bill about the additional environmental target on particulate matter, in addition to what is in clause 1(3), and the World Health Organisation guidelines. Clause 2 indicates why this is not just a framework Bill, as it includes some real stuff on particulate matter. But that real stuff does not get us to where we need to be on targets for particulate matter in ambient air.

One way or another, these amendments seek to equate the target guidelines to the World Health Organisation guidelines on particulate matter. Indeed, amendment 23 states that the PM2.5 air quality target should be, “less than or equal to 10 g/m3”.

I understand that that would be equivalent to the World Health Organisation guidelines. In that sense, although the amendments are slightly differently worded, they do not have any different intent or purpose.

The questions are: why the WHO guidelines; what have we done so far on PM2.5 emissions; and where might the targets suggested in the Bill get us? One problem with how we have addressed PM2.5 and other particulate matter is that although the emissions expressed as density per cubic metre of air have come down very substantially over the years, levels have pretty much plateaued between the early 2000s and the present. Indeed, as I see it we will not get too much further in achieving targets on the basis of that performance over recent years. The suggested targets set out in the Bill do not take us much further down the road as far as a fall in emissions is concerned.

We need to align ourselves with the WHO guidelines, so that we can ensure that we are targeting a regular and continuing reduction in emissions.
As hon. Members will know, these emissions are serious for human health. The smaller the particulate emissions, the more likely those particulates are to penetrate human tissue and lungs, and to cause long-term injury and health problems for the recipients. These finer particulates are pretty much a product of a lot of modern living, coming from, for example, tyres, brakes, diesel emissions—all sorts of things like that. It is certainly more than possible to target those factors in such a way as to get emissions down to a much more seriously depleted level than at present.

Indeed, that was the subject of a report by the Department in 2019 entitled, “Air quality: Assessing progress towards WHO guideline levels of PM$_{2.5}$ in the UK”. That report, which was obviously a Government report, suggested in its conclusion that the analysis of progress that had been made and of future progress demonstrated that,

“measures in the Clean Air Strategy, alongside action by EU Member States, are likely to take us a substantial way towards achieving the WHO guideline level for annual mean PM$_{2.5}$, but that:

“It also helps us understand where further action is needed.”

That is probably a summary of where the Government are as far as these guidelines are concerned: we are some way towards the WHO guidelines, but we are not there yet, and we need to understand that further action is needed and where it is needed. That is why we think a target, which should run alongside the WHO guideline level, is essential in or around this Bill.

2.45 pm

What does the report state about the feasibility of getting to those WHO guideline levels in the UK? It is very clear:

“On the basis of scientific modelling…we believe that, whilst challenging, it would be technically feasible to meet the WHO guideline level for PM$_{2.5}$ across the UK in the future.”

It goes on to say:

“Substantive further analysis is needed to understand what would be an appropriate timescale and means, and we will work with a broad range of experts, factoring in economic, social and technological feasibility to do this.”

However, the report says that this is feasible. It can be done, and it can be done on the basis of a reasonable timescale and within a reasonable set of means.

I do not think there is an argument here to say that anyone is setting an impossible task ahead of us, that this really cannot be done, or that we should not try to shoot for this because we will only fail and that would undermine the validity of targets. It is something that the Government’s own researchers have concluded is eminently feasible and doable. The only difference is that it has not been done or targeted yet.

I would be interested to hear any arguments why this should not be done and why we should not seek to put this in as our target in the Bill, because I cannot honestly think of any really good ones right at this minute. If the arguments are, “Well, it’s too hard,” or, “We shouldn’t be doing this right now,” or, “It’s something that would cost our country dearly,” I would suggest that the Government’s own advice is to the contrary. Therefore, I hope that the Committee can unite around the idea that this is where we should be going with our targets, and put this amendment on to the statute book.

Richard Graham: The hon. Gentleman says we must have guidelines; I agree with him totally, but in fact the guidelines are there in the legislation. Clause 1 lays out specifically what the standard means and the date by which it is to be achieved, which cannot be more than 15 years after the date on which the target is initially set. The guidelines are there, and clause 2, in seven crisp bullets, gives more detail about what is expected of the Secretary of State.

The hon. Gentleman’s amendment looks, on appearance, to be a modest word or two, but what he is trying to achieve is a rewriting of clauses 1, 2 and 3 altogether, setting not the guideline, but a very specific target and deadline. I cannot help wondering whether the deadline, which is before January 2030, is not linked specifically to the Labour party conference motion that called for net zero carbon by 2030—something his own Front Bench has rejected, accepting the Intergovernmental Panel on Climate Change’s target of net zero by 2050.

Dr Whitehead: Those are two different things.

Richard Graham: They are indeed, but the date is, by coincidence, the same.

Dr Whitehead: That is a bit like thinking that, if there are two bodies in different parts of the country, they must be connected because they are two bodies. It does not follow, to be honest, because they are not connected.

Richard Graham: I am interested in the hon. Gentleman saying that they are not connected. The two dates happen to be the same, so there is a connection. It is not like two bodies in different parts of the country. The key thing is that the guidelines for which he calls are there; the deadline for which he calls is a separate thing.

Rebecca Pow: The Government shares the shadow Minister’s desire to take ambitious action to reduce public exposure to air pollution and ensure that the latest evidence is taken into consideration when targets are reviewed. The Government take fine particulate matter, and air pollution as a whole, extremely seriously, and completely understand public concerns about this very serious health issue. That is why the Government are already taking action to improve air quality, backed by significant investment.

We have put in place a £3.5 billion plan to reduce harmful emissions from road transport. Last year, we published our world-leading clean air strategy, which sets out the comprehensive action required at all levels of Government and society to clean up our air. I reiterate that that strategy has been praised by the WHO as an example for the rest of the world to follow, so we are already leading on this agenda. That is not to say that there is not a great deal to do; there is, but the Government are taking it extremely seriously.

The Bill builds on the ambitious actions that we have already taken and delivers key parts of our strategy, including by creating a duty to set a legally binding target for PM$_{2.5}$, in addition to the long-term air quality target. That size of particulate is considered particularly dangerous because it lodges in the lungs, and can cause all sorts of extra conditions. I have met with many health bodies to discuss that. It is a very serious issue
and a problem for many people. However, we are showing our commitment to tackling it by stating in the Bill that we will have a legally binding target.

It is important that we get this right. We must set targets that are ambitious but achievable. Last week, Mayor Glanville, the representative from the Local Government Association, highlighted the importance of ambitious targets, but was at pains to emphasis the need for a clear pathway to achieve them. It would not be appropriate to adopt a level and achievement date, as proposed in amendments 23 and 185, without first completing a thorough and science-based consideration of our options.

Bim Afolami: Bearing in mind that the Minister has already quoted from last week’s evidence sessions, does she agree that Professor Lewis made it very clear that, once we reached the target level mentioned in the amendment, the United Kingdom would not be fully in control of the target, and it would therefore be dangerous to put such a target in the Bill?

Rebecca Pow: I thank my hon. Friend for that intervention. I was going to mention Professor Alastair Lewis. Members will remember that he is the chairman of the UK’s air quality expert group. He gave stark evidence. He is obviously an expert in his field, and it was really interesting to hear what he said. He stressed the technical challenges involved in setting a target for a pollutant as complex as PM$_{2.5}$, which he explained is formed from diverse sources—the shadow Minister is right about that—and chemical reactions in the atmosphere. He was at pains to explain that a lot of PM$_{2.5}$ comes from the continent, and it depends on the direction of the wind, the weather and the atmospheric conditions. My hon. Friend is right that those things are not totally within our control.

Professor Lewis explained the need to decide how we would measure progress towards the target, and that the process would be challenging and would take time. It is crucial to get it right. When developing the detail of the target, we will seek evidence from a wide range of sources and ensure we give due consideration to the health benefits of reducing pollution, as well as the measures required to meet the targets and the costs to business and taxpayers. It is really important that we bring them on board.

I want to refer quickly to the report that the shadow Minister mentioned. I thought he might bring up the DEFRA report published in July 2019, which demonstrated that significant progress would be made towards the current WHO guideline level of 2.5 by 2030. He is right about that. However, the analysis did not outline a pathway to achieve the WHO guideline level across the country or take into account the full economic viability or practical deliverability.

In setting our ambitions for achievable targets, it is essential that we give consideration to these matters—achievability and the measures required to meet it. That is very much what our witnesses said last week. If we set unrealistic targets, it could lead to actions that are neither cost effective nor proportionate. That is why we are committed to an evidence-based process using the best available science—something I know the shadow Minister is really keen we do—and advice from experts to set an ambitious and achievable PM$_{2.5}$ air quality target.

I reiterate that it is crucial for public, Parliament and stakeholders that they have the opportunity to comment on this and have an input in the process of developing these targets. By taking the time to carry out this important work in engagement, we will ensure that targets are ambitious, credible and, crucially, supported by society. We have the significant improvement test, which is a legal requirement, outlined in the Bill. It will consider all relevant targets collectively and assess whether meeting them will significantly improve the natural environment of England as a whole. It is intended to capture the breadth and the amount of improvement. It is very much a holistic approach and it encompasses the impacts of air pollution on the natural environment and the associated effects on human health. All these things will be taken into account in assessing the journey to the targets. I therefore surmise that the proposal in amendment 25 is not necessary.

Dr Whitehead: The Minister is quite right in pointing out that the report we mentioned did not take into account within a scientific model the full economic viability or practical deliverability of that change. If she were to commission this group to go away and do that, would she commit to the WHO guidelines after that point?

Rebecca Pow: The shadow Minister knows that I will make no such commitment here. This has to be evidence based. Get the right evidence, then the decisions can be made. That is how this Bill will operate. All the advice we took last week from the experts—the people we have to listen to—very much agreed that this was the direction that we need to take. Reviewing individual targets through the test, as proposed in amendments 26 and 27, would not be in line with the holistic approach of the Bill.

Furthermore, the fixed timetable for periodically conducting the significant improvement test provides much needed certainty and predictability to business and society. We have heard from many businesses that they want this surety. It would be inappropriate to determine the timescale for this test on the basis of one new piece of evidence. However, we recognise that the evidence will evolve as highlighted by amendments 26, 27 and 185. The Government will consider new evidence as it comes to light after targets have been set, as part of the five-yearly review of our environmental improvement plan and its annual progress report. The Office for Environmental Protection has a key role. If the OEP believes that additional targets should be set, as I have said before, or that an update to a target is necessary as a result of new evidence, it can recommend this in its annual report, assessing the Government’s progress.

3 pm

I am convinced there is a very clear process for all this. The Government will then have to publish and lay before Parliament a response to any such report by the OEP. This process ensures Parliament, supported by the OEP, can hold the Government to account on the sufficiency of its measures to improve the natural environment. I therefore kindly ask the hon. Gentleman to withdraw the amendment.
Dr Whitehead: I do worry about the idea that a target should only be set if we know that the target can be achieved and exceeded immediately. If we did that all of the time, we would not have targets. We would set what we were going to do as a target and—well I never—we would always achieve it. A target has to be something that is grasping at the stars in order to be achieved. A target, among other things, should not just be based on the idea that you can do something now, easily. It should be, in part, a wake-up call and a gee-up to make sure the target is achieved once you have done the basic work that it is technically possible to do. Indeed, the Government report got us to a position of doing that. I do not accept the Minister’s arguments on this. There should be a target, at the very least to keep us on the straight and narrow as far as reduction in particulate emissions are concerned, which is based on WHO guidelines. I therefore seek a division on this.

Question, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 2]

AYES
McCarthy, Kerry
Morden, Jessica
Oppong-Asare, Abena
Sobel, Alex
Whitehead, Dr Alan

NOES
Afolami, Bim
Ansell, Caroline
Bhatti, Saqib
Docherty, Leo
Graham, Richard
Longhi, Marco
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Clause 2 ordered to stand part of the Bill.

Clause 3

ENVIRONMENTAL TARGETS: PROCESS

Dr Whitehead: I beg to move amendment 81, in clause 3, page 2, line 33, leave out subsection (1) and insert—

“(1) Before making regulations under sections 1 or 2, reviewing targets under section 6, setting interim targets under section 10, or considering actions required to achieve targets set under sections 1, 2, or 10, the Secretary of State must—

(a) obtain, and take into account, the advice of a relevant independent and expert advisory body set up for this purpose;
(b) carry out full public consultation;
(c) publish that advice as soon as is reasonably practicable.

(1A) If regulations laid under sections 1 or 2 or interim targets make provision different from that recommended by the advisory body, the Secretary of State must both publish the public interest reasons for those differences and make a statement to Parliament on them.

(1B) Any advisory body set up under subsection (1)(a) must comprise 50 per cent of members nominated by the OEP and 50 per cent of members nominated by the Committee on Climate Change.”

This amendment seeks to prevent the Secretary of State from breaking Articles 4 to 8 of the United Nations Aarhus Convention of which the UK is a party. It encourages the Secretary of State to set up and listen to an independent expert body, to consult with the public, and share information. Where discrepancies between what is advised and the regulations the secretary of state chooses to make arise, it requests explanation of that discrepancy. Finally it makes suggestions for how that advisory body should be set up.

The Chair: With this it will be convenient to discuss amendment 181, in clause 3, page 2, line 35, at end insert—

“(1A) The advice sought under section 3(1) must include advice on how the scope and level of targets should be set to significantly improve the natural environment and minimise, or where possible eliminate, the harmful impacts of pollution on human health and the environment.”

Dr Whitehead: I was slightly taken aback as I had received an indication from the Chair’s provisional grouping and selection of amendments that amendments 81 and 181 would be taken separately.

The Chair: They can be voted on separately but debated together. I hate to say it, but I am right.

Dr Whitehead: I think I probably have a provisional grouping in front of me here and things maybe have changed since then. In that case, I am very sorry that I raised that particular point.

The Chair: No problem at all. The grouping on the selection paper indicates amendment 81 with 181 and then, separately, amendment 24.

Dr Whitehead: My other problem here was that I had extensively marked up the provisional grouping with colour coding and so on, and was reluctant to set it aside. That is maybe why I brought it into the Committee. It is a nice piece of work in its own right.

We are talking about amendments 81 and 181 grouped together, which I am happy to talk to. I begin with amendment 81, which seeks to unpack the statement at the beginning of clause 3 that before “making regulations” the “Secretary of State must seek advice from persons the Secretary of State considers to be independent and to have relevant expertise.”

That is a rather strange form of wording. Hon. Members may agree on that. It appears, at its face, that the Secretary of State could choose who—in his or her opinion—is “independent”, a subjective view from the Secretary of State, and who has “relevant expertise”. That is also a subjective view. The Secretary of State can decide on his or her advice without consultation, and can decide from whom he or she must seek that advice.

Amendment 81 seeks to make it much clearer that that is not how the process of seeking and obtaining advice would be carried out. Not only that, that it also seeks to put in place what is essentially good practice from previous legislation in this area, to guide us on how that process would be undertaken. Amendment 81 sets out that the Secretary of State would have to “obtain” and “take into account” the “advice of a relevant independent and expert advisory body set up for this purpose” when reviewing targets and making regulations under clauses 1 or 2. It would not just be someone who the Secretary of State thought had some relevance to the matter, or to whom they decided to go in the belief that they might be independent. They would be “independent”, they would be “expert”, and they would be separate. It would be clear who that advice was coming from.
On the basis of that advice, full public consultation should be undertaken, and that advice would be published as soon as was reasonably practical. It gives the Secretary of State a get-out, and it is proper that it should. Since the advice is to be given as advice, and if the Secretary of State decided that they did not want to take that advice, or wanted to make a provision other than the one recommended by the advisory body, then the Secretary of State should

“publish the public interest reasons for those differences and make a statement to Parliament on them.”

That is what is known as a comply or explain procedure. It would be expected, in the first instance, that the Secretary of State would comply with properly given, properly expert and properly independent advice, but if they did not feel that they could comply with that advice, it would be up to them to put up a good case as to why not, to publish that good case and to make a statement to Parliament on the good case as to why they could not comply.

We have suggested that the members of the advisory body for this purpose should be nominated by two bodies, one of which is independent and the other, we hope, will very shortly be independent. We suggest that 50% of members be nominated by the Office for Environmental Protection and 50% by the Committee on Climate Change.

That brings me to the procedures that were set up under the original climate change legislation, the Climate Change Act 2008, which, as I have already mentioned in these proceedings and will undoubtedly mention again, seems to me to be a yardstick by which we should measure what we are doing in the Bill. The Bill has often been described as a Climate Change Act for the environment, and it is right that we should make that comparison, because a Bill in its best form will, first, stand the comparison, because a Bill in its best form will, first, second, the comparison and, secondly, as the Climate Change Act has, stand the test of time between Administrations and through vicissitudes and changes in scientific consideration. It will have within it the mechanism to keep a firm eye on what we are doing, but at the same time change, if necessary, with changes in circumstances.

The Climate Change Act is clear about what the Secretary of State must do in terms of either setting targets or amending target percentages. That is a comparator with what is suggested in this Bill in clause 3. The Climate Change Act states the following:

“Before laying before Parliament a draft of a statutory instrument containing an order...amending the 2050 target or the baseline year...the Secretary of State must...obtain, and take into account, the advice of the Committee on Climate Change”—the Committee on Climate Change was set up by the Climate Change Act for that purpose of providing independent advice. The Act also says that the Secretary of State must publish that advice and, if the order that the Secretary of State lays makes provision different from that recommended by the committee,

“the Secretary of State must also publish a statement setting out the reasons for that decision.”

The “comply or explain” mode of doing things is enshrined in the Climate Change Act. Indeed, it is shot through the Climate Change Act in terms of different orders that can be made to amend targets or baseline years or to amend target percentages. When the target percentage in the Act was, as hon. Members will recall, changed in July of last year—I was privileged to lead for Labour on the change that was put forward, as it happened, a statutory instrument—that change went through well, in that the procedures in the Climate Change Act allowed the change to be made on the basis of proper advice and consultation and ministerial statements to that effect. All those procedures worked well in relation to the Climate Change Act and the changes made there.

There are no such procedures in this Bill. That is what we are particularly concerned about. We think that a procedure similar to that in the Climate Change Act but addressing the particular concerns of the Environment Bill—not everything can simply be squeezed in unamended and unchanged—would be the appropriate way to deal with this request for advice on setting targets and interim targets. Yes, the amendment is quite a bit more extensive than the brief mention of targets in clause 3, but it would add real lustre to the Bill, ensuring that targets would be properly set, properly consulted on and properly explained. Therefore, they would be properly and legitimately adopted.

3.15 pm

Amendment 181 seeks to expand on the advice sought under clause 3(1) and is to be taken alongside our proposals on advice. It seeks “advice on how the scope and level of targets should be set to significantly improve the natural environment and minimise, or where possible eliminate, the harmful impacts of pollution on human health and the environment.”

It therefore specifies to an extent what the content of the advice sought by the independent body would look like, and how the body could be sure to shape its advice to be consistent with the intentions of the framers of the legislation. We think both changes would be good for and strengthen the Bill, and we hope that the Government will be interested in proceeding, if not along those exact lines, then along lines similar to those in the Climate Change Act, knowing that that procedure has stood the test of time well. It would certainly be robust for the future.

Rebecca Pow: I thank the hon. Gentleman for amendments 81 and 181. I hope he has already got the impression that we are absolutely committed to setting targets under a robust evidence-led process. Independent experts, the public, stakeholders and Parliament will all play a part in informing the scope and level of target development. The Government will carefully consider advice from independent experts before setting targets.

As the Bill progresses, we will continue to consider how the role of experts is best fulfilled. A number of witnesses last week referred to the need to use experts, and they will be used constantly and continuously. Such experts could include academics, scientists and practitioners within the four priority areas included in the Bill. The expert advice we receive to support the setting of both the target for PM$_{2.5}$ and the further long-term air quality target will include that on how targets will reduce the harmful impacts of air pollution on human health. We will rely hugely on that expert advice.

Long-term targets will be subject to the affirmative procedure, so Parliament will have the opportunity to scrutinise and analyse the target proposals. That will, of course, include the shadow Minister, because both Houses
I want to stress that the Office for Environmental Protection can advise on targets, either through its duties related to environmental law or through its annual progress report on the environmental improvement plan. For example, it has a statutory power to advise on changes to environmental law, which enables it to comment on proposed legislation on long-term targets. It also has a statutory duty to monitor progress towards meeting targets as part of its annual progress report on the environmental improvement plan, which can include recommending how progress could be improved. So there is already a very strong mechanism.

Environmental law extends to all target provisions of the Bill—for example, procedural requirements on target setting and amendments, and the requirement to achieve targets. In addition, the Government will conduct the first significant improvement test—that is a legal requirement—and report to Parliament on its outcome, three months after the deadline for bringing forward the initial priority area targets.

The significant improvement test provisions of the Bill will form part of environmental law, which is why they will come under the OEP. That means that the OEP will have oversight of the provisions, as it does over all aspects of environmental law, and will have a key role in making sure that the Government meet the targets.

The shadow Minister rightly drew analogies with the Climate Change Act 2008 and the Committee on Climate Change. I am pleased that he recognises the similarities. In designing this framework, we have learned from the successful example of the Climate Change Act—for example, the strong duty to achieve long-term targets, the requirement to report on progress and scrutiny of progress by an independent, statutory body, in this case, the Office for Environmental Protection. That mirrors the CCA. We are confident that the framework is every bit as strong as the CCA framework and that it provides certainty to society that the Government will achieve the targets, delivering significant environmental improvements.

Ongoing stakeholder engagement, expert advice and public consultation will help to inform future target areas, as part of the robust, evidence-led, target-setting process. The Government will, as a matter of course, conduct a wide range of consultations for the first set of long-term targets. I hope that that is clear. We do not need the amendments suggested by the shadow Minister, and I ask him to withdraw them.

Dr Whitehead: That is all quite terrific, but it is not quite what it says in the Bill. That is the problem. The Minister has set out a robust and wide-ranging procedure for setting targets and I hope that all the steps she mentioned are going to be followed. If they are, we have a good arrangement. However, if we look at the Bill, there is fairly scattered evidence that that is the way we are going to conduct ourselves. On the contrary, it actually appears to give a great deal of leeway for

somebody or some people not to do most of those things in setting the targets, if that is what they wanted to do.

We are perhaps back to some of the discussions we had this morning about the extent to which the Bill has to stand not just the test of time, but the potential test of malevolence. If a well-minded and dedicated Minister, such as the one we have before us this afternoon, were to conduct the procedure, that is exactly how she would conduct it, and I would expect nothing less of her, because that is the frame of mind in which she approaches the issue—but, in legislating, we have to consider that not everyone would have that positive frame of mind. I do not want to divide the Committee, but I am concerned that the procedure in the Bill is too sketchily set out for comfort. Maybe, when we draw up the regulations, we could flesh out some of the things that the Minister said this afternoon, to assure ourselves that is what we will do, and do properly. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: I call Alex Sobel.

Alex Sobel: I was not expecting to be called quite so soon, so I will move amendment 24 formally.

Amendment proposed: 24, in clause 3, page 3, line 20, leave out “31 October 2022” and insert “31 December 2020”.

(Alex Sobel.)

This amendment is intended to bring forward the deadline for laying regulations setting the PM2.5 target to December 2020.

Rebecca Pow: I could cut my speech short and just say that I am very pleased the hon. Member has withdrawn his amendment.

The Chair: He has not withdrawn it; he has moved it formally.

Rebecca Pow: I will give my speech then, Sir Roger.

The amendment would undermine the intention to ensure that we set targets via an open consultation process that allows sufficient time for relevant evidence to be gathered, scrutinised and tested. As part of that process, we intend to seek evidence from a wide range of stakeholder interests, carry out good quality scientific socioeconomic analysis, take advice from independent experts and conduct a public consultation, alongside the parliamentary scrutiny of the target SIs that I have mentioned many times before.

It is important that we get that right rather than rushing to set targets, so we do not want to bring the deadline forward from 31 October 2022. We have heard strong support for that approach from stakeholders, who are all keen to have time and space to contribute meaningfully to target development. It is critical that there is certainty about what our targets are by the time we review our environmental improvement plan. That is essential for us to set out appropriate interim targets—the ones that will get us to the long-term target—and consider what measures may be required to achieve both the interim and long-term targets. The review of the plan must happen by 31 January 2023, so to that end, the target deadline of 31 October 2022 works well.
The Committee should also note that 31 October 2022 is a deadline. It does not prevent us from setting a target earlier where we have robust evidence and have received the necessary input from experts, stakeholders and the public.

Kerry McCarthy (Bristol East) (Lab): Can the Minister reassure us that the 2022 deadline does not mean that progress on those issues will not be made or that we cannot have interim targets before we reach the deadline? The whole thing is not being kicked off until 2022; we should still be doing our best to tackle the problem of clean air between now and then.

Rebecca Pow: The target deadline of 31 October 2022 works well for us to report back on our first environmental improvement plan three months later. We hope that some consultations will start during the process, so work will be under way to improve the environment, take advice, set targets and so on. Work will be under way to start the ball rolling.

3.30 pm

Alex Sobel: I thank the Minister for giving some reassurance that the date is not absolutely set in stone and that measures could be introduced earlier; although obviously the date given in the amendment is ideal from my point of view and that of the Chair of the Environment, Food and Rural Affairs Committee. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 3 ordered to stand part of the Bill.

Clause 4

ENVIRONMENTAL TARGETS: EFFECT

Dr Whitehead: I beg to move amendment 82, in clause 4, page 3, line 24, at end insert

“and,

(c) interim targets are met.”

This amendment places a duty on the Secretary of State to meet the interim targets they set.

For the Committee’s further enlightenment, I can say that amendment 24 was in a different place in the provisional grouping. I landed my hon. Friend the Member for Leeds North West in it slightly by assuming that it would be debated under clause 2; it is actually a separate discussion. I am sorry to my hon. Friend for that, but he did a brilliant job under the circumstances.

Amendment 82 is deceptively small but makes an important point about interim targets in this piece of legislation. The Bill requires interim targets to be set on a five-yearly basis. In the environmental improvement plans, the Government are required to set out the steps they will take over a 15-year period to improve the natural environment. However, environmental improvement plans are not legally binding; they are simply policy documents.

Although the plans need to be reviewed, potentially updated every five years and reported on every year, that is not the same as legal accountability. Indeed, voluntary environmental targets have been badly missed on a number of occasions. The target set in 2010 to end the inclusion of peat in amateur gardening products by 2020 will be badly missed. The target set in 2011 for the Department for Environment, Food and Rural Affairs to conserve 50%—by area—of England’s sites of special scientific interest by 2020 has been abandoned and replaced with a new target to ensure that 38.7% of SSSIs are in favourable condition, which is only just higher than the current level. A number of voluntary, interim and other targets have clearly been missed because they are just reporting objects; they do not have legal accountability.

Interim targets should be legally binding to guarantee that they will be delivered, and it is vital to have a robust legal framework in place to hold the Government and public authorities to account—not just in the long term, but in the short term. As things stand, the Government could in theory set a long-term, legally binding target for 2037, as suggested in the legislation, but then avoid having to do anything whatever about meeting it until 2036.

Amendment 82 would insert the phrase, “interim targets are met.” That would effectively place a duty on the Secretary of State to meet the interim targets they set. In that context, it is no different from the provisions of the Climate Change Act, which I keep repeating as an example for us all to follow. Indeed, how the five-year carbon budgets work is an example for all of us to follow. They were set up by the Climate Change Act effectively as interim targets before the overall target set for 2050, which is now a 100% reduction; it was an 80% reduction in the original Act.

Those five-year targets are set by the independent body—the Committee on Climate Change—and the Government are required to meet them. If the Government cannot meet them, they are required to take measures to rectify the situation shortly afterwards. Therefore, there are far better mechanisms than those in the Bill to give interim targets real life and ensure they are not just exercises on a piece of paper.

It is important that the Secretary of State is given a duty to meet the targets, because that means that they will have to introduce mechanisms to ensure that they meet those targets. That is what we anticipate would happen as a subset of these measures.

We need to take interim targets seriously, as I am sure the Minister would agree. Indeed, it is not a question of whether we take them seriously; it is a question of how we take them seriously, in a way that ensures that they are credible, achievable, workable and play a full part in the process of getting to the eventual targets that we set at the start of the Bill.

Kerry McCarthy: I will be very brief. I entirely support what my hon. Friend says about the need for interim targets. We have seen how the carbon budgets work under the Climate Change Act. There is real concern that the timetable might be slipping and that we might not manage to meet the commitments in the next couple of carbon budgets, but at least there is a mechanism.

I know that we have the environmental improvement plans, and that there is a requirement to review them and potentially update them every five years. However, there are so many strategy documents and plans. If we look at peat, for example, my hon. Friend mentioned the fact that the target set in 2010 for ending the inclusion of peat in amateur garden products by the end of this year will be missed. I know that the Government have a peat strategy, and there are various other things
kicking around that are mentioned every time we talk about peat. But there is a lack of focus, a lack of drive and a lack of certainty as to where the Government are heading on that issue. I feel that if we had legally binding interim targets in the Bill, that would give a sense of direction and it would be something against which we could hold the Government to account—more so than with what is currently proposed.

Regarding my last intervention on the Minister, I was trying to be helpful. I was just asking her to give a reassurance that all the efforts to clear up our air and to tackle air pollution are going on regardless; it is not just about setting this target and whether we set it for 2022 or 2020. That is one particular measure. All I am trying to say is that I am looking for reassurances that the Government will still be focused on cleaning up our air. All she has to do is say yes.

Rebecca Pow: I thank the hon. Gentleman for tabling this amendment. Very quickly, I can give assurances that of course work is ongoing to clean up our air, because we have our clean air strategy. A great many processes are being put in place through that strategy to tackle all the key pollutants that affect air quality. The measures in the Bill come on top of that. I hope that gives the reassurance that was sought.

It is of course critical that we achieve our long-term targets to deliver significant environmental improvement, and this framework provides strong assurances that we will do so. The Bill has this whole framework of robust statutory requirements for monitoring, reporting and reviewing, combined with the Office for Environmental Protection and parliamentary scrutiny, to ensure that meeting the interim targets is taken seriously, without the need for them to be legally binding.

Interim targets are there to help the trajectory towards meeting the long-term targets, to ensure that the Government are staying on track. We cannot simply set a long-term target for 2037 and forget about it. Through this cycle—the reporting requirement and the requirement to set out the interim target of up to five years—the Bill will ensure that the Government take early, regular steps to achieve the long-term targets and can be held to account. The OEP and Parliament will, of course, play their role too.

To be clear, we have a little mechanism called the triple lock, which is the key to driving short-term progress. The Government must have an environmental improvement plan, which sets out the steps they intend to take to improve the environment, and review it at least every five years. In step 2, the Government must report on progress towards achieving the targets every year. In step 3, the OEP will hold us to account on progress towards achieving the targets, and every year it can recommend how we could make better progress, if it thinks better progress needs to be made. The Government then have to respond.

If progress seems too slow, or is deemed to be too slow, the Government may need to develop new policies to make up for that when reviewing their EIPs. They will not wait until 2037 to do that; these things can be done as a continuous process, and that is important.

The shadow Minister rightly referred back to the Climate Change Act and the five-year carbon budgets, as did the hon. Member for Bristol East. He asked why, if the carbon budgets were legally binding, the interim targets are not. That is a good question, but of course the targets in the Environment Bill are quite different from carbon budgets. Carbon budgets relate to a single metric: the UK’s net greenhouse gas emissions. These targets will be set on several different aspects of the natural environment.

As I am sure hon. Members will understand, that is very complicated; it is an interconnected system that is subject to natural factors as well as to human activity. Additionally, aspects of the natural environment such as water quality or soil health might respond more quickly to some things and more slowly to others, even with ambitious interventions. It is possible that the Government could adopt extremely ambitious measures and still miss their interim targets due to external factors.

What is important, in this case, is that a missed interim target is recognised and that the Government consider what is needed to get back on track. I am convinced that the system that is there to recognising that—the reporting, analysis and so on—will highlight it. There will be reporting through the EIPs, the targets and the OEP scrutiny, and the incorporation of any new interim targets or measures; it can all be looked at in the five-yearly review of the EIP. I believe there is a strong framework there already.

Finally, of course, the OEP will have the power to bring legal proceedings if the Government breach their environmental law duties, including their duty to achieve long-term targets. Of course, we cannot reach the long-term targets unless we have achieved the interim targets first. I hope I have been clear on that; I feel strongly that we have the right process here, and I hope the shadow Minister will kindly withdraw his amendment.

Dr Whitehead: I hope the Minister will not think I am being too unkind if I say that she is describing a triple lock process rather more like a triple bunch of flowers process. Yes, what she says about the process operating under positive circumstances is good. Indeed, if it happens as she has outlined, we will have a good process in place. It may well be that as time goes by and people have more confidence in how the process works, and if the Government of the day play ball with that process in its own right, the outcome will be good.

3.45 pm

I accept the point that the Climate Change Act talks about one metric, as opposed to another. However, the point about the process adopted by that Act is that although under the law as it stands, we cannot imagine a Minister being clapped in irons and taken to the Tower for not achieving a particular carbon budget, the discipline that the legal status of that requirement places on Ministers means that they have to explain themselves to Parliament fully and carefully.

The Minister has suggested that this process substantively does the same. Ministers have to make pretty clear recompense for failings in the carbon budget. As she will know, if Ministers have slipped up in achieving a carbon budget—if they have produced a clean growth plan or low carbon plan relating to a carbon budget, and then do not achieve that budget—they are legally obliged to take measures to get it back on track. As I understand it, none of that kind of constraint applies to the Environment Bill. Although it is true that if this Bill is taken in its totality, a number of things could work
together to achieve something like that end, I would prefer it if we had something a bit stronger to make sure those ends are achieved. I am not saying that there is no evidence that those structures are effectively in the Bill; only that they do not really add up to something that can give us the same sort of certainty as the process in the Climate Change Act.

I hear what the Minister says, and I hope she is right. I am reasonably confident that with a good wind behind this legislation, those procedures will obtain the confidence of the public. However, the Bill is deficient when it comes to making fully sure that it will work over the long term in the way that the public want, and therefore that the public have confidence in it. I do not particularly want to divide the Committee, but I retain my reservations about whether the structures in the Bill will give it proper effect. I hope they will, but I reserve the right to say “I told you so” if they do not work out. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 83, in clause 4, page 3, line 24, at end insert
“and,
(c) steps identified under section 5(5)(b) are taken.”

This amendment places a duty on the Secretary of State to do what they have said needs to be done in their report.

The amendment attempts to tidy up the procedures in clauses 4 and 5. Clause 5 talks about reporting duties, and it identifies the steps that are taken to make sure the Secretary of State does what they need to do according to their report. At present, the steps identified in clause 5 stand separate from the Secretary of State’s report, and the Secretary of State appears to report in isolation. Various things have to be done, but they are not tied in with the report.

The amendment would ensure that the “steps identified under section 5(5)(b) are taken”, which would mean that the Secretary of State’s report is not only a piece of paper. The amendment would impose a duty on the Secretary of State to do what their report says needs to be done, so the report would have real substance for future activity in this area.

Rebecca Pow: I thank the shadow Minister for tabling the amendment. I am sure he agrees that the most critical thing is the meeting of long-term targets in order to deliver significant environmental improvement, rather than the specific process of getting there. Our target framework provides strong assurance that the Government will achieve them, so the amendment is not necessary.

If a long-term target is missed, the Government’s remedial plan must set out the steps they intend to take towards meeting the missed target as soon as reasonably practicable. The Government will remain under an explicit duty to meet the target. The OEP will have a key role in holding the Government to account on the delivery of targets, both through the annual scrutiny of progress and through its enforcement functions. If a long-term target is missed, the OEP may decide to commence an investigation, which could ultimately lead to enforcement action. We expect the case for enforcement action to increase with time if the target keeps being missed, including if the Government fail to take the steps outlined in the remedial plan. I therefore ask the hon. Gentleman to withdraw the amendment.

Dr Whitehead: I am a little happier with the Minister’s consideration of that amendment. I think it might be a good idea to pull these things together, but I accept what the Minister says, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 4 ordered to stand part of the Bill.

Clause 5

ENVIRONMENTAL TARGETS: EFFECT

Dr Whitehead: I beg to move amendment 84, in clause 5, page 4, line 1, at end insert—
“(c) include a timetable for adoption, implementation and review of the chosen measures, and the authorities responsible for their delivery, and
(d) an analysis of the options considered and their estimated impact on delivering progress against the relevant targets.”

The amendment strengthens the Secretary of State’s reporting by including a timetable and analysis.

We now turn to clause 5, which sets out that the Secretary of State must “set out the steps the Secretary of State has taken, or intends to take, to ensure the specified standard is achieved as soon as reasonably practicable.”

To give the clause a little more robustness, the amendment would add at the end that the Secretary of State’s report should “(c) include a timetable for adoption, implementation and review of the chosen measures, and the authorities responsible for their delivery, and
(d) an analysis of the options considered and their estimated impact on delivering progress against the relevant targets.”

That sounds a little routine, but we think that without such shaping, the report could be pretty much anything. We could give the report considerable shape by requiring it to contain a timetable for the adoption, implementation and review of the chosen measures, to shape and specify them; to set out who will be responsible for doing those things; and to contain an analysis of the options that have been considered and their estimated impact. That might not necessarily be an impact assessment as we traditionally know them in legislation, but a background analysis of those options and how they would affect the delivery of progress against relevant targets would be a good net addition to the Bill. I anticipate that the Minister may think otherwise, but I am interested to hear what she has to say. I am interested to know whether she thinks that such a process, which would give reports a lot more shape, might be considered for future reports. That might be done by further secondary legislation, or by other means—not necessarily those that are laid out in the amendment.

Rebecca Pow: I am pleased that the hon. Gentleman agrees that missing a legally binding target should lead to clear consequences and next steps. I do not believe that the amendment is necessary, however, because it does not strengthen the requirements that we are creating. The Bill requires the Government to publish a remedial plan to achieve the missed standard “as soon as reasonably practicable”.
To draw up their remedial plan, the Government would therefore have to assess both what is practicable—feasible—and what is reasonable. That would include how long the chosen measures are expected to take to achieve the missed standard, how and by whom they would be implemented, and what alternatives had been considered. To show that they had met that standard, the Government would need to set out how they had selected the measures included in the remedial plan—I think that is what the shadow Minister was getting at—as part of sound policy making and to ensure transparency.

The OEP would have a key role to play. If, for example, the Government failed to publish a remedial plan that met the relevant statutory requirements, the OEP might decide to open an investigation, which ultimately could lead to enforcement action. There are already very strong measures to back up the remedial plan, and in case standards or targets are missed. I therefore ask the hon. Member to withdraw the amendment.

Dr Whitehead: As I anticipated, I did not have an eager taker for my suggestion. Nevertheless, the Minister put on the record some of the anticipated structure following those reports. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 5 ordered to stand part of the Bill.

Clause 6

ENVIRONMENTAL TARGETS: REVIEW

Dr Whitehead: I beg to move amendment 183, in clause 6, page 4, line 21, at end insert—

“(3A) In considering whether the natural environment would be significantly improved, the Secretary of State must be satisfied that—

(a) the terrestrial and marine natural environment in England has improved as a system; and

(b) that the achievement of any targets which meet the conditions specified in subsection (8) would constitute significant improvement in that matter.”

This amendment would require a review to consider whether significant improvement is achieved for the environment as a whole, as well as for certain individual aspects of the environment.

We now move to the fabled land of clause 6. We have been looking at it from afar and thinking that it might be a mirage, but it turns out that, like the targets we are talking about, it may be within our grasp. The amendment is important when it comes to looking at the system of the terrestrial and marine environment as a whole in the consideration of significant improvement to the natural environment.

We have talked about what we mean by significant improvement. We have discussed whether in certain circumstances, the improvement of the habitat for a particular species near Birmingham might constitute significant improvement, or whether we need a more holistic consideration of significant improvement. I think we need something more holistic, because it is important that our individual efforts—we will discuss them later in relation to local nature action plans—join up, and that they are seen as a whole and as parts of a wider process that provides systematic improvement for the whole terrestrial and marine environment. Individual improvements should therefore be judged against that wider yardstick.

4 pm

In considering that question, we want the Secretary of State to be satisfied that the same yardstick can reasonably be applied to the general and the individual, ensuring that the general is taken account of and that individual things are not only good in their own right, but achieve a wider improvement. The amendment also sets out that “the achievement of any targets which meet the conditions specified in subsection (8) would constitute significant improvement in that matter.” That would bind the notion of significant improvement into the wider context, and it would be a useful improvement to the Bill.

The Minister might say that a systemic view of the overall terrestrial and marine natural environment can be inserted into the process in other ways. We probably agree that it is important for it to be done one way or the other, so that we stay focused on where we are going rather than getting distracted by things that are interesting but do not add to the whole, as far as systems are concerned. I hope that she will reassure me on that point.

Rebecca Pow: I welcome the shadow Minister’s intention of ensuring that the Secretary of State looks at whether targets will achieve significant improvement in the natural environment as a whole, as well as in individual areas of it. I do not believe that the amendment is necessary. The shadow Minister will not be surprised to hear me say that, but even in our evidence session of last week, Dr Richard Benwell, chief executive officer of Wildlife and Countryside Link, stated that “the environment has to operate as a system. If you choose one thing to focus on, you end up causing more problems to solve.”—[Official Report, Environment Public Bill Committee, 12 March 2020; c. 116, Q157.]

In line with that, the significant improvement test—a legal requirement in the Bill—is intended to consider both the breadth and the amount of improvement, with the aim of assessing whether England’s natural environment as a whole would significantly improve. It is a holistic approach, and the Bill’s definition of the natural environment is drafted to be broad enough to encompass all its elements, including the marine environment, which we discussed earlier. I believe the shadow Minister and I are thinking along the same lines, as I think he was intimating that he wants this all-encompassing approach, which is explicitly highlighted in the Bill’s explanatory notes.

The Secretary of State will consider expected environmental improvement across all aspects of England’s natural environment, both terrestrial and marine, when conducting the significant improvement test. The test involves assessing whether England’s natural environment would significantly improve as a result of collectively meeting the long-term targets, which are legally binding, under the Bill, alongside any other relevant legislative environmental targets to which we are also adhering. I hope that reassures the shadow Minister, and I ask him to withdraw amendment 183.

Dr Whitehead: I am interested to know what status the Minister thinks the explanatory notes have in these proceedings. I imagine they are rather more than insignificant, and rather less than completely significant. I read the explanatory notes to any piece of legislation.
Sometimes, it occurs to me that they run very close to what is in the legislation, and sometimes they depart a little, yet they come before us in the same form on all occasions. They are a sort of concordance that goes along with the legislation so that we can understand the clauses more easily.

I am not sure whether there is a consistent production line technique for explanatory notes, and whether they have at least some legal significance in terms of seeking the Minister’s intention in presenting a piece of legislation or, indeed, a Committee’s intention in seeking to legislate.

Rebecca Pow: The shadow Minister makes a very good point about the explanatory notes, although I always love having a look at them. Explanatory notes can obviously be used in the interpretation of the Bill and in legal proceedings, if necessary, as part of wider evidence.

Dr Whitehead: That is a very helpful intervention, and it is what I thought. It means that even if explanatory notes appear to stray a little from what one might read in the legislation, if one took it absolutely at face value, we can rely on them for clarification, for future reference. That is an important point, because this afternoon, in the Minister’s response to my inquiry, she relied on what the explanatory notes said about the Bill, rather than what the Bill said. I take her point. If we are to take on board what the explanatory notes say, then that is not a bad response to my point. I wonder whether it would have been a better idea to put that stuff in the legislation, but hey, no one is perfect. We probably have a reasonably good framework to proceed with, in the light of the Minister’s explanation. I therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 86, in clause 6, page 4, line 41, at end insert—

“(9) In carrying out a review under this section, the Secretary of State must consider whether any targets relating to the priority areas in section 1 that are contained in legislation which forms part of the law of England and Wales—

(a) have expired, or

(b) are required to be achieved by a date which has passed.

(10) If paragraph (a) or (b) applies, then the significant environmental improvement test is only met if a new target or targets are set relating to the same matters which specify a new standard and a future date by which such standards must be reached.”

This amendment prevents the targets from meeting the significant improvement test through virtue of being out of date and so more easily achieved.

The amendment seeks to ensure that—

Richard Graham: On a point of order, Sir Roger, am I right in thinking that we have got roughly halfway down page 1 of the selection list, and still have more than three full pages to go? By your calculation, are we on time to complete this business by 6 pm? If we are not, would it be possible for the Opposition to consider which of the amendments they most want to discuss, debate in detail and to push to a vote?

The Chair: Mr Graham, there is a wonderful organisation known as the usual channels, and I think you and I should allow them to do their job.

Dr Whitehead: I think we were aiming to get to the end of clause 6, so this is the last amendment that we want to raise this afternoon.

This amendment seeks to ensure that measures that are considered in carrying out a review are timely and in date. For example, the Secretary of State cannot carry out a review when things are out of date, and so more easily achieved than they would have been if the tests were in date. The amendment requires the Secretary of State to consider whether the targets that relate to the priority areas in clause 1 have expired or are required to be achieved by a date that has passed. That sounds a little like sell-by dates on cartons of milk, but it is more important than that, because a review could address targets that have expired, have been changed or have been achieved, and then the effect of that review could be pretty null.

This amendment puts at the end of the clause the requirement that

“the Secretary of State must consider whether any targets...have expired.”

If either of the considerations in proposed new subsection (9) apply, then under proposed new subsection (10),

the significant environmental improvement test is only met if a new target or targets are set relating to the same matters which specify a new standard and a future date by which such standards must be reached.”

That is to say, if, in carrying out a review, the Secretary of State considers a target to have expired, or to have been required to be achieved by a date which has passed, then the significant environmental improvement test is met only if that is rectified.

As hon. Members said this morning, this is a moving and creaking ship. Things can change over time. New targets can be put in place, and existing targets can be changed, amended and improved. This amendment reflects the fact that over time, that may well happen. Indeed, some targets might be achieved and exceeded. If a Secretary of State is reporting on a target that has been exceeded, but is saying how a target should be reached, then clearly that report does not make a great deal of sense. The amendment rectifies that possibility, and puts in place a requirement that new targets be sought through the target-setting process discussed this morning. It allies these targets with the significant improvement test, and allows them to be met in a coherent way.

4.15 pm

Again, the Minister may well decide that the amendment is not exactly what she wants this afternoon, but she may have information that will allow me to think, “Well, the Government have thought about this, and have a method of making sure that the problems are solved by means other than this amendment.”

Rebecca Pow: I thank the hon. Member. If I may say so, he tables slightly tortuous amendments and it is often a case of trying to get one’s head around them. I reassure him that this is not a creaking ship. This is a buoyant ship sailing towards a bright new blue environmentally enhanced horizon. As this is the last amendment today, I feel I can slip that in.

Dr Whitehead: Perhaps I can clarify the issue. My understanding of the term “creaking ship” is that it is a ship that is under sail, flourishing and driving through the water, and whose timbers are creaking as it is propelled to new horizons.
The Chair: I think the answer is, when you are in a hole, stop digging.

Rebecca Pow: I feel a bit of backtracking going on here.

Amendment 86 would mean that the significant improvement test could be met only if any targets within the four priority areas that have expired have been replaced by new targets. I reassure the hon. Member that the Government would consider current targets—not expired targets—only when conducting the significant improvement test. That test involves assessing whether England’s natural environment would improve significantly as a result of meeting the longer-term legally binding targets. That has taken up a large part of today’s discussion and is set under the Bill, as well as any other relevant legislation relating to environmental targets.

If the test is not passed, the Government must set out how they plan to use their new target-setting powers to close that gap. In practice, that will most likely involve plans to modify existing targets, make them more ambitious, or set new targets. That helps the Government to focus on the most pressing environmental issues of our time, rather than simply replacing targets that have expired. Some expired targets might, for example, no longer be the key issues on which we should focus in our long-term goals.

The Office for Environmental Protection has a key role through the exercising of its scrutiny functions, and it could publish a report if it disagreed with the Government’s conclusions that the existing targets were sufficient to pass the significant improvement test. The Government would then have to respond to that OEP report, and that response must be published and laid before Parliament. That is a clear pathway. The process ensures that Parliament, supported by the OEP, can hold the Government to account on the sufficiency of their measures to significantly improve the natural environment. I hope that clarifies the situation, and I ask the hon. Member kindly to withdraw amendment 86.

Dr Whitehead: I think that does provide clarification, to a reasonable extent. The amendment sought to copper-bottom guarantees, but the ship can sail quite well under the circumstances set out by the Minister, while perhaps not being fully caulked. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

The Chair: Before everybody leaves, the expectation is that the Committee will sit at 11.30 on Thursday 19 March. I say “expectation” because, as we all know, we live in rather strange times, and I feel I owe it to Mr Graham, having slapped him down a bit, to answer the question properly.

The timetable for the Bill is agreed by the usual channels, in consultation with the Minister and shadow Minister. There should be more than adequate time to thoroughly debate the Bill, given the programme we have. I have no problems with that whatsoever. However, I understand that discussions are taking place that may affect the progress not only of this Bill, but of other legislation. That remains to be seen. We may find this extremely important piece of legislation going on ice for a week, a month or six months.

Before we part—in case we do not meet even on Thursday—I want to say two things. The proceedings today have been slightly ramshackle around the edges, but I can live with that. You have been immensely courteous, thorough and good-humoured about the proceedings, and I am grateful to you for that.

Ordered, That further consideration be now adjourned.

—(Leo Docherty.)

Adjourned till Thursday 19 March at half-past Eleven o’clock.
Written evidence reported to the House
EB13 WWF UK
EB14 Countryside Alliance
EB15 City of London Corporation
EB16 Peter Silverman MA MSc, Clean Highways
EB17 Greener UK and Wildlife and Countryside Link (supplementary submission)
EB18 British Lung Foundation

EB19 ClientEarth
EB20 London Councils
EB21 Cllr Andrew Western, Leader of Trafford Council and Greater Manchester Green City Region Lead
EB22 British Heart Foundation
EB23 Global Witness
EB24 Global Canopy
EB25 Broadway Initiative
CONTENTS

Motion on future sittings agreed to.
Adjourned till a time and date to be fixed by the Chair.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 23 March 2020

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The Committee consisted of the following Members:

Chairs: † MR NIGEL EVANS, SIR ROGER GALE, SIR GEORGE HOWARTH

Afolami, Bim (Hitchin and Harpenden) (Con)  
† Ansell, Caroline (Eastbourne) (Con)  
Bhatti, Saqib (Meriden) (Con)  
† Brock, Deidre (Edinburgh North and Leith) (SNP)  
† Debbonaire, Thangam (Bristol West) (Lab)  
† Docherty, Leo (Aldershot) (Con)  
Edwards, Ruth (Rushcliffe) (Con)  
Graham, Richard (Gloucester) (Con)  
† Longhi, Marco (Dudley North) (Con)  
† McCarthy, Kerry (Bristol East) (Lab)  
Mackrory, Cherilyn (Truro and Falmouth) (Con)  
† Moore, Robbie (Keighley) (Con)  
Oppong-Asare, Abena (Erith and Thamesmead) (Lab)  
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)  
Sobel, Alex (Leeds North West) (Lab/Co-op)  
Thomson, Richard (Gordon) (SNP)  
Whitehead, Dr Alan (Southampton, Test) (Lab)  
Adam Mellows-Facer, Anwen Rees, Committee Clerks  
† attended the Committee
Public Bill Committee

Thursday 19 March 2020

[Mr Nigel Evans in the Chair]

Environment Bill

11.30 am

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I beg to move,

That, notwithstanding the Committee’s order of 10 March, the Committee, at the conclusion of proceedings at the sitting starting at 11.30 am on 19 March, do adjourn to a time and date to be fixed by the Chair.

Following cross-party discussions and in the light of recent events, it is appropriate that proceedings in Committee be postponed.

I thank all Members on both sides of the Committee—those here, and those not here today—for the wonderfully positive way in which they have approached their scrutiny of the Bill. The Committee knows that the Bill is landmark legislation, so we take it very seriously. I very much look forward to our resumption at an appropriate point. The motion provides for the Committee to adjourn until a later date, and it is right that we take such action in the light of what is happening nationally.

Thangam Debbonaire (Bristol West) (Lab): On behalf of Her Majesty’s Opposition, let me say that we appreciate the constructive way in which this has been handled. I thank the Clerks and staff. We look forward to resuming, because we have a lot of amendments to discuss, but I thank everyone for managing to smooth this out so swiftly. Thank you for your chairmanship, Mr Evans.

Deidre Brock (Edinburgh North and Leith) (SNP): I echo the hon. Member’s comments. I am not aware of any discussion held between our Whips, but I am sure that one did happen. While I am extremely disappointed, as we all must be, that the Committee cannot continue at this point, I look forward to its resumption in the near future, once we have got through this terrible time.

The Chair: These are unprecedented times. They have even got me chairing the Committee!

Thangam Debbonaire: Aww!

The Chair: I know.

Question put and agreed to.

Ordered, That further consideration be now adjourned.—(Leo Docherty.)

11.32 am

Adjourned till a time and date to be fixed by the Chair.
Written evidence reported to the House
EB26 The Ramblers
EB27 Cruelty Free International
EB28 Northern Ireland Environment Link
Programme order amended.  
Clauses 7 to 15 agreed to.  
Clause 16 under consideration when the Committee adjourned till this day at Two o'clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 7 November 2020
The Committee consisted of the following Members:

**Chairs:** † James Gray, Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Anderson, Fleur (Putney) (Lab)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Browne, Anthony (South Cambridgeshire) (Con)
† Docherty, Leo (Aldershot) (Con)
† Furniss, Gill (Sheffield, Brightside and Hillsborough) (Lab)
† Graham, Richard (Gloucester) (Con)
† Jones, Fay (Brecon and Radnorshire) (Con)
† Jones, Ruth (Newport West) (Lab)
† Longhi, Marco (Dudley North) (Con)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Zeichner, Daniel (Cambridge) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Tuesday 3 November 2020

(Morning)

[James Gray in the Chair]

Environment Bill

9.25 am

The Chair: May I start by welcoming the Committee back to the interrupted consideration of the Environment Bill and give you a few little parish notices? First, I start from the position of being a very traditional chairman. Chairmen come in different shapes and sizes, and I am at the traditional end of things and, therefore, try to use the procedures and practices we have in the main Chamber, although there may be some variations.

Secondly, we should be extremely careful about social distancing. The idea is to sit at the chairs with a blue tick, so the central row is not used, by and large. I think that is a matter for Members’ discretion, but perhaps people can make a point of keeping their distance throughout the process of the Bill. On social distancing, instead of passing notes to Hansard, which we would normally do, would Members kindly send by email any speeches they might make. I know that the Hansard Reporters would appreciate that.

Most members of the Committee are very experienced, but for those who might not be that experienced, the principle of what we are doing is that, having agreed the principle behind the Bill on Second Reading, we now consider the detail of the wording of the Bill, to make it a good Bill, no matter what we thought of the principle behind it. We can do that by considering the Bill line by line. The means by which that happens is that members of the Committee, whether Opposition or Government—or indeed people who are not members of the Committee, by means that I will describe in a moment—put down amendments to the Bill. Those amendments are then grouped for debate in a convenient way, bringing together topics that are similar.

Only members of the Committee may argue for amendments. However, hon. Members who are not members of the Committee may lay amendments if they can persuade a member of the Committee to move them, and I think one or two examples of that may occur during the Bill. Amendments must be laid by the rise of the House on Thursday for discussion on Tuesday and by the rise of the House on Monday for discussion on the Thursday. That is all I have to say by way of introductory remarks.

Dr Alan Whitehead (Southampton, Test) (Lab): On a point of order, Mr Gray. I welcome you back to the Committee after our long break. It is a pleasure to serve under your chairmanship. I also welcome Committee members back to our proceedings.

Because of the particularly long break we have had, a number of events have occurred since the last sitting in the earlier part of the year, which those with a long memory will dimly recall. Those events are twofold. First, the Government decided during the period in which the Committee was in abeyance to table a large number of new amendments, particularly concerning the operation of the Office for Environmental Protection, which, certainly in the Opposition’s view, considerably alter how that office works.

Secondly, in the period between our original deliberations and now, the Government also brought forward a planning White Paper, which looks as though it will cut across many of the provisions of the Bill relating to environmental improvement and action areas, which depend on planning zones for their operation.

Both those developments fundamentally alter some structures of the Bill. Through the usual channels, we made representations that we should have new evidence sessions at the beginning of this Committee period so that the Committee is informed of those new developments, which would help to ensure that our deliberations are carried out in the best way possible. Unfortunately, that has not found favour, and we begin our proceedings this morning without the benefit of any new information that might allow the Committee to consider those developments.

Would it be possible, Mr Gray, to accommodate a statement from the Minister on those two issues, on which she could be questioned, so that the Committee can have some elucidation before it continues its proceedings? Whether that statement should be made immediately upon the resumption of the Committee this morning, or could be accommodated as early as possible in the Committee’s proceedings, is clearly a matter for discussion, but we strongly hope that such a statement could be agreed.

The Chair: I am grateful to the hon. Gentleman for that point of order, which is more of a point of information than anything else. The changes that have occurred since the Committee last sat will be considered via amendments submitted by Opposition and other Members during our proceedings. There is no facility for making a ministerial statement to the Committee, but the Minister will have ample opportunity to answer the points that the hon. Gentleman wishes to raise during the debates that we will have between now and 1 December, which is the agreed out date. If there were extra evidence sessions, that would delay the out date. Although it cannot be done, the hon. Gentleman has made a valid point and the Committee has heard it. I know that the Minister will seek to answer those points during the debates that lie ahead of us.

Robbie Moore (Keighley) (Con): On a point of order, Mr Gray. As it is fairly warm in the room, would you mind if Members removed their jackets?

The Chair: It goes completely against my natural instincts and my absolute principles, but of course, gentlemen may remove their jackets if they wish during our proceedings. There is no need for a new point of order on every occasion. I assure the Committee that I will not be taking my jacket off.

Ordered.

That the order of the Committee of 10 March be varied as follows—

(1) In paragraph (1(d), leave out “and 2.00pm”.

(2) In paragraph (1), leave out sub-paragraphs (e) to (l).

(3) After paragraph (1), insert—

“A(1A) the Committee shall (in addition to its meeting at 9.25am on Tuesday 3 November) meet—

(a) at 2.00 pm on Tuesday 3 November;
which the plan relates, which the Secretary of State considers subsection (4) and insert—

discussion clause 25.

clause 25 considered together, but the amendment to have an amendment to clause 7 and an amendment to which the amendment refers. In other words, we may have them, that decision comes at the point in the Bill to of the Bill. The selection list of amendments arrived in the Committee Room a few moments ago. I hope that everyone has a copy. It shows how the amendments have been grouped, starting with clause 7.

One point that I omitted to make during my earlier remarks is that amendments are grouped for convenience of debate. However, if a decision has to be made on them, that decision comes at the point in the Bill to which the amendment refers. In other words, we may have an amendment to clause 7 and an amendment to clause 25 considered together, but the amendment to clause 25 will be moved formally at the time when we discuss clause 25.

Clause 7

ENVIRONMENTAL IMPROVEMENT PLANS

Dr Whitehead: I beg to move amendment 88, in clause 7, page 5, line 7, leave out subsection (4) and insert—

“(4) The environmental improvement plan must include, as a minimum—

(a) measures which, taken together, are likely to achieve any targets set under sections 1 or 2 and will ensure that the next interim targets included in the plan are met;
(b) measures that each relevant central government department must carry out;
(c) measures to protect sensitive and vulnerable population groups (including children, older people, people with chronic illnesses and outdoor and transport workers) from the health impacts of pollution;
(d) a timetable for adoption, implementation and review of the chosen measures, and the authorities responsible for their delivery;
(e) an analysis of the options considered and their estimated impact on delivering progress against the relevant targets; and
(f) measures to minimise, or where possible eliminate, the harmful impacts of pollution on human health and the environment.”

This amendment looks to strengthen Environmental Improvement Plans by connecting them to measures which are proportionate to targets set out in the bill, departmental action, vulnerable people, a timetable and analysis.

The Chair: With this it will be convenient to discuss amendment 112, in clause 7, page 5, line 7, leave out subsection (4) and insert—

“(4) An environmental improvement plan must set out the steps Her Majesty’s Government intends to take in the period to which the plan relates, which the Secretary of State considers will—

(a) enable targets set under section 1(1) and that meet the conditions at section 6(8) to be met, and
(b) make a significant contribution to meeting the environmental objectives irrespective of whether targets are in place to cover all matters relating to the environmental objectives.”

Dr Whitehead: This is potentially an important amendment. What we would expect to happen in a Bill is that as the legislation moves through its narrative, one part of the narrative connects to the next one in a coherent way. One of our criticisms of this Bill, although we have said that it is a good Bill in its own right in what it seeks to achieve, is that it fails to add to its coherence as the narrative of the Bill proceeds. What I mean by that is that the Bill tends to set itself out in a number of chunks, a little like an early picaresque novel, rather than a more recent novel that includes the present, the past and the future. I am not suggesting that the Bill itself is a novel, but others may have views on that.

The amendment seeks to bridge the narrative gap in the Bill by ensuring that the measures in this clause relate back to the targets at the beginning of the Bill, which we discussed, as hon. Members with long memories will recall, when our proceedings started earlier this year. Those targets, which we agreed—indeed, we agreed not only the targets, but the mechanism by which they would be decided on—are very important in relation to the environmental improvement plan that will arise from the Bill. If we have an environmental improvement plan that does not relate to those targets and, indeed, has a narrative on environmental improvement that is actually a descriptive arrangement rather than an action arrangement, it is vital that the connection is properly made in the Bill itself and that the environmental improvement plan, essentially, is instructed to organise itself along lines that do relate to those targets in the first place.

As we discover when we go through this clause, an environmental improvement plan is, in effect, already in existence—or rather, this Bill will bring that environmental improvement plan into existence. The Bill describes the process by which an environmental improvement plan can be developed and put in place, and then the Bill says, “Oh and by the way, it so happens that there is an environmental improvement plan already in existence that we can adopt for the purpose of the Bill”—and that is “A Green Future: Our 25 Year Plan to Improve the Environment”. People will see that, in the legislation, it is specifically referred to as being the present environmental improvement plan, the one in front of us.

However, that improvement plan—as, again, I am sure hon. Members will know—was actually adopted in 2018. To show people how far back that goes, I point out that it has a “Foreword from the Prime Minister”, the right hon. Member for Maidenhead (Mrs May), and a “Foreword from the Secretary of State”, the right hon. Member for Surrey Heath (Michael Gove). Neither of them is in the same role at the moment, so it is quite an old document. Among other things, it does not address itself to the structure of the Environment Bill; it says a lot of very interesting things, but it certainly does not address itself to how those things should take place. I want to talk later in the debate about some of the issues in the environmental plan, “A Green Future: Our 25 Year Plan to Improve the Environment”.

For the time being, suffice it to say that there appears to be a problem of connection, as far as the Bill is concerned. The amendment seeks to rectify that by clearly stating on the face of the Bill:
[Dr Whitehead]

“The environmental improvement plan must include... measures which, taken together, are likely to achieve any targets set under sections 1 or 2 and will ensure that the next interim targets included in the plan are met”. It therefore makes a direct connection between this part of the Bill and the first part. It states that the environmental improvement plan must include “measures that each relevant central government department must carry out... measures to protect sensitive and vulnerable population groups... a timetable for adoption, implementation and review of the chosen measures... analysis of the options considered and their estimated impact on delivering progress... and measures to minimise; or where possible eliminate, the harmful impacts of pollution on human health and the environment”.

The amendment therefore comprehensively makes those connections.

I am sure the Minister will say that none of that is necessary, because everything is okay—it all works all right. However, I hope, at the very least, that, in explaining why that is the case, she will also explain why it is not necessary to make that link between this part of the Bill, the environmental improvement plan and the targets that we set out and agreed in previous sittings.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I thank the hon. Gentleman for his opening words. It is an absolute privilege to be back with the Committee. [Hon. Members: “Hear, hear.”] It is more than seven months since we had to adjourn, very unusually, and we all know why that occurred. Sadly, we are still in a tricky situation with the coronavirus pandemic, but I am pleased that we are able to carry on with this hugely important piece of legislation, which will change the way we think about our environment forever. We are all involved in a very significant piece of work, and it is a delight to have you in the chair, Mr Gray.

Despite the fact that we are in these very tricky times with the pandemic, we need to look ahead as a Government and as a country. As we build back, as the Prime Minister has said, we want to base the recovery on solid foundations, including a fairer, greener and more resilient global economy. I want to touch on a few of these issues before we carry on, because it has been such a long time since we reconvened.

On the points made by the shadow Minister, we took expert evidence before. Everyone is entitled to take their own evidence as we go along to inform anything that we do. Written evidence is also submitted to back up the Bill, and that is always welcomed. The hon. Gentleman mentioned planning issues, and I absolutely assure him that we will address those when we get to the right part of the Bill and particularly the nature chapter. I think the Chair covered the issue of a statement comprehensively, and I fully support your words, Chair.

The Chair: Order. I think “Mr Gray” is the right thing; otherwise, we will get mixed up between Chair and Chairman. Also, in passing, I know you are all pleased to serve under my chairmanship, but you do not need to say so—[Laughter.]

Rebecca Pow: But we love saying that, Mr Gray. Okay, I will try not to say it again.

9.45 am

To touch on those wider issues, we are mindful of the situation that the country is in at the moment, but we need to look ahead. Those much bigger global challenges have not gone away, including climate change, biodiversity and all the things we have heard so much about, including the crash in species. The Government remain committed to being a world leader on tackling environmental issues. We will ramp up our work on ambitious legislation. As I have touched on, that will be done through this landmark Environment Bill.

Although the Bill has been paused, the work that Government have been doing has not paused, as was touched on by the shadow Minister. The Government have continued to work on implementing the Bill’s measures, including publishing our targets policy paper in August and launching a call for evidence to help identify which public bodies will be required to work with local authorities to reduce air pollution.

We have also launched a recruitment campaign for the chair of the Office for Environmental Protection, and have launched five local nature recovery strategy pilots in Cornwall, Buckinghamshire, Greater Manchester, Cumbria and Northumberland to test how the strategies will support development of wider environmental objectives. I see my hon. Friend the Member for Truro and Falmouth grinning, because one of the pilots is in Cornwall. I am pleased that those pilots have been launched, and I think they are going to give us some really interesting and useful data.

Sadly, we have to wait a bit longer to play our part as the host of COP26, but work has continued on that wider environmental agenda as well. The Prime Minister has committed to protect 30% of our land by 2030, which was a really serious commitment. We played a key part in the leaders’ pledge for nature, recently endorsed by 76 world leaders at a United Nations event.

We consulted on an obligation for companies trading in forest risk commodities to carry out due diligence on their supply chains. I very much hope to update the Committee on that matter in the coming weeks. Indeed, it was raised by many members of this Committee, including Opposition Members, in an earlier sitting. I will reporting on that as we proceed.

We have set out our plans to cement the UK’s position as a world leader in wind power. Inhabitants of these isles often complain about the weather, but it is a great natural asset and it will really help in our journey to net zero by 2050. That is why we have set out our plans for wind to power every home in the country by 2030, and to double capacity for renewable energy generation through the contracts for difference mechanism. I mention those measures, as well as others too numerous to go into today, the Chair will be pleased to hear, because they are all relevant to the Bill as background.

The Chair: Order. Sorry to interrupt the Minister, who is speaking extremely well, but I intend to be very tough with the Committee to make sure that we address the amendments in this group. I think it is right to offer a reasonable reply to the hon. Member for Southampton, Test and the point of order he made regarding things that have occurred since we last met. However, I think the Minister is tending towards a Second Reading speech, and perhaps she could address more particularly the amendment in front of us.
Rebecca Pow: Thank you Chair, I get your point and I beg your forgiveness. I will not include everything, but I wanted to update the Committee because so much has happened since we stopped our consideration of the Bill. People think we have gone on hold, but absolutely we have not.

We will be doing much more work, and we will discuss our statutory EIPs, which will drive up environmental improvement, in the next few days alone, as well as how we will continue to protect the environment from damage by embedding environmental principles at the heart of Government policy.

Turning to the amendments, which is what you really want me to do, Mr Gray, I appreciate the desire of the hon. Member for Southampton, Test to strengthen the EIPs—that is what clause 7 is all about. I am delighted that he has raised the 25-year environment plan because I was at the launch of that plan. Although colleagues who filled those important posts are in different roles now, I was there as Parliamentary Private Secretary in this Department.

I am utterly delighted to introduce this—perhaps the shadow Minister failed to address this—as the 25-year environment plan is actually the first EIP. That is what this is all about. What we are doing with the EIPs is triggering what is set out in the excellent plan. The Bill’s statutory cycle of monitoring, reporting and planning is designed to ensure that the Government take early, regular steps to achieve long-term targets and are held to account through regular scrutiny by the Office for Environmental Protection and by Parliament.

The Bill creates a statutory triple lock, which we will hear about a great deal as the Bill progresses, to drive short-term progress. First, the Government must have an environmental improvement plan setting out the steps they intend to take to improve the environment and to review it every five years. When reviewing it, they must consider whether further or different measures should be adopted to achieve interim—five-year—targets and long-term targets. When we review the EIP in 2023 we will update it as necessary to include the steps that we intend to take to achieve the targets that we set. That will be five years after the launch of the first plan in 2018.

Secondly, the Government must report on progress towards achieving targets every year. Thirdly, the Office for Environmental Protection will hold us to account on progress towards achieving targets. Each year it will comment on the progress towards targets reported in the Government’s EIP annual report and can flag early on whether it believes there is a risk of the Government not meeting their long-term targets. It may make recommendations on how progress could be improved, and the Government have to respond. Ultimately, the OEP has the power to bring legal proceedings if the Government breach their environmental law duties, including the duty to achieve long-term targets.

In requiring that EIPs set measures to deal with pollution, amendment 88 would single out aspects of the environment ahead of others. EIPs are defined as plans significantly to increase the natural environment. Measures on air quality, with corresponding benefits to human health, are already within the scope of EIP, so it is not necessary to place duties on particular matters in the EIP, which could undermine consideration of other important environmental goals.

The Bill includes a duty to set a legally binding target for PM$_{2.5}$, the air pollutant with the greatest impact on human health, in addition to a further long-term air quality target. The introduction of measures to meet the air quality target will reduce exposure to harmful pollutants and deliver significant improvements to human health. Other targets that meet the criteria set out in clause 6(8) already have their own statutory regimes, including any appropriate requirements to set out plans and measures to achieve them. It is therefore unnecessary to require that EIPs include measures to achieve them.

Amendment 112 would explicitly link the measures in the EIP to “meeting the environmental objectives”, and I address this with the assumption that the environmental objectives are to achieve and maintain a healthy and natural environment, as set out in new clause 1. The Bill’s provisions already ensure the delivery of the significant environmental improvements that the hon. Member for Southampton, Test seeks through the amendment and ensure that the Government can be held to account. Targets and EIPs have the objective under clauses 6 and 7 of delivering significant improvements to the natural environment, so I urge the hon. Gentleman not to press the amendment.

Daniel Zeichner (Cambridge) (Lab): As you suggest, Mr Gray, I will not go through all the formalities. It is a pleasure to be on this Committee, although it is a little like the philosopher’s axe: which part of this Committee is still part of the preceding Committee? Many of us are new to this, and it has been a long-running process.

The Minister is notorious for her optimism—or has a reputation for optimism. When she talks about the 25-year improvement plan, I wonder whether that is 25 years forward or whether it is taking us 25 years back, because it is about filling the gaps left by our leaving the European Union and the protections that came from that membership. I fear, as my hon. Friend the Member for Southampton, Test explained earlier, that the heart has been ripped out of the Bill.

To turn to the amendment, as you directed Mr Gray, I listened closely to the Minister’s observations and I do not quite understand why she is not sympathetic to some of the amendment’s proposals. I particularly query her attitude to the natural environment. She will have seen the representations from the National Trust about including heritage within the ambit of natural environment, and that prompts a big question. There is no natural environment; we have been part of the environment as human beings for many, many years and we have had huge impact on it. I suspect we will pursue this matter in further discussions, but I would welcome her observations on why heritage is not included among the proposed protections.

In particular, I do not understand why the Minister does not favour the inclusion in the environmental improvement plans of proposed paragraph (b) in amendment 88, which calls for the reporting of “measures that each relevant central government department must carry out”.

All of us involved in rural policy know that it is an endless issue, and that virtually every part of government touches on the environment of rural areas. Those policies must be included as an essential safeguard to ensure that the environmental improvement plans work properly.
Rebecca Pow: The hon. Gentleman has hit the nail on the head: the natural environment is very complicated and complex. We have set out the Bill as it appears so that it takes an holistic approach to the environment, as I believe he will see as we proceed in our deliberations.

I believe that the hon. Gentleman was referring to rurality in particular, but the Bill covers everything about the environment, and not just one thing or another. It takes an holistic approach, and is a great deal more holistic than anything that the European Union has done. The environmental improvement plans are significant because there are no equivalents to them under EU law: member states were not required to maintain a comprehensive long-term plan to improve the environment significantly, but that is a key issue of the Bill. Nor was there any requirement on member states to report annually on progress towards any kind of significant improvement. EU law tends to require member states to prepare or publish plans to achieve particular targets, for example on air quality or water quality, but it does not offer the holistic approach of the Bill. By leaving the EU, we have an enormous opportunity to look at the environment in the round. I hope that helps Members.

Dr Whitehead: I am sorry, but I am just not convinced. I will consider clause 7 in further detail later, but the gap that we have identified in terms of the connection between this part of the Bill and the first six clauses is egregious, and does not appear to relate at all to what is in the 25-year environment plan, interesting though that plan may be in its own right.

The amendment is important because it addresses those shortcomings and it should not be set aside on the grounds that everything will be all right, and that the Bill is quite an holistic Bill after all. For that reason, I am afraid that we will seek to divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 3]

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth
Whitehead, Dr Alan
Zeichner, Daniel

NOES
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard
Jones, Fay
Longhi, Marco
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

10 am

Richard Graham (Gloucester) (Con): I beg to move amendment 201, in clause 7, page 5, line 10, leave out “may” and insert “must”.

This amendment would require the Government to include steps to improve people’s enjoyment of the natural environment in its Environmental Plan.

The Chair: With this it will be convenient to discuss amendment 202, in schedule 2, page 127, line 11, leave out “may” and insert “must”.

This amendment would require the Government to include steps to improve people’s enjoyment of the natural environment in its Environmental Plan and is consequential on Amendment 201.

Richard Graham: This is likely to be the shortest amendment proposed to the Bill. It simply substitutes the word “must” for “may” in clause 7, which would in turn require the Government to include steps to improve people’s enjoyment of the natural environment in their environmental plan. Why does this one-word change, which amounts to a net increase of one letter to the Bill, matter so much? The clue is in clause 7(5) and its clear intent to improve people’s enjoyment of the natural environment. The Government explicitly recognise the importance of that in the environmental improvement plan, which will set interim targets for each five-year period, and the amendment would ensure that the Bill includes people’s enjoyment in the five-year targets.

Many of us would argue that people’s enjoyment of the natural environment is always important, but it is especially so now, during the period of this pandemic. Many more of us have been enjoying green spaces during lockdown, and park visits in the UK were up 195% in the six weeks to 25 May compared with February. The amendment would put a greater legal burden on the Government to enhance access to such spaces as they set out new environmental policies in their environmental improvement plan.

The amendment acknowledges the value of parks and green spaces to all of us and all our constituents. This is a chance to appropriately fund our parks and green spaces, including the organisations that maintain them. Some of us will be aware of the Government scheme for pocket parks, which was announced by the Communities Secretary in March 2020. It was a £1.35 million fund—a very small fund by comparison with many of those that have had to be launched to support businesses, culture and many other organisations—and it created 68 new pocket parks around the country in order to transform urban spaces into green havens. They were hugely helpful, and I believe that further rounds would be both welcome and possible. They would help fund the priorities identified in the five-year targets for people’s enjoyment that should be created.

At this stage, I would like to bring as a remote witness the Ramblers organisation, which has made the point that access to, and enjoyment of, the natural environment has multiple benefits that are relevant to the aims of the Bill and to wider Government objectives. They include encouraging pro-environmental behaviours. There is evidence to suggest that people who spend more recreational time in natural settings are more likely to report engaging in a range of pro-environmental behaviours. In simple speech, that can often amount to volunteers joining litter-picking groups to ensure that our parks and green space are kept clean and are attractive to more visitors.

A survey shows that 85% of adults in England and Wales believe that being able to experience the countryside is important for children’s understanding of the environment. I think that is true in all our constituencies. In my constituency of Gloucester, we have the joy of the Robinswood Hill country park right in the middle of our small city. I believe that every child should have the experience of sitting on their mother’s or father’s shoulders for their first visit up the hill to watch the sunset over the River Severn in the summer. It is one of the most beautiful things that anyone can do, and it stimulates enjoyment and healthy behaviours.
There is also the issue of physical and mental health. More than eight out of 10 adults believe that visiting the countryside is good for their physical fitness and mental wellbeing. In a sense, we do not really need surveys to confirm that; we know it is true. People who live within 500 metres of accessible green space are 24% more likely to achieve the 30 minutes of daily physical activity that doctors constantly recommend. Access to green space is associated with reductions in long-term conditions such as heart disease and cancer, and close connections to green space are also associated with significantly less income-related health inequality, weakening the effects of deprivation on health. During the pandemic, there has been a huge increase in mental health problems, and during a lockdown period green spaces are in many ways people’s one chance of restoring some balance to their mental health.

In the current 25-year environment plan, which will be given statutory footing on Royal Assent, there are broad aspirations on engagement with the natural environment, but there are opportunities to improve them. I will turn briefly to some of the aspects that could be addressed. Evidence shows that access to nature and the outdoors is not entirely equal: for example, children in lower income areas and people from black, Asian and other minority ethnic backgrounds have the poorest access to green spaces and the natural environment. That is not always the case—in my constituency of Gloucester, the ward that is closest to Gloucester park, Barton and Tredworth, is also the area with the highest concentration of ethnic background diversity—but in general, access to the outdoors is unequal in our larger cities compared with towns or countryside.

The amendment would make a substantial difference by requiring the Government to take a strategic and coherent approach to issues of access to and enjoyment of the natural environment. Some non-governmental organisations have suggested that the amendment might put people’s enjoyment over the value of the natural environment to wildlife—that, for example, people and the environment are in competition and their goals are necessarily incompatible—but I reject that suggestion, because I believe that there are very clear examples of how people and the environment go well together.

The easiest way to shine a light on that is by talking about sensory gardens, which, as many of us know, are a frequent feature in schools that handle people with the greatest physical disabilities. Years ago, my family helped to raise funds for a sensory garden that was full of biodiversity. Not only was it a wonderful environmental joy, but it brought great joy to those with disabilities who attended the school. It is important therefore that the amendment be seen not as pro-people and anti-environment, but as pro-people and pro-environment.

Nor is the amendment intended purely to benefit urban dwellers—far from it. Aspects of it will hugely benefit the countryside as well. Research commissioned by the National Trust estimates that people across Great Britain are missing out on 500 million park visits a year because of poorly equipped facilities. Basic facility upgrades, from toilets and income-generating cafés to play areas, can help accessibility; litter collection, which I have already mentioned, is also incredibly important. Natural England has reported that insufficient footpaths in the presence of busy or dangerous roads can prevent easy access and deter their use. One in eight households has no access to a private or shared garden, a figure that rises to 21% of households in London, which highlights the importance of enjoyment of our green spaces.

Overall, parks in England deliver an estimated £6.5 billion of health, climate change and environmental benefits every year, including £2.2 billion in avoided health costs alone. It is not for me to challenge those figures; I think we can all intuitively relate to them, and I hope that as guessimates, which are inevitably imprecise, those are as accurate as they can be. For every £1 spent on parks in England, an estimated £7 in additional wealth is generated for health and wellbeing and the environment.

These anecdotal examples of evidence, surveys and research make a strong case for making sure that the people’s enjoyment of our public spaces is included in the Bill as a “must”, rather than a “may”. In a sense, the Environment Secretary showed his support for such concepts in July 2020 in a speech announcing £4 million for a two-year pilot project to bring green prescribing to four areas hit hardest by coronavirus, saying:

“Studies across the spectrum, from health to financial risk, remind us that it is in our best interests to look after nature. We know that a connection with nature contributes to wellbeing and improved mental health.”

I could not agree more. I know that the Minister who is taking the Bill through the House, and whose whole career in the House of Commons has been dedicated to working on the environment, shares those feelings.

I draw attention to two other aspects. First, in September 2019, Julian Glover published his independent “Landscapes Review”, sometimes known as the Glover review, into whether protections for national parks and areas of outstanding natural beauty are fit for purpose. The Government have not yet formally responded to that review, but I believe they are broadly supportive. Its proposals include:

“A stronger mission to connect all people with our national landscapes, supported and held to account by the new National Landscapes Service”;

and,

“A night under the stars in a national landscape for every child”.

What a wonderful idea. Millions of children in this country have never had the chance to do that, and if this could stimulate that experience, what could be better? Also proposed is:

“New long-term programmes to increase the ethnic diversity of visitors”.

That has to be the right way forward. Different ethnic communities in my city have not had the same experiences in enjoying our national parks. We need to encourage them, and to make sure that national parks are seen as open, accessible and to be enjoyed by everyone. The proposals continue:

“Expanding volunteering in our national landscapes”,

and,

“A ranger service in all our national landscapes, part of a national family”.

All those recommendations, alongside the nature recovery network that is part of the Bill and that aims to join up green spaces and landscapes, only emphasise the value of replacing “may” with “must” in the Bill, which will help to achieve some of the recommendations.

My one-word amendment has the backing of the Conservative Environment Network, which my hon. Friend the Minister and I were founder members of. It has the support of the Ramblers, as well as the support
of all the heritage organisations that come together in a group chaired by a former colleague of ours. Some of those aspects are reflected in amendment 202, which no doubt somebody else will talk to. It highlights the importance of archaeological, architectural, artistic, cultural and historical interest in our parks.

I particularly draw the attention of those listening from my constituency to the great Jurassic landscape in Robinswood Hill country park; stones that are millions of years old are sitting there on our doorstep. Having been a civil servant in another life, I recognise that no Department welcomes changes to its Bills, and that “must” implies additional responsibilities and work that is unlikely to be welcomed; however, I believe that this one-word change is a worthwhile measure. My hon. Friend the Minister is likely to have only one chance to lead a major new environmental Bill through the House. She will want it to be as strong and successful as possible. All Members on the Government Benches and, I suspect, on both sides of the House, share her ambition. I move this probing amendment in the hope that she will see this one written word as an entirely positive contribution to the spirit and intent of the environmental plan and the Bill.

[Richard Graham]

Dr Whitehead: I commend the hon. Member for Gloucester on bringing the amendment forward. It is an important amendment in its own right. It is also important in terms of something we did at the beginning of the Bill and which was briefly discussed during the earlier stages in the spring. The Bill is littered with “mays” where there ought to be “musts” and we drew attention to about 25 instances where there are “mays” in place and they should be “musts”.

10.15 am

One has to be a little careful when replacing “mays” with “musts” because there are certain indications where they are contingent on some other action. It is perfectly appropriate that the Government may do something after they were supposed to do something else. We have resisted the temptation to try and change those. However, we have put down a number of amendments where the “may” is in a primary part of a particular clause, which means that nothing needs to happen at all. The legislation is suggesting that the Government of the day might do something where they are concerned with as the Bill goes through. They may raise that concern independent of our portmanteau amendments on “mays” and “musts”.

I hope the Minister will reflect on that. I observe that she has been assiduous in tabling amendments. It is unfortunate, that those amendments do not include any recognition that this is a particular problem with the Bill. There are amendments that could be put forward that would rectify that.

I hope the Minister will take from this exchange that there is a real concern about how that particular formulation works through the Bill, and especially in this instance. I hope she will consider, at least in some of the instances where those “mays” and “musts” collide, tabling some amendments later in the Bill’s passage to rectify or ameliorate those parts of the Bill. That piece of sunny optimism on my part perhaps goes with the Minister’s sunny optimism on many things. Let us see whose optimism gets the upper hand in this instance.

Finally, it might have been a little mischievous of us to seek to draw the hon. Member for Gloucester into supporting a vote on this clause. Out of sensitivity to his general circumstances in life, we will not seek to do that, because I think the hon. Gentleman will withdraw his amendment. I think it illustrates, however, that this concern is held not only on this side, but across the Committee, so there is an additional onus on the Minister to think about whether there are instances where those “mays” and “musts” can cease colliding and can be amended for the better purposes of the Bill as a whole.

Rebecca Pow: I thank my hon. Friend the Member for Gloucester for his excellent speech. He knows that I hold him in great respect and I always listen to what he says. He collars me many a time. I have given this a huge amount of thought and talked to a great many people about it, because it has been preying on my mind—he can be absolutely sure of that. He has explained a bit about my background, so he will know that I am not making that up.

The Chair: I am glad of that.
My hon. Friend painted a lovely picture of life in the countryside, especially in his lovely constituency, including in the Robinswood Hill park, which I know because I briefly worked on rural and countryside issues in Gloucester many years ago. That was one of the places people revered even then.

I am dealing with the “may” as it relates to this amendment, which I think is the right thing to do.

The Chair: It is.

Rebecca Pow: It is cheeky of the shadow Minister to try to widen out the “may” and “musts” at this juncture.

Connecting people with the environment is really important to our health and wellbeing. It is a core objective of the Government’s 25-year plan, which we can all have a look at later to remind ourselves. It is written in there; I assure my hon. Friend. The Minister for Gloucester, that connecting more people from all backgrounds with the natural environment for their health and wellbeing is a key part of the 25-year environment plan, which is our first environmental improvement plan. When reviewing the environmental improvement plan, the Government must consider whether further measures are needed to achieve the targets. Under the Bill, long-term targets can be set out for any aspects of the natural environment or people’s enjoyment of it. As he will know, the Bill requires the Government to set out at least one target in four priority areas—air quality, biodiversity, water waste and resource efficiency—as well as the fine particulate matter target. Other targets can be set later, as we go along. There is huge scope for that.

We are already implementing many projects and schemes to connect people with nature. My hon. Friend has named a number of them already. For example, there is the children in nature programme, on which I, as the Environment Minister, link up with the Department for Education. There is the green social prescribing shared outcomes fund; he touched on the funding that has just been given. I was at the launch of the National Academy for Social Prescribing last year, when I was briefly a Minister in the Department for Digital, Culture, Media and Sport. I went with that hat on, although I had done a lot of work as a Back Bencher on green social prescribing; my hon. Friend is absolutely right about how important it is and what a difference it makes to people’s lives.

My hon. Friend the Member for Gloucester touched on pocket parks. That fund was launched last year by the Ministry of Housing, Communities and Local Government, to the tune of £1.35 million, and community groups can still bid for that now. If my hon. Friend or other hon. Members know any groups that would like to bid for that money, please encourage them to do so, as that would be worthwhile. We have also launched a £40 million green recovery challenge fund, supporting projects across the country to connect people with nature and generate jobs at the same time. So, there are a lot of ongoing projects, which will not stop. We expect public authorities to consider how to help to tackle the issue of health and wellbeing, through actions to comply with the strengthened biodiversity duty introduced later in the Bill, in clause 93.

I know my hon. Friend knows that the environmental improvement plan can set out the steps that the Government intend to take to improve people’s enjoyment of the natural environment. I have touched on that already, but that is engrained in the Bill. As my hon. Friend said, people’s enjoyment of the natural environment can, in some instances, have a negative impact on the natural environment. For example, if too many visitors go to a beach, it can negatively impact the wildlife and habitats, including through litter left behind. I am really conscious of that, because we have had some significant incidences of it over the summer. I had to engage with local authorities about it, including those in Cornwall, where it was raised as being a terribly difficult issue to deal with.

Our enjoyment of nature cannot take precedence over our stewardship of that environment for the future. That is why we do not necessarily want to give equal prominence to environmental improvement and people’s enjoyment in EIPs, as would result from these amendments. I understand that Greener UK agrees that the focus should be on improving the whole, holistic natural environment, not diverting it from its primary status. My hon. Friend the Member for Gloucester touched on that.

I highlight the link between the Environment Bill and the new environmental land management scheme, which is being brought through under the Agriculture Bill. ELMS will be one of the tools for delivery in the 25-year environment plan and one of the measures in the Environment Bill. It will pay for delivery of public goods. Listed among those public goods are beauty and heritage, as touched on earlier by the hon. Member for Cambridge, as well as engagement with the environment. That is actually listed as something that can be delivered as a public good through the Ag Bill and the new ELM system. There is a direct link with what my hon. Friend mentioned—the Ramblers—that excellent organisation, which is doing very good work on access to the countryside through our rights of way. It is obviously concerned about rights of way that might be lost. Rights of way are a vital network that enables people to access our open spaces, and we plan to complete the legal record of rights of way in order to bring certainty to the public and landowners about who has right of way over their land. I wanted to touch on that because it was raised and has been in the press this week.

My hon. Friend also made an important point about who gets access to the countryside, and he touched on issues relating to diversity. He rightly said that the Glover review highlighted that. It came up with some interesting recommendations, and the Government have not formally responded to it yet. It made some significant suggestions about our natural parks and areas of outstanding natural beauty, and all those global aspects. That will be dealt with when the Government fully respond to the review. It touches on many of the issues that my hon. Friend raised—in particular, equality.

On access to green space, the Government are developing a national framework of green infrastructure standards, which will help all authorities, developers and communities to improve green infrastructure provision in their area, and make it more nature-friendly and accessible to people. We are mindful of every single thing that my hon. Friend touched on, and I hope that reassures him.
On amendment 202, the drafting of schedule 2 is in line with and respects the devolution settlement for Northern Ireland. The amendment would, however, have the effect of reducing the Northern Ireland Executive’s authority to determine the contents of their own environment improvement plan.

I hope my hon. Friend understands how much thought has been put into this proposal. We truly note where he is coming from, but we believe that the issues he raises are being fully addressed in this holistic approach. I therefore ask him very kindly to withdraw amendments 201 and 202.

Richard Graham: I am very grateful to the Minister for doing detailed research to anticipate most of the points that I was likely to raise. I am also grateful for the comments of the hon. Member for Southampton, Test.

The Minister is quite right that it is appropriate at this stage to tackle the one-word change to the clause only, rather than the wider principle, which the hon. Member for Southampton, Test tempted her to pursue. I am absolutely sure that she not only understands exactly where I am coming from but is entirely with me. The question is whether she can bring me with her in exactly where I am coming from, but we believe that the issues he raises are being fully addressed in this holistic approach. I therefore ask him very kindly to withdraw amendments 201 and 202.

Amendment, by leave, withdrawn.

The Chair: Order. Before we move on to the next group, I would like to say that I have been very relaxed so far. We have had some very discursive contributions to the two groups we have had in the past hour and a half. We should all collectively seek to address our remarks particularly to the absolute detail of the amendments in front of us and not stray into other areas, however interesting.

Dr Whitehead: I beg to move amendment 87, in clause 7, page 5, line 13, at end insert—

“(5A) It may also set out the steps Her Majesty’s Government intends to take to improve the conservation of land environments of, among other things, archaeological, architectural, artistic, cultural or historic interest, including improving people’s enjoyment of them.”

This amendment invites the government to consider the historic environment in environmental improvement plans.

We are enjoined to concentrate on the amendment in front of us and how it affects the Bill as a whole. It would be useful to put to the Committee where we stand on clause 7. The clause states that the Secretary of State must prepare an environmental improvement plan. The beginning of the clause appears to suggest that the Secretary of State must sit down—presumably with a towel round his head—and work out an environmental improvement plan and present it to the House.

The clause then sets out what an environmental improvement plan is—significantly improving the natural environment in the period to which the plan relates—and that that period must not be shorter than 15 years. As the hon. Member for Gloucester mentioned, an earlier clause provides that the EIP should include steps Her Majesty’s Government intends to take to improve people’s enjoyment of the natural environment in that period.

Clause 7 then takes an abrupt handbrake turn. It says that is all very well, and all those things must be done by the Secretary of State. However, in the great tradition of “Blue Peter”, here is one I prepared earlier. It states in subsection (7):

“The document entitled ‘A green future: our 25 year plan to improve the environment...’ is to be treated as an environmental improvement plan.”

That is, it has already been done before the Secretary of State has to put pen to paper as provided earlier in the clause, to produce an environmental improvement plan. It then specifically states in subsection (8) of this clause:

“References in this Part...to the first environmental improvement plan, are to that document; (b) to the current environmental improvement plan, are to the environmental improvement plan for the time being in effect.”

That is the 25-year environment plan—

The Chair: Order. We have a very long Bill to consider, with a great deal of amendments. I therefore intend to be tough on both sides of the Committee. I know that that may upset every member of the Committee equally, but we need to make some progress. I therefore suggest that the hon. Gentleman should speak not to the whole of clause 7—he will have an opportunity to do that, if he chooses, in a stand part debate shortly—but specifically to his amendment, which refers to the conservation of land environments. Broader discussion of the clause may wait for later.

Dr Whitehead: Thank you, Mr Gray. I will, of course, follow your guidance closely, but I feel it is necessary to set out what part of the clause we seek to amend, and why, in order to explain the status quo ante. By tabling the amendment, we seek to set out steps for Her Majesty’s Government to take to improve the conservation of land environments of, among other things, archaeological, architectural, artistic, cultural or historic interest, including improving people’s enjoyment of them. The clause as it stands mentions people’s enjoyment of the natural environment. The amendment would place one of the
definitions of the natural environment into the context of what has happened to it over a very long period of history.

One little example of that, close to my constituency in Southampton, is the New Forest. The New Forest is not new and it is not, by and large, a forest. It is a very large and precious part of our natural environment, but it is not the natural environment it was originally. Actually, it is a spectacularly complex and superbly varied environment that has been worked on substantially by humans over 10 centuries. Substantial sections of the New Forest that were originally forest are heathland, for example, with their own habitats and precious areas of rare species within them. Those habitats have come about only as a result of human activity in the original area of the New Forest, clearing what was forest and working on, draining, changing, enriching and variegating the land. As a result, those species have colonised those areas and are now, to the human eye, indistinguishable from the natural environment as part of that forest.

Daniel Zeichner: My hon. Friend is making a powerful case. In the east of England, the Broads landscape is a similarly excellent example. It was long thought to be an example of the natural environment, but it now turns out to be a consequence of human intervention. The definition of what is natural is extremely important.

Dr Whitehead: My hon. Friend is right. The Broads came about as a result of peat extraction by Saxon and early medieval inhabitants of the area, and an amazing interlinked lakeland and wetland environment has developed as a result. Landscapes of archaeological, environmental, artistic, cultural or historic interest are an important part of the natural environment. They should be conserved and preserved, and loved and looked after for that reason, and not because they are a variation from the original landscape that was in place once upon a time.

10.45 am

Turning to the 25-year environment plan, which is apparently the status quo for our considerations, I see no mention or consideration in it of that aspect of our natural environment. We are being asked to adopt a plan for the future that simply does not include that aspect. As the Minister mentioned the clean air targets that we agreed earlier, the 25-year environment plan does not say very much about that either, other than publishing a clean air strategy.

If we agree the clause without amendment, we will have put all our eggs in a basket that does not contain many of the eggs that we want to be in that basket in the first place. That is why it is very important that we agree the amendment this morning. The Minister has indicated that 2023 is the date that the plan might be up for reconsideration. We must agree the amendment to ensure that at the very least the Bill contains a clear instruction to the Secretary of State to include that when preparing a future environmental improvement plan.

If the Minister does not accept the amendment, she ought at the very least to give an indication that that is the procedure that she will adopt, among other things, for the future preparation of an environmental improvement plan for the period post 2023. We will have lost some time as a result, but if she indicates that that would be very much on her mind for any future environmental improvement plan, it would go a long way to comforting us, although ideally the measure should be in the Bill in order to properly inform this section for the future.

Rebecca Pow: I want to assure the shadow Minister that the Government were elected on a manifesto that promised to protect and restore our natural environment after leaving the EU, and that is why the environment improvement plans and targets share an objective of significantly improving the natural environment.

I will whizz through my response as briefly as I can. The hon. Member touched on the fact that the natural world does not exist in a vacuum. We are in complete agreement. It is a very complicated scene. We interact with it; we use it and rely on it; and we change it, as the hon. Member referred to in many examples. It becomes part of our life, our history, our values and it is a natural heritage and inheritance that we should all be proud of. That is why the 25-year environment plan has at its heart that we will improve the natural environment and recognises that we cannot manage it in isolation.

The plan committed us to “Safeguarding and enhancing the beauty of our natural scenery and improving its environmental value while being sensitive to considerations of its heritage.”

That is what the plan mentions, so I want to give absolute assurances. I believe the shadow Minister is not aware that this point is all part and parcel of the Environment Bill already.

I understand that those outside this House who have been calling for the amendment feel that greater confidence would be given by an explicit reference in the Bill to these particular heritage features of land. I know that lots of people have been concerned about this, so I want to reassure them that the Bill ensures that our 25-year environment plan, including its stated recognition of the connection between the natural environment and heritage, will be adopted as the first environmental improvement plan. It will set the benchmark for future plans, including how to balance environmental and heritage considerations.

The approach we took in our 25-year environment plan on heritage was welcomed by stakeholders and is expected to be mirrored in future environmental plans by the future Government. I hope that gives assurances. The shadow Minister raises some serious points about heritage, but I think we are actually in agreement, so I would ask him to withdraw the amendment.

Dr Whitehead: I am not sure that the Minister can point to the exact part of the Bill where those things take place in the way that she has suggested they do, although I am a little reassured by the fact that she clearly has a good understanding of the problem that we have set out today and is alive to the issue. I hope the Minister will follow up this debate with some equally assiduous work as previously, to ensure that it is a substantial feature of the next, or revised, environmental improvement plan. I hope it will give great reassurance not just to people in this House, but to those concerned with our natural heritage and the way that our heritage as a whole impacts on the natural environment and the changes that have been made within it over time. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 7 ordered to stand part of the Bill.
Clause 8

ANNUAL REPORTS ON ENVIRONMENTAL IMPROVEMENT PLANS

Dr Whitehead: I beg to move amendment 89, in clause 8, page 5, line 32, at end insert—

“and,

(c) consider biodiversity reports published by authorities under section 40A of the Natural Environment and Rural Communities Act 2006 (as amended by section 94 of this Act).”

Clause 8 is concerned with the preparation of annual reports on the implementation of the current environmental improvement plan. The amendment would additionally require the consideration of annual reports on the plan’s implementation and operation. The clause sets out a number of ways in which that should be done. By the way, I cannot resist stating that, as hon. Members will observe, subsection (1) says:

“The Secretary of State must prepare annual reports”. The Secretary of State has no option but to do this. It is not a question of the Secretary of State “may”, rather, he “must prepare annual reports”. There is obviously some careful writing going on here.

Subsection (1) says:

“An annual report must...describe what has been done, in the period to which the report relates” and

“consider...whether the natural environment has, or particular aspects of it have, improved during that period.”

Later in the Bill, clause 94 amends the Natural Environment and Rural Communities Act 2006 to require the Secretary of State to look at biodiversity reports, which “must contain...a summary of the action which the authority has taken over the period covered by the report...a summary of the authority’s plans for complying with those duties...any quantitative data required to be included in the report”, and

“any other information that the authority considers it appropriate to include in the report.”

I will not read out the entire clause—as you will be delighted to hear, Mr Gray—but it sets out a number of other things that the biodiversity report should include. Nevertheless, in terms of biodiversity reports, that appears to be fairly central to the idea of reporting, on an annual basis, what has happened to that environmental improvement plan. That is, those biodiversity reports, which are coming out on a regular basis, should inevitably be included in the annual changes that have happened, which are required to be reported on by the Secretary of State as far as the improvement plan is concerned.

However, as hon. Members can observe, there is no linkage in clause 8 with clause 94 as far as biodiversity plans are concerned. We are concerned that, without something on the face of the Bill to link those biodiversity reports and the progress of the environmental improvement plan, those reports will be set aside, not taken into account and not included in the Secretary of State’s progress reports, and will have much less effect as a result. The amendment would therefore require the Secretary of State to

“consider biodiversity reports published by authorities under section 40A of the Natural Environment and Rural Communities Act 2006 (as amended by section 94 of this Act).”

That is the important part. We are considering an amendment to the 2006 Act later in the Bill specifically to do with biodiversity reports, yet we leave them hanging elsewhere in the legislation. The amendment introduce create an important linking passage between those two issues. The Committee ought to think carefully about whether it wishes that link to be explicit on the face of the Bill, or whether the inclusion of those biodiversity reports in the Secretary of State’s update on the environmental improvement plan should be left to chance.

Rebecca Pow: I thank the hon. Member for his consideration of the Bill and the amendment. However, I assure him that the amendment is not needed. Clause 8 places a duty on the Secretary of State to produce annual reports on progress in implementing the environmental improvement plan. As the current 25-year environment plan shows, EIPs have a very broad scope. We have already touched on that. The reporting requirements that the Government have proposed are equally broad in scope, describing what action has been taken to implement the plan, and considering whether aspects of the natural environment are improving. This consideration should draw upon relevant existing data. Specifying that particular reports must be considered is not necessary.

The Bill will introduce a requirement to produce biodiversity reports as part of a strengthened biodiversity duty on public authorities. These reports will provide valuable data, but are already in the scope of the existing reporting duty of the annual EIP reports. To ensure that the annual EIP reports are as robust and comprehensive as possible, we want them to be based on the best evidence. We also want to retain the flexibility to consider the most relevant evidence for a particular context.

11 am

Within that context, we should also consider that there will be several hundred biodiversity reports produced over a five-year period. They will be produced by all local authorities, local planning authorities, and other large landowning authorities. We will discuss that in more detail in the later clause. Only some of the reports will be relevant to the annual EIP reports, and it would be disproportionate to require all of them to be considered. The hon. Member’s amendment is not relevant, and is already dealt with in later clauses to do with biodiversity. The hon. Member for Southampton, Test is obviously deeply concerned about the issue of biodiversity and it is absolutely right that we should address it, but I ask him to withdraw amendment 89.

Daniel Zeichner: I suspect that we will be discussing the same points on a number of different amendments, but this amendment raises the whole issue of those biodiversity plans. It also raises the issue referred to by my hon. Friend the Member for Southampton Test at the beginning of today’s sitting, which is that we have seen significant changes over the summer in terms of the Government’s stated intent for the planning White Paper.

When we look at the information that goes into the environmental improvement plans, my concern is that, as my hon. Friend has suggested, the data needs to be there to make any kind of sensible judgment. It is
suggested, through the links to clause 94, that local planning authorities will be providing much of that information, yet the Government now propose to create a planning system that makes that nearly impossible. We will return to that, but it points to the great difficulty for the Opposition, in that, without an evidence session to explore these points, it is difficult to have a rational discussion at this point in our proceedings. My hon. Friend’s suggested amendment very much strengthens the Government’s ability to draw up a coherent plan. If we do not have that, we will end up with a nice-looking document that is not based on any real information.

This debate also touches on a more fundamental issue: the relationship between this Bill and the Agriculture Bill. I had the pleasure of leading on the Agriculture Bill in this very room some months ago, and we raised the point then. The interaction between the two is complicated and sophisticated, particularly in relation to environmental land management schemes. The Minister mentioned that earlier. Without the relevant information, we will not be able to have the planning strength we would all like to see.

Dr Whitehead: The points made by my hon. Friend the Member for Cambridge are important in the wider context of the Bill. They explain why we are finding it difficult to easily track what the various parts of the Bill are against each other. As my hon. Friend says, we will return to that in the next amendment. It is held on behalf of the Minister to explain a bit better how these things fit together—or indeed do not—than she has this morning. We legislate today not just for those who might be well-disposed towards the Bill and have its architecture well-embedded in their heads, and would therefore hopefully be able to move about within the Bill to put its bits together in terms of future directions. I refer to Ministers and those who are well-disposed towards its ideas—in this instance biodiversity reports. We are legislating for future circumstances where those required to carry out the terms of the Bill might not have the same enthusiasm, dedication and support for the issues as the Minister does. I am sure she will have a long reign as Minister, but she is nevertheless the present Minister.

It is important that we ensure as best we can that the legislation is malevolence-proof and that what we decide in respect of future Governments’ duties, both in this Committee and when the Bill goes through the House, really happens. The amendment is an example of something that could be included in the Bill. I accept what the Minister said about there being some measures that, with some good will, can ensure that those things happen, but they are far from the sort of long-term assurances we want. Although I will not press the amendment to a vote, I am afraid that what the Minister has said laid out this morning is very much dependent on a lot of goodwill and will towards the Bill.

Ruth Jones (Newport West) (Lab): The shadow Minister is making a powerful point—we are future-proofing for generations to come. To my mind, it is important that legislation is easy to read and understand, and it must be secure and tight. Future generations will be looking to us to set an example, which is why that is so important. A year ago, nobody knew about covid, so we cannot always read the future, but we must set things down tightly in legislation. That is why amendment 201, which was withdrawn, focused on the use of “may” and “must”—wording is so important. I agree with my hon. Friend that we must make the legislation as future-proof as possible.

Dr Whitehead: That is precisely my view of what we should be doing in Committee and throughout the passage of the Bill. I hope that the Minister will reflect on whether the clause is really tight enough to ensure that the provisions work, not just for her purposes but for the purposes of people in the future, and that she will look over the legislation at her leisure—there is plenty of time on Report—to see whether anything more needs to be done to ensure that that point is properly taken on board. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 90, in clause 8, page 5, line 32, at end insert “and,

(c) include an analysis of whether the policies and measures set out in the environmental improvement plan will ensure that any targets set under sections 1 and 2 and any interim targets set under sections 10 and 13 are likely to be met.”

This amendment is another example of the theme that we have been developing, first on the extent to which the later parts of the Bill link properly to the earlier parts, and secondly on whether provisions should be included in the Bill to ensure that those links are made when the Bill becomes law and are not just in the minds of the Minister and well-disposed civil servants.

The amendment, which also relates to clause 7(5), proposes that the environmental improvement plan should include “an analysis of whether the policies and measures set out in the environmental improvement plan will ensure that any targets set under sections 1 and 2”, which we have agreed to, “and any interim targets set under sections 10 and 13”, which we will talk about later, “are likely to be met.”

It is important to the proper functioning of any environmental improvement plan that it is drawn up on the basis of the targets. The Minister has mentioned that this is not just a question of the targets that are in the Bill; other targets can be set on the basis of the framework in clause 1. It seems to me that if that is one of our prime mechanisms for ensuring that what happens under the Bill as a whole works, it has to be a prime function of an environmental improvement plan. The idea of setting up an environmental improvement plan to miss, subvert or undermine those targets would be anathema to us, but there is nothing in the Bill to prevent that from happening. The two clauses are just not linked together. We therefore think, as I have mentioned before, that the amendment is important to rectify architectural defects in the Bill.

Under the amendment, the analysis would be one of the things the Secretary of State was required to include when preparing an environmental improvement plan. Of course, when the environmental improvement plan that we have at present was produced, no targets were in place, no targets had been set and no targets had been
considered. This is therefore an entirely new thing that would have to go into the revision of the environmental improvement plan that the Secretary of State is required to do in 2023.

I hope that the Minister will be fairly generous in considering whether to put this provision in the Bill. I think that it is an important change that needs to be made and, given that we have thought about it for a while, we will consider dividing the Committee if there is not a reasonable response to what is a serious and considerable lack of joining up between this clause and the earlier clauses.

Rebecca Pow: I thank shadow Minister for his proposal that the Government annually assess the sufficiency of environmental improvement plan measures for achieving our targets. He is clearly aware, as are we and, indeed, all the people who have put so much work into the structure of the targets and the EIPs, that it is very important to keep the EIPs on track. With that in mind, I assure him that the whole system that has been set up—the Bill’s statutory cycle of monitoring, planning and reporting—is designed to ensure that the Government regularly assess the sufficiency of their actions, while allowing some flexibility in how they do so.

The EIP annual reports are intended to be a retrospective assessment of what has happened in the preceding 12 months. The five-yearly EIP review is a more comprehensive assessment in which the Government must look not only backwards but forwards and consider whether the EIP should include additional measures. If so, the EIP may be updated and a new version laid before Parliament.

The Office for Environmental Protection will comment yearly on the progress reported in each EIP annual report, providing it with the opportunity to flag early on where it believes there is a risk that the Government might not meet their legally binding, long-term targets. It may also make recommendations on how progress towards meeting targets can be improved, to which the Government must respond.

11.15 am

I hope that that reassures the shadow Minister that there is a step-by-step system of constant reporting, monitoring and assessing. Ultimately, of course, the OEP has the power to bring legal proceedings if the Government breach their environmental law duties, including the duty to achieve long-term targets.

The intent of the amendment already appears in the EIP cycle. I have it all written out, because there is a step-by-step process to ensure we are kept on track. Any extra or duplicative reporting is unnecessary and could divert resourcing from that needed to ensure the successful implementation of the policy, so I ask the hon. Member for Southampton Test to withdraw the amendment.

Dr Whitehead: Indeed, I am wondering in a non-specific way, Mr Gray, what the Minister might think about this issue, having responded to the debate so far.

The provision that we wish to place in clause 8(2) appears in subsection (3), so will the Minister consider including it in subsection (2), which states what an annual report must consist of, whereas subsection (3) states that the report might consider these matters. Surely those targets and interim targets are central to any annual report and are not a consideration that might arise in the report.

I do not know whether the wording is slack or whether there is a reason why the consideration of relevant targets under clauses 1 and 2 are in subsection (3) and not in subsection (2). Our amendment expresses the centrality of targets to annual reports.

Daniel Zeichner: I have to say that I am finding this a slightly dry discussion, Mr Gray.

I listened to the Minister carefully and I am trying to understand the amendment’s effect in the real world. For those that influence the environment—I think of water companies and transport authorities—the extra clarity offered by the amendment would make it far more likely that they would amend their planning and investment decisions at the right time, which seems to be key to what we are trying to achieve.

Dr Whitehead: I thoroughly agree with my hon. Friend, although it is perhaps going a little too far for an hon. Friend to say that I am involved in dry discussions. On his suggestion, I will try to make my discussions a little damper in future.

To be honest, I do not think the Minister has given us a good reply. I do not want to press the amendment to a vote, but I want to put it on the record that we think it is important that these issues should be gathered together centrally in the annual reports and not put in the considerations about the annual reports. Again, I would hope—it is not a general reflection on this occasion, but an actual reflection—that the Minister might look at the fact that the wording applies to the documentation of the report and consider whether a drafting amendment to put subsection (3) into subsection (2) might not be a wise course of action at a future date.

Amendment, by leave, withdrawn.
Clause 8 ordered to stand part of the Bill.
Clauses 9 to 15 ordered to stand part of the Bill.

Clause 16

POLICY STATEMENT ON ENVIRONMENTAL PRINCIPLES

Dr Whitehead: I beg to move amendment 91, in clause 16, page 10, line 6, leave out “proportionately”.

This amendment removes ministerial estimates of proportionality as a limitation on the policy statement on environmental principles.

The Chair: With this it will be convenient to discuss amendment 92, in clause 18, page 11, line 13, leave out subsection (2).

This amendment removes the proportionality limitation on the requirement to consider the policy statement on environmental principles.
Dr Whitehead: I am afraid that we might be here discussing slightly dry propositions for a little while. Amendments 91 and 92 look at the wording in the Bill that relates to the proportionality of the interpretation by Ministers of the Crown when making policy. Clause 16(2) defines what a policy statement on environmental principles is. It explains that it

"is a statement explaining how the environmental principles should be interpreted and proportionately applied by Ministers of the Crown when making policy."

Although that appears to be an innocuous point, our view is that it is not remotely as innocuous as it looks, because it is not just talking about the statement on how the environmental principles should be interpreted. It is stating that, even after that interpretation, there is a second course of action that may be taken: Ministers of the Crown may decide to apply them proportionately. As far as I can see, there is no definition of the word "proportionately" in clause 16 or in the Bill as a whole, even though it is quite usual to place an interpretation of particular words in a Bill.

My understanding is that the word “proportionately” has to be attached to something—it is proportionate to something, or proportionately a part of something. When it is stated in the—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.
Public Bill Committee

ENVIRONMENT BILL

Ninth Sitting
Tuesday 3 November 2020
(Afternoon)

CONTENTS

Clauses 16 to 21 agreed to.
Schedule 1 under consideration when the Committee adjourned till
Thursday 5 November at half-past Eleven o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 7 November 2020
The Committee consisted of the following Members:

**Chairs:** † James Gray, Sir George Howarth

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Anderson, Fleur *(Putney)* (Lab)
† Bhatti, Saqib *(Meriden)* (Con)
† Brock, Deidre *(Edinburgh North and Leith)* (SNP)
† Browne, Anthony *(South Cambridgeshire)* (Con)
† Docherty, Leo *(Aldershot)* (Con)
† Furniss, Gill *(Sheffield, Brightside and Hillsborough)* (Lab)
† Graham, Richard *(Gloucester)* (Con)
† Jones, Fay *(Brecon and Radnorshire)* (Con)
† Jones, Ruth *(Newport West)* (Lab)
† Longhi, Marco *(Dudley North)* (Con)
† Mackrory, Cherilyn *(Truro and Falmouth)* (Con)
† Moore, Robbie *(Keighley)* (Con)
† Pow, Rebecca *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Thomson, Richard *(Gordon)* (SNP)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Anwen Rees, Sarah Ioannou, *Committee Clerks*

† attended the Committee
Public Bill Committee

Tuesday 3 November 2020

(Afternoon)

[JAMES GRAY in the Chair]

Environment Bill

Clause 16

Policy statement on environmental principles

Amendment moved (this day): 91, in clause 16, page 10, line 6, leave out “proportionately.”—(Dr Whitehead.)

This amendment removes ministerial estimates of proportionality as a limitation on the policy statement on environmental principles.

2 pm

The Chair: I remind the Committee that with this we are discussing amendment 92, in clause 18, page 11, line 13, leave out subsection (2).

This amendment removes the proportionality limitation on the requirement to consider the policy statement on environmental principles.

Dr Alan Whitehead (Southampton, Test) (Lab): I was in the middle of a brief exposition of the word “proportionately”, as found in clause 16, which we were discussing this morning. As I mentioned, the clause requires that a policy statement on environmental principles must be prepared in accordance with clauses 16 and 17. Subsection (2) defines the policy statement on environmental principles as

“a statement explaining how the environmental principles should be interpreted and proportionately applied by Ministers of the Crown when making policy.”

The word “proportionately” very much concerns Opposition Members, because the clause not only deals with the statement itself and how the environmental principles should be interpreted, but adds that Ministers of the Crown will be assumed to be proportionately applying those principles. It goes beyond the environmental principles themselves and gives Ministers of the Crown the leeway to apply those principles “proportionately”.

“Proportionately” is a strange word. The Cambridge philosopher of ordinary language J. L. Austin defined it, among others, as a “trouser-word”—a word that does not function properly without a pair of trousers on.

Daniel Zeichner (Cambridge) (Lab): Where are you going with this, Alan?

Dr Whitehead: I think J. L. Austin is very interesting, but others disagree. Indeed, the dictionary definition of “proportionately”, which underlines his point, is:

“In a way that corresponds in size or amount to something else.”

It has no consequence in its own right, and that is the problem that we have with this particular formulation. If there are no trousers on “proportionately”, it can mean whatever anybody wants it to mean. In this instance, it appears to mean what Ministers of the Crown may want it to mean. It is possible—not in terms of the intentions or anything else of present company—that the definition of “proportionately” is entirely what Ministers of the Crown may want to make of it. A much more straightforward example of that particular action is Lewis Carroll’s Humpty Dumpty deciding that words mean exactly what he wanted them to mean.

We may come on to this later, but the Bill should define what “proportionately” might mean, what its limitations are and what Ministers do when deciding, proportionately, what environmental principles should be. I accept that it may well be the case that Ministers have a view on environmental principles and how that policy statement may be put into place. This is not an appropriate way to bring Ministers into that particular discussion. For the sake of clarity, we would like the the see the word removed from the clause, so that it reads, “a policy statement is a statement explaining how the environmental principles should be interpreted.” That offers enough leeway as far as policy statements are concerned. I welcome the Minister’s explanation as to why that additional line should be necessary in the clause, and what it adds rather than what it takes away, in terms of making quite meaningless some of the things that I have outlined in the first part of the clause with regard to Ministers.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I thank the hon. Gentleman for these amendments, and welcome the opportunity to clarify why the provisions are needed. The amendments would remove the need for the policy statement to set out how the environmental principles should be proportionately applied by Ministers when making policy. They also remove important proportionality considerations associated with the legal duty to have due regard to the policy statement on environmental principles. Proportionate application is a key aspect of use of the principles, and it ensures that Government policy is reasoned and based on sensible decision making. It is vital that this policy statement provides current and future Ministers with clarity on how the principles should be applied proportionately, so that they are used in a balanced and sensible way. Setting out how these principles need to be applied in a proportionate manner does not weaken their effect, nor does ensuring that action on the basis of the policy statement is only taken where there is an environmental benefit. It simply means that in the policy statement, we will be clear that Ministers need to think through environmental, social and economic considerations in the round, and ensure that the environment is properly factored into policy made across Government from the very start of the process.

When the policy statement is then used, Ministers of the Crown will take action when it is sensible to do so. This approach is consistent with the objective in relation to the policy statement of embedding sustainable development, aimed at ensuring environmental, social, and economic factors are all considered when making policy. Not balancing those factors could have consequences that halt progress. For example, a disproportionate application of the “polluter pays” principle could result in anyone being asked to pay for any negligible harm on the environment, when in reality, many actions taken by humans cause some environmental harm, such as going for a walk in the country. It is essential to ensure that
the principles are applied in an appropriate and balanced way, and proportionality is absolutely key to this. Since this amendment removes vital proportionality considerations, I ask the hon. Member not to press amendments 91 and 92.

The Chair: Before I call Daniel Zeichner, who caught my eye, can I explain a small point about procedure? It would be helpful if anybody who wishes to speak while the person who has moved the amendment is speaking would catch my eye one way or another—standing up in their place is the clearest way to do so. Those people speak, and the Minister speaks afterwards. That means the Minister is replying to the points that are made. For now, it is fine, but in future, Members should catch my eye while the mover of the amendment is speaking. They can speak, and the Minister can reply to what hon. Members have to say.

Daniel Zeichner: Thank you, Mr Gray. My apologies for muddling up the procedure. I am grateful for the opportunity to make a few points on what seems to be one of the most important parts of the Bill. For many of us, the precautionary principle has been a key part of our environmental protections.

It is fair to say that there is a difference of view internationally about how one approaches these things. Without trying to trivialise it in any way, there is a difference between the American approach and the European approach. Of course, we have been part of the European approach for a long time, and the precautionary principle has been absolutely key. The introduction of proportionality will seriously weaken our environmental protections. Although we have reams of paper to go through, that is the key distinction. I fear that the application of proportionality will water down our environmental protections.

I found the explanatory notes very helpful, as I always do. Paragraph 173 says:

“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.”

Of course, as soon as we introduce that balancing side, those essential precautionary environmental protection are at risk. I am afraid, despite the Minister’s optimism about the Bill, that this is the crunch issue. If this amendment is not carried, there is no doubt that our environmental protections will be weakened.

Dr Whitehead: My hon. Friend makes a key point about the importance of the amendment. It is not just that many things pivot on it; one could almost go so far as to say that the whole thrust of the Bill pivots on it.

The understanding has always been that the Bill really will put the environment on the map and will provide not only good environmental protection in the long term, but no regression and enhanced environmental protection in the future. If that word is at the heart of it, things could be traded off against considerations that are completely outwith the intentions and purposes of the Bill, and it could be subverted entirely at ministerial discretion. That is surely not something that we should easily countenance.

In a moment, we will come on to an amendment that attempts to get a definition of proportionality on to the statute book. Although we do not want to divide the Committee on this amendment, if we do not secure substantial progress with the next amendment, we may seek to divide the Committee at that point. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 16 ordered to stand part of the Bill.
Clause 17 ordered to stand part of the Bill.

Clause 18

Policy statement on environmental principles:

Effect

2.15 pm

Amendment proposed: 92, in clause 18, page 11, line 13, leave out subsection (2).—(Dr Whitehead.)

This amendment removes the proportionality limitation on the requirement to consider the policy statement on environmental principles.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 4]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard
Jones, Fay
Longhi, Marco
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Deidre Brock (Edinburgh North and Leith) (SNP): I beg to move amendment 114, in clause 18, page 11, line 19, leave out paragraph (a).

This amendment removes the exceptions for armed forces, defence and national security policy from the requirement to have due regard to the policy statement on environmental principles.

The Chair: With this it will be convenient to discuss amendment 93, in clause 18, page 11, line 19, leave out “the armed forces, defence or”.

This amendment removes the exceptions for armed forces and defence policy from the requirement to have due regard to the policy statement on environmental principles.

Deidre Brock: It is important to establish a principle that no area of Government should be exempted from its responsibilities to the environment. The amendment brings the activities of the Ministry of Defence, the armed forces, defence and national security into the scope of the Bill. I have been talking at length on this subject for some time now, and have submitted numerous parliamentary questions on it. Some of those questions actually received answers, but sadly I am still awaiting a letter from the Minister for Defence People and Veterans outlining the environmental impact assessment of the MOD’s operations at Cape Wrath, which he promised me in February of this year. Perhaps mentioning that today will jog his memory a little.
We have swathes of munitions dumps up and down the UK coast, still imperilling our fishers and others on our waters. There are also large chunks of land in the UK currently outside the scope of the Bill. Yes, hundreds of nuclear safety incidents on the Clyde were acknowledged by the MOD, but only because of written questions I had submitted. We have no idea what impact military fuels are having. Scientists for Global Responsibility estimates that 6% of global greenhouse gas emissions result from military-related activities.

I understand that the percentage share of the UK’s emissions total is lower for defence here, but our emissions from the military are still higher than those of some entire countries. By taking this action, the UK really could act as a world leader and role model. We have no idea what impact weapons testing or training efforts have. I know because of my parliamentary questions that assessments are made, but they are not published. It must be possible to make such assessments transparent without compromising the safety of our forces and their interests.

A number of witnesses to the Committee, when I asked them about the issue, seemed to agree that it was something of an anomaly. Lloyd Austin of Scottish Environment LINK, while accepting that exceptions will exist, said that they “should be based...on a degree of justification for why...the environmental issue has to be overwritten. Nobody thinks the environment will always trump everything but, on the other hand, where the environment is trumped, there should be a good reason, and that reason should be transparent to citizens.”

John Bynorth of Environmental Protection Scotland said:

“It is a bit arbitrary and unjustified that the military...should not be subject to the same conditions as everyone else.”—[Official Report, Environment Public Bill Committee; 12 March 2020; c. 143, Q202.]

Ruth Chambers, from Greener UK, speaking about the fact that this duty will not apply to the Ministry of Defence, said:

“Already, we seem to be absolving quite a large part of Government from the principles.”—[Official Report, Environment Public Bill Committee; 10 March 2020; c. 71, Q112.]

The environmental principles, that is.

I am not going to speak for long—we have many amendments to get through—but I have been raising this issue for a long time. I was delighted to see Labour come on board too, although disappointed to see that they still want to keep the exemption for national security. We have to ask what kind of national security will be left to us if the environment goes belly up.

From answers received from the House of Commons Library, I know that there are so many pieces of primary legislation containing exemptions relating to the armed forces that it is not possible to list them all. If we are going to start stopping these exemptions for the military, the place to start should be in the Environment Bill. I am interested to hear the Minister’s response, but I am going to press the amendment to a vote.

Fleur Anderson (Putney) (Lab): Clause 18 makes the armed forces, defence or national security exempt from due regard to the policy statement on environmental principles. It is detrimental to leave this whole section of Government out of the Bill’s provisions. If we want this Bill to be a legal framework for environmental governance and to have all the correct people in one room, why leave out one of the biggest polluters, the biggest spenders and the biggest landowners? It just does not make sense in terms of achieving ambitious net zero targets.

Were the exemption to be confined and constricted to decisions relating to urgent military matters and those of national security, it is of course entirely reasonable. I fully accept that there will be occasions when national security has to take precedence over environmental concerns. We do not want to impede the work of our armed forces or compromise our safety and security in any way. However, the clause is not drafted as tightly, cleverly and smartly as that. Rather, it is a blanket exclusion for the Ministry of Defence, the Defence Infrastructure Organisation and the armed forces from complying with the environmental principles set out in the Bill.

The carbon footprint of UK military spending was approximately 11 million tonnes of CO₂ in 2018—very significant. Some £38 billion was spent on defence last year alone—more than 2% of our GDP. Bringing how that is spent in line with our environmental aims is essential to achieving our overall national environmental targets. If it is not in the Bill, it is just going to be left to goodwill and to hoping that it will work.

I hope that the Minister will shortly argue that the principle is important and, if it is, the armed forces and defence must not be exempt—that is how we show it is important. The Ministry of Defence is one of the largest landowners in the country, with an estate that is nearly equal to 2% of the UK landmass. Last week I was on Salisbury plain, which is the size of the Isle of Wight. It is where significant military work is carried out, but it is also where a significant environmental advantage could be held.

The Defence Infrastructure Organisation manages 431,400 hectares of land within the UK. The sites are used for training, accommodation and large bases and the organisation has a remit to ensure the safety, sustainability and rationalisation of the estate. It states that:

“MOD has a major role to play in the conservation of the UK’s natural resources. Stewardship of the estate means that the MOD has responsibility for some of the most unspoilt and remote areas in Britain; with statutory obligations to protect the protected habitats and species that they support.”

I am not arguing that the Ministry of Defence does not care about the environment. I am saying that, if we all care about the environment, the MOD should come within the legal framework of guidance. We can have an amendment specifically tailored for the armed forces. Much of the land used by the MOD for training and operations is in highly sensitive environments and many parts are located in areas of outstanding natural beauty, including Dartmoor, Lulworth, Warcop and the Kent downs. They are subject to a number of associated policy processes, such as bylaw reviews, planning applications and so on, which means that they are subject to environmental protection. They should be joined up and come within the remit of the Bill as well.

A reason for adding this matter to the Bill is that the Ministry of Defence is already deeply committed to environmental protection and to tackling climate change, but a major rethink of defence policy is needed to achieve our ambitious environmental aims. New approaches
to procurement are needed in particular. The Air Force, for example, is looking at different types of aircraft fuel. That should come within the Environment Bill, not without.

It prompts the question of why there is a blanket exemption, as it does not give credit to the armed forces and to the newly formed strategic command for all the work they are doing to achieve our environmental goals. The clause should be tightened up considerably. Rather than separating them, here is an opportunity to link the Bill’s environmental principles to the armed forces’ environmental objectives. We are in a climate emergency.

There is no time to wait around for the goodwill of enormous Departments to get in line—certainly not one with such significant spending, carbon emissions and land ownership. I urge the Minister to support the amendment, or to come back with a smarter amendment that enshrines our national security at the same time as enforcing the speed of environmental action that we need and expect the armed forces to be able to deliver.

**Dr Whitehead:** What the Committee needs to understand is that the inclusion in the Bill of the application of policy as set out in subsection (1) does not apply to the armed forces. Subsection (1) states:

“A Minister of the Crown must, when making policy, have due regard to the policy statement on environmental principles currently in effect.”

The Minister must, therefore, have “due regard” to policies on environmental principles except where it relates to anything to do with the “armed forces”, as my hon. Friend the Member for Putney said. She mentioned that it is particularly important when the land that the MOD has under its control is considered, which we indeed know from the handy “National Statistics” publication which states what land is owned by the MOD. The issue, however, is not only the land owned by the MOD but also the further 207,400 hectares over which it has rights in addition to its freehold and leasehold-owned land. A reasonable interpretation of that is to consider what is controlled by the MOD and the armed forces. Is that a total of 431,000 hectares, as my hon. Friend said? That is the size of Essex plus half of Greater London, to put it into context.

That is the amount of land that is under no jurisdiction at all as far as environmental principles are concerned.

There may be good reasons for that huge amount of national land resource being exempt from these environmental protections, but none are immediately apparent to me. Not only are they not apparent to me, what is apparent to me is that an organisation that undertakes actions that prejudice the environmental quality or environmental protection of UK land is often required to mitigate those actions elsewhere in any other sector. If a new port berth is being decided upon, then one of the first things to happen is that a consideration of environmental mitigation takes place for the land that has been despoiled by the new port, even if the berth is regarded as necessary. Even that principle does not appear to apply as far as the MOD is concerned.

As my hon. Friend said, I accept that when a person drives across Salisbury plain, for example, they occasionally see great big tracks on the plain where tanks have driven around it, and that on the Lulworth ranges there is weaponry practice that has environmental impacts. Of course, that is a part of MOD defence activity, and it may be necessary for that activity to be carried out. However, it does not seem beyond our imagination to consider that the MOD and defence should be in a different position as far as environmental mitigation is concerned. It would be quite reasonable to suggest that within the necessary undertakings that the MOD has to go about doing, environmental mitigation should be part of that process, if necessary. To just give the armed forces a blanket let-off as far as any environmental principles are concerned seems, to me, a bridge too far.

**2.30 pm**

It is not the case that the Army and the MOD do not have policies that they themselves state are mitigating, pro-environmental principles, but under this legislation, those principles would be entirely voluntary. If the MOD decided one day that it did not want anything to do with them, that would be the end of the matter. When we are talking about an area that is, as I say, the size of Essex plus half of Greater London, we surely cannot have that as part of a Bill that claims to protect the environment as a whole over the next long period of time. This has nothing to do with that particular ambition.

**Daniel Zeichner:** We just had a discussion about proportionality, and it strikes me as perfectly possible to say to the MOD that it could react proportionately to these kinds of judgments. In our previous discussion, we introduced a notion that I would say will be used to the detriment of the environment; why could we not ask the MOD to act proportionately when it comes to its environmental obligations?

**Dr Whitehead:** Indeed, my hon. Friend is absolutely right. It would not be difficult to draft something that would both protect the activities that I think we all agree the MOD and the Army need to do on occasions, and ask them to act proportionately in respect of their environmental obligations when undertaking those activities.

An amendment to this clause has been tabled by the hon. Member for Edinburgh North—[HON. MEMBERS: “And Leith.”] And Leith as well, yes; I have been to both Edinburgh North and Leith, so I should remember the connection between the two. The Labour party has also put forward amendments, which take out two sections of this clause and, as it were, challenge their inclusion and these exemptions separately. We do not see any substantive difference between what we are saying through those two particular challenges and, as it were, the overall challenge that the hon. Lady has put forward through her amendment: it is essentially a big question about why these particular exemptions are in place. We do not just have exemptions for the MOD; we have exemptions as far as “taxation, spending or the allocation of resources within government”.

I am not exactly sure what land that controls, as we cannot put that in place in the same way as we can with the MOD, but it is also not apparent to me why those areas should also be treated differently.

**The Chair:** The amendment does not refer to that.

**Dr Whitehead:** Sorry, amendment 94—

**The Chair:** Amendment 93 refers to paragraph (a), not paragraph (b).
Dr Whitehead: Amendment 94, which I believe is in this group—

The Chair: No.

Dr Whitehead: I stand corrected. So we are discussing amendments 93 and 114 in this group and discussing amendment 94 in the next group. I will remove my remarks on amendment 94 and save them for the next group. I have to say that I do not think there is much between the formulation put forward by the hon. Member for Edinburgh North and Leith and the one put forward by us, as we will come to in the next amendment. Therefore, we support the hon. Lady in her endeavours by us, as we will come to in the next amendment.

Rebecca Pow: My facts say 1%, but shall we agree, Chair, that it is nearly 2%?

The Chair: It is quite a lot.

Dr Whitehead: To try and get some clarity as far as this section is concerned.

Rebecca Pow: I thank hon. Members for the amendments. Clearly, we have sparked some quite strong feelings here about this particular issue. I want to make it clear, Chair, that I am just going to focus on defence, to which the amendment relates.

While we recognise the intention behind these amendments, it is fundamental to the protection of our country that the exemptions for armed forces, defence and national security are maintained. The exemptions that would be removed by the amendments relate to highly sensitive matters that are vital for the protection of our realm, so it is appropriate for them to be omitted from the duty to have due regard to the environmental policy statement. A critical part of the role of Defence and Home Office Ministers is to make decisions about the use of UK forces to prevent harm, save lives, protect UK interests or deal with a threat. We have several colleagues in the Room who have strong armed forces links, and I think they will agree with that summary. It would not be appropriate for Ministers to have to go through the process of considering the set of environmental principles before implementing any vital and urgent policies related to the issues I have just mentioned.

Furthermore, the Ministry of Defence has its own environmental policies in place, as well as a commitment that its policies protect the environment, with a strong record on delivering on those commitments, which we had reference to from both sides, particularly from the hon. Members for Southampton, Test and for Cambridge. For example, the MOD require that all new infrastructure programmes, projects and activities have to include sustainability and environmental appraisals. Those appraisals cover a similar spectrum of analysis to the environmental principles.

I also want to highlight that the MOD takes the environment extremely seriously. It is adapting to mitigate defence’s impact on climate, which was touched on by the hon. Member for Putney, to build resilience and support the Government’s commitment to net-zero emissions and a review is underway to develop its response to net zero and climate change, with a new strategy planned to add to the existing sustainable development policy. That is a clear indication that the MOD means business where the environment is concerned.

As was touched on by a couple of Members, and particularly the hon. Member for Edinburgh North and Leith, the Ministry of Defence owns or otherwise controls approximately 1% of the UK’s landmass—

Dr Whitehead: Two per cent.
It is simply no longer acceptable for the armed forces to be exempt from reporting their progress towards climate change targets, or their compliance with environmental targets or any of the other targets that other parts of Government are required to report on. I am disappointed that the Government cannot support this amendment. As I have said, the number of exemptions for the armed forces in primary legislation across Government is extraordinary; in fact, there are so many that the Commons Library felt that it could not list them in their entirety in its briefing.

It is important to hold to the principle that we all have a part to play in trying to save the planet. There should be no exemptions for any Government Department. I accept that there are sensitivities around national security, but I think there are ways of addressing them and taking them into account. I am delighted that Labour Members are with me on this issue, and I will press the matter to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 5]

AYES
Anderson, Fleur
Brock, Deidre
Furniss, Gill

Jones, Ruth
Whitehead, Dr Alan
Zeichner, Daniel

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Jones, Fay
Longhi, Marco
Mackrony, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

2.45 pm
Amendment proposed: 93, in clause 18, page 11, line 19, leave out
“the armed forces, defence or”. —(Dr Whitehead.)

This amendment removes the exceptions for armed forces and defence policy from the requirement to have due regard to the policy statement on environmental principles.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 6]

AYES
Anderson, Fleur
Brock, Deidre
Furniss, Gill

Jones, Ruth
Whitehead, Dr Alan
Zeichner, Daniel

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Jones, Fay
Longhi, Marco
Mackrony, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Dr Whitehead: I beg to move amendment 94, in clause 18, page 11, line 20, leave out paragraph (b).
such as the woodland carbon guarantee and commitments to biodiversity net gain, with the Treasury commissioning the Dasgupta report. A raft of measures demonstrate this. However, we need to ensure the Treasury Minister’s ability to alter the UK’s fiscal position is not undermined, since taxation raises the revenue that allows us to deliver essential public services, such as the NHS, police and schools.

Although I recognise the purpose of the amendment, it is beneficial for the country that the Treasury can make economic and financial decisions with regard to a wide range of considerations, which will, of course, include the environment and climate. I therefore ask the hon. Gentleman to withdraw this amendment.

Dr Whitehead: As I always am, I will be polite. The Minister, with great aplomb, read out words from a piece of paper that was placed in front of her to explain what the clause means, but she must realise, as we all do, that that is total nonsense. It makes no sense at all.

Let us look at actions in various other areas of Government. The imperatives on net zero and climate change that we just passed through the House effectively apply to decision making in all Departments. Departments are not supposed to make decisions about their activities and spending without reference to those imperatives. Yet what we have on this piece of paper—I am sure it was assiduously drafted by someone seeking to defend this particular exemption—appears to drive a coach and horses through that consideration, let alone other considerations. Apparently, in taking its decisions on larger matters, the Treasury does not have to be bound by considerations on environmental protection.

I think that is a shock to all of us, because it means that the Bill is completely useless. The Treasury considers a large number of things in its policies, covering every area of practical Government activity, one way or another. If the situation is as the Minister has described, where do environmental protections stand? With any environmental protection, if it is part of the consideration of Treasury policy development, there is a door for the Treasury to run out of. As I understand it, that is what it says on the piece of paper.

Richard Graham (Gloucester) (Con): Just for clarification, is the hon. Gentleman effectively saying that the Bill should provide the Treasury with an opportunity to give a blank cheque for whatever the Office for Environmental Protection requires?

Dr Whitehead: The phrase “due regard” comes in here, importantly. The truth is that clause 18 is a blank cheque in the opposite direction—a blank cheque for Ministers to invoke if they decide under certain circumstances not to be bound by environmental protection, as the Bill appears to suggest that we all should be. That is unconscionable; it should not be in the Bill.

Cherilyn Mackrory (Truro and Falmouth) (Con): Could the hon. Gentleman clarify what would happen in the situation that we have faced this year, in which the Treasury has had to make very fast decisions and give billions to businesses because of covid? Some of those businesses might not be of an environmental nature—in fact, some might be what we would regard as non-environmental or actually detrimental to the environment—but because of the social impact of that money, the Treasury has had to do it. It is my understanding that if the law were as the hon. Gentleman would like it, the Treasury would not have had that leeway. Could he clarify that?

Dr Whitehead: The Treasury would have had that leeway, because of the phrase “have due regard”. There are clearly circumstances in which emergencies or other issues mean that Ministers may at particular stages have to draw away from their environmental or climate change imperatives and responsibilities. However, the important thing about having due regard is that if they do so, they have to explain why and under what circumstances they are taking the decision. Clause 18 will do exactly the opposite: Ministers will not have to explain anything—they can just not do anything that they do not feel like doing. I hope that Conservative Members will join us in saying that that is not good enough and is not what the Bill should be doing.

There could be another formulation. The hon. Member for Truro and Falmouth has pointed the way: with the right formulation, we could encompass the sort of circumstances she mentions. Of course we would be happy to support that, because there are indeed considerations that need to be undertaken at certain stages of emergency and difficulty, and which may cause some difficulty with the imperatives. That is what due regard protects us from, to a considerable extent. However, the principle that someone who does something other than what we think the imperative should point towards should justify what they are doing and be accountable for it is a very important part of our processes, and that is not the case here.

Rebecca Pow: I just want to clarify a few points. As I am sure the shadow Minister knows, HMT takes environmental impact extremely seriously already; in fact, it is referred to in the Green Book, which guides policy making, that it has to be taken into account including consideration of natural capital. The environmental principles will be referred to in the Green Book, so we already have very strong measures that HMT is obviously being guided by.

Dr Whitehead: Forgive me, but I think the Minister has elided “is” and “ought”. Yes, the Treasury may do those things and put them in the Green Book, but under clause 18 it does not have to, just as the Ministry of Defence is doing things that we might say are laudable—we heard about curlews coexisting alongside tanks—but it does not have to, and if for any reason it did not do them, it would not have to say anything about it. It is entirely lucky that the Treasury and the Ministry of Defence are doing what they are doing, but that need not be the case. The Minister illustrated in what she read out a little while ago that that is not the case. They do not have to do those things under the Bill. In defence of the fact that they do not have to do them, she has highlighted examples of where, despite that and because of their good nature and good will, they are doing them anyway. I would expect that to happen, but it does not mean that in legislation we should allow good luck to rule the things that we think are imperative as far as environmental protection is concerned.
3 pm

**Daniel Zeichner:** This is a fascinating discussion. As the debate has unfolded, I have found myself looking at the clause and thinking, “What would have been in anyone’s mind when drafting that extra line?”. What do they think needs to be excluded, and for what purpose? If the clause existed without that line in the first place, then unless people are seeking something rather extraordinary, I would not have thought they would try to open up an opportunity to drive a coach and horses through an environmental protection Bill. What was the thinking, I wonder?

**Dr Whitehead:** Indeed; my hon. Friend shines a light on it. If one were of a suspicious character, one might say, “Why is this line here anyway?” As the Minister said, the Treasury and the MOD do quite a lot of work in this respect. One might say, “Good. They do a lot of work in this respect, and that needs to be encouraged, so let’s have a very strong starting point to bolster the work that they do already, and let’s have some limited exceptions, driven by absolute necessity, with accountability over what they consist of and how they are undertaken.” Instead, we have drafting that does the opposite. If hon. Members were suspicious, they might question why that drafting is in there, and not another form of drafting that is much closer to what we all want to see: environmental protections being respected as far as possible.

Frankly, the Minister has given us no explanation of why it is there. She has given us a very able and clear exposition of who does what through their good nature. I applaud her for that, because it is part of her Department’s remit to make sure other Departments do that. However, her Department’s remit would be strengthened if the clause was strengthened or if it was not there at all. On that basis, I am afraid that we will seek to divide the Committee on this amendment.

**Question put,** That the amendment be made.

**The Committee divided:** Ayes 6, Noes 10.

**Division No. 7**

**AYES**

Andersen, Fleur
Brock, Deidre
Furniss, Gill

**NOES**

Afolami, Bim
Bhatti, Saqib
Brown, Anthony
Docherty, Leo
Graham, Richard

**Question accordingly negatived.**

Clause 18 ordered to stand part of the Bill.

Clause 19 ordered to stand part of the Bill.

**Clause 20**

REPORTS ON INTERNATIONAL ENVIRONMENTAL PROTECTION LEGISLATION

**Dr Whitehead:** I beg to move amendment 195, in clause 20, page 12, line 16, at end insert—

“(1A) The Secretary of State must—
(a) consult on the criteria and thresholds to be applied in determining significance for the purposes of subsection (1), and
(b) publish guidance on those matters reflecting the results of the consultation.”

This amendment would require the Government to consult on what counts as “significant” for the purposes of this Clause.

**The Chair:** With this it will be convenient to discuss the following:

Amendment 196, in clause 20, page 12, line 19, at end insert—

“(2A) The report must include—
(a) the results of an independent assessment of developments in international environmental protection legislation, and
(b) the Government’s proposed response to those developments.”

This amendment would require the report to include an independent assessment and the Government’s response to it.

Amendment 197, in clause 20, page 12, line 32, at end insert—

“(7) The Secretary of State must make an oral statement to Parliament about the report as soon as reasonably practicable following the laying of the report.”

This amendment would require an oral statement to accompany the written report.

**Dr Whitehead:** I am afraid that we come to another discussion about the definition of a word in the Bill, which I know will cause some Members to groan. Nevertheless, as we saw in the last discussion, just a couple of words, or three, can have enormous significance in terms of a Bill’s wider consequences, so it is important that we look at them, what they mean, and their place in the Bill.

Amendment 195 seeks to define what is meant by “significant” where the clause states:

“The Secretary of State must report on developments in international environmental protection legislation which appear to the Secretary of State to be significant.”

The clause therefore provides for reports on what is happening around the world in terms of environmental protection legislation. What are the good and bad points, what can we learn from, and what things can we co-operate on? The clause kindly defines international environmental protection legislation as “legislation of countries and territories outside the United Kingdom, and international organisations, that is mainly concerned with environmental protection.”

The clause also states:

“The Secretary of State must report under this section in relation to each reporting period.”

It then states what those reporting periods are to be. International environmental protection legislation is therefore defined, but the Secretary of State apparently has a completely free hand to decide which of those developments are significant, without any accompanying definition in the legislation of what that word means.

One might say that that is quite significant, because clearly there can be an enormous range of judgments on what, subjectively, a particular Secretary of State might think are significant international developments. For one Secretary of State, it might be that a particular state has adopted legislation similar to our own in their Parliament. Another might think it significant that
another jurisdiction has decided that its army should be exempt from land holdings coming under its own environmental legislation, and that such an omission has produced riots and street clashes in that country as a result of the population deciding that it was a bad idea. A range of things might be regarded as significant or not.

**Bim Afolami** (Hitchin and Harpenden) (Con): This point is fundamental. As drafted, the Bill has it as a subjective judgment by the Secretary of State. The hon. Gentleman's amendment seeks to make it objective. In our system—this goes to the heart of the amendment, and many others—the Secretary of State and Ministers representing the Department are responsible to Parliament for their actions and whether any judgment they make is correct. The Bill deliberately leaves it in the hands of the Secretary of State to make that subjective judgment, and if the House disagrees at the time the debate will happen at the time.

**Dr Whitehead**: I thank the hon. Member for his intervention, but that is not quite right, really. The Secretary of State must report on developments and on international environmental protection legislation that appears to him or her to be significant, and after he or she has taken a judgment, he or she produces a report that must be laid before Parliament. What comes before Parliament is not what is before the Secretary of State. It is not a gazetteer of international environmental protection action. It is a report after the Secretary of State has decided what is significant and what is not significant. Those things that the Secretary of State defines as not significant are left out of the report.

Parliament could conceivably say, “Aha! We have done a great deal of separate assiduous research and we have decided that the Secretary of State has left this and this and this out—why has the Secretary of State left these things out?”, but that requires a separate series of actions from Parliament that are outwith the report, not about the report itself. The amendment seeks to define what the Secretary of State should reasonably put into a report for Parliament to look at. We have also tabled an amendment on what should be done in addition to the report being published, which we will come to in a moment.

The central point of the amendment is that the Secretary of State should

"consult on the criteria and thresholds to be applied in determining significance" and then

"publish guidance on those matters".

That still gives the Secretary of State some leeway in determining what is in the report, but it means that there is a body of guidance by which the Secretary of State should be guided in terms of what he or she puts in the report for the subsequent perusal of Parliament. At present, because there is no definition of "significant" in the Bill, that guidance is completely lacking.

I hope that now I have given that explanation, the hon. Member for Hitchin and Harpenden can support the amendment, as I think what he seeks to ensure is that Parliament gets a report and the chance to discuss what the Secretary of State has done. I would suggest that a much better way of doing that is by agreeing to the amendment, rather than the word standing unexplained, as it does at the moment.

**Rebecca Pow**: I thank the hon. Member for the amendment. I recognise the intention behind requiring further guidance on what counts as “significant”. However, this is a horizon-scanning provision. As such, it would be counterproductive for the Government to try to anticipate in advance the kinds of significant developments that might be identified.

There is no single overarching metric for the environment. Many of us touched on the complex landscape that is the environment earlier today. Creating an objective test is impossible. It is important that there is flexibility to take account of the full range of developments in the period, in order to produce a report that is useful in informing domestic legislation. The amendment would reduce the flexibility, potentially limiting the scope and use of the report.

The review will cover other countries’ legislation that aims to protect, maintain, restore or enhance the natural environment or that involves the monitoring, assessing, considering or reporting of anything in relation to the above that is significant. What is significant will depend on the period being assessed. Something significant today might not be significant next year and different things might be significant next year.

On the proposals for an independent assessment and an oral statement, I assure the hon. Member that there are already effective measures in place to allow Parliament to scrutinise the report. That point was ably raised by my hon. Friend the Member for Hitchin and Harpenden. When the report is laid before Parliament, Members can highlight any areas where they believe the Government have missed important developments. It is obviously really important that they do this, and it will ensure independent scrutiny. It is crucial that this is carried out and that we look at what is going on internationally. If we want to call ourselves global leaders, we have to be aware of what is being done elsewhere. If there are good examples, we need to copy them.

**Leo Docherty** (Aldershot) (Con): Glorious!

**Daniel Zeichner**: As I listen to the Minister, I think there is so much subjectivity involved in this. Just thinking back through the glorious array of Secretaries of State who we have had in the Conservative Government over the past decade—
that they can both comment. The whole purpose of it is that it will be well scrutinised, so that the right measures are introduced. There will be many measures, and we will not want all of them to be introduced, so we need to choose the very best ones. The whole idea of the Secretary of State’s report is that it will be open and transparent—I honestly hope that I have made that clear.

The clause is about ensuring that the Government take active steps to identify significant improvements and are accountable to Parliament for the actions that they will take in response. It is therefore right that the Government take full responsibility for producing the report. I do not think that requiring the Secretary of State to outsource the responsibility is the right approach. Additionally, independent consideration can already be provided by the Office for Environmental Protection—for example, clause 27 provides Ministers with the power to require the OEP to advise on any other matters relating to the natural environment, which could include developments in international environmental protection legislation that it sees as important, positive or progressive, so we have that extra layer there as well.

I hope that I have given some clarity, and I ask hon. Members not to press amendments 195 to 197.

Dr Whitehead: I think we have not got to amendment 197 yet.

The Chair: Amendments 195 to 197 are grouped together. We have debated them, but we will not be deciding on amendments 196 and 197.

Dr Whitehead: Indeed, but I have not spoken to amendment 197.

The Chair: They are one group: amendments 195, 196 and 197. That is the group we are currently discussing.

Dr Whitehead: I wanted to say a few words about amendment 197.

The Chair: Well, it is too late. I asked you to discuss it in the first place, and you did not. You can now wind up on the group of amendments.

Dr Whitehead: Thank you, Chair. Following your advice, I will wind up on this group of amendments. In so doing, it is conceivable that I might refer to some of the amendments during the course of my discussion.

The Chair: Quite right.

Dr Whitehead: We have the Minister’s explanation of how the word “significant” is to be defined: it is not to be defined, effectively. We also have what I would kindly say is a descriptive, rather than an objective, passage about what Secretaries of State do about significance. The point made by my hon. Friend the Member for Cambridge is really important, and it underlines what I said previously. We do not impugn the motives or the commitment of either the present Secretary of State or the present Minister in this respect. I am sure they will do everything they can to ensure that such reports are open and transparent, are put before the House and are properly discussed and that they include everything that most people would consider significant, as far as international environmental protection events are concerned.

However, that is not the point. The point is that different people could occupy those offices. They might have significantly different views and might produce virtually nothing for the House regarding environmental protection events. There would be nothing in the Bill to stop them doing that, except, possibly, if we were to pass amendment 197. That amendment would add to this part of the Bill by saying:

“The Secretary of State must make an oral statement to Parliament about the report as soon as reasonably practicable following the laying of the report.”

As the hon. Member for Hitchin and Harpenden envisaged, the Secretary of State would have to come before the House and make an oral statement, on which he or she could be questioned. There would therefore be a clear line of transparency at that time as far as whatever the Secretary of State decided to do concerning the report. If the Minister went as far as to accept amendment 197, that would make a difference concerning this test of significance. As matters stand, we feel that the protections are woefully inadequate in terms of the way in which the report must be compiled and presented. Therefore, we seek to divide the Committee.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 8]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Zeichner, Daniel

Whitehead, Dr Alan

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Jones, Fay
Longhi, Marco
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Dr Whitehead: I beg to move amendment 95, in clause 20, page 12, line 32, at end insert—

“(7) The Secretary of State must—

(a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect full compliance with the Aarhus Convention, and

(b) if they consider it appropriate to do so, take any of the steps identified by that consideration.

(8) A report under this section must set out what steps identified by the Secretary of State intends to take during the next reporting period to that effect.”

This amendment requires the Secretary of State to consider what steps may be taken to improve compliance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and, if they consider it appropriate to do so, to take those steps.
The Chair: With this it will be convenient to discuss amendment 97, in clause 22, page 13, line 8, at end insert—

“(c) respect, protect and fulfil the rights contained in the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.”

This amendment requires the OEP to oversee implementation of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Dr Whitehead: The explanatory statement for this particular amendment relates to the question of securing better or further effecting full compliance with the Aarhus convention, which is a wide-ranging convention relating to environmental protection and activities.

The amendment suggests that the Secretary of State should keep under consideration how the UK Government might secure better or further effect full compliance with the Aarhus convention. We are signatories to it, so one would have thought that we should try to fully comply with it, in general terms. The amendment is really asking the Secretary of State to do something that we ought to do anyway. If the Secretary of State considers it appropriate, the amendment also suggests that they take the steps identified in that consideration and produce a report setting out what steps are being taken to secure full compliance and what steps they intend to take over the next reporting period.

The Aarhus convention is important, but it has been, in some people’s eyes, somewhat overtaken by other events. Nevertheless, it remains important in international environmental considerations, and it important that it should be put into the Bill as one of the Secretary of State’s considerations to undertake.

Rebecca Pow: I thank the hon. Gentleman for drawing the Committee’s attention to the Aarhus convention, which is of course an international agreement. I do not deny its importance, so he and I agree on that.

The UK ratified the convention in 2005, and we remain a party to it in our own right. Our exit from the EU does not change our commitment to respect, protect and fulfill the rights contained in this important international agreement. Implementation of the Aarhus convention is overseen by the Aarhus convention compliance committee, and the Department for Environment, Food and Rural Affairs co-ordinates the UK’s ongoing engagement with the committee on our implementation and on findings pertaining to the UK on specific issues. The committee has welcomed the willingness of the United Kingdom to discuss compliance issues in a constructive manner.

Clause 20 requires the Government to review significant developments in international environmental protection legislation, as we discussed. The findings of that review will then be used to inform Government policy on environmental protections, enabling the UK to stay at the forefront of international best practice on environmental protection. The amendment would require that report to include material about existing obligations under the Aarhus convention, not new, innovative developments in environmental protection legislation. That would dilute the purpose of the clause. We independently meet our convention obligations, and there is no need to amend clause 20 to ensure that we continue to do so.

Amendment 97 is unnecessary, as the provisions of the Aarhus convention already fall within the remit of the OEP, where they have been given effect in UK law and meet the definition of environmental law. The OEP will improve access to justice: it will receive complaints free of charge to complainants and will have powers to investigate and enforce compliance with environmental law by public authorities. The OEP will be legally required to keep complainants informed about the handling of their complaints, and it will also have to produce public statements when it takes enforcement action, unless it would not be in the public interest to do so. In addition, public authorities that have been subject to legal proceedings by the OEP will be required to publish a statement setting out the steps they intend to take in the light of the outcome of the proceedings.

Given that we are already engaged with the convention committee on our obligations, the amendments are unnecessary. I ask the hon. Gentlemen not to press them.

Dr Whitehead: I appreciate that the Minister has already replied, but I wonder whether she could—

The Chair: The Minister could intervene.

3.30 pm

Dr Whitehead: Has the Minister thought about the extent to which the Aarhus convention is fully implemented in the UK, either via retained EU law or the existing domestic system? In terms of her response to this debate, was she saying that it is the case that the Aarhus convention is now fully implemented in UK law?

Rebecca Pow: I know I am not able to speak again, but perhaps the shadow Minister will allow me to intervene on him—I think I will have to put this in the form of a question, which makes it quite tricky, Mr Gray. Does the shadow Minister agree that the UK’s commitment to the Aarhus convention is unaffected by EU exit, because the UK is a party to the convention in its own right?

Dr Whitehead: That is true, but nevertheless there is the question of the extent to which that commitment itself is a freestanding commitment or additional, via EU retained law. I think the Minister will agree that there is EU retained law in respect of the Aarhus convention. While it is true that we are an individual signatory to it, we were also effectively a joint signatory to it through the EU joint law arrangement. Therefore, we were actually twofold signatories, as far as the Aarhus convention is concerned. Does the fact that we are now a onefold signatory to the Aarhus convention fully replace what it was that we were originally as a twofold signatory to the Aarhus convention? I think the Minister was saying yes, but I am not absolutely certain that that is the case.

Richard Graham: I am slightly confused that the shadow Minister appears to be suggesting that if we are a signatory to any convention in our own right, we are somehow a stronger signatory if we are also a signatory as part of the EU, which we have already left. Are we not straying into areas of semantics way beyond the Environment Bill today?
Dr Whitehead: I can understand the hon. Member indicating that this may be semantics, and indeed, it may be. I was attempting to elucidate the question of whether our being an original signatory to the Aarhus convention—when the convention took place—is identical to what has happened in terms of our being a joint signatory to the Aarhus convention, which took place through our EU membership. There are instances where something that the UK originally signed up for was signed up for jointly through the EU at a different stage. A lot of the conventions on atomic materials transfers and various similar things, which have gone through Euratom or the International Atomic Energy Agency are subject to that sort of progression, where what we signed with the IAEA and what the European Community signed up to subsequently, are a progression in terms of those original signatories. They therefore mean slightly different things, even though it appears that there are two signatories.

It may be the case that the hon. Member is right, and I am seeking to get the Minister to elucidate whether, indeed, the hon. Member is absolutely right. Is the fact that we are a signatory to the Aarhus convention exactly the same as what was the case when we were previously—in addition—a joint signatory with the European Union? Are there any particular matters relating to that signatory which should be converted into UK law to ensure that we are actually in the right place, as far as that signatory issue is concerned? The Minister may well stand up and say yes, that is the case—in which case, I will be a very happy Member of Parliament.

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 20 ordered to stand part of the Bill.

Clause 21 ordered to stand part of the Bill.

Schedule 1

THE OFFICE FOR ENVIRONMENTAL PROTECTION

Dr Whitehead: I beg to move amendment 179, page 121, line 16, at end insert

“with the consent of the Environmental Audit and Environment, Food and Rural Affairs Committees of the House of Commons”.

The amendment would require the appointment of the Chair and other non-executive members of the Office for Environmental Protection to be made with the consent of the relevant select committees.

We have now moved from chapter 1 of the Bill, which is about environmental governance and improving the natural environment, to the very important topic of the Office for Environmental Protection, which I think will detain the Committee for a little while, as we will discuss not only its formation and operation, but the amendments that the Government made while the Bill was not before us, changing what the Opposition think are substantial elements of the OEP’s operation.

Clause 21 states:

“A body corporate called the Office for Environmental Protection is established.”

So before anybody worries too much about where we have got to, that is all we have done so far. We have just established the Office for Environmental Protection. As with all good Bills, however, the meaning is often contained at the end, in the schedules. That is the next bit we are dealing with this afternoon—the schedule that sets up what the Office for Environmental Protection is about. I assume that we will get stuck into the substance of the Office for Environmental Protection’s objectives, independence and general function in our next sitting, but this afternoon we are concentrating on some details about the OEP’s membership, non-executive directors, interim chief executive and so on. Some people may say that those are not particularly central or important to the OEP, but they nevertheless have quite considerable repercussions in terms of its independence or otherwise.

Amendment 179 looks at the first appointment of the chair and non-executive members, and at how they are appointed and with what agreement. I am sure hon. Members will agree that, in addition to what the Office for Environmental Protection does, a key part of its independence lies in who its chair is, who the non-executive directors are, how they act in their role and the extent to which they ensure and guarantee that the office carries out an independent function in terms of that protection role. Paragraph 1(1) of schedule 1 defines what the OEP consists of: a chair, at least two but not more than five other non-executive members, a chief executive, and “at least one, but not more than three, executive members.”

Paragraph 1(2) states:

“The members are to be appointed by the Secretary of State”.

Under paragraph 2, the non-executive members are also to be appointed by the Secretary of State, but “The Secretary of State must consult the Chair before appointing any other non-executive member.”

The key is that a lot of the appointments effectively flow from the appointment of the chair. The Secretary of State must consult the chair on how other members are appointed having appointed the chair in the first place. The question then is whether it is right that the chair of the OEP is appointed simply because the Secretary of State decides that he or she should be appointed and has an untrammelled ability to do that. We think that that could create a cascading lack of independence in the whole OEP, depending on how the process is carried out. If it is carried out without any scrutiny or accountability, it is quite possible that the Secretary of State could appoint someone whom he/she particularly favours or thinks will give him or her an easy time with the appointment of other members of the office, and shape the office to be entirely subservient to what the Secretary of State wants to do.

Daniel Zeichner: My hon. Friend is making an important point. A theme runs through the debates today: an extraordinary concentration of power in the hands of the Secretary of State. In the discussion on the Aarhus convention, we saw the move away from supranational bodies. It is a basic principle that if power is spread, there is far more chance of it being exercised properly, particularly with something as important as environmental protection. Does he agree that this is just the latest example of a theme that has developed all the way through?

Dr Whitehead: That is indeed a concern. We have raised, and will repeatedly raise, the difference between the Bill’s aspirations and many of the practicalities. The
difference between the Bill’s lofty aspirations and its often severely lacking practicalities is apparent throughout its construction. This is one instance where that is the case. The chair of the OEP is, in the first instance, to be a non-executive member of the office. I would be interested to hear whether the Minister shares my understanding, but it looks to be the case that the chair will be appointed from among the non-executive members whom the Secretary of State has appointed in the first place. The key at that point is who the non-executive members are and how they are appointed. In this instance, they appointed just by the Secretary of State. We suggest a procedure that grounds those appointments within parliamentary procedures.

Robbie Moore (Keighley) (Con): Does the hon. Member recognise that the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee have the opportunity in the appointment process to scrutinise the Secretary of State’s preferred candidate?

Dr Whitehead: The hon. Member has put his finger exactly on the problem, because according to this piece of legislation, in practice, they do not. There is no requirement to do that in the Bill. The amendment is designed to do exactly what he suggests should be done, which is that the appointment should take place with the scrutiny and consent of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee.

3.45 pm

I think the spirit of what the hon. Member said this afternoon about the operations of this House is exactly what we take to be the case. Regularly, Select Committees scrutinise and discuss appointments and put forward their opinion to the House, so the House may then decide what the Secretary of State’s decision might be, informed by their scrutiny and discussion. As far as I can see, there is no provision for that in the Bill. I hope that the hon. Member and others agree that it would be a good idea for those non-executive directors to be appointed by the Secretary of State with the consent of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee, as this amendment proposes.

The hon. Member will undoubtedly have experience of that. That is what we do in this place, in general terms. The Committee on Climate Change, like all sorts of committees, has its appointments run in front of Select Committees. The Select Committees do an honest job for the House to ensure that the Executive and legislative branches are in line with those appointments when they come through.

I hope the Minister will agree that that is an omission from the Bill that needs putting right. In practice, I do not think it would make an enormous amount of difference, but constitutionally it could make an enormous amount of difference. If we do not have this in the legislation, there is the possibility that the Secretary of State could decide in the absence of any parliamentary scrutiny or discussion of what he or she will do, and thereby subvert some of the Bill’s good intentions on environmental protection. The Office for Environmental Protection has to be the centrepiece of protection activity; to do that, it needs not only theoretical independence, but stated independence, laid down in legislation concerning its activities for environmental protection.

Rebecca Pow: I will keep my comments to what the amendment refers to, which is the involvement of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee. I agree with the hon. Gentleman that Parliament should have a role in the process of making significant public appointments. To scrutinise key appointments made by Ministers is a proper role for Parliament. The Environment, Food and Rural Affairs Committee and the Environmental Audit Committee—I am proud to have been a member of both, and many hon. Members here are members of those Committees—will jointly carry out a pre-appointment hearing with the Secretary of State’s preferred candidate for the OEP chair.

As the shadow Minister knows, there has already been a lot of discussion about this. This is a commitment. The Secretary of State will duly consider any recommendation made by the Committees.

Ruth Jones (Newport West) (Lab): The Minister says that the preferred candidate can be scrutinised. Is that not a bit of a Hobson’s choice?

Rebecca Pow: This is an open and fair process, and other appointments are duly scrutinised in that way. The considerations and views of both Committees will be taken extremely seriously because the work they do is very pertinent to the work in this sphere of Government. The OEP chair is then consulted by the Secretary of State on the appointments of the non-executive members. We do not believe it necessary or desirable for Parliament to scrutinise all those individual appointments in the way that has been suggested.

Ministers are accountable and responsible to Parliament for public appointments, and they should therefore retain the ability to make the final determinations. Ultimately, Ministers are accountable to Parliament and the public for the overall performance of the public body and of public money. The OEP will be added to the schedule of the Public Appointments Order in Council and so will be independently regulated by the Commissioner for Public Appointments. The Secretary of State will be required to act in accordance with the governance code, including with the principles of public appointments, which would ensure that members are appointed through a fair and open process.

The chair of the OEP will be classed as a significant appointment, requiring a senior independent panel member, approved by the commissioner, to sit on the advisory assessment panel, which can report back to the commissioner on any breaches of process. We have also introduced, in paragraph 17, a duty on the Secretary of State to have regard to the need to the need to protect the OEP’s independence in exercising functions in respect of the OEP, including on public appointments.

Those arrangements, and the requirements in the Bill, provide the appropriate balance between parliamentary oversight and ministerial accountability, while ensuring that appointments to the OEP are made fairly and on merit. I therefore request that the hon. Member for Southampton, Test withdraw his amendment.

Richard Graham: Will the Minister give way?
The Chair: Order. The Minister sat down before you asked, Mr Graham, but I dare say you may intervene on the shadow Minister. I call Dr Alan Whitehead.

Dr Whitehead: The Minister has yet again provided us with a description of things that happen, as opposed to what ought to happen as far as this House is concerned. On the second category of events, she appears to be saying that Select Committees may well take it upon themselves to interview and discuss candidates for posts—with the agreement of that candidate—and report back their thoughts, and that Ministers may then decide that they like or do not like what the Select Committee has said, but are pleased, in any event, that the Select Committee did that piece of work.

I do not think the Minister can show me anything in the Bill that requires that process to be cemented, so that the Secretary of State could not go ahead with an appointment without Select Committees having done that work. Let us say, for example, that the Select Committees decided that they did not want to do the work or were too busy with other matters, and the Secretary of State appointed the chair and the non-executive members of the board, there would be nothing that anyone could do about it, because nothing in the legislation says that that scrutiny has to happen. The Minister should be able to confirm that there is nothing in the legislation for that.

Richard Graham: I think I understand the position of the Opposition, which is to undermine slightly the independence of the new Office for Environmental Protection before it has even got under way by suggesting that the appointments process for the chair will somehow be rigged, with some crony of the Minister or the Secretary of State comfortably slotted into position. Shock, horror! That never happened under the Government of which he was a member.

In fact, what has taken place is rather remarkable. It is much closer to an American appointments hearing than almost anything that has ever happened in relation to senior appointments to new independent offices. The idea that two—not just one but two—Select Committees would be so disinterested in their unusual and new power to scrutinise and hold to account someone who is being put forward as the first chairman of a new independent body and would completely overlook their responsibilities is surely bizarre. The hon. Member is a reasonable man. Can he not agree that this is a very good process?

The Chair: Interventions must be brief. That was a speech.

Dr Whitehead: A very good one, if I may say, but nevertheless a speech. You are right, Mr Gray.

The point the hon. Gentleman was making is that a process of scrutiny will, in this instance, be undertaken by the Select Committees in question. However, we need to look at the circumstances whereby that scrutiny comes about. The Committee and, indeed, members of the Select Committee, may say “Actually, this particular piece of formulation in the schedule relates to the appointment of the initial chair of the Office for Environmental Protection” but I think it probably applies to the appointment of chairs as they go forward.

Rebecca Pow: I remind the hon. Gentleman that the Select Committees pressed for that scrutiny and they have welcomed the fact that they will be able to scrutinise the potential chair. They did some pre-legislative scrutiny of the Bill; that was one of their recommendations and we accepted it. It has gone down extremely well. I want to back up the comments from my hon. Friend the Member for Gloucester in terms of what is being put in place. I am sure the shadow Minister, when he fully understands the process, will agree with me that the purpose is that non-exec members in particular are appointed on a fair and open basis, regulated through our public appointments process.

Dr Whitehead: I am not suggesting that anything is other than that, and I am not suggesting that the Select Committees are anything other than pleased with what they have undertaken to do and the welcome their work has received from the Government. However, the Minister, in a sense, answered her own question by stating that the Select Committees pushed for that. That is what Select Committees do, and they have the power to summon all sorts of people. In this instance, as far as I understand—I may not have fully understood the process—the Select Committees in their power as Select Committees in general pushed for the hearing and Ministers thought that was a good idea and they went ahead with it. To that extent, yes, things have gone well, but it is still not in the Bill that that should ever happen. It is entirely down to the Select Committees. We should not do it that way round.

Rebecca Pow: Does the hon. Gentleman not agree with me that the very fact that that has happened demonstrates that Select Committees are taken seriously? As such, the measure in the Bill is sensible, serious and fair.

Dr Whitehead: As it happens, yes. However, again, we are in “as it happens” territory, which we seem to be in rather a lot this afternoon. As it happens, yes, that appears to be working quite well. I do not know, should there be a future reconstitution of the Office for Environmental Protection or future appointments of non-exec members and the chair, whether that procedure would necessarily be replicated. It might be; it might not. We are lucky we have Select Committees that are as strong as they are.

Cherilyn Mackrory: As a new Member, I am just understanding the mechanisms here. From what I am hearing, the process that has just taken place to ensure that we are where we are is due to good parliamentary mechanisms. It seems that the hon. Member is asking Ministers to put more parliamentary mechanisms in the Bill when those checks and balances are already in place and work very well.

4 pm

Dr Whitehead: The hon. Member is quite right to draw attention to good parliamentary mechanisms. I do not want us to be diverted into a long discussion about the Executive and the unwritten UK constitution, but Parliament is not putting a provision on the Executive by passing this Bill—that does not exist. Instead, Parliament has used parliamentary procedures outside of that to have an effect on the Executive, and the Executive have
agreed for that effect to be placed upon them. That is a good thing—I do not in any way want to undermine that. As the hon. Member says, that has worked well.

Cherilyn Mackrory: The hon. Gentleman is illustrating the point perfectly. Secretaries of State come and go at the mercy of the electorate, whereas the parliamentary checks and balances are always here. That is what should govern the procedure.

Dr Whitehead: Yes, indeed—Secretaries of State come and go, just as Presidents of the USA come and go. Nevertheless, while they are there, Presidents can appoint justices of the Supreme Court who are always there. Although the member of the Executive has gone, the effect of their actions remains—in this example, with the judiciary branch in the US. In principle, that is what could happen as far as this construction is concerned in the judiciary branch in the US. In principle, that is what should govern the procedure.

Anthony Browne (South Cambridgeshire) (Con): I am a member of the Treasury Committee. We do a lot of selection hearings and most of them are agreed through parliamentary processes. We find we end up doing an awful lot of selection hearings, and we have spent a huge amount of time doing them, on the board of the Bank of England, the Prudential Regulation Authority, the Financial Policy Committee and so on. We end up having discussions about whether we want to do all these hearings. Do we do them in this way or that way? Do we do reappointment hearings? We retain flexibility around that, because it is done through the parliamentary procedure.

It seems to me that the danger of setting down in legislation that all non-executive members should be appointed on the consent of the two Committees is that we bind their hands into the future. They may decide that they want to do it in some other way. We retain flexibility for the Committees if they do it through parliamentary means.

Dr Whitehead: Well, yes is the answer. We are trying to bind those Committees to some extent to do the right thing, as far as those appointments are concerned. The hon. Gentleman who has experience on the Treasury Committee and other hon. Members who have experience on Committees will know that Committees take their responsibilities seriously. I have been party to that sort of discussion in Select Committees that I have served on in the past. They take their responsibilities very seriously. They take the issue seriously. They do it very carefully and make sure that the result of their deliberations is as good as it can be. That is something that I am absolutely fine with; I do not wish to fetter that in any way.

However, the hon. Gentleman and other Members also know that that has not always been the case with Select Committees. Indeed, in my time in Parliament, it has largely not been the case. The process of deciding upon the appointment of members of various organisations via a Select Committee hearing is a relatively recent innovation. That came about not as a result of legislation but as a result of Select Committees pushing their own authority within the parliamentary system.

In one sense, that is perfectly acceptable, but I am seeking to draw a distinction between that process, which has by and large resulted in a good outcome as far as these appointments are concerned, and the fact that it says in a piece of legislation, “That is what is supposed to be done.” There are other pieces of legislation in existence that specify what is supposed to be done, but this piece of legislation does not. I wonder to myself why those pieces of legislation specify those things whereas this piece of legislation does not.

It would not be difficult—on the contrary, it would be very straightforward—to specify in this piece of legislation what is to be done, while agreeing that that is largely what happens in practice in this Parliament. That is a good thing, and it is a sign of our changing unwritten constitution—I emphasise the word “unwritten”.

That is why, in a piece of legislation, it is probably necessary to write down what our intentions are and how they are to be carried out in practice by the House in its interpretation of the unwritten constitution of this country.

Daniel Zeichner: I had the privilege of serving on the Transport Committee for a couple of years. Like the hon. Member for South Cambridgeshire—my near neighbour—I went to a number of hearings and found them very useful. It strikes me that there is a range of levels of significance. This appointment is hugely significant. It takes back from a supranational body, the European Union, responsibility for one of the most important oversights. We all agree that it would be good to go through this process, so I do not understand why the Government do not want to codify in law what will in fact happen. I do not quite see what they are frightened of. Does my hon. Friend agree?

The Chair: Order. I do feel that we are slightly going round in circles.

Dr Whitehead: Yes, indeed, Mr Gray. I agree with my hon. Friend. It would be a good idea for the Government to put this in the Bill, notwithstanding the fact that, in practice, the creaking oak of the British constitution does things in sometimes surprising ways in order to develop itself. It is always useful to have something on the face of a piece of legislation to fix how the unwritten constitution works in respect of a particular function of Government. There is nothing to lose and everything to gain from putting this in the legislation.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 9]

AYES

Anderson, Fleur

Furniss, Gill

Jones, Ruth

Zeichner, Daniel

NOES

Afolami, Bim

Bhatti, Saqib

Browne, Anthony

Docherty, Leo

Graham, Richard

Jones, Fay

Longhi, Marco

Mackrory, Cherilyn

Moore, Robbie

Pow, Rebecca

Question accordingly negatived.
Dr Whitehead: I beg to move amendment 15, in schedule 1, page 122, line 5, leave out "may" and insert "must".

The amendment asks for "may" to be left out and "must" to be inserted. As I recall, we have had previous discussions about that in this Committee, so I do not think I need to add anything further.

The Chair: I think the hon. Member is therefore seeking to withdraw the amendment.

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 154, in schedule 1, page 122, line 11, leave out sub-paragraph (3).

This amendment prevents the Government from giving directions to the interim chief executive of the OEP.

The amendment concerns the directions that the Secretary of State may give an interim chief executive of the Office for Environmental Protection. As hon. Members will see, paragraph 4(3) of schedule 1 refers to an interim chief executive "exercising the power in sub-paragraph (2)", which states:

"Where the OEP has fewer members than are needed to hold a meeting that is quorate...an interim chief executive may incur expenditure and do other things in the name and on behalf of the OEP."

The key point is that the interim chief executive may do "other things" in the name of and on behalf of the OEP, even though the OEP does not have sufficient members to be quorate and take a decision.

What appears to be envisaged is that in those circumstances,

"an interim chief executive must act in accordance with any directions given by the Secretary of State."

Quite simply, if an interim chief executive is in post without those other members of the OEP being appointed—depending on the speed with which that is done, it could be quite a while—the independence of the OEP will not be compromised just a little bit; it will be compromised completely, in that the interim chief executive is completely the creature of the Secretary of State.

The Chair: Order. I think the hon. Gentleman is addressing himself to the wrong amendment, because this amendment requires that sub-paragraph (3) be deleted from paragraph 4. You are referring to sub-paragraph (2), I think.

Dr Whitehead: Mr Gray, if I gave that impression then I am sorry, but I thought I was speaking to sub-paragraph (3) of paragraph 4, which is that the chief executive "must act in accordance with any directions given by the Secretary of State."

As far as I can tell, amendment 154 leaves out sub-paragraph (3), which is the sub-paragraph to which I was referring.

That is, in essence, the case that we want to make this afternoon. As hon. Members have already asked, why is this particular provision in place? What is the problem here? If this is an interim chief executive of a body that is going to be independent, why the lack of independence when the OEP is still forming itself? Is it because the Secretary of State thinks that the interim chief executive might go rogue and do all sorts of odd things in the absence of other non-executive directors to hold them in place? In that case, the appointment process for the interim chief executive must be pretty lacking. Is it that the Secretary of State might be tempted to mould the OEP and its operations before it is fully functional as an independent office and can therefore, as it were, hit back?

I would not like to think that either of those are correct interpretations of this sub-paragraph, but as it is written, that is what it appears to say: that the interim chief executive does as the Secretary of State says. That seems to fly in the face of everything I have understood about the OEP and how it is supposed to work, how it is supposed to be set up and how it is supposed to start operating. As the amendment states, we would therefore like to see the sub-paragraph excised from this Bill, so that the interim chief executive has the beginnings of the independence in his or her actions in the OEP that we would expect the OEP to have when it is fully formed.

4.15 pm

Anthony Browne: I have set up lots of organisations and it is completely standard to go through a process where there is a shadow or interim chief executive and an interim board. There is a critical difference between that position and a substantive chief executive, which is that they are setting up the way the whole system works—the operations, the modus operandi—and making significant decisions that will last for many years or decades. They are doing it in a position where there is not full governance around it, such as a fully established board, an established chair and everything else. It is right that there is some oversight of what an interim chief executive is doing in setting up the organisation, because the rest of the governance infrastructure will not be there yet.

Daniel Zeichner: There has not been any comment yet on the extraordinary situation we find ourselves in. We are just 55 days away from the end of the year and the new situation that we are about to embark upon, and there is nothing in place. That is part of the problem. It is a shambles, quite frankly, that we are leaving the European Union and entering a period where it is unclear how our environmental protections will work. I suggest much more will be said about that as we go through our debates.

As my hon. Friend the Member for Southampton, Test and the hon. Member for South Cambridgeshire have said, this is a key moment in setting the path ahead for this new organisation. This provision feeds into this general sense that, far from having a much more sophisticated and wider way of approaching these issues, it all comes down to centralising power in the hands of the Secretary of State to determine the way forward. That cannot be right and I think there is genuine outrage among many who are looking at how this process is unfolding.

We have gone from helping to establish strong environmental principles as a leading player in the European Union to the extraordinary position we find ourselves in. We have no idea how long this is going to
take. Is it going to be in place? Perhaps the Minister could tell us. Perhaps things are in train and we are waiting for announcements. Perhaps it will happen next week or in January, or perhaps it will not happen for months and months. In the meantime, many of our own protections are in limbo, effectively.

The schedule gives us no confidence that the Government even have a plan for where we are going with this. I hope the Minister can give us some reassurances, because many of my constituents—and, I suspect, many constituents of other Members—are really worried about these issues. At a time of climate crisis and biodiversity emergency, how can we possibly be setting an example to the rest of the world as we approach COP26 when we are in this shambolic position, with the suggestion that this so-called independent agency should effectively be run by the Secretary of State?

Rebecca Pow: There have been some fiery comments about this particular amendment, Chair.

I welcome the support of the hon. Member for Southampton, Test for our inclusion in the Bill of a mechanism to appoint an interim chief executive of the OEP. I want to give some reassurances that establishing this independent body that can hold future Governments to account is of crucial importance. That remains very much in focus when considering this power for the Secretary of State to appoint an interim chief executive.

The initial role of the interim chief executive would be to take urgent administrative decisions to ensure that the OEP is up and running as soon as possible, which I know is a key concern of Members. I want to say a little about that role and why it is necessary. Such decisions would include staff recruitment and other matters related to setting up the new body. I welcome the comments of my hon. Friend the Member for South Cambridgeshire, who has a lot of experience in setting up these bodies. It is a fully practical step to help with the interim period. By way of background information for the hon. Member for Cambridge—he raised some pertinent points—we intend that the permanent chief executive will be in place no later than autumn 2021, and the proposed timeline then allows for the OEP chair to lead the appointment of that chief executive.

By way of more background, the Secretary of State has asked officials to assemble a team of staff within the Department for Environment, Food and Rural Affairs group, to be funded from the Department’s budget, to receive and validate any complaints against the criteria for complaining to the OEP, so there will be a team in place in the interim. A lot of work has gone on behind the scenes but we had a lull because of the coronavirus, so it is nobody’s fault that this has happened. Obviously, other structures and plans are being put in place, but that is why details of an interim chief executive have had to be considered. That power will be required for the interim chief executive only in the event that a quorate board is not in place in time to make the decisions. If the board is quorate in time, it will be able to make its own arrangements. During any period when they are making administrative decisions on behalf of the OEP before the board is quorate, the interim chief executive must be capable of being held to account. That is essential good governance and oversight of public funds. That is why we are giving the Secretary of State, as the accountable Minister, the power to direct the interim chief executive during that period.

The shadow Minister was, if I may say so, making some slightly malign intimations about what he potentially thought the Secretary of State had in mind in controlling the interim chief executive. I would like to set all those thoughts and views aside—that is not the purpose; it is a practical arrangement. I would like to give more reassurance on two point. First, the Bill provides for the interim chief executive to report to the OEP’s board, not the Secretary of State, as soon as the board is quorate. Secondly, the Government will not commence the OEP’s statutory functions before the OEP is quorate. Therefore, the interim chief executive will only be able to make decisions relating to the OEP’s statutory functions when they report to a quorate board, not to the Secretary of State. Therefore, the Secretary of State will not have any power of direction over the OEP’s statutory functions. It is important to make that clear. Amendment 154 is, consequently, unnecessary and I ask the hon. Member to withdraw it.

Dr Whitehead: I wonder whether the Minister has considered at what point the interim chief executive of the OEP must be in place. Bearing in mind that the actual chief executive is not to be appointed until next August. The OEP, which is essential, should be operational from 1 January—indeed, we have had assurances on that—because of the differences in environmental protection that may result from our leaving the EU, and so not having areas of EU law available for environmental protection purposes, which are supposed to be replaced by, among other things, the independence of the OEP, to ensure that those areas of law are fully upheld.

The Minister appears to be telling us that there will be something like an OEP in existence from 1 January, and that it will have something like an interim chief executive to run it—indeed, I understand that a lot of work on that has already been done—but that during that entire period the OEP will not be independent, because effectively it will be run by the Secretary of State. That may be a function of the fact that the process is dragging on in a way that we did not anticipate, and that the Minister probably did not anticipate, overlapping the period when lots of work should have been under way to get this system going, to ensure a seamless change on 1 January. Instead we will have a raggedy process that is a very, very long way from any of the aspirations that were expressed for the OEP—the way it will operate, what it will do in terms of environmental protection, and its independence of the Secretary of State.

I accept that when a new organisation is set up—as the hon. Member for South Cambridgeshire said, and he has experience of these matters—there can be issues. If someone is setting up, say, a new subsidiary company, the board of the company that is setting up the new company will appoint a chief executive of that subsidiary company, and while that chief executive is getting in place it is quite reasonable for the board of the superior or parent company to expect that person to be responsible to the superior or parent company as the new company is being set up. Only if, for example, at a later date Chinese walls are inserted between the operation of the subsidiary and that of the superior or parent company does that reporting go adrift; but that is only when things are properly set up.
We are not in that situation here. We said from the word go that we would set up an independent body that would be responsible for all the environmental legislation that has come over to us from the EU, which is now bedding down in UK law, and that that responsibility needed to be exercised from day one of that transfer.

**Rebecca Pow:** Does the shadow Minister not agree that an unprecedented and unexpected incident has occurred? We have had the coronavirus pandemic. In the light of that, does he not agree that arrangements are well under way for setting up the OEP, and that the Government fully intend—I have given more details today—to introduce the OEP by 2021? Because of the pause in consideration of the Bill and because of the coronavirus, we cannot confirm the exact date, but we will implement—indeed, are implementing—bona fide transitional arrangements, with a secretariat that will support the OEP chair. The chair is currently being sought, through a public appointments campaign. The whole system is in process. We will have an interim chief executive and my hon. Friend the Member for South Cambridgeshire understands exactly the role of that person. There is nothing malignant about it, and the Secretary of State will certainly not control him. Does the hon. Member agree that I made that quite clear in my speech just now?

**Dr Whitehead:** Well, I hope the Secretary of State will not be controlling him. [Interruption.] Or her. I hope the Secretary of State will scrupulously keep his or her hands out of controlling that person. I am pleased to hear assurances from the Minister that that may well be the case—in terms of the Minister’s bona fides, I would expect nothing less. That is what the Minister should be saying, because that has always been her commitment on the OEP in the past; but that does not in any way excuse the fact that it says something opposite on the face of the Bill. That is the issue that, as legislators, we need to look at.

4.30 pm

Yes, it is true that there have been problems with moving the legislation forward, and I have great sympathy with the Minister for having to deal with those problems. That still does not excuse the fact that, one way or another, we will have a non-functioning or barely functioning OEP for a considerable period, whereas we were always told that the opposite would be the case. Sub-paragraph (3) underlines why that is the case.

This piece of the Bill was not written after these events took place; it was actually in the original Bill from the end of 2019. It is not the case that, as a result of the great difficulties that we have had and the problems that there have been in setting up the OEP, needs must and actions have been taken—I appreciate that that may well be a problem. It was always the intention, regardless of whether things were operating perfectly by this stage, that that is how things would operate: it is clear from sub-paragraph (3). I am afraid the argument that, “Well, there have been big problems. Give us a break on this”—powerful though it is in practice—does not stand up. That is what the legislation says; that is what the legislation always suggested. Notwithstanding other matters, that is what would have happened with the legislation. That perhaps underlines why it is necessary to take sub-paragraph (3) out under these circumstances.

Although I applaud the Minister’s efforts in getting the Bill together under the present circumstances, and her fortitude in pushing it forward when it looked like it was seriously in jeopardy, we nevertheless have an almighty mess situation here, which it seems has been exacerbated by the original intentions behind the legislation. Obviously, we would want to do everything we can to support the Minister in ensuring that the OEP is up and running as soon as it can be and that it is a good as it can be, but we are still in a position where we are about to write a piece of legislation that seems to undermine the mess, not resolve it.

**Question put.** That the amendment be made.

The Committee divided: Ayes 4, Noes 10.

**Division No. 10**

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**Question accordingly negatived.**

**Dr Whitehead:** I beg to move amendment 155, in schedule 1, page 122, line 15, after sub-paragraph (4) insert

“but an appointment may be made in reliance on this sub-paragraph only with the approval of the Chair.”

This amendment requires the Chair’s approval for civil servants or other external persons as interim chief executive of the OEP.

Although it is late afternoon and I do not want to go on the record as being excessively shirty for a long period, I am afraid that discussion of the amendment is part of that shirtiness process. Paragraph 4(4) of schedule 1, which was written as part of the Bill and was not part of the suite of amendments we saw when the Bill reconvened from the Government side, suggests that rules that the chief executive may not be an employee or a civil servant do not apply to the appointment and operation of an interim chief executive.

The constraints on the appointment of an interim chief executive are not there. They could be an employee of the Department, a civil servant, or someone placed by the Secretary of State in that position, when the requirement to underpin the independence of the OEP means that should not be the case for the chief executive proper. That underlines the theme of determined non-independence of the OEP in its early stages, and the Secretary of State’s ability to mould and shape how the OEP works, before it is properly formed.

Amendment 155 “requires the Chair’s approval for civil servants or other external persons as interim chief executive of the OEP.”

Having been appointed, the real chair—not the interim chair—would have the authority to act as a guardian of the independence of the OEP. We have already been through the process of appointing the chair, so at the point at which the interim chief executive might be
appointed from within the civil service or the Department, or that might be proposed, the chair of the OEP would not necessarily say that was bad or impossible, but would at least have the authority to decide whether the Secretary of State was doing the right thing. That seems to me to be the least of the requirements that should be placed on this sub-paragraph.

We have discussed the independence of the OEP as it is set up. Having got to the position of having a reasonably independent chair in place, to then not involve the chair in the appointment of the interim chief executive seems perverse. The amendment does nothing except try to ensure that the OEP is visibly independent; Members from all parties can agree to that.

Anthony Browne: I used to be the chair of the Regulatory Policy Committee, a non-departmental public body linked to the Department for Business, Energy and Industrial Strategy; I appointed its entire new board. In a previous life, as I have mentioned, I was involved in setting up various other bodies, such as TheCityUK and the HomeOwners Alliance, and I have been involved tangentially in setting up independent bodies as part of the civil service.

I completely salute the support expressed by the hon. Member for Southampton, Test and the Opposition for the independence of the OEP. They are doggedly making sure that it is fully independent, and I totally support that; it will function properly only if it is fully independent. However, on the issue of the interim chief executive, I think—to follow the dogged analogy—that they are slightly barking up the wrong tree.

The whole point about the interim chief executive of any organisation is that they are setting it up. They are designing the org chart, saying “Right: this committee will do this, we need to hire these personnel to do that, these are the finances, this is the first draft budget,” and everything else—they are not actually fulfilling the substantive end function of the public body. The Opposition are worried about the timing, and I am worried about the timing too.

What normally, or very often, happens is that an organisation does not go through a recruitment process for an external interim chief executive. The chief executive is normally banned from being a civil servant, which is absolutely right, but we are talking about getting somebody to set the body up and get it going before the recruitment process for the end chief executive, the appointment of the entire board and everything else, which will take a long, long time—I think it took me about eight months to recruit a new board for the Regulatory Policy Committee.

The thing to do is get a civil servant who has experience of setting up bodies. Because of employment rules in the civil service, they can basically just be reassigned and put in place immediately. They can start setting up the organisation and doing all the stuff that needs doing, and in the meantime we can recruit the full, substantive, independent chief executive, which takes longer. When the independent chief executive is recruited, they will then have an organisation that they can work with and can return and rejig if they want. That is a far better and more efficient way of setting up an organisation than taking the completely purist approach that the first chief executive has to be a fully independent person who is not a civil servant and will not take directions from the civil service.

Daniel Zeichner rose—

Anthony Browne: I have finished, but the hon. Gentleman is welcome to succeed me.

Daniel Zeichner: I am grateful; I am sure that the hon. Gentleman can unfinish briefly. This is not just about setting up another body; it is an extraordinarily delicate issue. The complaint out there is concern about independence. Because of the substantial shift away from a supranational body, surely it is much more important to make sure that everybody sees that the new body is independent from the outset. This is exactly the wrong way of going about giving people that confidence.

Anthony Browne: I will just make one observation, speaking as somebody who has hired various chief executives for other organisations. On the boards that I have been on, the recruitment processes for external chief executives has taken at least three months just to identify the candidate. The sort of people we are looking for are often on notice periods of three or six months, so we are really talking about a minimum of six months, maybe nine months—quite probably a year—to hire the substantive chief executive.

Do we want to sit around doing nothing, with no organisation and no one doing anything for a year or nine months, while we hire the substantive chief executive? I agree with the principle, but what is more important is getting the machinery up and running, the cog wheels going and the pieces in place, and doing the recruitment of the substantive chief executive in the meantime. When we finally appoint them, which might well be six or nine months later, they will then have a skeletal organisation to run.

Rebecca Pow: I thank the hon. Member for Southampton, Test for his interest in the interim chief executive’s role and the Secretary of State’s power to appoint them. I reiterate what I mentioned in our debate on amendment 154: that the role of the interim chief executive is to take the urgent decisions required to ensure that the OEP is up and running on time. That power will be required only in the event that a quorate board is not in place soon enough to make those decisions; that is the crucial point. If the Secretary of State is required to consult the chair on the appointment, the power may not be worth exercising, because we expect the board to become quorate soon after the chair starts in post.

Amendment 155 actually has the potential to delay the appointment of the interim chief executive, which I think is what my hon. Friend the Member for South Cambridgeshire was alluding to. That would actually defeat the point of appointing one. He or she might be there for just a couple of days.

Richard Graham: The only disappointing aspect of this debate has been a relatively determined approach by some Opposition hon. Members in trying to demonstrate that the independence of this new Office for Environmental Protection will be somehow compromised from the start. Does my hon. Friend agree that, actually, what is
being put in place is a pragmatic approach to try to get something up and running as fast as possible, given the extraordinary circumstances of this year, and that to do anything else would only delay things and be counterproductive? We all want the same end; this is the best way to do it.

4.45 pm

**Rebecca Pow:** I thank my hon. Friend for that intervention; I could not have put it better myself. I feel that I am under a certain amount of attack here. This is all being put into place so that we can get things up and running. As everyone knows, we are in an extraordinary time. I know the shadow Minister said that the provision was in there anyway as a failsafe, in case we needed this interim set-up. It could well have never been needed to be used, but it is there in case we need it.

We want the OEP to get off to a good start. When the chair is appointed—as I said, that process is well under way—we want them to be the person to appoint what I would call the first real chief executive. That is the right process. I think we would all agree with that. The requirement in the amendment would be disproportionate to how long the interim post might be there, because we expect this chief executive to be fully in place during 2021.

I must clarify another separate point. Although it would be a short-term role, the interim chief would be able to make decisions on behalf of the OEP, but they would be just set-up decisions. That is also why—I allude again to my hon. Friend the Member for Southampton, Test to withdraw it.

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I remind the shadow Minister that the Secretary of State is subject to parliamentary scrutiny—there is a long process by which that will happen—concerning all the decisions taken in respect of the OEP. I have a page I could read about how the OEP will be independent, but they have always been here, and always allowed that to happen. They have always been here, and always allowed that to happen, increases some of the suspicions out there. It is our duty, and would at least be good sense, for us to dispel those suspicions as early as we can in the life of the OEP.

Dr Whitehead: The Minister spoke of the importance of getting things done now. After all the problems we have had, I cannot for the life of me see how that is in any way impacted by the idea that the chair of the OEP, who will shortly be in place, should have a say in deciding—guidance has properly been put in for the independence of the OEP—whether long-term recruits should not be from the civil service or any other external persons. Why should the chair not have that say in an appointment?

I assume that the chair of the OEP would be equally concerned to ensure that things are up and running as quickly as possible, that a proper and good appointment is made of an interim chief executive, and that, if a good case is put forward, that appointment might be of someone in the civil service or another person in the Department.

The amendment does not stop any of those things from happening; it merely says, as my hon. Friend the Member for Cambridge mentioned, that if it is the intention that the OEP will be truly independent it is the look of the thing from the beginning that will convince people of that.

I do not think that we can duck the issue. There are a lot of people out there who are profoundly suspicious and concerned that the OEP will not have its independence and will not be able to act as an environmental watchdog in the way that is claimed. Indeed, they will have suspicions, many of which we do not share, that a lot of what is being done is to undermine that independence, and—I would not go so far as to say to strangle the OEP at birth—to clutch the OEP much more closely to the bosom of Government than might have otherwise been the intention.

I hear what the Minister says about the fact that it was extremely fortunate that the provisions in the Bill were there anyway, which sort of came to the rescue when we were in the position of having to do these things very much at the last minute, rather than in a more considered way over a longer period. The fact that they have always been here, and always allowed that to happen, increases some of the suspicions out there. It is our duty, and would at least be good sense, for us to dispel those suspicions as early as we can in the life of the OEP.

Accepting the amendment would not, therefore, be a big deal. I do not intend to divide the Committee yet again, because we have made our point by dividing the Committee on other amendments, but this one is entirely on the same theme. I enjoin the Minister to think again about whether she wants to introduce something at a later date in proceedings that at least waves a flag in the direction of proper independence for the OEP as it gets under way, in addition to when it is fully under way. That would be very helpful for all of us who are concerned, in terms of what we will try to do to ensure that the OEP does its job properly.

Cherilyn Mackrory: Paragraph 17 of schedule 1 explicitly says:

“In exercising functions in respect of the OEP, the Secretary of State must have regard to the need to protect its independence.”

I notice that the Opposition have not tabled an amendment to that, because they are obviously happy with it.

Dr Whitehead: That is right, but that is the OEP as it is up and running; this is about the OEP as it is formed. Our point on a number of things this afternoon has been that if we undermine the independence of the OEP as it is being formed it is rather difficult to carry out paragraph 17 later on, when the OEP is fully functioning. I thank the hon. Member for drawing attention to that point, but it is not entirely what we are discussing this afternoon—although I fully agree that the Secretary of State should, of course, have regard to the independence of the OEP when it is up and running and functioning. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Deidre Brock: I beg to move amendment 188, in schedule 1, page 124, line 26, at end insert—

“(a) delegate the function to an environmental governance body designated by the Scottish Ministers, and

(b) provide the resources for that function to be exercised.”

This amendment aims to introduce the geographical imperative to ensure clear lines of reporting and response in Scotland and to clarify that the body acting in Scotland will be acting with consent of Scottish Ministers, thus respecting the devolution settlement.

Clearly, the Bill before us is applicable largely to this place because, as I have already referenced, environmental policy is, in the main, devolved. There are, however, still areas here and there within the Bill that require a little tidying to ensure that there is no danger of devolved regulatory powers being affected or even overridden inadvertently.

The amendment ensures that on the rare occasions when the OEP acts in Scotland, it will do so only with the consent of Scottish Ministers. In fact, amendments 190 and 191 also seek to respect the devolved Administration in Scotland.

Amendment 188 is about respecting the devolved Administration in Scotland, ensuring that the regulatory functions remain with the Scottish regulator, as is currently the case. It is about the Scottish Parliament and Government forging a different kind of future that will keep driving forward improvements in environmental policy. It means, too, that the Scottish regulator—currently the Scottish Environment Protection Agency—would maintain a holistic view of environmental policy in Scotland. I look forward to hearing the Minister’s response.

Rebecca Pow: I thank the hon. Member for Edinburgh North and Leith. The amendment gives me a good opportunity to demonstrate that the Government’s new environmental governance framework respects the devolved settlements. She will be aware that the environment is largely a devolved matter and, as such, it is for each Administration to develop their own environmental governance proposal in relation to the devolved functions.

The Bill therefore makes a clear distinction between devolved and non-devolved functions, and we have ensured that the OEP can cover England and any matters across the wider UK that have not been devolved. That is necessary, as non-devolved matters cannot be addressed by the devolved Administration’s own governance arrangements once these ones are in place.

We expect that all the remaining devolved matters that fall outside the remit of the OEP will be addressed by the devolved Administration’s governance proposals in due course. Indeed, we welcome the steps that Scotland has taken to establish its own environmental body. The Bill is drafted in such a way as to ensure that the OEP can exercise its functions only on matters that are not devolved in respect of Scotland, so it would be inappropriate to delegate such functions to Environmental Standards Scotland, the intended equivalent Scottish body, to deliver those functions.

We do, none the less—and I did want to be at pains to say this—expect that the OEP will work harmoniously and productively with equivalent bodies in the devolved Administrations. That is obviously really important, since we cannot control the air, water or lots of things like that: in many cases, we will be working in tandem.

That is why in clause 40(2)(f) we have made provision for the OEP to share information with its devolved equivalents and why in clause 24(4) we have placed a duty on it to consult them on any relevant matters.

Beyond the provisions already in the Bill, the OEP and its equivalent bodies will also have discretion to jointly decide how best to co-ordinate these activities. The OEP has been carefully designed to respect the devolution settlements by limiting its scope to environmental law, the definition of which specifically excludes matters falling within the devolved competence in Northern Ireland, Scotland and Wales.

The Government consider it inappropriate and contrary to the delineation of legislative responsibilities under the devolution settlements to delegate the OEP’s functions in this context. I thank the hon. Member for raising this issue, because I want to be at pains to be clear about how we are working with the devolved Administrations, but I believe the amendment is unnecessary. I ask her to kindly withdraw it.

Deidre Brock: I have great respect for the Minister and for her sincerity—I genuinely do. I think she absolutely means what she says and she absolutely thinks that the way things are at the moment under her ministerial leadership will remain the same forever.

I am afraid that, ultimately, her suggestions do not cut the mustard with me, because environmental policy is devolved to Scotland. The amendment simply requires that, rather than Scottish Ministers just being consulted, they are actually required to give some sort of consent. As the amendment says in sub-paragraph (a), whatever the environmental issue is, the function should be put to a “body designated by the Scottish Ministers”.

Without that agreement from the Government, I am afraid that I will have to ask that the amendment be put to a vote. Things are either devolved or they are not. I do not think that whether the Government at the time feel that they have a greater locus in an area than the devolved Government in place at the time should be part of the consideration. It is important that the responsibility for environmental policy that rests with devolved Governments is fully respected and that the agreement of the Scottish Government is sought in all instances to do with environmental policy.

Question put. That the amendment be made.

The Committee divided: Ayes 1, Noes 8.

Division No. 11]

AYES

Brock, Deidre

NOES

Brown, Anthony

Docherty, Leo

Graham, Richard

Jones, Fay

Longhi, Marco

Mackrory, Cherilyn

Moore, Robbie

Pow, Rebecca

Question accordingly negatived.

Ordered, That further consideration be now adjourned.—(Leo Docherty.)

5.1 pm

Adjourned till Thursday 5 November at half-past Eleven o’clock.
Written evidence reported to the House

EB29 The Law Society of Scotland
EB30 Bio-based and Biodegradable Industries Association (BBIA), and the Association for Renewable Energy and Clean Technology (REA)
EB31 Aldersgate Group
EB32 Forest Peoples Programme
EB33 United Kingdom Without Incineration Network (UKWIN)
EB34 Mineral Product Association
EB35 Nappy Alliance
EB36 Severn Trent Group
EB37 Chemical Industries Association
EB38 Environmental Investigation Agency
EB39 Bright Blue
EB40 ReNew ELP
EB41 News Media Association
EB42 Yorkshire Humber & North Lincolnshire Regional Access Forum
EB43 British Soft Drinks Association
EB44 Policy Connect
EB45 Food and Drink Federation (supplementary)
EB46 Scottish Land & Estates
EB47 Association of Convenience Stores
EB48 Convention of Scottish Local Authorities (COSLA)
EB49 Pesticide Action Network UK
EB50 Veolia
EB51 Environment & Threats Strategic Research Group & Centre for Ecology, Environment and Sustainability, Bournemouth University

EB52 Alupro
EB53 InSinkErator
EB54 Mayor of London
EB55 UKELA (UK Environmental Law Association)
EB56 Professor Eloise Scotford, Centre for Law and Environment, Faculty of Laws, UCL
EB57 Woodland Trust
EB58 Sustrans
EB59 Paper Cup Alliance
EB60 NO2PLASTICS
EB61 Professor Elizabeth Fisher, Professor of Environmental Law, Faculty of Law, University of Oxford
EB62 Northern Ireland Food and Drink Association (NIFDA)
EB63 National Biodiversity Network Trust
EB64 Foodservice Equipment Association
EB65 AMDEA—The Association of Manufacturers of Domestic Appliances
EB66 Alliance for Beverage Cartons and the Environment (ACE UK)
EB67 Western Riverside Waste Authority
EB68 Ancient Tree Forum (ATF)
EB69 Camfaud Concrete Pumps Ltd
EB70 Waitrose & Partners
EB71 Lead Ammunition Group
EB72 Inland Waterways Association
EB72a Inland Waterways Association: Appendix A—Vision for Sustainable Propulsion on the Inland Waterways
EB73 Woodland Trust (further submission)
Tenth Sitting

Thursday 5 November 2020

(Morning)
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 9 November 2020

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The Committee consisted of the following Members:

**Chairs:** JAMES GRAY, † SIR GEORGE HOWARTH

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
† Anderson, Fleur (*Putney*) (Lab)
† Bhatti, Saqib (*Meriden*) (Con)
† Brock, Deidre (*Edinburgh North and Leith*) (SNP)
† Browne, Anthony (*South Cambridgeshire*) (Con)
† Docherty, Leo (*Aldershot*) (Con)
† Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)
† Graham, Richard (*Gloucester*) (Con)
† Jones, Fay (*Brecon and Radnorshire*) (Con)
† Jones, Ruth (*Newport West*) (Lab)
† Longhi, Marco (*Dudley North*) (Con)
† Mackrory, Cherilyn (*Truro and Falmouth*) (Con)
† Moore, Robbie (*Keighley*) (Con)
Pow, Rebecca (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
Thomson, Richard (*Gordon*) (SNP)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Zeichner, Daniel (*Cambridge*) (Lab)

Anwen Rees, Sarah Ioannou, *Committee Clerks*

† attended the Committee
Public Bill Committee

Thursday 5 November 2020

(Morning)

[SIR GEORGE HOWARTH in the Chair]

Environment Bill

11.30 am

The Chair: Before we begin, I remind Members about social distancing. Spaces available to Members are clearly marked. Hansard colleagues would be grateful if you could send any speaking notes to hansardnotes@parliament.uk. I also remind Members to switch electronic devices to silent, please. Tea and coffee are not allowed during sittings.

We will continue line-by-line consideration of the Bill. The selection list for today’s sitting is available in the room, and shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same, or a similar, issue. Please note that decisions on amendments do not take place in the order they are debated but in the order they appear on the amendment paper. The selection list shows the order of debate. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

We now continue our consideration of schedule 1. I call Dr Alan Whitehead to move amendment 157.

Schedule 1

THE OFFICE FOR ENVIRONMENTAL PROTECTION

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 157, in schedule 1, page 124, line 40, at end insert—

“12A (1) At the start of each five-year period, the Secretary of State must publish and lay before Parliament an indicative five-year budget for the OEP.

(2) In sub-paragraph (1) ‘five-year period’ means—

(a) the period of five financial years beginning with the financial year that begins after the commencement of this Schedule, and

(b) each subsequent period of five financial years.

12B If the OEP requests additional funding, due to a change in the nature or extent of its functions, the Secretary of State must publish and lay before Parliament a statement responding to the request.”

This amendment requires the OEP to be given a five-year indicative budget, and allows it to request in-budget increases.

It is a pleasure to serve under your chairmanship, Mr Howarth. Before we start, I note the Minister’s absence this morning. I understand that she is unwell. I hope to convey the wishes of us all, and particularly of the Opposition, for her speedy recovery and return to her full powers, which are considerable, in the business of guiding the Committee. [HON. MEMBERS: “Hear, hear!”] I appreciate that her absence has meant that we have had to slightly rearrange how we proceed today. The Opposition fully support those changes, and hope that we can get through today in a useful and amicable way and be out in good time this afternoon. That is certainly our intention.

We tabled amendment 157 on the basis of the need to underpin the independence of the Office for Environmental Protection as far as its financing is concerned. The Bill effectively states that the Minister can provide funds for the OEP from time to time, as he or she directs. I do not have the exact wording in front of me, but that is essentially what it states. That is not good enough; independent bodies associated with Departments need a clear line of sight of the money that they will receive for their activities.

In the case of another departmentally associated independent body, the Environment Agency, the combination of the Government hugging it closer, in terms of the agency’s activities, and substantially reducing its funding has created a real problem with its activities. We therefore suggest that the procedure for funding the OEP should be that, at the start of each five-year period, the Secretary of State publishes and lays before Parliament an indicative five-year budget, which we anticipate would be maintained for the life of the Parliament. We suggest that that be done not just for the first five-year period, but for each subsequent five-year period, so that at the beginning of each period the OEP has a clear remit in front of it, knows what its budget is and what it can and cannot do, and cuts its cloth accordingly, with a clear line of sight as far as financing is concerned.

That would mean, among other things, that in each Parliament the OEP has guaranteed independence for its activities. I reflect, in parallel, on the experience of Select Committees, which we were talking about in Tuesday’s proceedings. Following changes made a little while ago, Select Committee members are selected at the beginning of each Parliament, and their membership continues independently of the wishes or interference of bodies such as the Government Whips Office—heaven forfend that it would ever do such a thing—or of suggestions that people ought or ought not be on Select Committees because of their views about supporting the Government. Select Committees are proof that that works. Not only are their memberships selected and agreed at the beginning of each parliamentary Session, but their budgets come from a parliamentary vote, not from Government sources.

We are trying to set up a procedure that is reasonably close to that, in that the budget is set. It would not be limitless, but it would be known and secure for a five-year period—the lifetime of a Government. It would not be possible for it to be diluted, diverted or whatever during that period. We think that is an important principle in setting up the OEP, and we hope that the Minister for the time being—I am not sure how to refer to him—will come at least some way towards meeting that principle, perhaps by accepting this amendment. I hope he will at least indicate that he will think seriously about it. If we are not able to get that very clear assurance, we will seek to divide the Committee to put that principle on the record.

Ruth Jones (Newport West) (Lab): My hon. Friend is making a powerful speech about the funding. Let us be honest: if we do not have the correct funding in place, how can the OEP be impartial and carry out its job.
effectively? Does he agree that it would be a concern if the OEP did not have separate estimates from those of the Department for Environment, Food and Rural Affairs? How else will it maintain its impartiality?

Dr Whitehead: That is absolutely right. We need to make sure, as we go through each element of the OEP’s formation and operation, that it is not only thought to be independent, but seen to be so in its activities. This is an important part of the OEP being seen to be independent. I await the Minister’s thoughts on how we might proceed.

Leo Docherty (Aldershot) (Con): I am grateful to the shadow Minister for his kind remarks in wishing my hon. Friend the Member for Taunton Deane a speedy recovery, and for the amicable tone in which he is seeking to work today. I thank him for the amendment. It highlights the unusual commitment this Government have already made to giving the OEP an indicative multi-annual budget, in response to Parliament’s scrutiny of the draft Bill. This budget will be formally ring-fenced in any given spending review period; that will provide the OEP with more longer-term financial certainty than afforded to most arm’s length bodies.

However, it would be unnecessary and unhelpful to include this commitment in the Bill. Other bodies with multi-annual funding commitments, such as the Office for Budget Responsibility, do not have it set out in legislation. In this Bill we have already included mechanisms to ensure that the OEP will remain adequately funded under this and future Governments.

The Bill imposes a statutory duty on the Secretary of State to provide the OEP with enough funding to undertake its statutory functions. There is also a duty on the OEP, in its annual statement of accounts, to provide an assessment of whether it was provided with sufficient funding by the Secretary of State during that year. The OEP’s statement of accounts will be laid before Parliament.

That brings me to the second part of the amendment. Parliament will have ample opportunity to scrutinise the funding of the OEP further, and to hold Government to account accordingly. The OEP’s funding will be made public through a separate line in DEFRA’s estimate, in response to Parliament’s scrutiny of the draft Bill. This budget will be formally ring-fenced in any given spending review period; that will provide the OEP with more longer-term financial certainty than afforded to most arm’s length bodies.

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That brings me to the second part of the amendment. Parliament will have ample opportunity to scrutinise the funding of the OEP further, and to hold Government to account accordingly. The OEP’s funding will be made public through a separate line in DEFRA’s estimate, with further detail in the OEP’s own annual financial report. We will give the OEP the option of providing the relevant Select Committee with an additional estimates memorandum alongside the DEFRA estimate. The memorandum would provide the Select Committee with a clear statement of what is in the estimate, and why any additional funding is being sought.

The OEP will therefore be able to provide Government and Parliament with additional information relating to any changes in funding and how the funding will be applied, enabling any perceived shortcomings to be highlighted. In that spirit, I ask the hon. Gentleman to withdraw the amendment.

Fleur Anderson (Putney) (Lab): I echo the remarks made by the shadow Minister, my hon. Friend the Member for Southampton, Test, about sending our best wishes to the Minister, the hon. Member for Taunton Deane. I wish her a speedy recovery.

I will add to the shadow Minister’s remarks about strengthening the multi-annual budget provision and putting it in the legislation. I am grateful to the Minister for saying that there will be some indication of the multi-annual budget, but I ask for it to be stronger. I draw the Committee’s attention to what the Select Committee on Environment, Food and Rural Affairs said on the funding of the OEP in April 2019. The Bill has been in progress for a long time, so we may not all remember what the Committee said then—some, like me, may not even have been an MP then. It said:

“A history of sustained budget cuts to DEFRA’s arm’s length bodies does not fill us with confidence that the current funding provisions for the Office for Environmental Protection in the draft Bill are sufficient. Given the importance of the OEP’s independence from Government”—

that independence is the reason why it is important that we discuss this matter alongside amendment 156—

“it should have additional budgetary protections than is customary for Non-Departmental Public Bodies.

The Government should commit to providing a multi-annual budgetary framework for the Office for Environmental Protection in the Bill. This commitment would help to ensure the Office for Environmental Protection’s independence from Government and is consistent with best practice as seen with the Office for Budgetary Responsibility. Rather than grant-in-aid, the Office for Environmental Protection should also have its own estimate which should be negotiated directly with HM Treasury, and voted on by Parliament in the yearly Supply and Appropriation (Main Estimates) Bill.”

The Select Committee argues that the requirement for multi-annual provision should be fundamentally written into the Bill, not subject to whims or dependent on good intentions in the future. That is very important for the next topic of our conversation about the independence of the OEP.

11.45 am

Daniel Zeichner (Cambridge) (Lab): It is a pleasure to serve under your chairmanship, Sir George. I also send my good wishes to the hon. Member for Taunton Deane and wish her a speedy recovery.

Much of the discussion on Tuesday was about—as it will be today—the independence of the OEP. Of course, organisations cannot be truly independent if they are heavily dependent on another organisation for their funding and resourcing. I echo many of the comments made by my hon. Friend the Member for Putney and the shadow Minister. This might seem a slightly arcane discussion about how the funding is separated and arrived at, but a point that I have already made, and will, I suspect, continue to make, is that the organisation is so important that it has to be independent, and be seen to be independent, and has to have public confidence, because it replaces a very strong regime.

Sadly, we saw on Tuesday, and will, I fear, see as we go through further clauses today, that the sense of independence is being eroded. That is important, because when we look at other organisations that are involved in environmental protection, we see that the record, particularly under this Government, is absolutely atrocious.

The Lords Select Committee in 2018 described the cuts made to many of these organisations as having a “profound negative impact” on England’s biodiversity. The funding cuts to Natural England under this Government have been absolutely astonishing—there was a cut of some £265 million in 2008-09, and of a mere £83.6 million in 2019-20, which matters because we are being asked to trust the Government to resource the organisation properly. I am sure many of us are regular watchers of “Countryfile”; just a few weeks ago, it had
Richard Graham (Gloucester) (Con): On a point of order, Sir George. In the Committee’s discussions on Tuesday, I noted that the shadow Minister, the hon. Member for Southampton, Test, raised on a couple of occasions—in columns 285 and 287 of the Official Report—the appointment of non-executive directors to the future Office for Environmental Protection. He intimated strongly that it would be a good idea for such directors to be appointed with the consent of the two relevant Select Committees. He later said that perhaps the Select Committees would decide that they would not want to be involved in the appointment of non-executive members of the board.

I have been in contact with the Chair of the Environmental Audit Committee, my right hon. Friend the Member for Ludlow (Philip Dunne), who confirmed that there has never been an approach from Labour Front-Bench Members or any member of his Committee with that suggestion. He does not recall a suggestion for pre-appointment hearings for NEDs—apart from the chair—by any member of his Committee during its inquiry into the draft Environment Bill last year, either. In his view, it is an impractical suggestion, which had never been raised before. May I therefore invite the shadow Minister to withdraw some of his comments about the appointment of non-executive directors from Tuesday’s discussions?

Dr Alan Whitehead: I beg to move amendment 156, in schedule 1, page 126, line 2, leave out ‘have regard to the need to’.

This amendment makes the independence of the OEP an absolute requirement.

I apologise for de-knighting you earlier, Sir George; I will continue in the right vein. I will respond briefly to the point of order by the hon. Member for Gloucester. My intention on Tuesday was to draw attention to the principal architecture of various issues and how they might work relative to Select Committees. It was not to impugn the actions of anyone on a Select Committee or any proceedings of Select Committees. If the hon. Member for Gloucester felt that I was doing that in any way, I hope I can set the record straight this morning. As to the remarks that I made about how, in principle, Select Committees work and might have a hand in the appointments, and about the difference between those Committees having a hand in the appointments and the Government—in principle, but not necessarily in practice—not referring to them, I fully stand by those remarks for the future. I hope that that clarifies things for the hon. Gentleman.

Richard Graham: I am grateful for the shadow Minister’s comments. The key thing is that there is an important separation between the responsibilities of Select Committees and what a Government choose to do in a Bill. The implication of what he said on Tuesday was that those ideas had been well discussed, and raised previously, and that it was perfectly normal for the two relevant environmental Select Committees effectively to have hearings for non-executive directors, as well as for the chair. I thought it would be helpful to put the record straight and to say that that had never been discussed in
the Environmental Audit Committee and that the Chairman had never been approached about it by anyone from any party.

**The Chair:** Order. I have made the point that the Chair is not responsible for the content of any right hon. or hon. Member’s speech. Mr Graham has raised his concern in a point of order. Dr Whitehead has responded, and I propose that we now stick rigidly to the amendment at hand and continue with consideration of it.

**Dr Whitehead:** Thank you, Sir George. We can perhaps talk about this offline, so to speak. I am happy to stand by what I said previously, but I would welcome discussing it further with the hon. Gentleman if he would like to.

The amendment is fairly straightforward. On Tuesday, the hon. Member for Truro and Falmouth made a point about paragraph 17 of schedule 1, which reads:

“In exercising functions in respect of the OEP, the Secretary of State must have regard to the need to protect its independence.”

In her intervention, she emphasised the words “protect its independence”. However, we would rather emphasise the fact that the wording “have regard to the need to protect its independence” would not actually protect the OEP’s independence. We suggest deleting the words “have regard to the need to” so that the passage would read, “In exercising functions in respect of the OEP, the Secretary of State must protect its independence.” That is simpler and more straightforward, and makes the duty of the Secretary of State clear. I hope that the Minister will respond positively.

**Fleur Anderson:** I also want to speak about the independence of the Office for Environmental Protection. The former Secretary of State, the right hon. Member for Surrey Heath (Michael Gove), promised us a new, “world-leading”, independent environmental watchdog. However, what is in the Bill is not good enough. The current wording is:

“In exercising functions in respect of the OEP, the Secretary of State must have regard to the need to protect its independence.”

The amendment would change that so that the Secretary of State “must protect its independence”. We have had previous amendments that were short but important, and this is another one. Instead of giving a nod to something, hoping it will happen or wishing for the best, we will actually write this proposal into the Bill. That is important in relation to our earlier conversations about the appointment of the chair and the OEP’s independence.

**12 noon**

It was promised that family reunion would be in the original Brexit legislation, but it was not there, and it was promised that it would be in the Immigration Bill, which was discussed only yesterday in the House of Commons, but it was not there. We cannot trust the Government to deliver in the legislation promised, and they have once again moved the goalposts with the Office for Environmental Protection.

I welcome the concept of the Office for Environmental Protection and share the ambition for it, but what the Bill delivers cannot in all seriousness be called independent.

The problem is compounded by the Minister’s new clause 24, which further dilutes any appearance or practice of independence. That is really disappointing, and it is why we deem it necessary, unfortunately, to table this short but important amendment. It is not too late to rescue what was originally a really positive idea.

On Tuesday, the Committee discussed the chair. I am disappointed that our amendment was rejected, as it would have gone some way to restoring a semblance of independence and precedence. As the Institute for Government noted:

“This was one of the moves the Treasury made back in 2010 to establish the Office for Budget Responsibility as an independent credible actor. Indeed, the Treasury went even further: the chancellor can only remove the chair and the other two members of the Budget Responsibility Council with the consent of the Treasury Select Committee.”

It is written right there in the procedures.

Overseas examples demonstrate the importance of an independent chair, whose role can be written in and make the whole body more independent. In Canada, the equivalent body, the Commissioner of the Environment and Sustainable Development, which audits the environmental policies of the Government, is appointed by the Auditor General in Canada, who is in turn appointed by the Canadian Parliament.

In its evidence sessions, the Committee had many organisations lining up to share their concerns about the independence of the OEP Industry-orientated bodies, such as the Aldersgate Group, whose members include companies such as Associated British Ports, IKEA and Thames Water, as well as environmental non-governmental organisations, say that the failure to give MPs a say on who leads the OEP is a mistake. That is why this associated amendment is needed.

I am deeply worried by the further changes to the OEP proposed by the Government, particularly those giving the Secretary of State powers to issue enforcement guidance on matters that must be included in the OEP’s enforcement policy—new clause 24. To quote Greener UK, that gives the Government a “get out of jail free” card, to direct the watchdog away from awkward or inconvenient cases.

The Government’s justifications for that simply do not stand up to scrutiny. The Secretary of State has said that this is a normal, standard clause that applies to other public bodies with independent regulatory laws, and I am sure we will hear that again. Although the Government do have a similar power in relation to some existing public bodies, the critical fact is that Ministers do not have a similar power to issue guidance in relation to bodies charged principally or partly with enforcement in relation to potential breaches of the law by other public bodies. For example, the Equality and Human Rights Commission and the Information Commissioner’s Office, which carry out enforcement in relation to breaches of the law on human rights, equality and data protection legislation, are not bound by similar power in relation to their enforcement functions.

Ministers have the power to issue guidance to some bodies in the DEFRA ecosystem, such as Natural England and the Environment Agency, as well as other non-departmental public bodies, such as the Office for Budget Responsibility. However, none of those are enforcement...
bodies with the power to take the Government to court if there is a suspected breach of law. That is a critical difference.

The Government have also claimed that the new power does not grant the Secretary of State any ability to intervene in decision making about specific or individual cases and that the OEP does not have to act strictly in accordance with the guidance where it has clear reasons not to do so. Although that is technically correct, and I hope it remains so, when considered in the context of all the other changes the Government hope to make to the OEP, that power will clearly have the effect of allocating Ministers an essential role in shaping the basic principles of the watchdog. That will have a severely constraining effect on the OEP’s ability to act independently.

The legislation makes the good intentions law—that is the point—but it would change the whole power dynamic in the room. When the OEP chair is there with the Minister, who has the most power? As Greener UK put it:

“This guidance power inverts the intended hierarchy (in which the OEP oversees ministers) and gives ministers the role of overseeing the OEP.”

That has consequences for the rest of the Bill. No matter what the Government claim, there is no doubt that such a broadly cast power will undermine the OEP’s independence and render the Government’s ambition for a world-leading watchdog unachievable. The Government’s proposals would also limit to only urgent cases the OEP’s powers to bring review proceedings against public policies, which is something that we will be looking at in future.

Let us not make these mistakes with the OEP, which, if set up correctly from the start and left to do its job without interference, has the potential to transform our environment and be a crucial partner to the Government in achieving their aims and policy statements. I hope that the Committee will support amendment 156.

Daniel Zeichner: My hon. Friends have made a powerful case, to which I will not add much more. Looking at what we are losing through leaving the European Union, I was very struck by the Library briefing, which states:

“EU law is monitored and enforced by the European Commission under Article 258...as the ‘Guardian of the Treaties’. It is overseen by the Court of Justice of the European Union... which can levy fines on Member States that are found to be in breach of EU law.”

That is an incredibly powerful position. Although we had only a certain amount of influence over that arrangement as a member state, it could be used to considerable effect.

I was very struck by the evidence to the Committee from ClientEarth, which has obviously used that arrangement to good effect on behalf of the citizens of the UK in challenging the Government’s record on air quality. Even back in March, before the amendments before us and others were tabled, ClientEarth was very clear:

“Despite the Government’s words about the independence of the OEP, the funding structure envisaged in the Bill places the OEP too close to Defra and too much discretion is given to the Secretary of State in the appointment of the OEP’s members.”

Those at ClientEarth are concerned because they know that, in the past, they could intervene and act on behalf of UK citizens, but under this system, they will not be able to. That key change weakens our protections, and it is why it is so important that amendments such as this are pursued, although I suspect they will not be successful. However, I think that these provisions in the Bill will be torn to shreds in the other place, quite frankly.

Leo Docherty: I agree with Opposition Members who have spoken about the need to protect the independence of the OEP. That is why we have introduced a new duty on the Secretary of State to have regard to the need to protect the OEP’s independence, and placed a duty on the OEP to act objectively, impartially and transparently. Unlike with most public bodies, the Bill gives Ministers no power to set the OEP’s programme of activity or to direct the exercise of its functions. Parliament can scrutinise the actions of the Secretary of State in exercising functions in relation to the OEP to ensure that the Government are not interfering in the delivery of the OEP’s statutory functions.

The operational independence of the OEP, however, which we wholeheartedly support, should not impede the Secretary of State in exercising appropriate scrutiny and oversight of the OEP. That is important because the Secretary of State, as an elected representative of the Government, is accountable to Parliament and the public for the overall performance of the body and for the use of public money. Requiring the Secretary of State to actively protect the OEP’s independence at all times would be incompatible with that ministerial accountability, which is one of the Government’s key principles of good corporate governance.

The amendment would prevent DEFRA, the OEP’s parent Department, from exercising appropriate oversight, including accounting officer responsibilities. I therefore ask the hon. Member for Southampton, Test to withdraw his amendment.

Dr Whitehead: My hon. Friends have made powerful contributions on the overall independence of the OEP and the circumstances under which that independence can be enhanced or undermined. In terms of our general discussions this morning, hon. Members will see that the importance of the OEP—its crucial role in holding other bodies to account and possibly taking them to court—puts the OEP into a reasonably unique category as far as such bodies are concerned. Comparisons with some of those other bodies fall rather short in terms of making a distinction between the importance of the OEP and, indeed, the importance originally attached to it by previous Secretaries of State in introducing the Bill in the first place.

That, essentially, is a theme that we will be pursuing today, and amendment 156 is part of that. While I hear what the Minister says about the Department’s ability to guide and control part of the OEP’s actions, it is not good enough, in the context of the formulation before us, to say that the independence of the OEP can be compromised for the purposes set out. We do not intend to pursue the point to a Division this morning, but in terms of the corpus of our contributions on this clause, I want to place on record that the same goes for the debate later today, and we hope that those comments will be heard. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 1 agreed to.
Clause 22

Principal objectives of the OEP and exercise of its functions

Deidre Brock (Edinburgh North and Leith) (SNP): I beg to move amendment 189, in clause 22, page 13, line 16, leave out subsection (5).

This amendment removes the restriction on the OEP overlapping with the Committee on Climate Change.

The Chair: With this it will be convenient to discuss the following:

Government amendments 30 and 66.

Government new clause 4—Memorandum of understanding.

Deidre Brock: May I send my best wishes to the Minister, and wish her a speedy recovery? I look forward to seeing her back in her place next week.

I say from the outset that amendment 189 is really a probing amendment. I am trying to gain a better understanding of what the Government were seeing to achieve in the clause by excluding areas of climate change committee activity from OEP oversight. However, I note the Government’s in new clause 4, and I look forward to hearing what the hon. Member for Aldershot has to say in that regard.

12.15 pm

Leo Docherty: I thank the hon. Member for Edinburgh North and Leith for her warm wishes, which I will convey to the Minister, and for tabling amendment 189, which gives me the opportunity to explain how the Bill will ensure that there will be clarity over the respective remits of the OEP and the Committee on Climate Change. Government amendments 30 and 66 and new clause 4 will ensure that the OEP does not duplicate the work of the Committee on Climate Change, as well as requiring the two bodies to prepare a memorandum of understanding. I will come on to those in more detail in a moment.

Amendment 189 would remove clause 22(5), which would weaken the overall provision of the Bill to clarify the respective roles of the two bodies. That provision requires the OEP to set out in its strategy how it intends to avoid any overlap with the Committee on Climate Change when exercising its functions. That ensures that the avoidance of such an overlap would run through the OEP’s entire operation. That would be difficult to achieve simply through a memorandum of understanding. I therefore ask the hon. Member to withdraw amendment 189 to ensure that the Office for Environmental Protection and the Committee on Climate Change can work together seamlessly.

Government amendments 30 and 66 and new clause 4 are part of a package of measures, including statutory requirements already set out in the Bill, that help to clarify the distinct roles of the two bodies to ensure that they develop an effective working relationship. Government amendment 30 will ensure that the OEP does not duplicate the work of the Committee on Climate Change by providing that the OEP will not monitor or report on specific matters already within the statutory remit of the Committee on Climate Change. Government amendment 66 ensures the same effect in Northern Ireland should the Northern Ireland Assembly choose to extend the OEP to Northern Ireland.

The OEP has an important role to play alongside and in collaboration with the Committee on Climate Change in ensuring that the UK continues to drive forward ambitious action on climate change. That role is not being called into question by the amendments. Indeed, Greener UK has welcomed the amendments and their addition to the existing provisions, which “ensure that there is no duplication and overlap”.—[Official Report, Environment Public Bill Committee, 10 March 2020; c. 74, Q(16).]

The Committee on Climate Change is also supportive of both the existing measures and the Government amendments. I therefore commend Government amendments 30 and 66 and new clause 4 to the Committee, and graciously urge the hon. Member to withdraw amendment 189.

Deidre Brock: I thank the Minister for that brief but adequate explanation.

Dr Whitehead: I think we can claim a little collective win on this. We have been concerned about the possible clash between the remit of the Committee on Climate Change and that of the OEP, almost since the publication of the Bill. I think the matter was raised in proceedings before they were suspended earlier in the year. To avoid duplication and a possible treading on each other’s toes, it is really important that there is not a mix-up between what the OEP does on elements of the climate change and environmental remit, and what the Committee on Climate Change is doing.

The amendments that the Government tabled to clarify and codify that distinction, which also refer to Northern Ireland, seem a positive step forward in how we decide what we are going to do. In a moment, we will come to an amendment that tries to clarify that for another Government body. I welcome these amendments.

Daniel Zeichner: I, too, welcome the amendments, but does my hon. Friend agree that they demonstrate that the overall architecture of the whole system has not been flawed from the outset? I am thinking of the relationship with other organisations and, for instance, the interaction with the Agriculture Bill and the Fisheries Bill, which we have long argued were done in the wrong order.

Dr Whitehead: Yes, indeed. My hon. Friend is absolutely right. It indicates that the thinking when the Bill was constructed in the first instance did not take account of those distinctions. We may need to go further in deciding who has what brief, as far as these issues are concerned.

On this particular issue, the Minister’s clarification is welcome. Obviously, the Opposition have not won many amendments so far, so being on the right side of a new amendment can be the cause of some rejoicing. We do not wish to oppose the amendments; on the contrary, we support them.

The Chair: Government amendments 30 and 66 and Government new clause 4 will be determined later in the proceedings.

Deidre Brock: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Dr Whitehead: I beg to move amendment 105, in clause 22, page 13, line 18, at end insert—

(5A) The Energy Act 2013 is amended in accordance with subsections (5B) and (5C).

(5B) In section 131(1), for “may” substitute “must”.

(5C) In section 131(2), after subsection (c), insert—

“(d) the duty of the Authority in assisting the delivery of greenhouse gas emissions targets as set out in the Climate Change Act 2008.”

(5D) This section comes into force at the end of the period of three months beginning with the day on which this Act is passed.”

This amendment is intended to facilitate co-operation between the OEP and the Energy Authority.

This amendment follows on from our previous debate about clarifying which of various bodies does what. As my hon. Friend the Member for Cambridge said, there are a number of other issues relating to which body does what—how that works in the overall scheme of things as far as environmental protection is concerned, and how that relates to climate change issues.

One body that has a very substantial hand in the process and is very involved in the consequences of environmental protection, the use and deployment of energy, and decisions about where energy comes from—particularly as far as climate change and net zero considerations are concerned—is Ofgem: the body responsible for those considerations in the energy sphere.

The amendment would align Ofgem’s responsibilities and remit with the other bodies that we have discussed this morning. Ministers have argued that Ofgem’s remit includes concerns about the environment and climate change, but in practice, its written remit does not. Its remit at the moment is simply to secure good value for customers; it does not go into the areas that we have been talking about today. However, from the Energy Act 2013 onwards, the Government have had the ability to put that right. In part 5 of the Act, there is provision for the Government to put forward a strategy and policy statement, which would produce the remit for that body.

I have now been concerned for a long time that while part 5 of the Act would have been simple for the Government to implement—it is there on the statute book, with detailed guidance on how to do it—it has been curtailed merely because it is up to the Minister to trigger the provision. There is no start date for its implementation—we may come later to similar points about this Bill—and the Government have decided not to implement it. They have therefore resiled from the idea of producing a strategy and policy statement.

The amendment seeks to do two things. First, it would amend part 5 of the Energy Act 2013 to ensure that a remit for the policy and strategy statement is written into the Act. Secondly, it would ensure the implementation of that part of the Act by setting a timescale. Ministers would therefore need to pay attention to the insertion of Ofgem’s climate and environment brief and do something about it by bringing that part of the Act into force within a set period of time.

It is a simple amendment. I appreciate that it would amend another Act of Parliament so we might have to go through a Marx Brothers tootsie-frootsie ice cream sketch form-guide discussion to get to a thorough understanding of how the 2013 Act relates to the Bill, but I hope hon. Members are assured that the Opposition tried hard to draft the amendment so that it would properly give effect to what we want it to do. If hon. Members do not take our word for it, a copy of the Energy Act 2013 is freely available on my desk for them to peruse at their leisure.

Leo Docherty: The hon. Member’s amendment raises a question about the making of a strategy and policy statement for Ofgem. As he will be aware, the Government intend to publish an energy White Paper ahead of COP26, and it would make sense to draft a strategy and policy statement in the light of the policies and priorities set out in the White Paper. It would be inappropriate to give a specific timeline on publishing the strategy and policy statement at this stage.

Ofgem already has various powers and duties in relation to its important role in the transition to net zero. Its duty is to protect existing and future consumers and, as is already set out in legislation, that includes their interest in the reduction of targeted greenhouse gas emissions. At the start of the year, we welcomed Ofgem’s new decarbonisation action plan, which contains important proposals, including enhancing flexibility in the electricity system and decarbonising heat, which will help us to meet our vital commitment to eliminate our contribution to global warming by 2050.

Given the existing decarbonisation duties on Ofgem, the work it is already undertaking in that area and the close and productive working relationship at all levels between Ofgem and central Government, it is not necessary to place any new duties on Ofgem in relation to the delivery of greenhouse gas emissions targets. I therefore ask the hon. Member to withdraw the amendment.

Dr Whitehead: I thank the Minister for the interesting reply that—he will have to forgive me for saying this—he read out from the piece of paper put in front of him. Nevertheless, that piece of paper is quite interesting, because it appears to say two slightly different things. First, it says, “Don’t worry about putting something in the Bill today, because the energy White Paper is shortly to appear.” There may well be a proposal in the White Paper to implement part 5 of the Energy Act 2013—finally, after seven years. That White Paper has been imminently expected for two years, but is so very imminently expected now that it might appear before Christmas. That statement appears to say that that is what the Government are going to do and that a proposal to unlock part 5 of the Energy Act 2013 will be in the White Paper. If that is the case, that is an interesting development.

12.30 pm

However, the second part of the statement says that it is not necessary to do that, because Ofgem has all it needs to undertake a climate and environment brief. Indeed, Ofgem has pushed the boat out a little, on its own freelance account, in terms of a climate and energy brief. It is also the case that the outgoing chief executive officer of Ofgem bemoaned the fact that Ofgem did not have that particular brief in its locker, and felt that constrained what Ofgem could do in that area.

That statement is both interesting and curious, as it appears to face both ways. Is it something that the Government intend to do in the energy White Paper, and therefore implement? Alternatively, is it something that is not necessary, and therefore the Government do not intend to bring forward something in the energy
White Paper to influence part 5 of the 2013 Act? I have put the Minister on the spot. He may not be able to give me a response today, but I would be interested to see his response in writing in the near future about what exactly that paragraph means.

If the statement means what I think it might mean, that is encouraging. If it means what the second part appears to say, then that is not encouraging at all. I thought the statement might say something slightly less encouraging and that we might have to divide the Committee, but under the circumstances I will await some written information.

Leo Docherty: I will be pleased to write to the hon. Member.

Dr Whitehead: I have effectively concluded my comments, Sir George. I hope the Minister will write to me shortly to give a clear indication about what that package means, and we can go from there. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Leo Docherty (Aldershot) (Con): I beg to move amendment 203, in clause 22, page 13, line 22, after “33(1)(b)” insert “,35(1)(b)”. This amendment is consequential on Amendment 208. It requires the OEP’s enforcement policy to set out how the OEP will determine whether a failure to comply with environmental law is serious for the purposes of clause 35(1)(b), which is inserted by Amendment 208.

The Chair: With this it will be convenient to discuss Government amendments 208 and 209.

Leo Docherty: This group of amendments clarifies the circumstances in which the OEP may bring an environmental review, in order to ensure there is no doubt about its thresholds for action. Government amendment 203 ensures that the OEP’s enforcement policy will set out a consistent approach in determining whether a serious failure has occurred throughout its enforcement process, and is consequential on amendment 208.

Dr Whitehead: We are in an interesting set of circumstances regarding these amendments, and some others that are still to come. Essentially, the Government are amending their own Bill, so on several occasions—both today and in the not-too-distant future—the Opposition may be in the position of stoutly defending the Government’s Bill while, I suspect, Government Members will stoutly defend the amendments that the Government have tabled.

We are potentially in an odd position, in that we actually do not think that the Bill is very good as it stands, particularly in terms of the protection of the independence of the OEP, but we are certainly prepared to defend it from further erosion by what we consider to be a systematic series of Government amendments that, taken together, seriously undermine the OEP’s independence of action over its life.

These amendments are the first part of that action, which took place, to our dismay, over the period the Bill was suspended. Clearly, at some stage somebody decided that the Bill was too kind to the OEP and that further restrictions should be placed on its activities and freedom of action in relation to a series of things, such as notices, environmental improvement plans, and whether the OEP can bring about a review if a subject continues to do what it was doing after a notice has been given. Previously, the Bill enabled the OEP to do that; following the amendments, it no longer can. It has had a substantial element of its freedom to act, and to act appropriately, removed by the amendments.

The other important element in this group of amendments, which will recur in a number of other areas, is, as we have raised in Committee before, the use of the word “serious”. The amendments have curtailed systematically throughout the Bill the remit of the OEP to undertake various actions on the basis of what it thinks is best in a particular set of circumstances, to the extent that before the OEP can act it has to pass a test of whether the action is regarded as serious. We have discussed how a series of differences can flow from one word. The problem with the introduction of the word “serious” in these areas of the Bill and others is that there is no definition in the Bill of what “serious” means. Let us have a guess: who can determine what “serious” means through guidance? Does anyone have any thoughts?

Richard Graham: The OEP.

Dr Whitehead: No. The Secretary of State can decide by guidance how “serious” is to be interpreted regarding the OEP’s actions.

Fleur Anderson: It is a fact that environmental protection and action that breaches air pollution limits, for example, will happen slowly and incrementally. Does my hon. Friend agree that it is hard to determine the point at which that becomes serious?

For example, Putney High Street in my constituency is one of the most polluted high streets in the country. That has happened slowly over many years; it would be hard to say when it became serious. When will the Office for Environmental Protection be enabled to step in and say, “This is an issue”? That goes for rivers and all the other issues we will discuss.

The nature of environmental action is that it will happen slowly. The measure of saying something is “serious” will limit the term to so few large-scale events that the Office for Environmental Protection will be rendered so weak in its action.

The Chair: Order. This is no criticism of the hon. Lady, but her contribution could have been a speech rather than an intervention, which should be brief. I am sure the Committee appreciated it, whether it was a speech or an intervention, but I hope interventions will be kept brief in future.

Dr Whitehead: Thank you, Sir George. I am sure that all Committee members will abide by your guidance in the remaining sessions. My hon. Friend the Member for Putney has hit the nail on the head regarding the discussion of seriousness.

Richard Graham: The explanatory statement to Government amendment 208 lays out clearly that “the OEP may only bring an environmental review against a public authority if it is satisfied on the balance of probabilities that the authority has failed to comply with environmental law.” The explanatory statement to Government amendment 209 adds: “The OEP may only bring an environmental review after it has given a decision notice.”
The emphasis is on the OEP. Does he not accept that?

Dr Whitehead: I am not sure whether the hon. Member has addressed himself to the totality of these issues. I will raise a question concerning the explanatory notes and the notes on the purpose of the amendments in a subsequent debate.

The steps that the OEP must take in providing a notice are perfectly reasonable and should be undertaken; the big difference is the additional test, after those steps have been taken, as to whether the whole thing is serious or not. As my hon. Friend the Member for Putney rightly said, in many instances one cannot set a point at which something becomes serious or not.

Richard Graham: We have to be serious about this. If the borough council is not cleaning a particular street in Putney properly, that is not an issue that the OEP should immediately jump at on the evidence of one photograph from one constituent. It should not say, “Right—we must take the authority to court!” There have to be some boundaries, so the insertion of the word “serious” is surely sensible and appropriate.

12.45 pm

Dr Whitehead: The central point is that it ought to be within the remit of the OEP to decide what constitutes a cumulation, to the point that something becomes serious. The amendments take that decision out of the hands of the OEP so that a serious test threshold would have to be passed before it could take action in the case of a cumulative serious problem. The hon. Gentleman can read what the amendment paper indicates about whether the OEP considers that that test has been passed.

Richard Graham: I fear that the shadow Minister has not read the explanatory statement clearly. It begins:

“This amendment provides that the OEP”

and refers to whether it is satisfied, and whether

“it...considers that the failure...would be serious.”

The emphasis is on the OEP. Does he not accept that?

Dr Whitehead: Yes. Of course the emphasis is on the OEP, but the test of what is serious is outwith the remit of the OEP. The hon. Gentleman can look at other explanatory notes in this regard. There is no definition of “serious” in the Bill. The guidance on the test of seriousness that has to be achieved is inevitably outside the Bill: it is within the remit of the Minister to decide.

As to the decision on whether something is serious enough to proceed—and I suggest to the hon. Gentleman that we are now talking about two different versions of “serious”—if the agency itself, in its work, thinks something is serious, I would have thought that it should be able to proceed. However, the question whether something is serious in terms of the test that must now be passed by the agencies concerned is outside the consideration of whether the agency itself thinks that something may or may not be cumulatively serious. That is a central concern that we have in this area, and other areas.

If the issue were as straightforward as the hon. Gentleman suggests, why on earth would the Government amendments have been tabled in the first place? They have not been put in for a laugh—there is a serious purpose behind them, which is to put “serious” on the face of the Bill and take the definition outside the legislation, so that control of the word “serious” is outside the OEP’s remit.

Frankly, as with the old fable of the frog that does not get out of the saucepan before it boils because at no stage does it decide it is too hot for it to stay, the OEP would have no ability to pull the frog out of the saucepan at any stage. It would simply have to stand by while the frog boiled, and then refer the boiled frog to the Minister and say, “Is that serious enough and should we perhaps have done something about it beforehand?” That seems to me to be a bit of a concern about how the OEP works in the long term.

We do not intend to divide the Committee on the amendment, because we are making a general point about seriousness as part of the corpus of Government amendments that have been tabled. However, when we debate clause 23 we certainly intend to divide the Committee, for reasons that I shall set out.

Amendment 203 agreed to.

Leo Docherty: I beg to move amendment 204, in clause 22, page 13, line 22, after “36(1)” insert “and (6A)”

The Chair: With this it will be convenient to discuss Government amendment 220.

Leo Docherty: We have sought to ensure that the OEP focuses its enforcement function on the most significant and serious breaches of environmental law. Unlike the European Commission, which can only take action against member state Governments, the new Office for Environmental Protection will enforce the delivery of environmental law by all levels of public authority, from local authorities and arm’s length bodies to central Government. On that basis, it is important that the OEP should have the ability to focus on the most significant or serious breaches of environmental law.

Clause 36 allows the OEP to apply to intervene in a judicial review relating to an alleged failure to comply with environmental law. However, the clause as currently drafted does not require the OEP to focus such interventions on serious cases when initiating its own enforcement actions. Amendments 204 and 220 will therefore improve the clause by increasing consistency across the OEP’s application of its enforcement function.

Dr Whitehead rose—

The Chair: The hon. Gentleman had not indicated that he wished to speak. I call Dr Alan Whitehead.

Dr Whitehead: I put my pen up, Sir George, but that is probably more appropriate for the auction room than the Bill Committee. I will try to raise my pen higher or make some other sign in future.

The Chair: In future, I will assume that the hon. Gentleman wants to take part, rather than assuming that he does not.
Dr Whitehead: That is kind of you, Sir George; thank you. These amendments follow on from the debate that we had on the last series of amendments. As the Minister said, they would make proceedings consistent across the Bill, but that is precisely the point that we have been making. This series of amendments consistently seeks to introduce different levels of judgment necessary for the OEP to carry out a range of things, including, in the case of amendment 220, applications “to intervene in a judicial or statutory review relating to an alleged failure by a public authority to comply with environmental law”. The amendment states that the OEP may apply to intervene in proceedings “only if it considers that the failure, if it occurred, would be serious”. As there is no definition of “serious”, the OEP is left in the dark about whether it may intervene or not if it considers a failure to be serious—its definition may not be in line with the Government’s. It is really curious that the explanatory statement to amendment 220 states: “This amendment provides that the OEP may apply to intervene in a judicial or statutory review relating to an alleged failure by a public authority to comply with environmental law only if it considers that the failure, if it occurred, would be serious” but that “If that test is satisfied, it may apply to intervene”. What test? Who can satisfy it? There is no test in the Bill or, apparently, in the remit of the OEP, yet the explanatory statement refers to a test being satisfied. I can draw no other conclusion: the only way to reconcile the amendment and its explanatory statement is for the Government to provide guidance—separately from the OEP—on how that test can be satisfied. That is one of the fundamental problems that we are grappling with here. Although I accept that the amendments are consequent to the central idea of seriousness, unless we bottom out what seriousness is and how the test can be satisfied, we will not have made any further progress on amendments that sort things out in the Bill.

Daniel Zeichner: My hon. Friend is explaining quite a complicated situation really well. What I find baffling about this discussion is that earlier this morning Government Members asserted the independence of the OEP, and here they are introducing an amendment that restricts its independence and makes a judgment as to where to intervene. Does he share my puzzlement?

Dr Whitehead: I do share my hon. Friend’s puzzlement because we appear to be having things in different ways. If the question of seriousness were so straightforward, we would not have to worry about putting these things in the Bill in the first place; the previous formulations would be perfectly adequate.

There is a purpose behind the Government amendments, and that purpose has to be, as I have explained, to take the definition outside the work of the OEP. For that reason, we really have to divide on amendment 220 to establish clearly what we think about this particular activity taking place.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 5.

Division No. 13

AYES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Jones, Fay
Longhi, Marco
Mackrory, Cherilyn
Moore, Robbie

NOES

Anderson, Fleur
Furniss, Gill
Jones, Ruth
Whitehead, Dr Alan
Zeichner, Daniel

Question accordingly agreed to.

Amendment 204 agreed to.

Dr Whitehead: On a point of order, Sir George. Hon. Members will have noticed that amendment 204 is consequential. We had to vote on it because of the inclusion of the two amendments in this part of the Bill. However, we wanted to vote on amendment 220. Perhaps we could have it on the record that that is what we wanted to do, but procedurally we were required not to.

The Chair: We can have a Division on that when we come to it.

Clause 22, as amended, ordered to stand part of the Bill.

Clause 23 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.
—(Fay Jones.)

1.1 pm

Adjourned till this day at Two o’clock.
Public Bill Committee

ENVIRONMENT BILL

Eleventh Sitting
Thursday 5 November 2020
(Afternoon)

CONTENTS

CLauses 24 to 36 agreed to, some with amendments.
Adjourned till Tuesday 10 November at twenty-five minutes past Nine o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 9 November 2020
The Committee consisted of the following Members:

**Chairs:** James Gray, † Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
Anderson, Fleur (Putney) (Lab)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Browne, Anthony (South Cambridgeshire) (Con)
† Docherty, Leo (Aldershot) (Con)
† Furniss, Gill (Sheffield, Brightside and Hillsborough) (Lab)
† Graham, Richard (Gloucester) (Con)
† Jones, Fay (Brecon and Radnorshire) (Con)
† Jones, Ruth (Newport West) (Lab)
† Longhi, Marco (Dudley North) (Con)
Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Zeichner, Daniel (Cambridge) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Deidre Brock: I am just trying to establish this from the Minister: all these bodies are included in the reference to the Scottish Government—to “the Scottish Ministers”. I think that is what the Minister is saying. If that is indeed the case, although I stick to my point that all matters of the environment should be under the aegis of the Scottish Government, I am content to withdraw my amendment at this point, but I might revisit it on Report and Third Reading. We will, of course, be speaking to other amendments relating to the same matter later on. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 24 ordered to stand part of the Bill.

Deidre Brock: I beg to move amendment 98, in clause 25, page 15, line 26, at end insert

“including setting out what action will be taken”.

This is a fairly simple and straightforward amendment, which I hope will be taken in a fairly simple and straightforward manner. In subsections (9) and (10) of clause 25, there is provision for the Secretary of State to do certain things. By the way, I cannot resist emphasising that on this occasion the Secretary of State “must” do them. Subsection (9) states:

“The Secretary of State must—

(a) respond to a report under this section, and

(b) lay before Parliament, and publish, a copy of the response.”

Subsection (10) states:

“Where a report under this section contains a recommendation for how progress could be improved, the response must address that recommendation.”

But the clause does not include a provision for setting out what action the Secretary of State might take in response to that report. Amendment 98 would add the words, “including setting out what action will be taken”.

It would be a prudent addition to the Bill, ensuring that when the Secretary of State is responding to an annual reporting process, he or she responds to the fact not just that there is a report, but that there is a report and that action should be taken. The Secretary of State ought to record at the same time as responding to the report what actions he or she is going to undertake.

Leo Docherty: I thank the hon. Gentleman for this amendment, as it allows me to highlight the reporting mechanisms and duties the Bill creates for the Office for Environmental Protection and the Government.

These carefully designed reporting mechanisms are central to the OEP’s ability to hold the Government to account on their environmental commitments. Clause 25(10) already requires the Secretary of State to address any recommendations made by the OEP when they respond to the OEP’s annual report. This requirement was added to the Bill following pre-legislative scrutiny. It is expected that Ministers will respond to the OEP’s recommendations...
in the Government’s own progress report on the environmental improvement plan. This report must describe what has been done over the previous year to implement the EIP—that is, what actions have been taken—and consider whether the natural environment has improved. Both the OEP’s report and the Government’s response will be published and laid before Parliament. This gives stakeholders and Parliament the opportunity every year to scrutinise whether the Government have taken action in response to the OEP’s recommendations.

As part of the triple lock in the targets clauses, the Government are required to review the EIP at least every five years. In doing so, they must consider whether further or different steps should be included in the plan specifically to achieve interim and long-term targets. This would include consideration of the OEP’s recommendations since the last review. Given that the Government are already required to respond to the OEP’s recommendations in this way, there is no need to include any additional requirement in the Bill to set out the actions that the Government will take. I therefore ask the hon. Gentleman to withdraw his amendment.

Dr Whitehead: I thank the Minister for that explanation. I am not entirely sure that it completely satisfies our concerns, but under the circumstances we do not wish to press the amendment to a Division this afternoon. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 25 ordered to stand part of the Bill.

Clause 26
MONITORING AND REPORTING ON ENVIRONMENTAL LAW

Dr Whitehead: I beg to move amendment 99, in clause 26, page 15, line 31, at end insert “(including international environmental law”).

Again, this it is a fairly straightforward amendment. For the sake of clarity and completeness, it would add half a line to the Bill concerning the monitoring under clause 26 by the OEP of the implementation of environmental law. Clause 26(1) states: “The OEP must”—again, “must”—“monitor the implementation of environmental law.”

As we alluded to earlier in our proceedings, we are simply suggesting adding, “(including international environmental law)”, so that the OEP is required to have regard to what is happening in environmental law not only here in the UK, but elsewhere, for the greater elucidation of what is happening in environmental law in this country. The amendment would make it clear that that is a responsibility of the OEP. We think it would strengthen the position in terms of a light being shone on not just UK environmental law, but environmental law across the world.

Ruth Jones (Newport West) (Lab): I rise to support the amendment. It is all very well having environmental law, but we must take account of international law as well. As we have heard in previous debates, air quality has no boundaries as such. We must also take account of the fact that international law will impact on the way we manage recycling, waste and so on. I therefore stand in support of the amendment.

Leo Docherty: I thank the hon. Gentleman for tabling the amendment, as it gives me the opportunity to clarify the OEP’s remit. The intention of the amendment is to include international environmental law within the remit of the OEP’s monitoring function only where it is relevant to the UK. However, the relevant international environmental law already falls within the remit of the OEP in three ways.

First, any domestic legislation that implements an international convention and meets the definition of environmental law—for example, the conservation of habitats and species regulations implementing the Bern convention on the conservation of European wildlife and natural habitats, and the EU habitats and birds directives—would already be in the scope of the OEP. Secondly, the OEP will be able to scrutinise our international environmental commitments where they are included in the environmental improvement plan, for example our commitments to the UN convention on biological diversity. Finally, the Secretary of State may ask the OEP’s advice when fulfilling the duty, under clause 20, to report on significant developments in international environmental protection legislation.

I hope that reassures the hon. Gentleman that the OEP has already been given a role in holding the Government to account for our international environmental commitments. I therefore hope that he will withdraw the amendment.

Dr Whitehead: I am not entirely sure that what the Minister has said this afternoon clarifies the matter to the extent that we wanted in our amendment. However, I draw attention to the fact that when someone says something in this Committee it goes on the record and can be used subsequently for the purpose of clarifying the intentions behind a measure in the Bill. Nevertheless, the fact that the Minister has, by way of a not quite bang-on description of exactly what is happening at the moment, gone slightly further in his clarification of what he thinks would be the responsibility of the OEP under these circumstances, is, I think, good enough for me. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Amendment made: 30, in clause 26, page 15, line 33 at end insert—

“(2A) But the OEP must not monitor the implementation of, or report on, a matter within the remit of the Committee on Climate Change.

(2B) A matter is within the remit of the Committee on Climate Change if it is a matter on which the Committee is, or may be, required to advise or report under Part 1, sections 34 to 36, or section 48 of the Climate Change Act 2008.”—[Leo Docherty.]

This amendment modifies the OEP’s duty to monitor, and power to report on, the implementation of environmental law under clause 26. It provides that the OEP must not monitor or report on matters within the remit of the Committee on Climate Change, which is defined in subsection (2B) by reference to specified provisions of the Climate Change Act 2008.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27
ADVISING ON CHANGES TO ENVIRONMENTAL LAW ETC

2.15 pm

Dr Whitehead: I beg to move amendment 4, in clause 27, page 16, line 16, leave out “may, if the Minister sees fit,” and insert “must”.

Amendment, by leave, withdrawn.
Clause 27 ordered to stand part of the Bill.
[Dr Whitehead]

At first sight, this amendment looks as if it is just another “may” and “must” amendment. I say “just”, but I think Members have got the message that this is something we are concerned about throughout the Bill. The Bill is written in such a way that Ministers may do all sorts of things, but there are very few things that they must do. It would strengthen the Bill immensely if the “mays” were converted to “musts”. The hon. Member for Falmouth and—

Richard Graham (Gloucester) (Con): Gloucester.

Dr Whitehead: Sorry, Gloucester—it is in the west country, so that is okay. I hope our listeners in the west country will not be offended by that comment. As the hon. Member for Gloucester said earlier, there are a considerable number of circumstances where replacing “may” with “must” could do a very good job.

This is a particularly egregious version of that “may” or “must” dilemma. Clause 27(6) states:

“The Minister concerned may...lay before Parliament—

(a) the advice, and
(b) any response the Minister may make to the advice”—

that is, the advice on changes to environmental law and so on. I have deliberately left out a little bit of that subsection. Over and above “may”, it says,

“if the Minister thinks fit”.

The preceding subsection gives the OEP a responsibility to publish advice on changes to environmental law, stating:

“The OEP must publish—

(a) its advice, and
(b) if the advice is given under subsection (1), a statement of the manner on which it was required to give advice and any matters specified under subsection (2).”

The OEP has a duty to do that—it must publish the advice.

When that advice gets to the Minister’s desk, the Minister may not feel like responding at all, and the Minister may justify the fact that he or she has not responded at all by simply saying, “Well, I didn’t think fit to do it.” That phrase is capable of any interpretation whatever. All the Minister has to do is say, “I didn’t bother to publish the advice or any response to it because I didn’t think fit to do so.” There is no objective test of that; the Minister can just decide that they do not want to do it, and that is the end of it. That is a really bad piece of drafting, and it ought to be removed. At the least, we want to see the word “may” replaced by “must”, but we also think that the additional anti-belt-and-braces device—“if the Minister thinks fit”—should be removed from the clause.

Leo Docherty: The Bill provides the OEP with statutory functions that enable it to provide advice on any proposed changes to environmental law. It can also provide advice, at the request of a Minister, on any other matter relating to the natural environment. The clause provides the Minister with a discretionary power to lay the OEP’s advice and any response they wish to make to it before Parliament. In this situation, it is entirely appropriate to provide the Minister with that flexibility.

The provision of advice from the OEP to Government may not simply be a single event but could be an iterative process. Given that the OEP will become an expert body, Ministers may regularly ask it for advice, which may include specific technical questions on relatively minor matters. Requiring the OEP’s advice to always be laid before Parliament may impede the interaction between the OEP and Government. The Government should be able to seek advice from and respond to their public bodies with ease. This approach is not new; the advice provided by the Committee on Climate Change under sections 33 to 35 of the Climate Change Act 2008 is not laid before Parliament. Flexible, case-by-case provision is needed here, and it would be inappropriate to convert this power into an inflexible duty. The Committee should be assured that, if the OEP’s advice is significant enough for Parliament to debate it, the Minister will lay it before Parliament so that it can be discussed.

Daniel Zeichner (Cambridge) (Lab): Some of us Opposition Members do not have experience of government, so we have to trust the way others work, but I find this slightly extraordinary. It seems to me that if this is in legislation, it is not a question of just picking up the phone and having a casual chat with people; it is about seeking advice. If the Minister is seeking advice, why on earth should that not be available to Parliament? Parliament ought to be able to see what the Government are doing. That does not preclude the odd informal phone conversation.

Leo Docherty: I take the hon. Gentleman’s point, but the key word here is “flexibility”. It is important that flexibility be retained in the relationship so that the Government can interact with the OEP and other public bodies with ease. That is the important principle at stake here.

The OEP is required to act transparently, and any advice that it provides, either on its own initiative or at the request of a Minister, must be published. Parliamentarians will be able to use the OEP’s published advice to question the Government on action they have taken in response to the OEP’s advice. I hope that has eased some of the concerns of the hon. Member for Southampton, Test, and I courteously ask him to withdraw the amendment.

Dr Whitehead: I am a bit bemused by the passage that the Minister has just read out. The process here is that the Minister is laying something before Parliament. That is all the Minister is doing, or might be required to do. I really cannot think why that affects the moving nature of the relationship or the question of iterative changes, which the Minister alluded to. It seems to me that that answer has actually dug the hole a bit deeper, in terms of what concerns us about the clause.

The clause relates to advising on changes to environmental law, which it should absolutely be the province of Parliament to have a good look at. If the clause is simply about the relationship between the OEP and a Minister, and the Minister can, at his or her pleasure, decide whether something goes before Parliament, although it is true that Parliament can, in theory, quiz the OEP separately about what it is doing, that requires all sorts of other devices to be put in place. The laying before Parliament of the advice and, most crucially, any
response the Minister may make to that advice, would mean that Parliament had a reasonably automatic route to deciding what it wanted to do about those things.

Indeed, taking the clause at face value, we know that under some of the procedures in this place, it would be very difficult for MPs to find out what had gone on, particularly in terms of the Minister’s response to advice that the OEP provided. That response may be in the form of an internal communication, which could be revealed to Parliament only by quite assiduous work to try to get it on the public record. This seems to me a completely unsatisfactory formulation for that reason alone.

Ruth Jones: The shadow Minister is making an important point. The wording in the clause is “if the Minister thinks fit”.

Again, the power is now vested in one person, and we are back in a situation in which, if it is a good Tuesday, the Minister may do it; if it is a bad Tuesday, he may not. This is where we need to take the subjectivity out. The objective advice that must be given by the OEP and published should then make its way naturally to Parliament, to ensure that it can be acted on.

Dr Whitehead: My hon. Friend is absolutely right. She emphasises that the proper relationship is between the OEP, the Minister and Parliament, not the OEP, the Minister and maybe Parliament. That is what this issue is about.

This is not quite the same as other issues that this Committee has considered, which were about the extent to which the Government may be trying to withdraw or reduce the powers of the OEP. Nor, indeed, is it a question of a simple “may” or “must”, because it goes to the heart of the need for that three-part relationship when it comes to changes to environmental law.

I am getting a little weary of pointing out these lacunae and various other things in the Bill. On this occasion, we do not want to divide the Committee, but I hope that the Minister has heard what we say about the relationship between the Committee, Ministers and Parliament, which it would be in the Government’s own interest to clarify, because opaque processes can become the cause of quite unnecessary tussles, misunderstandings and opposition. Simply making things open, transparent and clear will prevent those difficulties in most instances. If those difficulties can be compounded depending on whether the Minister has a good or a bad Tuesday, as my hon. Friend the Member for Newport West said, the chances of something happening that may not be to the advantage of the Government are also then compounded.

As I say, I am not seeking to divide the Committee, but I hope that the Minister will consider whether an amendment to the Bill at a future date might be appropriate to make matters clear. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 27 ordered to stand part of the Bill.

Amendment 191, in clause 28, page 16, line 30, after “means a” insert—

“(f) a Scottish local authority,”

This amendment seeks to increase the definition of “public authority” in relation to failures by public authorities to comply with environmental law.

Dr Whitehead: Amendment 117 seeks clarity about what a public authority is. Hon. Members will see from perusing the amendment paper that it is not an action amendment; it does not ask the Government to do anything differently. It amends that part of the Bill—a part found in all Bills—that defines words and terms in the Bill. Although I cannot put my finger on it exactly, I believe there is a definition of “public authority” elsewhere in the Bill, but not in this clause.

Amendment 117 would put a definition of “public authority” in this part of the Bill by inserting before “a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons” the words “a Minister of the Crown, a government department and public body including a local authority”;

those would be public authorities carrying out that function. That would expand the definition in the Bill to match what is said elsewhere in the Bill about what a public authority consists of.

Ruth Jones: I am grateful for the opportunity to speak in support of the amendment. We are well aware that the terms “public authority” and “public body” are often used interchangeably, which can lead to a lack of clarity. We are concerned that “public authority” could be interpreted as meaning a smaller category of public bodies. Public bodies are sometimes, for the avoidance of doubt, explicitly listed in legislation as being encompassed by the term authority. For example, section 28G of the Wildlife and Countryside Act 1981 clarifies that authorities include “any other public body of any description.”

This clarification is helpful for those reading only part of the Bill; it means that they do not need to read the whole Bill to understand a clause. It is important that we clarify what we mean by the term, so we welcome the amendment.

Leo Docherty: I thank hon. Members for their contributions. I agree that it is of great importance that the OEP should be able to hold public authorities to account, and that all parties should have certainty about its remit. I assure hon. Members, however, that the provisions in the Bill are sufficient to ensure both those things.

Regarding amendment 117, we have deliberately taken a broad approach to defining a public authority as “a person carrying out any function of a public nature”, subject to a number of specific exclusions. The same approach is used in a number of other Acts, including the Human Rights Act 1998 and, more recently, the...
European Union (Withdrawal Agreement) Act 2020. It is, therefore, an approach with which the courts are familiar.

The existing definition already covers UK Ministers and Government Departments, local authorities, arm’s length bodies such as the Environment Agency, and all other bodies that carry out public functions. It is therefore unnecessary to list specific types of public authority in the Bill, as they are already captured. Furthermore, by including the term “public body” without defining it further, this amendment would introduce a lack of clarity about who and what is covered by this particular new element of the definition.

I reassure the hon. Member for Edinburgh North and Leith that the Bill respects the devolution settlements, including the Scotland Act 1998. Scottish Ministers, the Scottish Parliament and any person carrying out devolved functions have been excluded from the remit of the OEP. The public authorities listed in amendment 191 are, therefore, already excluded from the remit of the OEP, to the extent that they are carrying out devolved functions, so it is not necessary to list them as excluded bodies for the purposes of clause 28. I support her intention of avoiding overlaps with the equivalent Scottish governance body, Environmental Standards Scotland. That is why we have appropriately sought to limit the OEP’s remit to reserved matters, while avoiding any devolved matters that would appropriately be dealt with by that body.

In conclusion, I hope that Members are reassured that the definition is fit for purpose. It both avoids overlaps with bodies carrying out devolved functions, and ensures that the OEP has oversight over all relevant public authorities. As such, I politely ask the hon. Member for Southampton, Test, to withdraw the amendment.

Deidre Brock: I am somewhat reassured by the Minister’s comments. He has basically given me the same assurance as he gave for amendment 190—that all the bodies covered in the amendment are already covered by references to either “(d) a devolved legislature” or “(e) the Scottish Ministers”. I am happy with that assurance and will not press amendment 191.

Dr Whitehead: Likewise, although we think it would be a good idea to have the words in amendment 117 in the Bill, we are a little reassured by what the Minister has said, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 28 ordered to stand part of the Bill.

Clause 29
Complaints

Deidre Brock: I beg to move amendment 192, in clause 29, page 17, line 5, leave out subsection (4).

This amendment would allow public bodies to report the actions of other public bodies where they are at fault.

The amendment has come about because it seems a little strange to me that public bodies would be excluded from the reporting side of the system, particularly as public bodies might be reckoned to be rather more likely to receive knowledge about breaches. If public bodies should be held to account, why is it sensible for them to not aid in holding other public bodies to account? Reports made by those carrying out public functions are not likely to be less valid, or less based on true concern, so I do not feel they should be discounted. I am keen to hear the Minister’s response, because, as I say, it seems a strange part of the Bill.

Leo Docherty: I thank the hon. Lady for tabling her amendment. It is of course important that the OEP be aware of potential breaches of environmental law, and the power to receive complaints is an important element of that. However, it would not be appropriate for one public authority to be able to submit a complaint to the OEP about another public authority; it would amount to one part of the government system complaining about another. There are more appropriate ways for public authorities to resolve such disputes.

Public authorities are expected to work together constructively to resolve any instances of alleged non-compliance. For example, the Government’s code of good practice is clear that Government Departments and arm’s length bodies should “develop constructive working relationships based on trust, respect and shared values.”

Furthermore, if a public authority has a specific role in regulating other public authorities, mechanisms will already be in place to enable the relevant bodies to enforce the relevant regimes. For example, when a local authority applies to the Environment Agency for an environmental permit and is subject to permit conditions, the Environment Agency already has powers to take the necessary enforcement action under existing legislation if the local authority fails to abide by the conditions.

There are also relevant precedents for our approach, which is broadly similar to that in the Local Government Act 1974 in relation to what is now called the local government and social care ombudsman. In that Act, public authorities are also excluded from submitting complaints to the ombudsman.

I note that a person who works for a public authority would still be able to submit a complaint in a personal capacity, rather than on behalf of their organisation. As such, I hope that the hon. Member is reassured that the provision in clause 29(4) is appropriate, and ask her to withdraw the amendment.

Deidre Brock: I am not entirely convinced by the Minister’s response. My point about public bodies being more likely to hear of potential breaches from other public bodies still stands, but I will reflect a little more on what he has said. I will withdraw the amendment, but I might revisit it in future. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 29 ordered to stand part of the Bill.

Clause 30
Investigations

Dr Whitehead: I beg to move amendment 5, in clause 30, page 18, line 6, leave out “may” and insert “must”.

Where the OEP carries out an investigation this amendment seeks to ensure that it is made public.
This is another “may” and “must” amendment, which draws attention to an interesting passage of “mays” and “musts” in this clause that culminates in letting the OEP off. Subsection (1) states:

“The OEP may carry out an investigation under this section if it receives a complaint.”

made under the previous section. Subsection (2) states that it

“may carry out an investigation under this section without having received such a complaint if it has information that, in its view, indicates that...a public authority may have failed to comply with environmental law, and...if...the failure would be a serious failure.”

So it can carry out an investigation.

However, subsection (4) states:

“The OEP must notify the public authority of the commencement of the investigation.”

So there is a requirement and a duty on the OEP to tell the public authority what it is doing about the investigation. Not only must it tell the public authority, but under subsection (5) it must

“prepare a report on the investigation and provide it to the public authority.”

Then, subsection (8) states that the report should set out

“whether the OEP considers that the public authority has failed to comply with environmental law...the reasons the OEP came to that conclusion, and...any recommendations the OEP may have”.

So there is quite a powerful set of instructions to the OEP as to what it may do when it carries out an investigation into a public authority and how it is supposed to prepare a report. It must set out the things that I have just cited.

After all that, subsection (9) states:

“The OEP may publish the report or parts of it.”

Or it may not; it may keep it to itself and put it in a cupboard. Having done all that, the OEP is not required to do anything about it. However, subsection (10) states:

“If the public authority is not a Minister of the Crown, the OEP must also...notify the...Minister of the commencement of the investigation, and...provide the relevant Minister with the report prepared under subsection (5).”

So the OEP must provide the Minister with something if the public authority is not a Minister of the Crown, but it does not have to publish the report. It is not clear whether the Minister has to do anything if the OEP does not, although the OEP, instead of leaving the report in the cupboard, might send it across the Minister’s desk.

We therefore have a circularity that ends in a dead end, if it is possible to conceive of such a thing. That concerns me, because if I were the interim chair of the OEP and I was not completely au fait with everything that it ought to do or not do, I would take that passage to mean that the OEP does not actually have to do very much. I do not think that is good enough; the OEP should be bound by what it is required to do in the case of these investigations.

2.45 pm

Ruth Jones: Does my hon. Friend agree that the Bill cannot make up its mind whether the OEP is a strong body that stands for environmental rights or a puppy of the Government?

Dr Whitehead: That is an interesting point. This clause does not appear to be able to decide whether the OEP should or should not do something. Having said that it should be a strong, independent body, to the extent that the Government are thinking about how the word “independent” may be interpreted, the Bill seems to let it perform less than its best, in terms of what that independence might consist of.

Richard Graham: We have seen today a number of further insinuations that the Office for Environmental Protection will be less than satisfactorily independent. This is the first time that such an office has been created in this country—it is a unique historical moment—and all the evidence we have heard so far clearly suggests that it is up to the OEP to define a large amount of its role and that the Government are giving it the opportunity to do so. Surely we should accept that this will be a great step forward and stop undermining it.

Dr Whitehead: It is not a question of undermining the integrity of the OEP at all. As the hon. Gentleman says, it does not exist yet, although bits of it are gradually coming into existence and may materialise in corporeal form in due course. It is therefore not easy to say that anyone in this room is undermining its performance and actions. We are talking about whether the framework within which it functions will work well or not. It is incumbent on us to ensure that, as the OEP comes into existence, the framework is as good as it can be and that the lines of its relationship with Parliament and Ministers are as clear as they should be. We are not undermining what the OEP will do; we are trying to support it by clarifying, before it is under way, what the boundaries are, how they work and who is expected to do what. That is not clear in this passage of the Bill.

Anthony Browne (South Cambridgeshire) (Con): I completely support the OEP’s independence, but I am confused. At the moment, the OEP can decide whether it publishes a report, but the hon. Gentleman’s amendment proposes that it must publish a report, which presumably reduces rather than increases its independence of action. When it does a report, it might decide that there are certain things that it does not want to publish for certain reasons—we do not know, because we cannot pre-empt it. The hon. Gentleman is saying that it has to do something, which surely reduces its independence.

Dr Whitehead: With respect, independence has nothing to do with an authority not doing what it should do or just deciding that it cannot be bothered to do something or other. That is not independence, but sloth. We would expect the framework for an independent body to support its independence by giving it a framework within which to work that makes sure it can work as well as it should—by determining on what lines the expectations about what it does should be determined, and, indeed, how the public will see that independence in action. Our suggestions would not downgrade or undermine the independence of the OEP. On the contrary, they would help it to act in the best possible way as an independent body.

Anthony Browne: There are many reasons why an organisation such as the OEP might not want to publish a report, other than sloth. As a former journalist, I am all in favour of openness—I think everything should be
as open as possible—but there might be reasons for wanting a private, or non-public, investigation, and the amendment would remove the ability to decide to carry out a private investigation. It would curtail the OEP’s course of action and reduce its independence. I think everything should be public, but I can certainly see that there are scenarios where the OEP might decide to do something that it did not want put in the public domain. The Opposition would remove that course of action.

Dr Whitehead: There are a number of existing laws, protocols and arrangements for all public bodies that give them, in certain circumstances, discretion not to do certain things, such as in relation to national security or the revelation of individual contracts—there are all sorts of things of that kind. Guidelines already allow that discretion.

I do not think that the idea that a Department should, under normal circumstances, publish reports to elucidate matters for the public, where those existing areas of discretion in the law do not apply, is in any way undermined. That is part of the process by which we express our confidence in that public body in the first place as a body that operates transparently and in concert with the Minister and Parliament to get the relevant matters out on the table and discussed and that can demonstrate that it is doing that. That is a perfectly appropriate way to ensure that the public and indeed this place are confident about its independent operation. I am not, therefore, sure that the point made by the hon. Member for South Cambridgeshire, well-intentioned as I am not, therefore, sure that the point made by the hon. Member for South Cambridgeshire, well-intentioned as I think it was, has a great deal of substance in relation to the clause.

Leo Docherty: I thank the hon. Gentleman for his contribution and agree that it is extremely important that the OEP should operate as transparently as possible. However, it is also important that it should be allowed the discretion it needs to operate effectively.

Investigation reports prepared under the clause will play an important role in ensuring that the OEP’s enforcement activities are transparent and in enabling public authorities to learn from its recommendations. We expect that, in the majority of cases, the OEP would choose to publish its report. However, it is important that it should have the discretion to choose whether that is appropriate. Some investigations may involve matters of significant sensitivity or confidentiality. For instance, the OEP may investigate a complaint that has been motivated by bad faith or factually incorrect information. There may be no public interest in its widely publishing a report containing entirely groundless allegations.

The OEP should be able to decide whether it is in the public interest to publish a report, and to determine whether any other restrictions on the publication of information need to be taken into account. It is of course required by clause 22(2)(b) to have regard to the need to act transparently. It will need to exercise its discretion concerning publication in line with that duty. Also, clause 38 already requires it to publish a statement at key stages in the enforcement process, to ensure that it is as transparent as possible. Furthermore, any information that the OEP does not proactively publish or report will still be subject to requests for disclosure under the relevant legislation.

The clauses therefore strike the right balance and make clear provision to ensure that the OEP acts as transparently as possible. Although I acknowledge the positive intent behind it, the amendment is unnecessary and could hinder the OEP’s ability to make decisions in the public interest. It could also lead to the unnecessary publication of baseless allegations. On those grounds, I ask the right hon. Gentleman to withdraw the amendment.

Dr Whitehead: I regret to say that I have not yet been elevated to that position.

Leo Docherty: It is only a matter of time.

Dr Whitehead: Something that we have been trying to point out fairly consistently as we have gone through the Bill is the use of “may” and “must”, and we will come shortly to another one of those areas in a moment. I do not intend to push for a Division. I just want to say, as I have done when debating previous clauses, that our concern about this issue has some substance. It would be a good idea to reflect on how we want the OEP to be set up and to operate. We should consider whether there are other ways to ensure that the OEP is established as a busy and transparent advocate of its area, and whether we can find other methods of doing that, other than through this part of the Bill. I am sure the Minister will want to think about that over the next period. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 30 ordered to stand part of the Bill.
Clause 31 ordered to stand part of the Bill.

Clause 32

Information notices

Dr Whitehead: I beg to move amendment 6, in clause 32, page 18, line 40, leave out “may” and insert “must”.

Where the OEP has reasonable grounds for suspecting a serious break of environmental law, this amendment seeks to ensure that an information notice is given.

Earlier, I was going to stand up and say that we might have tabled an amendment that was a “must” too far, and that was because, in clause 32(1), we suggest that the OEP must, rather than may, give an information notice to a public authority. If I have pointed out previously, there are circumstances in which “may” is a perfectly appropriate term to put in a Bill, and it may well be thought at first sight that this is one such occasion.

However, we will come shortly to a debate—it probably will not be much of a debate, because we have covered the area before—about the fact that the Government are seeking to amend subsection (2)(a) by clarifying that an information notice “explains why the OEP considers that the alleged failure, if it occurred, would be serious”. In this clause, the inclusion of the word “serious” has elevated the import of whether the OEP gives an information notice to a public authority. If the Government are including a provision that says the failure to comply has to be serious in order for an information notice to
be given, surely the word “must” ought to apply. That is what the Government have done with their amendment: they have put the seriousness of the public authority’s alleged failure, as judged by the OEP, into the “must” category rather than the “may” category. Under those circumstances, it would look pretty odd if the OEP did not give an information notice. It might be a good idea, therefore, in line with the amendment—not that I particularly agree with the amendment itself, assuming we make it—to place in the Bill the requirement for the OEP to give an information notice to a public authority under those circumstances.

3 pm

Leo Docherty: I understand the hon. Gentleman’s desire to ensure that all failures are addressed by the OEP. However, the amendment may in fact limit the OEP’s ability to resolve failures quickly and efficiently.

The OEP’s enforcement function has been designed as a framework. An escalating series of measures is available for it to use to resolve failures as quickly as possible in the interests of people and the environment. The investigation phase is an important part of that framework and we expect that, in many cases, that process will quickly resolve any issues without the need for enforcement action.

Where an issue has been resolved by a public authority at the investigation stage, there will be no need for an information notice, and a requirement to issue one would serve no purpose. It would also waste the OEP’s resources by prolonging cases that it would otherwise prefer to have closed following its initial investigation.

We consider it appropriate that the OEP, as an independent body, has the discretion to target and prioritise its enforcement activities in line with its own enforcement policy. We have provided for that in clause 22. The amendment would be inconsistent with those provisions.

Finally, it is important that the OEP does not duplicate the work of any existing bodies or regulators. By removing its discretion concerning when to issue an information notice, the amendment may mean that it is required to take enforcement action where another authority may be better placed to do so, which could lead to overlapping enforcement activity. Placing it under a duty to serve information notices in all cases is inconsistent with its requirement to respect the integrity of other statutory regimes in clause 22 and is clearly not in the interests of any party or the environment.

I hope that the hon. Gentleman is reassured that the OEP’s enforcement framework is designed to bring about compliance as quickly as possible, and that allowing it the discretion to target enforcement activities will be fundamental to its success. I therefore ask him to withdraw the amendment.

Dr Whitehead: I wonder whether the Minister’s speaking note was written before the Government tabled the next amendment that we will debate, because his reply is one that I might well have given before that amendment was introduced. The Government amendment counters quite a lot of what he said, so I would like him to consider whether that is indeed the case, and whether he completely stands by what he said in the light of amendment 205.

We may want to discuss that when we get to amendment 205, and it might be a good idea, although I do not intend to pursue the other word of the day, “serious”, with regard to that amendment. The combination of the two issues—“must” and “may”, and “serious”—is interesting, and that is what we have in this clause. I do not wish to press amendment 6 to a Division, but I hope that the Minister reflects on that conjunction. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Leo Docherty: I beg to move amendment 205, in clause 32, page 19, line 2, at end insert—

“(aa) explains why the OEP considers that the alleged failure, if it occurred, would be serious, and”.

Under clause 32 the OEP may give a public authority an information notice if it has reasonable grounds to suspect that the authority has failed to comply with environmental law, and it considers that the failure, if it occurred, would be serious. This amendment requires the information notice to explain why the OEP considers that the alleged failure, if it occurred, would be serious.

The Chair: With this it will be convenient to discuss Government amendment 206.

Leo Docherty: Amendment 205 is a technical amendment that serves to clarify that an information notice issued by the OEP must explain why the OEP considers that the alleged failure would be serious. Together with the corresponding change proposed in Government amendment 206 to clause 33, concerning decision notices, it will ensure that all the OEP’s notices are clear and transparent, and it will provide clarity for all parties in the process.

Given the requirement that the OEP may issue an information or decision notice only if it considers that the alleged failure would be, or is, serious, it is entirely right and in the interests of good administration that notices should explain the OEP’s reasons for considering that to be the case. The OEP’s enforcement framework is designed to ensure that the OEP prioritises action in the most serious cases, adopting a strategic approach to enforcement action, and these amendments reinforce that.

Dr Whitehead: Yet again, we may be defending the Bill from its detractors, who happen, on this occasion, to be in the Government. The traffic is not always one way. The substantial problem of the inclusion of the word “serious” continues in the two amendments. We do not want to go over the full discussion of the word “serious” and what it does and does not do, because we have already had quite a good go at it. The hon. Member for Gloucester is not in his place, so we might be able to skip over that reasonably rapidly.

The amendments continue the problem of defining what is serious, how the OEP works on that basis, and the extent to which someone from outside the OEP is required to tell it what is or is not serious. I ask the Minister to reflect on what the addition of the amendments would say, as far as the OEP is concerned. I was interested in his statement a little earlier that the OEP “must” decide whether something is serious in order to take action—in this instance, to give an information notice. If the OEP must decide whether something is serious, it must also be enjoined to provide an information notice when it has decided that something is serious.
Therefore, as we have said, the two go together. The Minister sort of underlined that case in his statement on what the OEP must do in respect of the Government amendments. Again, we do not intend to press the matter to a vote, but I underline what we have said about the question of seriousness and the conjoining of the two. It is a bit like putting two fireworks in a box, with all the consequences that that might entail. I hope the Minister will reflect on that, and on whether he has any thought of making drafting amendments to the Bill, perhaps on Report, to make its purpose a little clearer.

Amendment 205 agreed to.

Clause 32, as amended, ordered to stand part of the Bill.

Clause 33

DECISION NOTICES

Amendment made: 206, in clause 33, page 19, line 36, at end insert—

“(aa) explains why the OEP considers that the failure is serious, and” —(Leo Docherty.)

Under clause 33 the OEP may give a public authority a decision notice if it is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law, and it considers that the failure is serious. This amendment requires the decision notice to explain why the OEP considers that the failure is serious.

Dr Whitehead: I beg to move amendment 118, in clause 33, page 19, line 39, at end insert—

“(2A) A decision notice may also direct the public authority to rectify the failure to comply with environmental law.

(2B) A public authority must comply with a direction under subsection (2A)."

This amendment allows the OEP to require a public authority to remedy a failure to comply with environmental law.

I am sure the Committee will be delighted that this provision does not involve the words “serious”, “must” or “may”, or anything like them. What it does involve is a suggestion by the Opposition that the OEP should be given additional powers on decision notices to direct a public authority about which a decision notice has been made. When discussing the previous clause, we have seen that the OEP must consider seriousness in the information notices. When it comes decision notices, the same applies. A decision notice “may” follow from an information notice, and the definition of the decision notice in 33(2) states that it describes a failure of a public authority to comply with environmental law, and

(b) sets out the steps the OEP considers the authority should take in relation to the failure:"

However, it does not say anything about what the public authority ought to do to rectify that failure and comply with environmental law. The OEP has a pretty strong requirement to go through information notices and decision notices, but it steps back at that point; it has issued its decision notice, and that is the end of it.

Our amendment takes that process a stage further by suggesting that the OEP should also have the power of direction: a power to require the public authority to rectify its failure to comply with environmental law, which the OEP has identified through the information notice and the decision notice. The amendment also states, in order to make it clear, that the public authority “must comply” with the direction that the OEP has made. The amendment would therefore give the OEP a substantial new power—one that is absolutely consistent with the strength of action it is required to take in the route between information notices and decision notices. That would be a wholly good thing as far as good governance by the OEP is concerned. It would be a clear note of understanding that if a public authority does come by a decision notice from the OEP, it should expect that there will be consequences. The OEP would be empowered to provide those consequences and ensure that compliance with the subject of a decision notice could be followed up.

3.15 pm

Ruth Jones: I rise in speak in favour of the amendment. My hon. Friend has made an eloquent point about the steps so far. We seem to be teetering on a cliff edge. We have got as far as accepting that there is an issue, the problem has been highlighted and solutions have even been suggested, but the wording of the clause does not give us an actual solution. The public authority must rectify the failure, but that is not enshrined in law. We all know that if we want something to be done, it must be enshrined in law. “Put it in the Bill,” is our usual cry.

Some of us—those who have worked in health, for instance—will remember that Crown immunity used to be given to NHS buildings. Problems and solutions were identified, but there was never any enforcement because of Crown immunity. I am sure that the Government do not want that to happen with such an important Bill, and that is why we have tabled the amendment.

Leo Docherty: It is, of course, important that the OEP’s enforcement framework is robust. However, we do not consider that binding notices would be an effective or appropriate means of achieving that. Decision notices are an important part of the OEP’s enforcement framework. They allow the OEP to set out the nature of a failure and recommend the remedial steps that a public authority should take in response. If the public authority chooses not to follow the recommended remedial steps—for example, because it believes that it is correctly applying the law for which it is responsible—the OEP can refer the matter for an environmental review. We would expect the OEP’s decision notice to form part of its evidence submission in an environmental review, and for this evidence to be given appropriate consideration as the view of an independent body. This will be the most effective way for the OEP to address cases of non-compliance.

Furthermore, the provision for binding notices through this amendment would be inappropriate for three key reasons. First, if the amendment were accepted, the OEP would effectively be able to superimpose its own decisions in place of those made by the relevant authorities appointed or elected for this purpose. Secondly, current protections for third party rights in the environmental review process would be lost. That could be damaging for businesses and cause extremely unhelpful uncertainty. Thirdly, without provision for an appeals mechanism, the public authority would have no right to challenge the OEP’s judgments, other than making an application
for judicial review. The enforcement framework set out in the Bill will ensure that cases are resolved as quickly as possible, with powers to overturn decisions resting with the courts, as is appropriate. I therefore ask the shadow Minister to withdraw the amendment.

Dr Whitehead: I thank the Minister for that response. Our suggestion that the OEP ought to have a more serious power has to some extent been answered with reassurance by the Minister. However, I am unsure whether the Minister ought not to consider, for future reference, not necessarily the exact wording of this amendment, but the merit of giving the OEP what might be described as shots in the locker. Perhaps that could be done entirely as the Minister has described, or perhaps other provisions need to be added, although not necessarily this one. The process needs some thought, and I hope that the Minister will give it some thought as we move towards the introduction of the OEP. I will therefore not pursue the amendment, in the confident thought that the Minister will give the matter some consideration for the future. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 33, as amended, ordered to stand part of the Bill.
Clause 34 ordered to stand part of the Bill.

Clause 35
ENVIRONMENTAL REVIEW

Leo Docherty: I beg to move amendment 207, in clause 33, page 20, line 40, leave out “Upper Tribunal” and insert “court”.

*This amendment replaces a reference to the Upper Tribunal with a reference to the court, which means either the High Court or the Court of Session. Similar changes are made by Amendments 210, 211, 212, 214 and 216.*

The Chair: With this it will be convenient to discuss Government amendments 210 to 216.

Leo Docherty: This group of amendments will move the environmental review process from the upper tribunal to the High Court. Having reflected further on how that process will fit within the wider landscape of environmental mitigation, we have identified a risk that hearing environmental reviews in the upper tribunal could introduce unnecessary complexity and, potentially, inconsistency. This change is therefore intended to create greater coherence, clarity and consistency and is in the interests of good administration. First, the change will ensure that all the OEP’s legal proceedings are heard in a single forum, the High Court, regardless of whether they are brought as an environmental review following normal enforcement procedure or as an urgent judicial review.

Secondly, the change will ensure that all alleged breaches of environmental law are heard in the same forum, regardless of who has brought claims. For example, wider environmental judicial reviews brought by non-governmental organisations are heard in the High Court and environmental reviews brought by the OEP will now come to the same forum. That should help to promote a consistent approach towards the interpretation and application of environmental law. It is important to note that this change of legal forum does not in any way affect the legal test or principles that will be applied in an environmental review, and nor does it affect the OEP’s access to legal remedies such as.

Dr Whitehead: This is a substantial group of amendments that all have the same effect—to transfer proceedings in a variety of different areas from the upper tribunal to the High Court.

I am—mercifully, it might be said—not a member of the legal profession, and one of the few Members of Parliament who is not, but I am somewhat puzzled about how this provision happened as an amendment in earlier proceedings of the Bill. When the Bill went off for pre-legislative scrutiny by the Select Committee on Environment, Food and Rural Affairs, that Committee gave some recommendations and thoughts on the question of the upper tribunal and, indeed, of the High Court, judicial review and environmental review.

At that point, the Government’s response to the EFRA Committee and its pre-legislative scrutiny report was as follows. Noting the Committee’s recommendation, the Government stated that “we have made provision for a new environmental review mechanism in the Upper Tribunal for the OEP to bring legal challenges”—that is, the Government made such provision. I emphasise this next sentence:

“The approach will have a number of benefits compared to that of a traditional judicial review in the High Court. In particular, taking cases to the Upper Tribunal is expected to facilitate greater use of specialist environmental expertise.”

At the point of pre-legislative scrutiny—this is how the Bill stood, before we all disappeared for a while—the Government appeared to be not only in favour of taking cases to the upper tribunal, but advocating that because they expected it would “facilitate greater use of specialist environmental expertise.”

Although the Bill was not in front of us for a time, nothing has happened in the legal world, as far as I know, to cause that judgment to be reversed. No new legislation or proceedings are in place; all is as it was.

The Government had judged that the upper tribunal approach was perfectly okay, so it is unclear why fairly strong support for continuation of the clearer upper tribunal route with an environmental review has been so comprehensively replaced with reference, under the judicial review mechanism, to the High Court. Perhaps during lockdown some people had too much time on their hands—they were not getting out enough or whatever—and thought they would tinker around with the provision.

People who understand these matters better than I do have suggested that that could undermine the holistic approach we might expect the OEP to take, which could have been supported in the upper tribunal. That is due, among other things, to how a tribunal has a less adversarial approach than the High Court, and the lowering of procedural requirements between the similar but different-in-name processes of environmental review and judicial review could create confusion for court users and practitioners. There are a number of cons to the change—that may be what the Government thought when they responded to the EFRA Committee with a robust view that the upper tribunal would give “greater use of specialist environmental expertise” in determining, in a non-adversarial way, how such matters should progress.
Dr Whitehead: Indeed, my hon. Friend makes the point about specialist environmental expertise in a far better way than the Government did to the EFRA Committee. Among other things, the upper tribunal is not adversarial; it is, in effect, inquisitorial, allowing such expertise to come to grips with an issue in an atmosphere conducive to shining light on it, rather than the knock-down, drag-out fight between two sides of the High Court. The Government would be well advised to listen to her point carefully.

3.30 pm
Again, this is not an issue on which we wish to divide the Committee, but we put a big question mark over why this decision has been made, which appears to go completely against the Government’s previous position, and whether the advantages that the Government think this change in procedure will have are not outweighed by the disadvantages that a number of people have raised, including my hon. Friend the Member for Newport West.

I suggest again that it would be good if the Government consulted further before deciding that this is how the Bill will be shaped. They need to reflect on whether there are a greater number of considerations against the change than for it and whether they are happy that, after passing through all stages in this House and the other place, the Bill will emerge in its final state with this provision intact.

Amendment 207 agreed to.

Amendment made: 208, in clause 35, page 20, line 40, at end insert

‘, but only if—

(a) it is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law; and

(b) it considers that the failure is serious.’—(Leo Docherty.)

This amendment provides that the OEP may only bring an environmental review against a public authority if it is satisfied on the balance of probabilities that the authority has failed to comply with environmental law, and it considers the failure is serious. This aligns the conditions for bringing an environmental review with the conditions for giving a decision notice.

Dr Whitehead: I beg to move amendment 123, in clause 35, page 20, line 40, at end insert—

‘(1A) Where the OEP has given a decision notice to a public authority but has not applied for an environmental review, any person with sufficient interest may apply for an environmental review.’

This amendment allows any person to apply for an environmental review where the OEP decides not to.

The Chair: With this it will be convenient to discuss amendment 124, in clause 35, page 21, line 14, at end insert—

‘(4A) A person who has made a complaint under section 29 may intervene in an environmental review which relates to that complaint or an issue which the Upper Tribunal considers is related to the issue in that complaint.'
Leo Docherty: I thank the hon. Member for the amendments. The Government agree that it is important for the general public and interested parties to be able to challenge alleged breaches of environmental law, which is why we are ensuring that anybody can make a complaint to the OEP, free of charge, about a public authority’s alleged failure to comply with environmental law, which is in addition to existing rights to bring judicial review.

The environmental review is an innovative, bespoke litigation procedure and the final stage in the OEP’s enforcement process. The OEP will only bring environmental review in serious cases, having first conducted a number of thorough pre-litigation steps with the aim of resolving the breach. We do not consider it appropriate for another party to be able to take over at this point, as proposed in amendment 123. The OEP’s decision not to apply for an environmental review will be a considered one and could be taken for a number of reasons.

First, following the decision notice, the public authority may have acknowledged the breach and be taking remedial measures to rectify it, or the response to the decision notice could demonstrate to the OEP’s satisfaction that there is in fact no breach. Secondly, any decision not to bring legal action will be informed by the OEP’s specialist expertise and the information it has gathered in its investigation. Furthermore, the OEP’s enforcement framework has been designed in order to motivate public authorities to engage in constructive dialogue and problem solving. If there is a threat of legal action by a third party, regardless of actions taken to resolve issues during the investigation stage, that undermines much of the incentive for public authorities to work with the OEP.

On amendment 124, we recognise that people will have an interest in cases brought to environmental review by the OEP and may wish to intervene in such cases. However, we also recognise that that might not always be appropriate. There is a well-established procedure for determining who may intervene in legal proceedings. As such, it would be inappropriate to override that procedure by specifying such matters in the Bill. Nevertheless, I assure the hon. Member that we have already started to examine the existing procedural rules to see where changes may be necessary. I therefore ask him to withdraw amendments 123 and 124.

Dr Whitehead: We do not intend to press this to a Division if we are satisfied that the public are fully protected in terms of how this works overall. The Minister has to some extent, by pointing out the mechanism for judicial review, started to build ground for the possibility that there are other mechanisms for public intervention. I welcome the fact that he indicated that there should be public involvement, if necessary, beyond the involvement of public bodies where appropriate, but I do not think he has made the case—in terms of a specifically environmental review, which, as he said, is a relatively new process—that the public’s ability under judicial review to intervene can be wholly applied to environmental review in the way that the Bill might intend.

Our amendments try to tie the public—a “person with sufficient interest”—to that environmental review specifically. I am afraid, therefore, that we need to put on record that this is an important right that the public should have and that it is not fully recognised in the Bill. We would like to see it recognised, and therefore I think we ought to apply for a Division on amendment 123 this afternoon.

Question put. That the amendment be made.

The Committee divided: Ayes 3, Noes 6.

Division No. 14]

AYES
Furniss, Gill
Jones, Ruth

NOES
Afolami, Bim
Bhatti, Saqib
Docherty, Leo

Question accordingly negatived.

Amendment proposed: 209, in clause 35, page 21, line 1, leave out paragraph (b). —(Leo Docherty.)

The OEP may only bring an environmental review after it has given a decision notice. This amendment removes the OEP’s power to bring an environmental review in relation to conduct occurring after a decision notice is given, which is similar or related to the conduct described in the decision notice.

Question put. That the amendment be made.

The Committee divided: Ayes 7, Noes 3.

Division No. 15]

AYES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo

NOES
Jones, Fay
Longhi, Marco
Moore, Robbie

Question accordingly agreed to.

Amendment 209 agreed to.

3.45 pm

Dr Whitehead: I beg to move amendment 119, in clause 35, page 21, line 2, at end insert—

“(2A) The purpose of an environmental review is to promote the integrity of environmental law and the achievement of environmental improvement in accordance with the law.

(2B) When considering an environmental review, the Tribunal may review any finding of fact on which the decision in question is based and, where relevant, whether the achievement of environmental improvement required, had been achieved.”.

This amendment clarifies the purpose of environmental review and provides that the Tribunal may review findings of fact during a review.

The Chair: With this it will be convenient to discuss amendment 120, in clause 35, page 21, line 14, at end insert—

“(4A) In the case of an environmental review, the Upper Tribunal shall treat notices issued by the OEP as authoritative in respect of any relevant issues.”.

The amendment ensures that OEP notices will be treated as authoritative in any related environmental review, helping to ensure that the notices play a meaningful role in any subsequent enforcement action.
Dr Whitehead: Amendments 119 and 120 are connected. They seek to provide in the Bill a definition of the purpose of an environmental review. We think that will strengthen environmental reviews as set out in the Bill. Amendment 119 sets out that their purpose is to “promote the integrity of environmental law and the achievement of environmental improvement in accordance with the law.”

That is a fairly clear definition. It would allow a tribunal—in this case, the High Court—to review any findings of fact on which the decision in question is based, and indeed whether environmental improvement, as defined in the first part of the amendment, has actually been achieved. This would give powerful additional clarity about the environmental review, and we offer the amendment to the Government as a good addition to the Bill.

If the definition in amendment 119 is put in place, amendment 120 would enable the upper tribunal to treat notices issued by the OEP as authoritative in respect of any relevant issues. The link between the definition of environmental law, what the tribunal may do so far as facts are concerned and how those notices should be treated by the OEP would be a substantial addition to the Bill, ensuring that environmental reviews are as strong as they can be. I anticipate that the Minister might not think that such a great idea, but I offer it, for what it is worth, and hope that even if the Minister does not decide on this occasion that it should go straight into the Bill, he may go a way and reflect on it and consider whether, during the passage of the Bill, he may go a way and reflect on it and consider whether, during the passage of the Bill, it thinks fit.

Leo Docherty: I thank the hon. Member for his contribution on this matter. First, I reassure him that the court may already review relevant facts or evidence in coming to its judgments. I fully expect that the court will give the OEP’s decision notices appropriate weight as part of any environmental review, and that its judgments will contribute to the integrity of environmental law.

While I support the hon. Member’s desire to see environmental improvements delivered by the Bill, I am concerned that amendment 119 would potentially blur the well established separation of powers between Government and the courts. We all support the objective of achieving environmental improvement, but that is a policy objective for the Government to deliver. It would be highly unusual and inappropriate to give the courts responsibility for delivering a policy objective other than the service of justice. Moreover, this could also lead to secondary legal challenges examining whether the environmental review had achieved its supposed purpose.

Both amendments also risk tilting the balance of the court’s judgments in such a way as to favour the OEP’s case in environmental reviews. It would be unheard of to impinge on the impartial role of the court in carefully balancing all the evidence before it and reaching a fair and reasonable judgment. That could be prejudicial to the public authority concerned. Clearly, therefore, it is better to allow the court to continue to operate in a fair and balanced way, giving all parties confidence that they will be given a fair hearing, which is necessary to ensure that judgments are objective, impartial and can widely and positively influence environmental case law. I respectfully ask the hon. Gentleman to withdraw the amendments.

Dr Whitehead: I did not expect the Government to be over-enthusiastic about this idea, and indeed, they have demonstrated that they are not. They have indicated that they have concerns about the difficulties that this particular formulation might cause, but, as I have said on previous occasions, I think that the principle is probably about right, and it would be helpful for the Bill if the Government thought on it. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 210, in clause 35, page 21, line 15, leave out “Upper Tribunal” and insert “court”.

211, in clause 35, page 21, line 18, leave out “Upper Tribunal” and insert “court”.

212, in clause 35, page 21, line 23, leave out “Upper Tribunal” and insert “court”.

213, in clause 35, page 21, line 24, leave out “the court” and insert “it”.—(Leo Docherty.)

Dr Whitehead: I beg to move amendment 121, in clause 35, page 21, line 24, leave out from “review” to end of line 28.

This amendment allows the Upper Tribunal to grant any remedy it thinks fit.

The Chair: With this it will be convenient to discuss the following:

Amendment 180, in clause 35, page 21, line 28, at end insert—

“(8A) Where the Upper Tribunal makes a statement of non-compliance, it may impose ongoing financial penalties where it deems these to be necessary.”

The amendment would clarify that the Tribunal has the power to impose financial penalties, but only if satisfied that granting the remedy would be likely to cause substantial hardship.

Amendment 184, in clause 35, page 21, line 28, at end insert—

“(8A) Where the Upper Tribunal makes a statement of non-compliance it may impose a remediation requirement to take such steps as it may specify, within such period as it may specify, to secure that the net environmental position is restored to what it would have been if the offence had not been committed.”

The amendment would give the Tribunal the power to require a public authority to make amendments to the Bill if the Government thought on it. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 210, in clause 35, page 21, line 15, leave out “Upper Tribunal” and insert “court”.

211, in clause 35, page 21, line 18, leave out “Upper Tribunal” and insert “court”.

212, in clause 35, page 21, line 23, leave out “Upper Tribunal” and insert “court”.

213, in clause 35, page 21, line 24, leave out “the court” and insert “it”.—(Leo Docherty.)

Dr Whitehead: I hope that, after that plethora of votes, everyone knows where we have got to. I think and hope that I know, but we shall see whether I am speaking to the right amendment.

Amendment 121 would give the OEP’s relationship with the upper tribunal—in this case, the court—a greater amount of leeway over a remedy that could be granted by the court on judicial review. Clause 35(8) states that the upper tribunal—here it is the High Court—“may grant any remedy that could be granted by the court on judicial review other than—

(a) be likely to cause substantial hardship”

and so on. The amendment would delete the second part of subsection (8), thereby enabling a remedy to be granted without that caveat on its operation. We think that would strengthen the proceedings. Similarly, amendment 80 would allow the upper tribunal to issue financial penalties where it thinks fit.
Amendment 184—this is important; I am particularly concerned about it—would allow remediation requirements, so that the net environmental position would be returned to where it was before the action took place. One important principle regarding environmental damage and various other activities is that such damage should not go unnoticed or be left by the wayside, and those who cause it should be required to put things back to their original state. If bodies undertake planning activity that causes environmental disturbance, they should be required to put something else in place or remedy the damage. The amendment would allow remediation requirements to be introduced, so that the offending body would be required to put the issue right. That important principle ought to be in the Bill.

Ruth Jones: Does my hon. Friend agree that although financial penalties are important, remediation is even more important? For instance, where trees with tree preservation orders have been cut down, contractors have decided to take the fine on the chin, while not doing anything about the trees. The remediation aspect is so important.

Dr Whitehead: Once again my hon. Friend hits the nail on the head. In many cases a contractor, or someone who has decided to undertake an action, may make a cold calculation about what they can achieve by cutting down a row of trees, or sawing branches off a tree, or whatever. Although they might face financial consequences, the net result could be to their advantage, so they will take that on the chin. However, the tree is gone, and the other things have not been remedied. The idea of having a remediation clause that a person who is thinking of doing something must take into account before they do it is an important step forward. As my hon. Friend says, that remediation requirement should be in the Bill and a power of the upper tribunal or the court.

4 pm

Leo Docherty: I thank the hon. Gentleman for his contribution. We support his intention of ensuring that the court has powers to grant appropriate remedies in environmental reviews.

With regard to amendment 121, it is also important to recognise that in some cases the granting of remedies by the court could substantially affect the rights of innocent third parties who have acted in good faith in reliance on public authority decisions. We have therefore sought to protect the rights of such third parties from the most significant implications of unlawful decision making. To be clear, that does not prevent the court from granting remedies in any circumstances where a third party is even slightly affected. In order to be able to grant a remedy, the court would need to be satisfied that this would not be likely to cause substantial hardship or prejudice.

It is entirely necessary to protect third parties from the increased risk of granting remedies long after a decision has been taken. It is not novel to protect such rights in legislation, but the current drafting is a reasonable and proportionate approach to that issue. Subject to those safeguards, through an environmental review, the court will have access to judicial review remedies, including mandatory and quashing orders that can ensure that compliance with environmental law is achieved.

In the highly unlikely event that a public authority failed to comply with a court order, the OEP would be able to bring contempt of court proceedings, which could lead to a range of sanctions being imposed by the court, potentially including fines or even imprisonment. The availability of those remedies and the strict requirement for compliance with court orders entirely dispense with the need for an inferior system of fines in a domestic context, as proposed in amendment 180. Fines form part of the EU infraction framework, but only because the Court of Justice of the European Union is unable to compel the member state into a specific course of action through a court order. The provision for remedies through the OEP’s environmental review enforcement procedure clearly outlines how this Government are committed to enhancing environmental protections now that we have left the EU.

Turning to amendment 184, I reassure the hon. Gentleman again that the court has the appropriate powers to make court orders where a public authority has breached environmental law. Amendment 184 would go further by giving the court powers to specify the steps necessary to make amends for any environmental harm resulting from the breach of the law. Given the separation of powers, it is for the courts to determine legal proceedings and for the Government and public authorities to implement law and policy. That is why we have provided that, where the court has determined that a public authority has failed to comply with environmental law, that authority must publish a statement setting out the steps that it intends to take. I therefore ask the hon. Member not to press amendments 121, 180 and 184.

Dr Whitehead: I take the Minister’s points on amendments 121 and 180, and we do not intend to proceed further with those. However, on amendment 184 the Minister has essentially repeated the limitations that are already on the courts with respect to public authorities and remediation—that is, that an authority would be expected to say what it is going to do, but that does not mean the authority has to do it. We think the inclusion of this particular arrangement on remediation, although it would be an extension of the court’s responsibilities, would nevertheless be a substantial environmental gain by ensuring that the process was fully followed through.

I am sorry that the Government have been unable to accept either the spirit or the actuality of amendment 184. Although it is not the lead amendment in this group, it does relate to this clause, so a Division would be appropriate within the purview of this particular clause. That is what we would like to do, Sir George, if that is the order that we can follow. I beg to ask leave to withdraw amendment 121.

Amendment, by leave, withdrawn. Amendment proposed: 184, in clause 35, page 21, line 28, at end insert—

‘(SA) Where the Upper Tribunal makes a statement of non-compliance it may impose a remediation requirement to take such steps as it may specify, within such period as it may specify, to secure that the net environmental position is restored to what it would have been if the offence had not been committed.’—[Dr Whitehead.]

The amendment would give the Tribunal the power to require a public authority to make amends for environmental harm resulting from a breach of the law.

The Committee divided: Ayes 3, Noes 7.
Government amendments 218 and 219.

Clause 36

Judicial review: powers to apply to prevent serious damage and to intervene

Leo Docherty: I beg to move amendment 217, in clause 36, page 22, line 11, at end insert “, and (b) the urgency condition is met.”

This amendment provides that the OEP may only bring a judicial review under clause 36, rather than proceeding by way of information notice, decision notice and environmental review, in urgent cases. Amendments 218 and 219 define what is meant by urgent.

The Chair: With this it will be convenient to discuss Government amendments 218 and 219.

Leo Docherty: We have created the OEP’s bespoke core enforcement mechanism of notices and environmental review to identify and resolve breaches of environmental law while only resorting to litigation in court as a last resort. Clause 36 ensures that the OEP can apply directly for judicial review, but that power has always been intended to supplement the OEP’s core enforcement mechanism. It is expected that judicial review should be used by the OEP in limited and exceptional circumstances where it is necessary to do so to prevent or mitigate serious damage to the natural environment or human health where the OEP cannot do so through its core enforcement mechanism.

Government amendments 217, 218 and 219 clarify the policy intention as to how and when the OEP should apply directly for a judicial review. Amendment 217 simply clarifies that the OEP should apply for judicial review only in limited circumstances, now referred to as the urgency condition. Amendments 218 and 219 go on to define when and how the urgency condition may be met.

The urgency condition is framed in terms of necessity. To meet the condition, it must be necessary for the OEP to proceed according to this route—rather than its normal enforcement procedures—to prevent or mitigate serious damage to the natural environment or human health. The clause is also restructured so that this condition is an objective, rather than subjective, test that must be passed in order for the OEP to bring such proceedings. This is intended to bring greater clarity to the test. Amendments 217 to 219 will therefore improve clause 36 by clarifying the process for the OEP to apply for judicial review as intended.

Dr Whitehead: The Opposition’s opinion is that these amendments, which are connected, as the Minister has explained, constitute a serious undermining of the powers of the OEP and its ability to judge for itself what it wants to do, particularly with regard to judicial review.

Clause 36(1) states: “The OEP may apply for judicial review, or a statutory review, in relation to conduct of a public authority (whether or not it has given an information notice or a decision notice to the authority in respect of that conduct) if the OEP considers that the conduct constitutes a serious failure to comply with environmental law.” Therefore, there is already the question of “serious failure” in the clause. Now, the Government are adding to that by putting this urgency requirement on the end, so there has to be not just a serious failure, but an urgent and serious failure. This clearly puts obstacles in the way of the ability of the OEP to work for itself, in relation to how judicial review is undertaken. It puts in place a number of outside obstacles to that process.

Without going over the case at great length, we think that this is part of that suite of amendments that seek to put a corset around the OEP in terms of what it may or may not do, and in effect hug it closer to Government as a result. We do not think that is conducive to what we have always considered to be the imperative of the independence of the OEP, and therefore we will seek once again to defend the Bill as it stands—against the Government’s wish to dilute further what is in it—particularly in relation to the powers of the OEP that were set out when the Bill was first introduced.

We do not want to support amendment 217, but we appreciate that the other amendments are consequential to it and that therefore if amendment 217 does go through, the others follow. Not wishing to extend proceedings greatly this afternoon, I will just say that is where our position stands.

Question put. That the amendment be made.

The Committee divided: Ayes 7, Noes 3.

Division No. 17]

AYES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo

Jones, Fay
Longhi, Marco
Moore, Robbie

NOES

Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan

Question accordingly agreed to.

Amendment 217 agreed to.
Amendments made: 218, in clause 36, page 22, line 12, leave out from beginning to “(rather” in line 13 and insert
“The urgency condition is that making an application under subsection (1)”.
This amendment, together with Amendment 219, provides that a case is urgent only if it is necessary to bring a judicial review, rather than proceeding by way of information notice, decision notice and environmental review, to prevent or mitigate serious damage to the natural environment or to human health.

Amendment 219, in clause 36, page 22, line 14, after “35)” insert “is necessary”.
See Amendment 218.

Amendment 220, in clause 36, page 22, line 29, leave out subsection (6) and insert—
“(6) Subsection (6A) applies to proceedings (including any appeal) that—
(a) are in respect of an application for judicial review or a statutory review, and
(b) relate to an alleged failure by a public authority to comply with environmental law (however the allegation is framed in those proceedings).

(6A) If the OEP considers that the alleged failure, if it occurred, would be serious, it may apply to intervene in the proceedings (whether it considers that the public authority has, or has not, failed to comply with environmental law).”—(Leo Docherty.)

This amendment provides that the OEP may apply to intervene in a judicial or statutory review relating to an alleged failure by a public authority to comply with environmental law only if it considers that the failure, if it occurred, would be serious. If that test is satisfied, it may apply to intervene whether or not it considers that the authority has in fact failed to comply with environmental law.

Clause 36, as amended, ordered to stand part of the Bill.

The Chair: In consideration of the vast amount of material that the Minister has agreed to reflect on, and out of concern for his time and welfare, the Committee will now adjourn.

Ordered, That further consideration be now adjourned.
—(Fay Jones.)

4.16 pm

Adjourned till Tuesday 10 November at twenty-five minutes past Nine o’clock.
Written evidence reported to the House

EB74 Royal Society of Chemistry (briefing on the Environment Bill's provisions relating to plastic and electronic waste)

EB75 Royal Society of Chemistry (briefing on the Environment Bill's provisions relating to REACH legislation)
Twelfth Sitting
Tuesday 10 November 2020
(Morning)

CONTENTS

Clauses 37 to 45 agreed to, some with amendments.
Schedule 2 agreed to.
Clause 46 agreed to.
Schedule 3, as amended, under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 14 November 2020
The Committee consisted of the following Members:

**Chairs:** † James Gray, Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Anderson, Fleur (Putney) (Lab)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Browne, Anthony (South Cambridgeshire) (Con)
† Docherty, Leo (Aldershot) (Con)
Furniss, Gill (Sheffield, Brightside and Hillsborough) (Lab)
† Graham, Richard (Gloucester) (Con)
† Jones, Fay (Brecon and Radnorshire) (Con)
† Jones, Ruth (Newport West) (Lab)
† Longhi, Marco (Dudley North) (Con)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Zeichner, Daniel (Cambridge) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Tuesday 10 November 2020
(Morning)

[James Gray in the Chair]

Environment Bill

9.25 am

The Chair: We have a great deal to get through today, so there is no time for idle chit-chat.

Clause 37

Duty of the OEP to Involve the Relevant Minister

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 38 to 40 stand part.

Dr Alan Whitehead (Southampton, Test) (Lab): Hon. Members will see that under clause 38, when the Office for Environmental Protection “gives an information notice or a decision notice, applies for an environmental review, judicial review or statutory review or applies to intervene in a judicial review or statutory review, it must publish a statement”.

What is curious about this clause is that while it states at the beginning that the OEP “must” publish a statement, the next subsection says that that does not apply “if the OEP considers that in the circumstances it would not be in the public interest to publish a statement.”

My concern is this: in what circumstances would it not be in the public interest to publish a statement; and why is it only for the OEP and no one else to decide that it should not publish such a statement? I would like to hear from the Minister what she considers those circumstances to be and, if the OEP so decided, what would be the criteria upon which that decision would be taken?

Anthony Browne (South Cambridgeshire) (Con): When we last met we all agreed that the OEP should have as much independence as possible. I fully support that. What I find confusing about the hon. Gentleman’s argument is that he is talking about reducing the OEP’s ability or flexibility to do what it sees fit, and he is trying to set down in law exactly what it should do in different circumstances. Surely we should appoint an independent regulator, make sure that the best people are running it and—as much as one can—let it decide whether to issue a notice or not. This would limit its independence.

Dr Whitehead: The hon. Gentleman will have accepted already that, throughout the passage of the Bill, we have tried to assert robustly—this is accepted on all sides—that the OEP should be truly independent and should undertake its activities in that spirit of independence. We have tried to point out that a number of measures in the Bill would undermine that independence by putting constraints on the way in which it acts.

Secondly, we have tried to ensure that the OEP is set up in such a way that it is fully transparent and organisationally accountable for what it does. Those two things go together: the OEP should be fully independent, and it should be set up in such a way that that independence is based on accountability and transparency in its actions. Clause 38—I remind hon. Members that this is a clause stand part debate, not an Opposition amendment—appears to suggest that the OEP has an option to be less than transparent in its dealings with the public in relation to public statements. That is a substantial caveat on a requirement. It is a “must”, not a “may”. It “must” publish those statements, but the caveat is that if the OEP thinks that it is not in the public interest, it does not have to do so. On the face of it, that is resiling from the second principle that I set out: that the OEP should act in a publicly transparent and accountable way.

What I want from the Minister is either an explanation of why that subsection has been placed in the Bill or to know whether there could be a potential challenge to the subsection, which appears to enable the OEP to decide, regardless of any other criteria, that it feels something would not be in the public interest. If the OEP decided that it would not be in the public interest to publish a statement—so no such statement would appear and people would not know even that a statement was about to come out—what would be the potential challenge, and what machinery exists elsewhere in the Bill that one may not yet have seen that would enable criteria to be applied to how the OEP considers what is in the public interest or otherwise? All hon. Members will agree that if the question of public interest is subjective and internal to an organisation, that is not necessarily a good test of what the public interest might be considered to be.

That is why this is a stand part debate: it is a question to the Minister, rather than a suggestion that this clause be removed.

Daniel Zeichner (Cambridge) (Lab): Good morning, Mr Gray. My hon. Friend is making important points. In paragraph 340 of the explanatory notes, there is a comparison with how the European Commission works. One of the key issues is: is this system now stronger or weaker? Does my hon. Friend believe that this is a more or less transparent process?

Dr Whitehead: As my hon. Friend suggests, it is a less transparent process than before. It appears that, in this clause, we are retreating from the principle of transparency. Of course, I may be completely wrong, and there may be factors, to which I hope to be pointed shortly, that mitigate or dissolve that concern. I am sure that the Minister can reassure me on that, or point to things that mean that the clause, odd though it looks in terms of transparency, is not as bad as it seems on the surface.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): It is good to be back. I thank the shadow Minister for his comments, and all hon. Members for carrying the proceedings last week when I was unwell. I put on record my thanks to the Whip, my hon. Friend the Member for Aldershot, who did a sterling job, and to the Opposition for, I think, being kind.
We are talking about clauses 37 to 40 en bloc. Those clauses ensure that the OEP can operate effectively, openly and transparently when carrying out its important duties, which of course is vital. Clause 37 ensures that relevant Ministers are informed and able to participate in relevant enforcement cases, and that the OEP can recommend ministerial involvement in legal proceedings. That allows it to make a case for a Minister’s participation in instances where it may be helpful for Ministers to provide input to the proceedings.

The shadow Minister touched on clause 38. I gather that he will not oppose it, but it is always good to have some questions and inquiries. I hope I will make it clear that the clause requires the OEP to publish statements at specific points during the enforcement process. The clause is important because it establishes the OEP as an open, effective and transparent watchdog.

If the OEP, having decided to carry out an investigation, is to do so effectively, we must enable it to obtain and review all the available information from other public bodies, so that it can reach a robust and fair conclusion. Clause 39 therefore ensures that, in appropriate circumstances, obligations of secrecy that would otherwise apply are disapplied to enable public authorities to provide information to the OEP in complaints and enforcement cases. All these clauses work together. It is important to note, though, that we have also ensured that certain fundamental protections, such as those set out in the Data Protection Act 2018, are unaffected by this clause.

Openness and transparency are important, but confidentiality is also vital to allow the OEP to establish a safe space for dialogue with public authorities, so that it can quickly and effectively establish the facts in a case and explore potential pragmatic solutions without the need for litigation, where that can be reasonably avoided. The whole system has been set up in a way that means that when the OEP is carrying out its enforcement functions, it first takes a liaison, advisory and discussion role. We want to do all that before we get down the road of litigation and all those other things. That is very important.

I thank my hon. Friend the Member for South Cambridgeshire for his comments. He is absolutely right that we do not want to tie the hands of the OEP. It has to be independent, and it has to be able to come to its conclusions about which bits of information will and will not be relevant.

Clause 40 plays an important role in the OEP carrying out its functions by ensuring an appropriate degree of confidentiality during the enforcement process. I assure the shadow Minister that the clause does not create a blanket ability to prevent information being disclosed, which I think is his fear; that is not how the OEP will operate. The OEP and public authorities will still have to assess any requests for information case by case, in line with the relevant regulations.

Clauses 39 and 40 therefore strike a careful balance between retaining confidentiality of that very sensitive aspect of the enforcement process and creating greater transparency across the process. As has been said many times, transparency is absolutely key to good governance. The EU does not even have such a system, so we are setting ourselves up as world leaders by introducing this kind of independent body. I hope those points have reassured the Committee.

Dr Whitehead: I thank the Minister for her explanation. I am not entirely happy with the way the clause is drafted, but I accept what she has said and will not oppose it.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clauses 38 to 40 ordered to stand part of the Bill.

Clause 41

MEANING OF “NATURAL ENVIRONMENT”

The Chair: We now come to amendment 113. No member of the Committee has signed the amendment, but anyone may move it if they wish. No one has signalled that they wish to, so we will move straight on.

Dr Whitehead: I beg to move amendment 126, in clause 41, page 25, line 35, after “structures” insert “but including sites of archaeological, architectural, artistic, cultural or historic interest insofar as they form part of the landscape”.

This amendment seeks to widen the definition of “natural environment” in this Part to include the historic environment. For the avoidance of doubt, we do not seek the inclusion of the historic environment in the definition of “environmental law”, or in the enforcement functions of the OEP.

The amendment revisits, in a slightly different way, a discussion that we had about the definition of “natural environment” and the effect of buildings and other structures on the environment. As the Committee will recall, when we spoke about that in a previous sitting, we discussed the fact that the appearance of the natural environment has, over centuries, been changed by human activities. If we went back in time, there would be no point at which we could say, “This is the natural environment, so we will use this point in time for our definition, because after this time, it is no longer the natural environment.” The natural environment is clearly constantly changing through human intervention.

Amendment 126 would give the clause a better grip on the issue than amendment 113, which was not moved. Amendment 113 sought to leave out “except buildings or other structures”, but amendment 126 would insert “but including sites of archaeological, architectural, artistic, cultural or historic interest insofar as they form part of the landscape”.

That is the nub of the question, as far as our landscape is concerned. Not only has the natural environment been changed over time in the way that I have described, but there are, in our natural environment, a whole host of structures—those might come under the definition of “buildings or other structures”, which, as hon. Members can see, are effectively excluded from the clause—that in various ways become part of the natural landscape as a result of their longevity in it, and because they have, at some stage, changed that landscape, thereby becoming a part of it.

9.45 am

I am sure hon. Members can think of many examples. I think of Maiden castle near Dorchester. That is a huge earthwork that dominates the landscape. I presume that if section 106 agreements and planning authorities had been around in the late bronze age, they would probably have decided that Maiden castle was an appalling blot on the landscape and should not have been built;
they would have asked the proposers to go back and design a much smaller castle that would not obliterate the view towards the sea. However, they did not exist at the time, and Maiden castle is there. It is clearly part of the natural landscape. Under this clause, it appears that that structure would be exempted from consideration. That cannot be right. Another example is Bant’s Carn on the Isles of Scilly.

A host of things have changed the landscape and become part of it. If anyone decided that they should not be protected as part of the landscape, there would be quite an outcry. The wording of the Bill skews our approach towards these structures and monuments, which the British public hold dear as part of the natural landscape. I think the British public would be surprised to hear that we are effectively legislating not to protect them and keep them part of that natural landscape.

Ruth Jones (Newport West) (Lab): My hon. Friend makes a powerful point. It is important to recognise that people may not even know of such places. There is a mountain called Twmbbarlwm just outside my constituency. On the top, it has a tump, or pimple, which is an iron age burial mound. People do not even know that that pimple is manmade. They would be appalled if anyone tried to deal with it. They assume it is natural, but it is not, though it has been there for hundreds of centuries.

It is important that we make every effort to cover all eventualities. If this Bill is to be groundbreaking for generations to come, we must cover all bases.

Dr Whitehead: I thank my hon. Friend for making that point. That underlines what we know is right in our hearts. If we reduced this to a few lines on a piece of paper, we might have to start making them distinctive in order to define what we are talking about. This amendment tries to ensure that such structures are regarded as part of the natural landscape.

Anthony Browne: The hon. Gentleman makes the valid point that many historical monuments have become part of the landscape. The UK is one of the most densely populated countries in the world. After 40,000 years of continuous human habitation, there is virtually nothing left that is not touched by the hand of man. I fully support the desire to protect monuments and so on, but the Bill is about protecting the environment. There is a separate legal framework for protecting monuments. I am worried about confusing the objective of the Bill, and worried that the OEP will be tasked with protecting monuments—when there is a separate legal framework for that—rather than protecting the natural environment.

Dr Whitehead: I take the hon. Gentleman’s point but it is not a question of the OEP having to take on the mantle of English Heritage, or a national monuments commission, and assiduously sweeping the leaves off ramparts and other things. Hon. Members will see that clause 41 is simply a meaning clause: it defines what we mean elsewhere in the Bill. It is important inasmuch as it provides a serious context in which other measures in the Bill can be seated. That is its only function. When we are seating those meanings within other parts of the Bill, it is important that we are clear about the extent of those meanings or indeed the limits of those meanings. That is all that the amendment seeks to do. It does not seek to do anything more, and does not give the OEP any obligation as far as these monuments and buildings are concerned, nor the changes in the landscape to which I refer. The hon. Member can rest assured that there would be no duty of care on the OEP, and it is merely a matter of including that in the definition.

Fleur Anderson (Putney) (Lab): Does my hon. Friend share with me concerns that the National Trust—one of the custodians of our British landscape—is also concerned about that very clause? They say that heritage and the natural environment “go hand in hand”. They will be looking to the clause to put them together in the correct way, as my hon. Friend said, for the very nature of our British environment. Nobody in this room would disagree with that.

Dr Whitehead: I thank my hon. Friend for that point, which I had not fully covered. The National Trust is, indeed, responsible for sweeping the leaves and various other things from these monuments, and it is among the bodies expressing concern that the meaning of clause 41 will not adequately serve the purpose of guiding the clauses that go before it. I hope that the Minister can provide a good explanation for the meaning in parenthesis being as it is. It is not that it should not be there—it will cover a number of issues, and if it was not there then we might start considering a modern block of flats part of the natural environment. Clearly, we would not want to go that far. I hope that the Minister accepts that amendment 126 strikes the right balance, ensuring that we have a much better definition to work with and that we make a distinction between buildings and other structures that are clearly not part of our natural environment and those that have become so, certainly in the public’s view, and deserve to be included in this meaning clause.

Rebecca Pow: I thank the hon. Gentleman for his amendment on the meaning of the natural environment. Obviously, we discussed this previously in some of the earlier clauses relating to heritage and such. I recognise that the natural environment does not exist in a vacuum and that our interactions with it and use of it create a heritage that we should be proud of, as I think we all are. It does not exist in a vacuum—the shadow Minister himself touched on this—but I believe it would be inappropriate to include the elements in the amendment in this particular definition, given that one of its key aims is to determine the scope of the functions of the Office for Environmental Protection.

The OEP must remain focused on its principal objective of environmental protection and the improvement of the natural environment. It is not its place to investigate complaints against breaches of legislation such as that concerned with cultural heritage such as listed buildings, which my hon. Friend the Member for South Cambridgeshire touched on, listed building consents or protection for ancient monuments. There is a raft of legislation that deals with all those things, and that is not the role of the OEP.

Daniel Zeichner: I welcome the Minister back to the Committee. This is a fine distinction, but does she not agree that, in so dramatically excluding “buildings or other structures”, the Bill goes too far, and the amendment is an attempt to bring it back slightly?
Rebecca Pow: Obviously all that has been considered and thought about, but the hon. Gentleman makes a good point. I will come on to what the 25-year plan says in a minute, because that really nails why the wording he wants is not there: it is because we believe it is already covered. It is important to note that the hon. Member’s wants is not there: it is because we believe it is already covered. It is not the case that our amendment would prejudice clauses subsequent to this—the Minister set out clauses 42 and 43 as falling within, for example, the meaning of environmental law. We think it would be a good thing if the structures and buildings that have changed the natural environment and have effectively become part of it were included in those considerations.

The Chair: It is very annoying.

Rebecca Pow: I apologise—I did not know it was on. It is important to note that the hon. Member’s explanatory statement is very specific about the effect he intends the amendment to have. It states that he specifically does not wish the historic environment to be included, “in the definition of ‘environmental law’, or in the enforcement functions of the OEP.”

It is necessary to have a distinction to ensure that, as I have just touched on, laws concerning, for example, building safety or other matters do not get tangled up in this and are not included in the OEP’s remit. Its focus must be the natural environment.

The clarification is welcome, and it is good to think about it, but unfortunately I must also point out our concern about the unintended effect that this amendment will have. The three definitions in clauses 41, 42 and 43 are intrinsically linked, working together to underpin the OEP and determine the scope of its enforcement functions. Therefore, including those matters within the meaning of the natural environment would mean that they would also be included in scope of the meaning of “environmental law” and the OEP’s enforcement policy.

Going slightly back on the previous point I made, the definition would not preclude the OEP’s looking at any breaches of environmental law that were related to the environment, for example, around Maiden castle or the twmp mentioned by the hon. Member for Newport West. Say, for example, that that was a protected habitat or there was a protected species within that habitat—I have the same around my wonderful Wellington monument, near the sort of consideration that we are putting in the plan to say that we should be “sensitive”. There is merely half a line within that general plan to say that we should be “sensitive”. There is nothing else in the plan, as far as I can see, that says anything further than that—nothing that goes anywhere near the sort of consideration that we are putting in front of the Committee this morning.

The amendment makes it clear that we should not only be sensitive, but that we should include as a consideration those historic monuments and those elements of heritage that effectively form part of the natural landscape. Nothing in the Bill addresses that point, and the amendment seeks to put that consideration on the face of the Bill.

The Minister has underlined our point to some extent. Being sensitive is not good enough; we have to have something in the Bill that spells out the overall consideration that should be made when thinking about the natural environment. We think strongly about this point, to the extent that we will press the Committee to a Division this morning. The amendment has very considerable merit and, whether or not the Division is successful—we will see when the votes come out, rather in the way of the American election—we nevertheless hope that the Minister will consider the point further.

Question put. That the amendment be made.

The Committee divided: Ayes 4, Noes 10.

Division No. 18]

AYES

Anderson, Fleur
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Jones, Fay
Longhi, Marco
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.
Dr Whitehead: I beg to move amendment 125, in clause 41, page 25, line 35, after “water” insert “, including the marine environment”. This amendment specifies that the natural environment includes a reference to the marine environment and is not confined to inland waters.

The Chair: With this it will be convenient to discuss amendment 193, in clause 41, page 25, line 35, at end insert—

“(d) the marine environment,”.

This amendment aims to ensure that the seas and oceans and the health of those environments are considered when the OEP is working.

Dr Whitehead: Before I discuss the amendment, I would like to seek your guidance, Mr Gray. As you can see, unfortunately, our Whip is not with us this morning through illness, but I wish to get a note to the Government Whip. Since I cannot walk out of the room to talk to him, may I through you or somebody pass this note to him?

The Chair: I would be delighted to pass that to the Minister, who will pass it on to her Whip.

Dr Whitehead: I shall be grateful if the Minister could draw the Whip’s attention to that when he returns.

The Chair: It might be appropriate for the shadow Minister to appoint one of the other Labour Members as a temporary Whip. That might be helpful for the Committee.

Dr Whitehead: Yes, that is quite right. Perhaps I should have thought of that; it is difficult to do mid-flight.

It was also remiss of me not to welcome the Minister back to her place this morning. I think she knows that when she was absent last week, we sent her our good wishes for a speedy recovery. Indeed, our wishes have come true as she is with us today. I am pleased to see her in her place and I hope that she has indeed had a speedy recovery and is fully back with us, as I am sure she is. I am sorry that I did not place that on the record earlier, but I was rather preoccupied with Maiden castle and various other things.

The amendment seeks to include a better definition, effectively through a few simple words, in the same clause that we were talking about previously concerning the meaning of “natural environment”. It would mean that subsection 41(c), which begins

“land (except buildings or other structures), air and water”, had at the end a clarification that that includes the marine environment.

It seems pretty obvious that that ought to be in the Bill. We are a country with a length of coastline that is almost uniquely extensive in Europe, and we are an island. Obviously, in the UK, we also have extensive inland waterways, such as lakes, rivers and, indeed, man-made inland waterways that have effectively become part of the natural environment, as I am sure hon. Members agree, such that they merit the sort of protection suggested by the definition in this clause. When the Minister replies, will she assure us that man-made inland waterways are included in the definition of “water” in the clause?

At no point does the Bill mention the marine environment. To the credit of Members across the House, we have developed sites of special scientific interest and conservation zones in the marine environment and around the coastline, sometimes quite a way offshore. It is not a question of having the land and the foreshore, and then simply the deep blue yonder. The marine environment must be seen as an integral part of the process of environmental conservation. Our legislation includes substantial activity to enable environmental protection and conservation to take place in those zones.

Ruth Jones: My hon. Friend is making a powerful point. During the passage of the Fisheries Bill, we spent a long time considering how to avoid dredgers damaging the marine environment. That should be included in this Bill, so that our legislation is joined up and cohesive, and ensures that the marine environment is as protected as the land.

Dr Whitehead: My hon. Friend’s important point underlines the purpose of our amendment and impels me to highlight that this is not just a theoretical question about the protection of the marine environment, but a practical question about how we approach that. For example, the marine conservation zone in Lyme bay has the very practical effect of—or other things—preserving the environment for cold-water corals and various other things in that very fragile ecosystem that require our protection to survive and thrive. Those considerations of the marine environment are absolutely and indistinguishably conjoined.

Robbie Moore (Keighley) (Con): Will the hon. Gentleman clarify the purpose of the amendment? Given that paragraph 355 of the explanatory notes to the Bill states:

“This includes both the marine and terrestrial environments. ‘Water’ will include seawater, freshwater and other forms of water”,

I am not sure what the purpose of the amendment is.

Dr Whitehead: The hon. Gentleman has quoted the explanatory note, which is not legislation. One of the problems that Committees face is that explanatory notes have a sort of half-life: they are quite often helpful for elucidation, but they add nothing whatsoever to, or take nothing away from, the legislation in front of us. Explanatory notes might mention what is or is not the case, but essentially they indicate only how benevolently or otherwise the Government look upon the legislation. 10.15 am

Cherilyn Mackrory (Truro and Falmouth) (Con): I am as big a champion for the marine environment as anyone in this room; before this time last year, it was our livelihood. I am struggling to understand the purpose of the amendment because everything in the marine environment is covered by

“land (except buildings or other structures), air and water, and the natural systems, cycles and processes through which they interact.”

I am struggling to see what in the marine environment is not covered by the Bill as originally written.

Dr Whitehead: The hon. Member will see that the Bill merely contains itself with the word “water”, which can have a number of different interpretations. In this instance, it has a substantially strong interpretation. This is not a problem with the present Government, but we are talking about legislation that must stand the test of time. It is
possible and reasonably straightforward to define “water” in this case as internal waterways, rivers and other water services within the land mass. The hon. Member will see that that is what the clause appears to suggest. The “natural environment” is defined as “plants, wild animals and other living organisms.” “their habitats” and “land”, which suggests that the word “water” should be taken in the context of the other things in the clause.

Cherilyn Mackrory: With respect, I disagree. What the hon. Member suggests is that the land stops on the foreshore. It does not, of course; it goes straight out to sea and becomes the seabed. The land does not stop. What we are arguing here are the semantics of where our land and our waters end, which will be covered in the Fisheries Bill.

Dr Whitehead: The hon. Member is right to the extent that land does extend under the water, otherwise the seas would drain fairly rapidly and we would be in a bad state. According to the hon. Member’s definition, we are conjoined with every other country in the world. The clause does not say that we must have a definition of “natural environment” that includes that—it stops in terms of what is on our land and what is not under the sea, as far as land is concerned. Arguably, the fact that it includes water could be defined, as the hon. Member suggests, as including everything on that land that is under the sea. It is nevertheless our responsibility—there are different areas of concern expressed in international treaties about territorial waters and various other things.

Anthony Browne: I completely and utterly support that the definition should cover the marine environment. My question to the hon. Member is why he picks on the marine environment as the one point of clarification needed in “land…air and water”. My hon. Friend the Member for Truro and Falmouth has talked about some aspects of the land, but does it cover soil? Does the hon. Member want clarification on that? Does it cover underground waterways, for example, which are big in my area? The big issue in South Cambridgeshire is the surface water, which is definitely under the ground. Does it cover cave systems? Is “air” just the air we breathe when we talk about air pollution, or is it also the ozone layer and so on? We could carry on with multiple long definitions and a long train of different qualifications, but I think that would create legal uncertainty for lawyers to interpret. The Bill is very generic—“land…air and water” covers everything that is important.

Dr Whitehead: The hon. Gentleman tempts me to go down a detailed path of discussing subterranean water outlets. I assume, because water is within our land mass, that those would be covered by the elision of land mass and water, which is suggested by the clause. Without going into a lengthy disposition about how far under the ground water might be counted as being covered under this arrangement, we can rest assured that those matters are not a serious issue of dispute.

That is why I do not want to go into enormous detail. The amendment is straightforward and short. It proposes several words that would put the matter to rest. It just states in a modest way that the definition should include the marine environment, so that if anyone is in any doubt, there it is in the Bill. That is all we are suggesting. There is no side to that. There are no additional consequences. It merely says we should be clear that that is what it includes. I think we all agree that it should include that.

This morning, we were treated to a quote from the explanatory notes, which indicated that the marine environment should be included, but it is not. We are just doing a modest labour in the vineyard by attempting to ensure that when people say something, they mean what they say. The best way to ensure that people mean what they say is to say it. That is what we propose to do on the face of the Bill.

Deidre Brock (Edinburgh North and Leith) (SNP): Amendments 125 and 193 have similar intentions. My amendment was meant as a probing amendment. I will not revisit the areas that the shadow Minister has eloquently gone through. My assumption was that the marine environment was considered for inclusion here and the decision was taken to exclude it. I would be interested to hear from the Minister what the rationale was for that.

Obviously, marine life is just as vital to the global ecosystem as terrestrial life, and the health of marine environments also needs to be protected. There may be some other agencies responsible, which the Government reckon should do the job, but surely there is a good case to be made for an agency with an overarching view of these tasks and challenges for the whole environment. I look forward to the Minister’s comments.

Daniel Zeichner: This is a short clause, but it is very important. I am fortunate to represent Cambridge, a city with some fantastic environmental organisations. The David Attenborough Building is renowned. It houses the Cambridge Conservation Initiative, which includes the Royal Society for the Protection of Birds, Fauna & Flora International and Birdlife International. I was fortunate to visit them a while ago, when I was preparing for a Westminster Hall debate. I was briefed by a range of dazzling experts. I was struck from their presentations by how many talked about the marine environment. I had not realised how significant it was. That was very much the term they used throughout their recommendations and advice to me.

I know the Minister cares passionately about the marine environment. I remember a Prime Minister’s Question Time when she questioned the showering habits of the Speaker. It is amazing the things that people remember. I should be clear that she was referring to the microbeads in Mr Bercow’s shower gel. I do not doubt the passion that she feels for the marine environment.

That leads me to question, given that we all agree on this point, why it cannot be put in the Bill. I believe the Government intend to include it. If there is such resistance to putting it in the Bill, it is either because each side wants to defend its position and does not want to give way, or there is something a bit more sinister.

Rebecca Pow indicated dissent.

Daniel Zeichner: The Minister says no. She might want to think about that, maybe not this morning, but as the Bill progresses. I would have said that including that one phrase would strengthen the Bill from the Government’s point of view and not leave people wondering what other treasures close to our land mass some parts of Government organisations have their eye on.
**Rebecca Pow:** I thank the shadow Minister for his very kind opening words. I also thank him for his interest in the clause, which is crucial to future environmental governance. I appreciate the sentiments behind the amendment, but I must disagree and say that it is unnecessary. I have thought about this matter a great deal myself, as hon. Friends and Members can imagine. I have also spoken to the Natural Capital Committee at length about this, and it is satisfied with what we have come up with after much discussion.

Hon. Members are aware that the marine environment is by far the largest part of the UK’s environment and, as such, is an enormous part of our natural world. It is therefore vital that we safeguard crucial marine ecosystems, and that is a core part of our environmental policy. One of the names I get in my portfolio is the marine Minister, so I say, “Leave water and the marine space out at your peril.”

That is why the marine environment is included within the existing clause, as is clarified on page 57 of the explanatory notes. I hear what everyone says about the explanatory notes, but the meaning of the natural environment explicitly covers “water”. This includes seawater, canals, lakes, the Somerset levels—which are seawater that has come inland, goes back out, and is then joined by inland water—and all the underground aquifers.

A very good point was made: where do we stop with these lists of things? That is important to remember. The definition also covers—I thank my hon. Friends the Members for Truro and Falmouth and for Keighley for mentioning this—the land that includes the seabed, the intertidal zones and the coastal plains. They are all part of the natural environment. Any plant, wild animal, living organism or habitat is also included in the definition, regardless of where it is physically.

Out of interest, I want to touch on the target-setting powers in the Bill. Targets can be set on any matter relating to the natural environment, which could include the marine environment. That means we can set long-term targets or legally binding targets that can help improve the marine environment. The Government must set out at least one target in their four priority areas, which include air, biodiversity, water and nature. The initial round of targets might include a marine environment target, and that could be one of the biodiversity targets. That measure is already in the Bill; it will actually bolster, protect and strengthen the myriad measures we already have in place for protecting the marine space. All of this will dovetail with the sustainability elements in the Fisheries Bill, which was mentioned by the hon. Member for Newport West, so it is all part and parcel.

I hope I have provided some assurances. The marine environment is very much included within the definition and, as such, each element of the environmental governance framework—including the OEP—will apply to it. On those grounds, I propose that the amendment is unnecessary, and I respectfully ask the shadow Minister to withdraw it.

**Dr Whitehead:** The Minister has given some good and solid assurances concerning what she thinks the clause could be interpreted to mean. Clearly, the fact that she has said that this morning suggests that it might be possible, should there be a dispute about this, to draw upon her words as underlining the Government’s good intentions. We have never disputed that. We are happy that the Minister thinks in that particular way.

I emphasise what my hon. Friend the Member for Cambridge said, which is that it seems straightforward to us that this should be included in the Bill. There is such potential dissonance between the Minister’s warm wishes for the marine environment and what is actually in the Bill. We think overwhelmingly that it would be a good idea to accept the amendment and seek to divide the Committee.

**Question put.** That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

**Division No. 19**

**AYES**

Anderson, Fleur
Brock, Deidre
Jones, Ruth

**NOES**

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

The Chair: With this is it will be convenient to debate Government amendment 65.

**Clause 42**

**Meaning of “Environmental Protection”**

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I beg to move amendment 31, in Clause 42, page 26, line 1, after “considering” insert “advising”.

**Member’s explanatory statement**

The fourth limb of the definition of environmental protection covers the functions of monitoring, assessing, considering or reporting on anything within the other three limbs. This amendment adds the function of “advising”, which was included in the equivalent provisions of the draft Environment (Principles and Governance) Bill (clause 31(2)(d)), and last session’s Environment Bill (clause 40(2)(d)).

The Chair: With this it is will be convenient to debate Government amendment 65.

**Rebecca Pow:** Before I begin, it was terribly remiss of me that I omitted to mention the hon. Member for Edinburgh North and Leith when discussing the previous amendment. I meant to do so, but I forgot to pick up my bit of paper. All the hon. Lady’s comments were welcome and duly noted, and added to the general
discussion and debate that we had about marine matters. I apologise for that; I meant to do so and then it was too late.

Government amendments 31 and 65 insert the word “advising” into clause 42(d) of the Bill and make the same amendment to schedule 2 in respect of the Office for Environmental Protection in Northern Ireland. This is a technical amendment to ensure that our new environmental governance framework can operate fully and effectively.

Environmental protection is at the heart of what the Bill intends to achieve, and as such it is vital that we ensure that the meaning of environmental protection provided in the Bill is as effective as possible. Without the amendment, statutory duties for public bodies to advise on environmental protection, such as section 4 of the Natural Environment and Rural Communities Act 2006—which we all refer to as the NERC Act—which places a duty on Natural England to provide advice at the request of a public authority, would not be considered environmental law.

The OEP would not be able to monitor or enforce this kind of legislative provision and the Secretary of State would also not be obliged to make a statement about any new legislation in this place. Therefore, not including “advising” in this clause would place unnecessary limitations on our new environmental governance framework. This would limit the Government’s ambition to be a global leader in championing the most effective policies and legislation for the environment. I therefore commend the amendment to the Committee.

Dr Whitehead: The Minister’s amendment does indeed clarify matters and enables a better definition for monitoring assessments and reporting. The Opposition are happy for the word “advising” to go into the clause, but I would like the Minister to reflect briefly on why that word, which she is now putting in as an administrative amendment, was in previous iterations of the Bill. It was in the original Bill two years ago and also in the current Bill’s immediate predecessor, which was unable to make progress because of the election. Why is it, then, that the word did not appear in the current Bill? Was it an accident? Did someone consider it inappropriate, and is the Minister now making up for that lapse? Unless it was an accident, could the Minister assure me that there was no underlying reason for leaving out the word, the reinsertion of which now requires a Government amendment, and that she has not mentioned anything that we ought to consider?

Rebecca Pow: I thank the hon. Gentleman for that question and for saying that the Opposition are happy with getting the word “advising” into this clause. I think I am at complete liberty to say that it was just a technical correction. I am pleased that it has been spotted and thank the hon. Gentleman for having done so.

Amendment 31 agreed to.

Clause 42, as amended, accordingly ordered to stand part of the Bill.

Clause 43

MEANING OF “ENVIRONMENTAL LAW”

Dr Whitehead: I beg to move amendment 127, in clause 43, page 26, line 6, leave out “mainly”.

This amendment ensures that any legislative provision that concerns environmental protection is included in the definition of “environmental law”.

Clause 43 concerns itself with one word, but, as I think hon. Members will appreciate, it provides, as is the case with many Bills, the crucial underpinning of a particular part—namely, those clauses up to clause 43. In other words, it defines the words we have discussed this morning and on other occasions. Although it may appear that a great deal of debate is focused on very small parts of the Bill—on one or two words—it is important to pay attention to them and to get this right.

I appreciate that we may appear not to be making the progress we would otherwise want to make, but this is essential for the overall progress of the Bill. I can reveal to the Committee that I have discussed with the Government Whip exactly how much progress we can make today, and we need to ensure that it is commensurate with getting the Bill through in good order overall. I assure hon. Members—and, indeed, you, Mr Gray—that we want to make good progress and get the Bill through in good order and in good time. I hope that what we do this morning will aid rather than impede that progress.

Clause 43 concerns itself with the meaning of environmental law. Subsection (1) states that it “is mainly concerned with environmental protection, and…is not concerned with an excluded matter”.

Subsection (2) defines excluded matters. We are concerned about the word “mainly”. We think that legislation that defines the meaning of environmental law should be “concerned with” environmental protection, not “concerned mainly with” environmental protection. The use of that word implies that a number of other things could be construed as not being concerned with environmental protection. Logic suggests that the inclusion of the word “mainly” admits the possibility and, indeed, the likelihood that there are things outwith that particular definition.

Subsection (2) refers to excluded matters and I think we will discuss some of those in a future debate. Nevertheless, assuming it stands, it defines what is outwith the concerns of environmental protection. The Bill itself puts forward the things that are excluded from consideration, while subsection (1) uses the word “mainly”, which adds another area of uncertainty regarding what is and what is not excluded.

Ruth Jones: Does my hon. Friend agree that the term “mainly concerned” is ambiguous, with no clear legal meaning? Indeed, Dr David Wolfe QC drew attention to this issue in his written evidence to the pre-legislative scrutiny of the draft Bill.

Dr Whitehead: My hon. Friend is a mine of carefully culled information from previous sittings of the Committee, including the evidence sessions, which underline the points we are making this morning. She has set out that this is not just our concern; it is widely shared outside this Committee Room, and for that reason it deserves additional consideration.

Our case is that the word “mainly” should be removed and that the definition of environmental law should be that it is “concerned with environmental protection”. Subject to concerns that we may have about some of the areas listed under excluded matters, the fact that subsections (1) and (2) sit together should provide a very clear line of discussion about the meaning of environmental law as far as legislative provision is concerned.
**Rebecca Pow:** I support the broad approach to defining environmental law, which has always been our intention with clause 43. We also need to ensure, however, that the definition is practical and workable, particularly for the OEP. The definition must not give the OEP such a wide remit that it is unmanageable or intrudes into areas where it would be inappropriate for the OEP to act or to be expected to act.

10.45 am

The OEP’s principal objective is to contribute to environmental protection and the improvement of the natural environment, as we have said many times. We must have a definition of environmental law that safeguards that objective by making it clear to all parties that the OEP’s focus will be on legislation for environmental protection and improvement. Removing the word “mainly” could bring a large amount of legislation into the OEP’s scope—that is not unlike our discussions about heritage and the other legislation connected to that—and would risk diluting the OEP’s effectiveness or diverting its resources to matters that could be more adequately dealt with by another body.

Many areas of legislation can be considered to be concerned, to a small degree, with environmental protections, despite being mainly concerned with something else. That is a good point, and I will give one small example: road traffic speed limits are mainly concerned with road safety, but they also have implications for the environment. We do not think that the OEP should have a remit to enforce speed limits.

**Daniel Zeichner** rose—

**Rebecca Pow:** I think that is quite a good example, but the hon. Member for Cambridge might come up with another.

**Daniel Zeichner:** I will not come up with a counter-example, but I think many would draw a very different conclusion from the Minister’s example. I am not a lawyer, but we are advised that the term “mainly” is mainly ambiguous in law. Others have suggested that “related to” would be a better term. Why have the Government chosen “mainly” rather than “related to”?

**Rebecca Pow:** Just like the hon. Gentleman, we have also taken a great deal of advice and have used “mainly” for the reasons that I have set out. Although the OEP could still prioritise, it would be unhelpful for stakeholders were the OEP to be concerned in a huge range of issues that have only minor or tangential links to environmental protection or improvement.

It is important to note that the definition is already broader than it might initially seem because it applies to individual legislative provisions, so it could be part of a wider Act or statutory instrument. That means that even if most of an Act or statutory instrument is not mainly concerned with environmental protections, any specific provisions that are considered environmental law would come under the OEP’s remit. It is also worth noting that the term “mainly” is not prescribed in the Bill. The OEP and public authorities will therefore be able to interpret it in accordance with its normal—another legal word—meaning.

I appreciate the intentions of the hon. Member for Southampton, Test, but the amendment is not necessary or appropriate because the existing definition is sufficiently broad and balanced with the need to maintain the OEP’s focus on the protection and improvement of the natural environmental. I therefore ask him to withdraw his amendment.

**Dr Whitehead:** I thank the Minister for her response—she had a good go at it. We will not withdraw our concern, but as the Minister has given some reassurance about how the term “mainly” might be interpreted and has indicated that some thought was given to that prior to the Bill’s drafting, I beg to ask leave to withdraw the amendment.

**Amendment, by leave, withdrawn.**

**Deidre Brock:** I beg to move amendment 115, in clause 43, page 26, line 10, leave out paragraph (b).

This amendment removes the exceptions for legislative provisions relating to armed forces and national security matters from the definition of “environmental law” for the purposes of the scope of the OEP’s functions.

I thank the Minister for her kind words and would like to correct myself slightly because I did not welcome her back to her place earlier. I am very pleased to see her and am glad that she has recovered.

The armed forces are potentially among the biggest polluters. The evidence from Scotland demonstrates that there has to be some oversight of the potential for environmental damage. I mentioned that previously in respect of the issues that have arisen. The nuclear bases on the Clyde do some work with SEPA—the Scottish Environment Protection Agency—and local authorities to alert them to some instances, but not all. Even those scant measures are the subject of voluntary agreements rather than obligations or regulatory oversight. No information is forthcoming, however, on the rest of the defence estate across Scotland. I imagine there is nothing about the estates across England either.

We know that the MOD does environmental assessments because it told me so in answer to written questions, but that information is kept secret. That is not good enough. We all have to play our part. As I have said, no individual Department should be completely excused from shouldering that responsibility. The phrase “so far as is reasonably practical” is used in a lot of legislation from which defence and our armed forces are exempt, and it could be too easily used as a get-out when that suited. It is time for that loophole to be removed, and for oversight to be in a place whereby such activities could receive independent and robust scrutiny that—while allowing for sensitivities around national security and similar matters—ensured that activities could be monitored satisfactorily. I look forward to the Minister’s response.

**Rebecca Pow:** I thank the hon. Lady for her contribution. We heard something about the issue with respect to previous clauses as well, and we recognise the intention behind those. Protecting our country is fundamental, which is why exemptions for the armed forces and national security are maintained. Any legislation that could be covered by those exemptions would concern highly sensitive matters that were vital to the protection of our realm, so it is appropriate to restrict the OEP’s oversight of and access to information in such areas.

We want to make it clear, so that there is absolutely no doubt, that legislative provisions relating to these matters cannot be environmental law, and so cannot fall within the OEP’s remit. Legislative provisions concerning
national security would cover matters such as the continuous at-sea nuclear deterrent and other policy areas vital to the protection and defence of the UK, which are of the utmost importance.

The single most important thing that we do is protect our people. It would not be appropriate for the OEP to have jurisdiction here, where its intervention could hinder vital work. We expect that such specialist matters would also be outside the OEP's areas of expertise. As such, the OEP would not be appropriately qualified to enforce such issues. Legislative provisions concerning the armed forces would cover matters related to personnel and staffing that link to defence capability and matters such as the Armed Forces Act. It would not be appropriate for the OEP to have a role overseeing the legislation.

To be clear: the exemption does not mean that public authorities such as the MOD or any of the armed forces will be exempt from scrutiny by the OEP in respect of their implementation of environmental law—for example, a lot of MOD land has site of special scientific interest designation; it simply means that legislation concerning the armed forces or national security will be excluded from the OEP's remit. Much of the defence land is protected land with SSSI designation. The OEP will still be able to hold public authorities accountable on that land for their statutory duties concerning the protection of the site, as the relevant legislative provisions will not be covered as regards national security or the armed forces.

The Scottish Government have, I note, taken a similar approach on the issue in section 10(3)(a) of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill 2018. They also have a number of exemptions that are not unrelated to this. It is worth noting that the Ministry of Defence has its own environmental policies, and it went into that in some detail last week. It does a great deal of good environmental work. I should mention the stone curlew project I visited, but there are many others where it is doing excellent work for protected species and habitats. It prides itself on that, and has a strong record of delivering on those commitments. On the whole, its SSSIs are in pretty good condition, so all credit to the MOD.

I know that the hon. Member for Edinburgh North and Leith has done a lot of work in this area, and it is something she has talked about from the beginning. I thank her for raising this, because it gives us a chance to make the argument. Given the sensitivities and existing environmental commitments, and given my clarification that the provision does not exempt from scrutiny public authorities that are concerned with national security, I hope she will consider withdrawing the amendment.

**Deidre Brock:** I remind the Minister again that the Scottish Government have no control over defence issues, so it is perhaps no surprise that they have had to exempt that in the continuity Bill. I hear what she says about some scrutiny being applied, but I still feel that there is too much of a blackout around the information relating to these areas. That is what I, environmental groups and members of the public have issues with.

I appreciate that there are sensitive areas that will have to be dealt with differently, but I am afraid I remain to be convinced that the exemptions are appropriate in this day and age, and that transparency across Government is not required by the public and various environmental groups that we have all dealt with. This is certainly a principle that is very important to me. With that in mind, I will push the amendment to a vote.

**Question put.** That the amendment be made.


**Division No. 20**

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Question accordingly negatived.

**Deidre Brock:** I beg to move amendment 116, in clause 43, page 26, line 11, leave out paragraph (c).

This amendment removes the exceptions for legislative provisions relating to tax, spending and the allocation of resources within government from the definition of 'environmental law' for the purposes of the scope of the OEP's functions.

You will be relieved to hear, Mr Gray, that I will not be pushing the amendment to a vote, although that is something I am keeping in my back pocket for the future. It seems to me that by fully exempting the main thrusts of Government policy, which are the biggest tools in the Government's cupboard, the Government are not driving their policy towards the best possible environmental goals. By wholly exempting tax and spend from their thinking on such matters, the Government are missing a chance to engage their biggest public policy lever.

I would have thought that at least some consideration of these issues would have been useful for the Government. That would have shown real commitment to change, improvement, making a future unlike the past and putting the environment at the middle of decision making. As I have said in the past, I appreciate the Minister's sincerity and her belief in these issues, but surely she does not want it to look as though the Government are merely ticking a box to say that the gap left by Brexit is being filled. Instead, she can show that there is an environmental heart to this legislation and this Government, not simply warm words. Here is an opportunity to prove that.

I am particularly keen to hear the Minister's reasoning behind the exemption, because it seems that the Government are missing a trick by not showing their commitment to environmental issues on this particular point.

11 am

**Rebecca Pow:** I thank the hon. Lady for tabling her amendment and for saying she will not push it to a vote. Although I recognise the intention behind the amendment, it is important that the exemption is maintained to ensure sound economic and fiscal decision making. It would be inappropriate for the OEP to have oversight of the implementation of legislative provisions that specifically
concerned taxation, spending or the allocation of resources, as the OEP needs to keep its focus on the protection of the natural environment.

Legislation regarding taxation is developed by Treasury Ministers, as the hon. Lady knows, and it is important that they are able to set taxes to raise the revenue that allows us to deliver essential services, such as the NHS, policing, education and schools—all those things that we all need and want. It would not be appropriate for the OEP to have jurisdiction over this area or over the administration of taxation regimes by Her Majesty’s Revenue and Customs.

I want to give a bit of clarity on this, as I think there may be some confusion: the term “taxation” does not extend to legislation relating to regulatory schemes such as the plastic bag charge, which was particularly successful, or the imposition of fees to cover the cost of a regulatory regime. Therefore, legislation relating to these matters could be considered within environmental law, and the OEP could take enforcement action if the public authority failed to comply.

The words “spending and the allocation of resources within government” refer to decisions about how money and resources are designated within and between Departments. When specifically considering the exclusion or allocation of resources, it is important to note that it is only the legislative provisions on this subject that are excluded. It is just a matter of being very clear about that, as there are many other areas, such as the plastic bag charge, where the OEP will be able to engage.

If a public authority were to argue that it did not have adequate resources to implement an environmental law, that would not stop the legislative provisions in question being environmental law, although the authority’s comments on its resources could, of course, be considered during the OEP’s investigation. On those grounds, I ask the hon. Member whether she might withdraw her amendment, now that I have given her more clarity.

Deidre Brock: I thank the Minister for her comments, which have provided me with some clarity. As I said, I will not be pressing this matter to a vote, although I think I will pursue it in the future. We are all well aware of the Treasury’s track record in resisting attempts to constrain its activities in any way—I suspect there has been some arm twisting done behind the scenes on this one—and this is an issue I will revisit. I thank her again for her words and beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 35, in clause 44, page 27, line 7, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.—(Rebecca Pow.)

Amendment 36, in clause 44, page 27, line 17, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.—(Rebecca Pow.)

The Chair: We come to amendment 78. It was not moved previously by any member of the Committee, but if any member of the Committee wished to move it now, they would be welcome to do so.

Dr Whitehead: I would like to. This amendment, as hon. Members will see, Mr Gray, was tabled by two previous members of the Committee. With the effluxion of time, however, they are no longer members of the Committee, for reasons of ascent—

Daniel Zeichner: They have been elevated.

Dr Whitehead: Elevated indeed, to higher and more august posts in the Opposition ranks. They are therefore no longer on the Committee, but that does not mean that what they put forward should have less consideration by the Committee.

The fact that additional consideration should be given is underlined by the information that we received just before the Committee met, which was that the Government proposed to table amendments that will come up later in the Bill’s consideration, concerning illegal deforestation in supply chains and the due diligence to be carried out in connection with those supply chains. Hon. Members will see from the latest marshalled list of amendments that those amendments—a new clause, which we will debate later, and a defining amendment that will be debated a little earlier than that—have now indeed been tabled.

The amendments, in essence, adopt substantial parts of another amendment that was tabled by some hon. Friends and will appear as new clause 5, which we will debate much later. This concerns the question of due diligence in respect of overseas supplies of timber, for example, and various other elements such as that. I suggest that my amendment was an essential defining part of new clause 5, which has in effect been run with by the Government in the proposals they have just tabled. There is a complete chain of connection between all those.

In that context, what is missing from the Bill is a definition not just of environmental harm, whether direct or indirect, but of what is meant in that context by the global footprint of environmental harm or environmental activity. By tabling their amendments, the Government are strongly indicating that the global footprint of environmental harm is a key element of the Bill.

I am delighted that the Government have tabled their amendments, because they cover an area that a lot of people have been concerned about for a long time. We
will debate the detail when we get to the new clause, but the fact that the Government have considered the issue, listened and looked at what is before us in Committee—

Ruth Jones: Does my hon. Friend agree that it is good to see the Government using the important proposal tabled by my hon. Friends the Members for Leeds North West (Alex Sobel) and for Bristol East (Kerry McCarthy) as a stepping stone to improve the Bill? We should welcome the Government doing that.

Dr Whitehead: Yes, indeed. My hon. Friend reminds me of the constituencies of our hon. Friends who tabled new clause 5, so I may now refer to them.

The amendments that the Government have tabled are important and we welcome them. We would like to add to our welcome the idea that the definition in the clause—which is, after all, as I have emphasised, an interpretation clause to ensure that we know the content, detail and background—should be placed so that it links not only to what we have already discussed in the Bill but to what is in the Government amendments. This will be our only opportunity to discuss this because, by the time we get to the Government amendments, we will have gone past this section of the Bill, so it is important that we decide this one way or the other today.

The Chair: I apologise to the Committee. I had not spotted the fact that this amendment was debated on a previous occasion and that we therefore should not be having a second debate on it but should have moved it formally.

Amendment proposed: 78, in clause 44, page 27, line 24, at end insert—

"‘global footprint’ means—

(a) direct and indirect environmental harm, caused by,

and

(b) human rights violations arising in connection with

the production, transportation or other handling

of goods which are imported, manufactured,

processed, or sold (whether for the production

of other goods or otherwise), including but not

limited to direct and indirect harm associated

with—

(i) greenhouse gas emissions;

(ii) ecosystem conversion and degradation;

(iii) deforestation and forest degradation;

(iv) biodiversity loss;

(v) water pollution and abstraction; and

(vi) air pollution.”—(Dr Whitehead.)

Question put. That the amendment be made.

Question negatived.

Amendment made: 65, page 132, line 1, schedule 2, after “considering” insert “advising”. —(Rebecca Pow.)

This amendment makes provision for Northern Ireland equivalent to the provision made by Amendment 31.

Schedule 2, as amended, agreed to.

Clause 46 ordered to stand part of the Bill.

Schedule 3

THE OFFICE FOR ENVIRONMENTAL PROTECTION:
NORTHERN IRELAND

Amendment made: 66, in schedule 3, page 133, line 33, at end insert—

“(2A) But the OEP must not monitor the implementation of, or report on, a matter within the remit of the Committee on Climate Change.

(2B) A matter is within the remit of the Committee on Climate Change if it is a matter on which the Committee is, or may be, required to advise or report under Part 1, sections 34 to 36, or section 48 of the Climate Change Act 2008.”—(Rebecca Pow.)

This amendment modifies the OEP’s duty to monitor, and power to report on, the implementation of Northern Ireland environmental law under paragraph 2 of Schedule 3. It provides that the OEP must not monitor or report on matters within the remit of the Committee on Climate Change, which is defined in sub-paragraph (2B) by reference to specified provisions of the Climate Change Act 2008.

11.15 am

Rebecca Pow: I beg to move amendment 221, in schedule 3, page 146, line 24, at end insert—

“22A (1) Section (Guidance on OEP’s enforcement policy and functions) (guidance on OEP’s enforcement policy and functions) is amended as follows.

(2) At the end of subsection (1) insert ‘, so far as relating to the OEP’s Part 1 enforcement functions.’

(3) In subsection (2)—

(a) in paragraph (a) after ‘policy’, insert ‘so far as relating to its Part 1 enforcement functions’;

(b) in paragraph (b) for ‘enforcement functions’ substitute ‘Part 1 enforcement functions’.

(4) In subsection (5) for “enforcement functions” substitute “Part 1 enforcement functions.”’

Schedule 3 to the Bill confers on the OEP enforcement functions in relation to Northern Ireland, which are similar to its enforcement functions under Part 1 of the Bill. Guidance issued by the Secretary of State under NC24 is not to apply to the enforcement functions conferred by Schedule 3, which are devolved. This amendment ensures that when Schedule 3 comes into force, the guidance power under NC24 will be limited to the OEP’s enforcement functions under Part 1 of the Bill and will not include its enforcement functions under Schedule 3.
The Chair: With this it will be convenient to discuss Government new clause 24—Guidance on OEP’s enforcement policy and functions.

Rebecca Pow: That was a massive canter or, actually, a gallop. We have whizzed on. The amendment and new clause will provide a power for the Secretary of State to issue guidance to the OEP on the matters listed in clause 22(6) concerning its enforcement policy. The OEP will be required to have regard to this guidance in preparing its enforcement policy and in carrying out its enforcement functions. This is an important new provision, which will allow the Secretary of State to seek to address any ambiguities or issues relating to the OEP’s enforcement functions where necessary. We expect the OEP to develop an effective and proportionate enforcement policy in any event, but Secretary of State guidance can act as a helpful resource for the OEP in the process. For example, the Secretary of State may issue guidance to the OEP relating to how it should respect the integrity of other statutory regimes, including those implemented by regulators such as the Environment Agency. That could also be invaluable to resolve and clarify any confusion that may arise regarding the wider environmental regulatory landscape.

As the Minister ultimately responsible to Parliament for the OEP’s use of public money, it is appropriate that the Secretary of State should be able to act if the OEP were not exercising its functions effectively or needed guidance from the Secretary of State to be able to do so, for instance, if it were failing to act strategically and, therefore, not taking appropriate action in relation to major systematic issues. The new clause will not provide the Secretary of State with any power to issue directions to the OEP—that is important—or to intervene in specific decisions. Rather, the OEP is simply required to have regard to the guidance in preparing its enforcement policy and exercising its enforcement functions. Furthermore, the Secretary of State must exercise the power in line with the provision in paragraph 17 of schedule 1, which requires them to “have regard to the need to protect” the OEP’s independence. That is important as well.

Daniel Zeichner: Will the Minister give way?

Rebecca Pow: May I just finish? Any guidance must also be laid before Parliament and published. That means that the process will be transparent, and the Secretary of State will ultimately be accountable to Parliament.

There are precedents elsewhere in legislation for this type of approach. For example, the Climate Change Act 2007 provides for the Secretary of State to give guidance to the Committee on Climate Change—a body that is considered to be highly effective and independent.

Daniel Zeichner: This is very important, and it came as a surprise to many of us that the Government are introducing it as an amendment. Will the Minister explain why it was not in the Bill originally? What was the process that led to the introduction of these amendments?

Rebecca Pow: As usual, much debate and discussion went on. It is all about transparency and clarity for the OEP—[Interruption.] The hon. Gentleman is raising his eyebrows. The Opposition are always seeking to suggest that there is something underhand going on, but I wear my heart on my sleeve, and this is all in the interests of transparency. There is a whole flowchart about how the OEP will remain independent. Schedule 1(17) sets out that the Secretary of State must be aware of the independence of the OEP. It is about giving much more clarity and focus to the way that the OEP will operate.

Amendment 221 is a consequential amendment to schedule 3, which provides an option to extend the OEP’s functions to apply to devolved matters in the future. As the functions conferred by schedule 3 are devolved, the amendment ensures that, if schedule 3 comes into force, any guidance issued under new clause 24 will not apply to those devolved functions. Amendment 221 is therefore necessary to ensure that new clause 24 is compatible with the devolution settlement in Northern Ireland. It leaves the Government the flexibility to assist the OEP through guidance if ever necessary while ensuring that it remains an independent enforcement body. In the light of that, amendment 221 is essential to ensuring that new clause 24 is compatible with the devolution settlement for Northern Ireland.

Dr Whitehead: I do not have any great objections to this clause, but we should reflect on the point made by my hon. Friend the Member for Cambridge. It is a bit shocking that this proposal was not in the Bill previously. This section is about ensuring that the OEP is set up and functions well in Northern Ireland, with all the issues that go with devolved government and the replication of its functions in the Province. Yet the ability to transfer functions on a devolved basis appears not to have occurred to the framers of the Bill before it was put before us. It is only after what in this context we might call the fortunate suspension of the Bill for quite a long time that it has been possible to reflect on that omission and this amendment appears before us. That is a bit concerning, in terms of what else in the Bill might not do justice particularly to the devolution settlements. That is a worry, but we are not worried about the actual content that has appeared. Therefore, we do not want to divide the Committee on this amendment.

Amendment 221 agreed to.

Amendment made: 67, in schedule 3, page 148, line 18, leave out “the National Assembly for Wales” and insert “Senedd Cymru”. —(Rebecca Pow.)

11.25 am
The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
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SCHEDULE 3 agreed to, with amendments.
CLAUSE 47 agreed to.
SCHEDULE 4 agreed to.
CLAUSE 48 agreed to.
SCHEDULE 5 agreed to.
CLAUSE 49 agreed to, with amendments.
SCHEDULE 6 agreed to.
Adjourned till Thursday 12 September at half-past Eleven o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 14 November 2020
The Committee consisted of the following Members:

**Chairs:** † James Gray, Sir George Howarth

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
† Anderson, Fleur (*Putney*) (Lab)
† Bhatti, Saqib (*Meriden*) (Con)
† Brock, Deidre (*Edinburgh North and Leith*) (SNP)
† Browne, Anthony (*South Cambridgeshire*) (Con)
† Docherty, Leo (*Aldershot*) (Con)
Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)
† Graham, Richard (*Gloucester*) (Con)
† Jones, Fay (*Brecon and Radnorshire*) (Con)
† Jones, Ruth (*Newport West*) (Lab)
† Longhi, Marco (*Dudley North*) (Con)
† Mackrory, Cherilyn (*Truro and Falmouth*) (Con)
† Moore, Robbie (*Keighley*) (Con)
† Pow, Rebecca (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
Thomson, Richard (*Gordon*) (SNP)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Zeichner, Daniel (*Cambridge*) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Tuesday 10 November 2020

(Afternoon)

[James Gray in the Chair]

Environment Bill

Schedule 3

The Office for Environmental Protection: Northern Ireland

Question proposed, That the schedule, as amended, be the Third schedule to the Bill.

2 pm

Dr Alan Whitehead (Southampton, Test) (Lab): There are two things on which I want to reflect. We must remember that the schedule concerns the Northern Ireland function of the Office for Environmental Protection, and should effectively provide the devolved Northern Ireland Assembly with a reasonable replica of what is required to set up the OEP in England and Wales. At the same time, it should provide for substantial reporting and discretion to the Assembly by the OEP.

A particular concern, about which I hope the Minister will reflect and respond, is that that replication of the OEP’s operation for its Northern Ireland function is not as close as it could be. Amendment 194, which was tabled by the hon. Members for Belfast South (Claire Hanna) and for Foyle (Colum Eastwood), who both represent constituencies in Northern Ireland, was discussed earlier as part of a debate on a group of amendments, so we did not actually discuss its content. I draw the Committee’s attention to the effect that amendment would have on the OEP in Northern Ireland: it sought essentially to provide a mechanism for long-term and interim targets.

That mechanism was the same as the one for the OEP response to targets set out in clauses 1 to 6. Although there is reference to those targets in general, it is very different from clause 1. Indeed, it does not include, for example, achievement measures and does not specifically discuss interim targets. That could have been resolved with the amendment, as the formulation is different from the one for England and Wales. I wonder whether that has arisen by omission or was the Government’s intention that there should be different arrangements relating to targets and interim targets for England and Wales and for Northern Ireland? Was their intention that the OEP should have different responsibilities towards targets in Northern Ireland? That is the first concern.

The second concern relates to the formulation of the requirement for Ministers to lay before Parliament the notices and legal actions that the OEP has introduced in respect of environmental law and environmental protection. Hon. Members will see that there is a repetition of our earlier debate about what we characterised as a particularly egregious “may” and “must” issue. Clause 3(6), on page 134 of the Bill states:

“The Northern Ireland department concerned may, if it thinks fit, lay before the Northern Ireland Assembly—(a) the advice, and (b) any response that department may make to the advice.”

Hon. Members will recall that is exactly what we debated, and whether the Minister responsible might decide that he or she would lay something before Parliament or, on the other hand, they might decide that they would not lay something before Parliament, and that was the end of that. We expressed concern about what we thought was a very poor formulation, as far as the UK Parliament was concerned, when we discussed the relevant amendment.

In the first instance, it looks as if that formulation is simply being repeated as far as the OEP and the Minister are concerned, in Northern Ireland, but there is a difference: it is not the Minister who may lay something before the Northern Ireland Assembly if he or she sees fit, but the Northern Ireland Department. I am puzzled by that formulation. How it is possible for an entire Department to think that something is fit, or not? In the formulation used in the England and Wales version, there is a person—the Minister—who must decide whether or not it is fit. We criticised the potential actions of that person in not thinking that something was fit.

I am puzzled about how this will work. Someone, somewhere, may or may not decide to lay something before the Northern Ireland Assembly. That is okay as far as it goes, but we do not like the idea of “may or may not”. However, I do not think what we are considering is a particularly easy legal concept: not only an entire Department thinking fit, but an entire Department thinking at all. The formulation that the Department “thinks fit” would require an entire Department to decide something, and an entire Department then to decide whether what it thought fit would be laid before the Northern Ireland Assembly.

There is no identified person at any stage in this to whom the Northern Ireland Assembly say, “We would rather you had put that in front of us. Why have you not, and why did you not think it was fit to put that in front of us?” Instead, they presumably have to knock on the door of the UK’s Northern Ireland Office and ask to speak to someone who could shed some light on that, then pursue how that thinking and fitness came about in the corridors of that Office.

That seems to be a very strange formulation. Can the Minister elucidate whether that means that an individual, one way or another, is responsible in the Northern Ireland Office and can be identified and can take the responsibility for thinking fit or otherwise? Or is it just a formulation that is so legally opaque as to make it virtually unworkable? If that is the case, would the Minister think about taking that away and thinking again about how the provision is formulated as far as Northern Ireland is concerned?

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I want to be clear that, as part of our dual commitment to a strong Union and protecting and enhancing the natural environment, the Northern Ireland Executive have asked us to extend certain aspects of our new environmental governance framework to Northern Ireland, subject to affirmation from the Assembly. A great deal of discussion has gone into that, and the Executive asked for that. I want to be clear about that. They do not believe it is clouded in opaqueness, because they have been fully engaged.

Schedule 3 provides an option to extend the OEP’s functions to apply to devolved matters in Northern Ireland in the future, should the Assembly decide to do so.
That is important. The shadow Minister touched on targets, but we voted on that earlier in schedule 2, so I do not think that is necessarily relevant to what we are talking about now.

The provisions in part 1 of schedule 3 will provide the OEP with powers in Northern Ireland broadly equivalent to those in England. For example, the OEP will be able to monitor and report on the implementation of Northern Irish environmental law, much as it would be able to do in England under clause 26. Similarly, schedule 3 provides for the extension of the OEP’s enforcement functions to Northern Ireland, taking into account the two nations’ different court systems. Part 2 will provide for the OEP to adapt its operating procedures appropriately if extended to cover devolved matters in Northern Ireland, and amends the general functions of the OEP so they may adequately apply to Northern Ireland. For example, part 2 ensures appropriate Northern Ireland representation on the OEP board and ensures that the OEP’s remit covers Northern Irish environmental law. Schedule 3 is essential to ensure the extension of the OEP to Northern Ireland should the Assembly decide to do that. I hope that I have made that quite clear.

Dr Whitehead: I do not think the Minister has clarified what paragraph 3(6) of schedule 3 means. I offered a possible interpretation of what that clause meant—it appears to say that an entire Department is responsible for thinking, and for thinking something fit. I assume that the entire Department that is mentioned in the provision is the Northern Ireland Department concerned, so that, as the Minister said, should these matters proceed properly towards devolution, there will be—she said that there has been, as I anticipated there should have been—extensive discussion with the devolved Administration in Northern Ireland on how this will work and what it means, and that a substantial part of this process is at their request. It is important to understand, since we are making legislation here for that to work there, what this actually means. I assume that it does not mean that the UK Northern Ireland Office is responsible, if it thinks fit, for laying before the Northern Assembly—

2.15 pm

Rebecca Pow: First, I want to clarify the fact that the decision to commence provisions to extend the OEP to devolved matters to Northern Ireland is a matter for Northern Ireland Ministers and for affirmation by the Assembly. I also want to point out that it is common practice for Northern Ireland to confer powers on a Department. Departmental functions are exercised subject to the direction and control of the departmental Minister, as set out in the Departments (Northern Ireland) Order 1999.

Dr Whitehead: I thank the Minister for that. That is very helpful. If it is the case that a Department, in Northern Ireland practice, effectively takes its cue for these things from the Minister in the Department that is responsible, that potentially answers my particular question. I have not heard that before, but it would be good if we could be assured that that is what will happen in practice once that goes into devolution—that there will be a person responsible for thinking fit, namely, the Minister in that Department.

Rebecca Pow: I will intervene again and give those assurances. I send a great many letters to my counterpart in that Department. We have a lot of toing and froing, so the hon. Gentleman can be assured that there is a lot of communication. We want it to work for Northern Ireland the way that they want it to work.

Dr Whitehead: Absolutely, and that is what we want to do as well. That is why we want to ensure that it works as well as it should. It appears, I hope, that this formulation, strange as it looks, is capable of being operated in a sound way, as far as the Assembly is concerned for the future, and that people will not be running around corridors asking the building to think, but running around corridors asking the Minister to think, which is what I thought should have been in the Bill. If it works that way round, that is fine. I thank the Minister for her clarification. I have no intention of opposing the schedule.

Question put and agreed to.

Schedule 3, as amended, accordingly agreed to.

Clause 47 ordered to stand part of the Bill.

Schedule 4

PRODUCER RESPONSIBILITY OBLIGATIONS

Ruth Jones (Newport West) (Lab): I beg to move amendment 16, in schedule 4, page 151, line 12, leave out “may” and insert “must”.

It is still a pleasure to serve under your chairmanship, Mr Gray, even though we are not mentioning that. It is lovely to have the Minister back in her rightful place. The Environment Bill is very important and long overdue, as we have heard. I want to touch on the reason we are here, what we are dealing with, and how we can honour the pledges and promises made to the people of the United Kingdom, primarily in England.

The Bill, according to the Government’s published paper, comprises two thematic halves. The first provides a legal framework for environmental governance, which my hon. Friend the Member for Southampton, Test so knowledgeably touched on this morning and last week. The second half of the Bill makes provision for specific improvement of the environment, including measures on waste and resource efficiency, which we are discussing today. In the coming days, we will cover air quality and environmental recall; water; nature and biodiversity; and conservation covenants. They will all be discussed. We need to get the Bill right to ensure that we honour the promise to provide a once-in-a-generation piece of legislation—a promise that the Minister and many Government Members heralded at every opportunity, at least until the Bill disappeared back in March. It is so good to have it back.

That is why Her Majesty’s Opposition have tabled this amendment. We must not have a Bill that is made up of passive “mays” or “coulds”; we need “wills” and “musts”. Many in this House and across England, and those in the sector, have waited hundreds of days for the missing-in-action Bill. Now that it is back and we are here in Committee, we must not waste—I apologise for the pun—the opportunity to have the strongest possible legislation, so we have tabled the amendment.

Rebecca Pow: I thank the hon. Member for proposing the amendment. I also welcome her taking up the cudgels—perhaps I should say something less aggressive.
Rebecca Pow: Yes, taking up the baton on behalf of the Opposition. May I assure the hon. Member for Newport West that the Government have every intention of making regulations using schedule 4? The Bill creates producer responsibility obligations in respect of specified products or materials. That is one of a number of provisions that will enable us to take action significantly to improve the environmental performance of products across their entire life cycle—from the raw material used, to end-of-life management. Other powers in the Bill include our ability in schedule 5 to require producers to pay disposal costs for their products; our powers in schedule 6 to introduce deposit return schemes; and the powers in schedule 7 to set resource efficiency standards in relation to the design and lifetime of products.

The Government need the flexibility to decide what measures will best deliver the outcomes that we want. Imposing producer responsibility obligations in all cases may not be appropriate. The power is drafted in a way that gives us the flexibility to choose the appropriate measure or combination of measures for any product, and to decide which producers are obligated, the obligations on them, and the steps that they need to take to demonstrate that they have met their obligations.

In this instance, we will use these powers to introduce new regulations for producer packaging responsibility. That will increase the reuse and recycling of packaging and reduce the use of unnecessary and avoidable packaging. In 2019, we consulted with the devolved Administrations on proposals to reform the regulations, and we will consult again in 2021, so it is a lengthy process, but a lot of discussion has informed this. In the resources and waste strategy for England, we made commitments relating to updating our already up-and-running producer responsibility schemes on waste electricals, waste batteries and end-of-life vehicles; these powers are needed to implement those commitments. We also committed to taking action to address food waste.

Products vary. They have different supply chains, use different materials and have different impacts on the environment. That is why we need to be able to introduce product-specific regulations, using the appropriate powers. This power provides the flexibility to impose producer responsibility obligations where it is appropriate to do so, and that flexibility would be removed by the amendment. I therefore ask the hon. Member to kindly withdraw it.

Ruth Jones: I thank the Minister for her comments. I take the point about flexibility; in my previous job as a physiotherapist, however, we had both flexibility and control. Splints and corsets were very useful in ensuring flexibility in confined areas. That is why the “mays” should be turned into “musts”. The grammar is important to us. But I take the point, and this is a probing amendment, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ruth Jones: I beg to move amendment 158, in schedule 4, page 151, line 16, after “waste” insert

“... reducing the consumption of virgin materials.”

This amendment is about taking strengthened measures on tackling waste. It refers to virgin materials, which the Minister mentioned previously. For the benefit of those outside these walls who are maybe not as knowledgeable as the Committee, these are materials like new paper or plastic.

This amendment, although specific and focused in its approach, seeks to ensure the Bill includes the strongest possible measures to tackle waste. The wider focus on the obligations and responsibilities of producers is important—not because the Bill will directly impact those parts of the world outside the UK, but because of the need to get our own house in order in the UK, and in England specifically. We need to do this because it is important to set an example to others, and the Minister alluded to this in discussions about COP26 next year.

We want a strong Bill. If colleagues support this amendment, we will help deliver a strong Environment Bill with a strengthened schedule 4. It would make clear to the producers of materials used in everyday life that they have responsibilities and we are going to hold them to account.

Fleur Anderson: I welcome the intention behind the schedule, which is to shift the burden of disposal costs from local authorities and the taxpayer to producers; the burden on them has historically been too low. I also welcome the shift in this Bill towards tackling food waste. I have been campaigning on this in Wansdworth borough for many years, and to see that it will be in the legislation and has to be addressed by the council is very welcome. However, in some ways, the drafting is too loose; as often in this Bill, it needs some tightening up, and I hope that these Labour amendments will be useful in doing that.

In terms of virgin materials, it is not good enough to focus on the end-of-life solutions for materials. The schemes introduced under this schedule need to incentivise producers to make the right decisions at the start of the process, as well as ensuring that they fulfil environmental responsibilities at the end. As the UK Environmental Law Association recommends, the Government need to clearly signal that extended producer responsibility covers the full life cycle, not only waste disposal. Reducing virgin material use is key to this, and to the Bill being as ambitious as we want it to be. Amendment 158 adds some words to ensure this.

Virgin materials include timber, plastic resin derived from the petroleum refining process and mined materials. This amendment would ensure that the producer responsibility scheme considers upstream measures that tackle consumption and production as well as waste minimisation. Although waste minimisation is important, it is not sufficient by itself to guarantee a reduction in virgin material use. Without adding this amendment, we cannot be sure the outcome will be the reduction that we need to see.

Manufacturing products with virgin materials usually requires much more energy and depletes more natural resources than using recycled materials, so when we reduce their use, there is also an offset for other processes. Action to reduce usage of virgin materials is essential to tackle overall depletion.

Rebecca Pow: I thank the hon. Member for her interest in this provision and for this amendment. I reassure her and the Committee that the amendment is not needed.

Reducing the consumption of virgin materials is important; we all agree on that. In our 25-year environment plan, we stated our long-term ambition of doubling...
resource productivity by 2050. That is about maximising the value and benefits we get from our resources, and managing these resources more sustainably to reduce associated environmental impacts.

I can assure the hon. Member for Putney that we are tackling this issue in the Bill. We have powers in schedule 5 to require producers to pay the disposal costs of the products or materials they place on the market, and for these costs to be varied according to the design or consumption of the products. Through the costs that producers pay, they can be incentivised to design and manufacture products that use fewer materials, that include more recycled materials, and are much easier to recycle and break down, so that the parts can be reused elsewhere.

2.30 pm

Bim Afolami (Hitchin and Harpenden) (Con): In my constituency, as in many others, I suspect, there is often difficulty getting recycling plants put in. I completely agree with the Bill’s intention to shift the cost to producers. However, what proposals are there to get recycling plants and places to process the waste, paid for by the producers, put in the right places? One could spend all the money one likes, but if there is nowhere to get the waste recycled, it cannot be recycled.

Rebecca Pow: I thank my hon. Friend. He touches on the crux of the matter. This is all-encompassing. We are driving towards what we call a circular economy. That is the purpose of the measures on waste and resources. They will ensure consistent collections, though we have not got on to that yet, and require products to be more recyclable, but we will need them to be collected and recycled. That will drive the demand for those plants to be established in the right place. Things will join up much better than they do today. That is what the measures in the Bill are all about. I thank my hon. Friend for raising that important point. This should make the whole procedure a more complete circle.

Deidre Brock (Edinburgh North and Leith) (SNP): Do the Government intend to invest in some of those recycling centres, or is the intention to leave it to the private sector to fill that need? That is a topic I have been pursuing lately and I am interested to hear the Minister’s views.

Rebecca Pow: That topic is not referenced in the Bill. Those are issues relating to how the regulations will work when it comes to producer responsibility and deposit return. Local authorities will still play a huge role, but the great point is that they will not be responsible for all the costs any more. What is brilliant is that the costs will be shifted on to the businesses. They will then be forced to design products that are much easier to recycle. That brings us again to the circular economy. I thank the hon. Lady for raising another good point.

The measures will help us to tackle waste from the beginning of the life cycle, and complement measures elsewhere in the Bill that support the later stages of that cycle. There are also powers in schedule 7 that will allow resource efficiency requirements to be placed on specified products. Those requirements will relate to factors such as the materials from which the product is manufactured, and the resources consumed during its production. For instance, thinking off the top of my head, one could say that clothing or textiles must contain a certain amount of recycled fibre. There could be a requirement to use fewer virgin materials or more recycled materials in the manufacture of the product.

I am pleased that the hon. Member for Putney welcomes the schedule. It is great to have that positivity, and I applaud her work on food waste. It is very exciting that it will become law for food waste to be collected. That will be an important part of the Bill, because while some local authorities, such as mine in Taunton Deane, do collect it, loads do not. Much of it ends up in landfill, giving off emissions. We could make so much better use of it, and could focus attention on how much food waste is produced, which is frankly shocking.

Dr Whitehead: Is the Minister’s example of requiring a certain proportion of textiles to include recycled materials now a policy?

The Chair: In the context of this amendment, Minister.

Rebecca Pow: I was just giving a random example, off the top of my head. I do not see any policies written here. Is the hon. Gentleman trying to catch me out?

Dr Whitehead: I was hoping it was going to be policy.

Rebecca Pow: The measures are the kind of thing that will open up the doors to all those opportunities.

The Chair: If it is any comfort to the Minister, she was deviating slightly from the content of the amendment.

Rebecca Pow: I was, and I thought the Chairman was going to interrupt me when I mentioned all the food.

Finally, schedule 4 allows us to set obligations on producers in relation to reuse, redistribution, recovery and recycling. All that will contribute to a more resource-efficient economy. For those reasons, I ask the hon. Lady to withdraw the amendment.

Ruth Jones: I am grateful for the Minister’s reassurance, in which she stressed the importance of the cyclical nature of the production of goods. We must break the cycle of new, new, new. I am risking the wrath of the Chair, but when I sat on the Environmental Audit Committee, we had an investigation and report into the throwaway nature of the fashion industry; that is very relevant to the Bill.

I thank the hon. Member for Hitchin and Harpenden, my hon. Friend the Member for Putney and the hon. Member for Edinburgh North and Leith for mentioning the importance of recycling centres. There is no point in everyone sorting their recycling at home if there is nowhere to recycle things. That is an important part of the process, which is why we will press after the legislation is enacted to ensure that happens. Having received the Minister’s reassurance, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ruth Jones: I beg to move amendment 159, in schedule 4, page 151, line 32, after “be” insert “prevented, reduced.”.
As you might notice, the amendment is very similar to others put before the Committee today. It focuses on the strength of the language that Ministers have chosen to use in the Bill. In recent days, my hon. Friends the Member for Southampton, Test and for Cambridge and I have said that we will hold Ministers to their promise to deliver a once-in-a-generation Bill. “Once in a generation” means it has to be big, bold and comprehensive. That is why we are calling on the Minister to use the strongest language in the Bill. I implore the Minister to be ambitious and bold in the text that is used.

I want to be helpful. I want the Minister to be able to sing from the rooftops about the Bill. I hope she will acknowledge the Opposition’s willingness to make it an even better Bill that really delivers for people across the whole UK. Let us not limit ourselves to moving things around, or shuffling deckchairs on the Titanic. Let us use this Bill to deliver real, long-term change.

The amendment would add “prevented” and “reduced” to the Bill, so that it does not just say “reused” and “redistributed”. We want the country to cut its reliance on plastics and paper, and to tackle waste in a meaningful way. Once again, the amendment will help deliver a strong Environment Bill with a strong schedule 4.

Fleur Anderson: As my hon. Friend has described so well, the amendment would widen the powers, so that producer responsibility regulations allowed targets for waste prevention and reduction, not just reusing and recycling. That is absolutely vital to achieving real carbon reduction and real waste reduction.

Waste prevention focuses on reducing the amount of waste generated from the source. It involves looking at manufacturing, processing, packaging, storage, recycling and disposal processes, to identify opportunities to manage waste and minimise the impact on the environment.

Although this looks like a minor amendment, the two words to be added would create another dimension to the powers of the Bill and the impacts it covers. Activities would include mapping packaging and production waste to inform and develop good practice, and developing recommendations and strategies for prevention, recovery and reuse. The words “prevention” and “reduction” are essential for doing that. An example from real life is utensils. The measures would look not just at plastic utensils and how to deal with them when they are thrown away, but reusing utensils from the start, so there is no re-packaging to look at. I have been campaigning about nappies, which form a huge part of our landfill. Preventing the use of disposable nappies would incentivise producers. “Prevention” could be a game-changing additional word in the Bill. A home composting scheme run by my neighbouring borough of Lambeth looks at the prevention of waste right from the beginning, in the home.

This provision would enhance the Bill. I endorse the addition of the words “prevented” and “reduced”.

Dr Whitehead: I want to add a little bit of context to amendment 159. As my hon. Friends the Members for Putney and for Newport West have already mentioned, it increases the dimension within which these issues can be considered in terms of targets. It does so not by an incidental addition of words, but essentially by adding what is in the Government’s White Paper “Our waste, our resources: a strategy for England”, which was published in 2018.

In that White Paper, the Government fully embrace the notion of the waste hierarchy, and the document contains lots of good charts to illustrate it. At the bottom of the waste hierarchy are things such as landfill. Moving up the hierarchy, we find energy from waste, which is still pretty low in the hierarchy; after that, it is necessary to start recycling. From a policy point of view, measures should always drive waste as far up the hierarchy as possible. If it is possible to recycle waste, rather than putting it into an incinerator as an alternative to burying it in the land, that is what should be done. If, however, there is residual waste that cannot be incinerated or recycled—there is some of that in the waste stream—it should be put into landfill, but only on a residual basis.

We would hope that over time, the amount of waste going into landfill will be virtually nil, because we have moved up the waste hierarchy in terms of how the system works.

In the waste hierarchy, there are two other categories above recycling: reducing and preventing. The best way to handle a waste stream is to make sure that there is less waste in it in the first place, and that it contains only things that cannot be reused or prevented from arising.

At that point, we would be dealing, pretty much, with a residual waste stream when it came to volume and climate change energy considerations. In the whole waste stream, the only waste to be addressed would be residual waste from a largely circular economy, in which products are designed to come apart so that the parts can be put to other uses, and, through industrial symbiosis, products that one company views as waste are presented to other organisations as raw material.

That process is possible only if product design or articulation allows it to happen. For example, the expectation would be that a vehicle could be taken apart and all the components—even if they are made of different elements, and they are not all metal or plastic—would be sufficiently pure and reusable to be used as the raw material for something else straight away. As we will discuss later, that is particularly important with the coming upon of electric vehicles. If electric vehicles cannot be taken apart—in particular, if their batteries cannot be taken apart to recover the rare earth elements, lithium and other materials for use in other batteries, so that they are not put into the waste stream in the first place—we are not very far down the line of recycling.

2.45 pm

Reuse is immensely important in the waste hierarchy. It sits only marginally behind the reduction of packaging and the reduction of unnecessary elements in manufacture, by careful design, to ensure that a product uses the minimum amount of material that is compatible with that material’s life. If we do those things, we will have a complete waste hierarchy in operation. The two words that would be added by the amendment are essential components of that hierarchy. I am not saying anything particularly novel or different, because that is the process the Government have adopted in their waste strategy.

Daniel Zeichner: My hon. Friend speaks with passion and experience on this issue. This is not novel, so I have found myself wondering, exactly as he does, why those
words have been excluded. Would he care to speculate on why the Government would choose not to have them in the Bill?

**Dr Whitehead:** My hon. Friend, as always, makes an important point about what is and is not in the legislation. I would expect him to have similar views about other words. It seems plain to me that if the waste hierarchy is to be adopted, all the components of that hierarchy must be in the description. They are not there, and I cannot speculate on why not. It may be that those who drafted the Bill were not fully aware of the waste White Paper when they sat down late at night to write that passage. If they were not, they should have been. The amendment would offer an opportunity to rectify that omission. We are not suggesting that there was any malevolent intention; perhaps it is just an omission. I hope the Minister can oblige us by ensuring that the words sit proudly in the Bill, alongside Government policy.

**Rebecca Pow:** I thank the hon. Member for Newport West for the proposed amendment. Although I recognise the intentions behind it, I must disagree with it. She pressed the Government to be as ambitious as possible, and I assure her that we are being ambitious. I am delighted that we think in the same way in wanting the highest ambition; I like to think that we are as one on that.

I do not believe we need the amendment. The power, as drafted, already allows us to place obligations, including targets, on producers to prevent waste or to reduce the amount of a product or material that becomes waste. Paragraph 2(2) gives examples of how targets may be set. They include, but are not limited to, the setting of targets to increase the proportion of a product or material that is reused, redistributed, recycled or recovered to prevent it from becoming waste. Those examples do not prevent the powers in schedule 4 from being used to set targets in relation to preventing waste from being produced, or reducing the amount of waste that is produced.

Producer responsibility obligations could be set as targets to incentivise producers to prevent or reduce waste, but they do not have to be set only as targets. We can all get a bit hung up on targets. Targets are important, but we could use the powers, for example, to require producers to take specific action to tackle waste, such as by requiring retailers to take back products. There is a lot of work in this space in the area of electronic waste, where department stores are expected to take back products. Another possibility could be single-use cups, once they have been used. Obligations such as this should create a strong incentive to create less waste in the first place: I think we are all agreed that that is what we are driving towards.

The hon. Member for Putney made a similar case about the circular economy. I applaud her work on nappies; I was one of those mothers. I have three children, and—this was a long time ago, when people were not talking about this sort of thing—with my first child, I used only washable nappies. Can you imagine, Mr Gray, how much work that was? Oh my goodness—not to mention the smell! I am not digressing, because this is all relevant. I was a news reporter at the time, and I interviewed a lady who had set up a business making these nappies, so I thought, “I am going to use those.” In fact, I think I used my child allowance support to pay for them. That was what I had decided I would do, but it was a labour of love.

The point is that through all these measures in the Bill, manufacturers of any product will be driven to think about what is in it. For example, are nappies made of recycled material? Do they have recycled content? Could they be reused? Are they washable? The Bill will drive everyone to think like that.

**Dr Whitehead:** If they made nappy pins that did not stab the baby.

**Rebecca Pow:** Did the shadow Minister use washable nappies for his children?

**Dr Whitehead:** I did indeed, absolutely.

**Rebecca Pow:** Did he?

The hon. Member for Putney also raised an important point about garden waste. We have now legislated for garden waste to be collected: that is in clause 54.

I also wanted to give a quick résumé about the life cycle issue that the hon. Member for Southampton, Test touched on. He mentioned the waste hierarchy, which is basically driving towards a circular economy. That is the driving force of the resources and waste strategy, and it is the intention behind the Bill. I will whizz through the related measures in the Bill, which are about raw material, extraction and manufacturing.

The resource efficiency requirement power enables standards to be set that relate to the materials and techniques used by manufacturers, such as specifying the minimum amount of recycled fibre in clothing, as we mentioned earlier. The resource efficiency information power will drive the market by providing consumers and businesses with the information they need to make sustainable choices. I can see my hon. Friend the Member for Gloucester looking at me; in order for him to be able to make the right choices, he wants to know how sustainable a product is, so that he can buy that one as opposed to another one. There will be more information and more labelling.

On end of life, the resource efficiency powers can be used to specify that products are designed so that when they reach end of life, they can easily be dismantled—exactly as the hon. Member for Southampton, Test outlined—and the materials can be recovered and recycled. Our powers for deposit return, extended producer responsibility and recycling collections would enable better management of products and materials at the end of life. That will increase reuse and recycling, and it will reduce the amount of material that is incinerated or landfilled.

Preventing waste from being created in the first place and reducing the amount of waste that is produced is a priority for the Government. That is why we have stated our ambition to achieve zero avoidable waste by 2050. We will do this though the measures set out in the resources and waste strategy—we seek the powers for some of those in this Bill—and through other initiatives such as the new waste prevention programme, which we hope to publish and consult on in the near future. On all those grounds, I ask the hon. Member for Newport West if she might withdraw her amendment.

**Ruth Jones:** What an enlightening debate we have had. In terms of one-upmanship, dare I say it, my hon. Friend the Member for Putney has managed reusable nappies for four children. This debate has been useful,
and it is good to have all the ideas, because only by putting all our heads together can we make this Environment Bill ground-breaking. We want it to work, and that is why our amendments are designed to help, not to hinder.

My hon. Friend the Member for Southampton, Test made the important point that as well as recycling, the reusing of goods, parts and components is crucial. People want to do the right thing. Since programmes such as “Blue Planet” have come along, people are much more aware of pollution and how they can play their part. They want to do the right thing, and this Bill must make it easy for them to do so.

The Minister mentioned garden waste. At the risk of blowing Wales’s trumpet, Wales already has a successful garden waste scheme—in fact, recycling rates in Wales are very high—so perhaps she can look across the border. She also mentioned targets. If we do not have targets, how do we know if we are getting to the end of the road? How will we know if we are improving unless we set targets in the first place? We should set targets not to be punitive, but to help us to assess our progress; that is why they are important. We believe that the amendment is also important, so we will press it to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 9.

Division No. 21]

AYES

Anderson, Fleur
Jones, Ruth

Whitehead, Dr Alan
Zechner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Jones, Fay
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Ruth Jones: I beg to move amendment 160, in schedule 4, page 154, line 38, leave out “any” and insert “specified”.

This amendment is very similar to others that have been tabled. It focuses not on the strength of language, but rather on the choice of language that Ministers have opted for in this Bill. By leaving out “any” and inserting the word “specified”, we are looking to ensure that we deliver results, rather than a scattergun or “we hope” approach. The amendment is relatively straightforward, so the Chair will be pleased to know that I will not go on when I do not need to. I hope that Ministers will take the amendment in the spirit in which it is intended, because we want the Bill to have teeth and to be effective. Above all, we want it to be useful and to deliver, so this amendment seeks to ensure we are focused on results, not just on good intentions and misplaced hope. As I have said, “once in a generation” means that the Bill has to be bold, big and comprehensive, so we call on the Minister to use the right language. We believe that the amendment will help to deliver a stronger Environment Bill, with a strengthened schedule 4.

Ruth Jones: Having heard the Minister’s words, I am somewhat reassured, but not entirely. We will therefore not press for a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Schedule 4 agreed to.

Clause 48 ordered to stand part of the Bill.

Schedule 5

Producer responsibility for disposal costs

Ruth Jones: I beg to move amendment 17, in schedule 5, page 157, line 9, leave out “may” and insert “must”.

Earlier this afternoon, I noted how important the Bill is and how we need to ensure that it receives thorough scrutiny, so that it is as strong and coherent as it can be. With that in mind, we need to do what I urged the Committee to do earlier: get the Bill right, so that we honour and meet the promise of a once-in-a-generation piece of legislation. I remind the Minister that she and her colleagues heralded that promise at every opportunity, until the Bill disappeared in March, only to return now.

That is why we are proposing the amendment. As I noted with amendment 16 to schedule 4, we must not rest on our laurels. We cannot have a Bill that is simply made up of passive and weak “may”s and “coulds”; we need the “wills” and “musts”. The fact that we have waited so long, listening to campaigners and those active in the sector, means that we cannot waste the opportunity to deliver a strong, wide-ranging and competent piece of legislation.

Rebecca Pow: I thank the hon. Lady for her amendment, but I reassure her that we feel it is not needed. The Government need the flexibility—I have mentioned this before—to decide what measures will best deliver the outcomes we want to see achieved. Requiring producers to pay disposal costs in all cases might not be the appropriate option.

The power is drafted to give flexibility to choose the appropriate measure, or combination of measures, for any product. It also gives us the flexibility to decide for which products or materials producers must pay disposal
costs, the producers who must pay the disposal costs, the costs that they must pay and what those costs should be.

At this point, I will take a step back to reflect on what the measures will actually mean. The powers will allow us to create a strong financial incentive for businesses to do the right thing. I have spoken with businesses, and of course they want strong signals, because without them they will not be inclined to invest, innovate or go in the direction that we want them to go. That is so important.

The measures will encourage producers such as supermarkets to reduce the packaging they use in their products, so that less waste is produced. Everybody will start thinking about their products and their packaging, because they have to be responsible for what happens to it at the end of the day. It would be in the best interests of manufacturers to make products that are more reusable and recyclable. Thinking back to nappies, if they are to be reusable or washable, they could contain recycled fabric—in fact, that is a jolly good idea, and someone is probably already doing it. That is just an example. Such decisions should all have sustainability in mind, and the customers will see that—with the new labelling and all the information—in the products that they buy.

I can therefore reassure the hon. Member for Newport West that the Government have every intention of making regulations using schedule 5. The resources and waste strategy also commits us to reviewing and consulting on measures, including extended producer responsibility for five other waste streams by the end of 2025. Those five include textiles, construction materials and fishing gear. Along with the other products in that list, they have all been highlighted as urgent areas that could do with this kind of focus.

We need to retain the flexibility to introduce product-specific regulations using the appropriate powers, and as drafted, this power provides the flexibility to impose extended producer responsibility obligations where it is appropriate to do so. I hope that is helpful, and I therefore ask the hon. Lady whether she might withdraw her amendment.

Ruth Jones: I thank the Minister for her words, and respectfully say that strong signals sometimes need to be backed up with strong words, which is why we wanted to amend the wording of the schedule to “must”, not “may”. However, that point having been made again, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ruth Jones: I beg to move amendment 161, in schedule 5, page 157, line 13, leave out from first “the” to end of sub-paragraph (2) and insert “social costs incurred throughout the lifecycle of the products or materials.”

As the Committee will know, schedule 5 allows the relevant 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. This is all about the journey, from start to finish, of the materials that we all rely on every day, even when we do not think about it. We have already had ample examples of the kinds of recyclable things we need to consider. I have to say to the Minister and her colleagues that the issues covered by this amendment will be mentioned both now and in coming days, because the Bill lacks foresight in a number of areas, but particularly when it comes to assessing the whole life cycle. That is particularly important, and it should be part of this Bill.

Thinking through this amendment and the background to it reminded me of recent events in Sri Lanka. That reminder was further reinforced when I received the answer to a written parliamentary question that I tabled to the Department for Environment, Food and Rural Affairs—for those who may be interested, it was question 109651. I asked the Secretary of State for Environment, Food and Rural Affairs “what discussions he has had with his Sri Lankan counterpart on the 21 containers of waste returned to the UK from that country in September 2020.”

The answer I received from the hon. Member for Taunton Deane was as follows:

“The Environment Agency (EA), as the competent authority for waste shipments for England, is proactively engaging with the authorities in Sri Lanka on these containers and is leading the response on this matter.

The 21 containers arrived back in England on Wednesday 29 October. The containers, which were shipped to Sri Lanka in 2017, were found by Sri Lankan authorities to contain illegal materials described as mattresses and carpets which had been exported for recycling. With the shipment now back on English soil, EA—

that is, the Environment Agency—

“enforcement officers will seek to confirm the types of waste shipped, who exported it and the producer of the waste. Those responsible could face a custodial sentence of up to two years, an unlimited fine, and the recovery of money and assets gained through the course of their criminal activity.”

That was the answer I received from the Minister, and the issues it covers show why this amendment is so necessary. There are some parts that I will be following up on outside this Committee, but its arrival in my inbox was timely for today’s debate.

The Minister’s answer to the question demonstrates that waste and the issues that go with it simply do not disappear. Containers that left the United Kingdom in 2017 and travelled across the world are now coming back to cause trouble. This Bill can design out some of those issues if Ministers want it to, and this amendment would help to ensure that it does. We need to ensure that the life journey of the materials used is followed through by their producers from start to finish, focusing not just on the waste element but on the production and useful lifetime element of these issues. I urge the Minister to think about the social costs of the issues we are discussing, not just the environmental costs. Many of these issues require a cohesive and coherent approach that deals with a number of different factors, and I hope the Minister will give proper consideration to this.

As the Committee will know from the papers, this amendment is relatively self-explanatory, but it is important, and I hope the Minister will give it serious consideration. Once again, our amendment will help to deliver a strong Environment Bill with a strengthened and more comprehensive schedule 5.

Fleur Anderson: We moved this amendment to urge the Government to go that bit further in their ambition for this Bill. We have gone this far—we have set up the
office, and have put in place all of these schedules and provisions—and by going just a little bit further, we could achieve so much more. Including “social costs incurred throughout the lifecycle of the products or materials” in schedule 5 would make a great difference.

The Local Government Association also believes that this schedule does not go quite far enough. It is concerned that litter and fly-tipping of discarded packaging is not included in the schedule, and that greater clarity on what producer responsibility will cover is needed. It also questions why the Bill does not currently include the term “full net cost”. There is a commitment to pay local authorities, but it should set out clearly that producers will be required to pay the full net cost to councils. To achieve that, the schemes should seek to reduce consumption of materials in the first instance, reducing the full life cycle impacts arising from sectors and product groups.

That is why I urge the Minister and her Government colleagues to consider supporting amendment 161, which would address this omission by factoring social costs into the fees, alongside environmental effects. It would also ensure that fees are implemented across the full life cycle of products and packaging, rather than just, as we have said in previous amendments, the end of life impact. Such a change would incentivise responsible and sustainable design to minimise these costs in the first place and enhance the environment for us all.

Dr Whitehead: Just to add to my colleagues’ excellent expositions, I draw the Committee’s attention to the wording of the schedule. It is headed “Producer responsibility for disposal costs”—fair enough. Paragraph 1(2) talks about “the disposal costs of the products or materials”. It is then as if the framers of the schedule thought, “Hang on a minute, is that what we really want to do?”, because paragraph 2(2) says:

“In this Schedule the ‘disposal’ of products or materials includes their re-use, redistribution, recovery or recycling.”

In order to continue with the way that the schedule is set out, the framers have had to mangle the English language to such an extent as to make it unrecognisable. A reasonable dictionary definition of “disposal” is “the action or process of getting rid of something”. The whole point about the circular economy and the waste hierarchy is to avoid doing that as much as possible in processing waste. Rather, one should try to recycle it, reuse it and keep it in life. It should go round the circular economy for as long as possible.

This schedule therefore looks like it is facing the wrong way in its whole outlook. The amendment goes some way to putting that right by emphasising that it is about the whole life of the product: what happens after it has been used the first time and how it can best fit into the circular economy definition of continuing with its use in the economy, so that new materials do not have to be brought in because the previous materials have been disposed of.

I suggest that the amendment is tremendously helpful, because it puts right the mangling that has gone on to get the schedule into existence in the first place. While paragraph 2(2) goes some way to un-mangle the phrase, the amendment completely un-mangles it. It emphasises what we should all emphasise—indeed, it is policy to emphasise—namely the whole life; the circular life of products that go round and round in the economy.

I hope the Minister will accept the amendment in the positive spirit in which it is intended. Among other things, it will restore to the Bill what most members of the public would consider to be the meaning of the word “disposal”. It is quite important that we ensure that legislation is not just intelligible to the general public, but can be received by them in the spirit in which it was put forward—that is, that they understand a particular phrase to mean what they think it means, not what someone somewhere in a building far away has invented it to mean because they could not get it right in the first place.

3.15 pm

Rebecca Pow: First, I thank the hon. Member for Newport West for withdrawing her previous amendment and not pushing it to a vote. I thank her for her consideration of this particular amendment, but I would like to reassure her and the Committee that I do not believe it is necessary.

The hon. Lady is absolutely right: it is important that as a society we monitor and address social issues relating to the manufacture of products and materials. In the UK, we address them through legislation, such as the Health and Safety at Work etc. Act 1974 and the Human Rights Act 1998. Other initiatives, such as the United Nations’ International Labour Organisation and the Forest Stewardship Council, look to tackle those issues on a global scale.

However, the core focus of extended producer responsibility is to encourage producers to take actions that will help to protect and improve the environment, including paying the costs of managing products at the end of their life and improving the design of products to make them recyclable or increase the amount of recycled material that they contain—all the things that we have mentioned previously. Recycling rates will then increase and the supply of secondary material will increase.

I will quickly address the issue that the hon. Lady touched on about Sri Lanka. I just want to highlight that it is a manifesto commitment, which we will implement through this Bill, to ban all exports of plastic waste to non-OECD countries. That is in clause 59, I think—I cannot read my writing. I have terrible writing.

Richard Graham (Gloucester) (Con): I am grateful to the Minister, because this is very important and the hon. Member for Newport West was right to raise it. Those of us who have responsibilities as trade envoys are very conscious of some of the damage done to relationships with overseas countries, particularly Commonwealth countries, where waste has effectively been dumped by local councils. That is partly due to the supply chain for waste disposal. Does the Minister agree that this Bill will make real steps forward in tackling that problem?

Rebecca Pow: I thank my hon. Friend for raising that issue. The hon. Member for Putney touched on litter, and I was going to say that this is a very wide subject—waste, hazardous waste, export of waste, litter—and
clauses 60 to 68 deal with a whole lot of those issues, so we will discuss them at length when we get to them. However, we are mindful of what my hon. Friend the Member for Gloucester says, and there are measures in the Bill to really get to grips with some of those things, which are rightly important, especially for our global standing, as he says with his trade envoy hat on. I know he does such great work representing us, so I thank him for that.

I must disagree with the hon. Member for Southampton, Test about words being mangled. The only thing that we want mangled is the waste, so that we can take it apart and turn it into something else. I completely disagree that the words have been mangled by those who have so carefully drafted the legislation. I will highlight the fact that the extended producer responsibility scheme and the requirements to cover the full net disposal costs of their products and materials when they become waste will encourage producers to make these changes that we all want to the design and the materials that will have an impact on the whole supply chain. That is the purpose of all this. That will then increase the supply of materials for recycling and the quality of material for recycling, by reducing contamination and the use of hard-to-recycle products and materials. The whole circular system will be dealt with, so I take issue with his mangling suggestion.

At the end of the day, our supply chains will be strengthened in secondary materials, which is so important that we will then give investors the signal and the confidence they need to invest in our UK recycling industry, so we can put the recycling units that my hon. Friend the Member for Hitchin and Harpenden mentioned everywhere they are required and companies such as Coca-Cola can have all the PET plastic they want to make all the bottles they would like to make from good-quality recycled plastic. It is difficult to get hold of enough of many of those things now, but when we get these measures in place, the idea is that it will all be sorted out. I can see the hon. Member for Cambridge smiling at me, but I know he knows that I am on the right track.

Richard Graham: My hon. Friend the Minister made a good point about making sure that the costs to the private sector involved in helping us recycle more come to a level at which it is important for them to invest. The fringe benefits from that are massive. Many of the recycling centres that previously sent waste to landfill are now available for all sorts of green energy projects including solar, hydrogen and onshore wind. It will make a huge difference in my constituency of Gloucester, including solar, hydrogen and onshore wind. It will be seeking to divide the Committee.

Ruth Jones: I thank the Minister for her explanation and I also thank my hon. Friend the Member for Putney for highlighting the issues of litter and fly-tipping, which really vex people. My inbox is full of complaints about such issues as are, I am sure, those of most Members here if their constituency is anything like mine. It is important that the quality of people’s environment is enhanced and made as good as possible. I am also grateful to my hon. Friend the Member for Southampton, Test: as he points out, the wording is important. People outside these walls do not fully understand what the Bill is trying to say: the word “disposal”—as he says—is in the dictionary and it means getting rid of something, but we want to make sure that we have a cyclical economy. We come back to making sure that words matter.

I was pleased to hear the Minister highlight the manifesto pledge not to dump rubbish in non-OECD countries. It raises the issue of whether it will go to OECD countries, but that is obviously important. I was also pleased to hear COP26 raised. It is important that the UK sets a shining example to the rest of the world on that, and that is why we are pushing amendment 17: it is so important that we make sure we get it right at this stage so that, as has been mentioned, future generations look back on the Environment Bill with pride. We will be seeking to divide the Committee.

Question put, That the amendment be made. The Committee divided: Ayes 4, Noes 9.

Division No. 22]

AYES

Andersen, Fleur
Jones, Ruth
Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard
Jones, Fay
Mackrony, Cherilyn
Moore, Robbie
Pow, Rebecca
Zeichner, Daniel

Question accordingly negatived. Schedule 5 agreed to.

Clause 49

PRODUCER RESPONSIBILITY FOR DISPOSAL COSTS

Amendment made: 38, in clause 49, page 29, line 36, leave out “Assembly” and insert “Senedd”.—(Rebecca Pow.)

See Amendment 28.

Clause 49, as amended, ordered to stand part of the Bill.
Dr Whitehead: I beg to move amendment 18, in schedule 6, page 161, line 21, leave out “may” and insert “must”.

This is another “may” and “must” amendment. Hon. Members are familiar with the arguments, so I will not rehearse them at this late hour of the day. In moving the amendment, I am adding to the pile on the Minister’s desk. I ask her to consider whether, even at this late hour, it might be a good idea to start putting in a few more “musts” than was the case previously. I hope the Minister will look at that favourably in the future. I do not wish to push the amendment to a vote.

Dr Whitehead: But you are moving it.

Rebecca Pow: I thank the hon. Member for his amendment. He is trying at every opportunity to sneak in a “must”, but we share the sentiment and recognise the importance of taking action to improve the design of products—that is what this is all about—including by mandating the provision of information relating to resource efficiency on products. Given the pace of change and the need for flexibility in deciding where regulation is necessary, however, it is not appropriate to insert a requirement that we must take such action across the board for all products, nor to specify a list in advance. Our intention is to use this power to set resource efficiency information requirements where they will give the greatest impact. I can reassure the hon. Member that we are committed to doing that.

I am pleased that the first anticipated use of the information power will mandate labelling to show the recyclability of packaging, which I know is a source of stress for many households, including my own. In fact, I go absolutely berserk if I get home and find that my children have gone to a shop where everything is in packets, instead of buying it loose. Labelling and clear messaging about the damage that some packaging can do would get the message through.

The Government are considering how we should implement these measures beyond packaging, and we want to ensure that, where requirements for more information are introduced, it will have significant positive impacts on the environment. We expect that some industries will be motivated to proactively settle or improve their requirements at different times for different products, and within a reasonable timespan. Additionally, it will facilitate the making of separate provisions for England, Wales, Scotland and Northern Ireland should the devolved Administrations wish to exercise this power.

On those grounds, I ask the hon. Member whether she would kindly withdraw the amendment.

The Chair: Dr Whitehead moved the amendment.

Rebecca Pow: I am sorry. I ask the hon. Gentleman to kindly withdraw the amendment.

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.30 pm

The Chair: We now come to amendment 226, which the sharp-eyed will have seen is not on the selection list. That is because it is what is known in the trade as a starred amendment, which means that it was tabled after the cut-off date last Thursday. I have nevertheless taken the view that it is appropriate to debate it under schedule 6, which we have now reached. I call Alan Whitehead to move the amendment.

Dr Whitehead: I have no idea what amendment 226 is about—or at least I have not got it in front of me.

The Chair: While he is finding his feet, it may help the hon. Gentleman if he looks at page 8 of the amendment paper, where he will see that amendment 226 amends schedule 6, line 7.

Dr Whitehead: I beg to move amendment 226, page 162, line 7, schedule 6, after “product” insert “and the expected total environmental impact the product will have throughout its life”. This amendment requires manufacturers or sellers to evaluate the environmental impact of a product throughout its life cycle, alongside the expected life of the product.

The amendment speaks for itself. As the Chair has kindly reminded us, it concerns the overall life of the product, not specific moments in the life of that product. As hon. Members know from stories such as the 5,000-mile yoghurt pot, the overall life of a product includes a range of travel, processing and other activities before it gets on to the shelf. Modern arrangements mean that something that looks very simple will have been fabricated in one country, exported to another and further processed there, exported back to the original country and filled with another product, while the lid is added somewhere else during the refrigeration process and then it is back to where it started from. In my constituency, there are many instances of stuff leaving the port in a container, going to the other side of the world for processing and coming back for sale in roughly the place it started out from.

The lifetime of the product is about all the things that happen to it on its journey. The amendment recognises that that is the case and that, in moving towards a circular economy, we need to be mindful that the lifetime of the product is a theme that needs to be seriously taken into account so that we can ensure that it is as efficient, economical, low-carbon and resource-efficient as it can be. That is why we have tabled the amendment.
Rebecca Pow: I am very happy to discuss the amendment in the circumstances outlined by the Chair, and I thank the hon. Member for Southampton, Test for tabling it. The Government recognise the value of providing consumers with information on the expected lifecycle and environmental impact of products. The amendment is not necessary, because the powers in the Bill already allow for that. Indeed, I hope that it is clear from everything we have been talking about that it is the whole lifecycle of the product that will be the key thing once the measures in the Bill are in place.

The resource efficiency powers set out in the Bill enable us to achieve the amendment’s goal. However, the current drafting allows us to provide greater clarity on the aspects of a product’s lifecycle that can be covered, in recognition of what it is practicable and feasible to require. The schedule covers the scope of the powers in relation to lifecycle impacts, including production processes, pollution impact during production, use and disposal, product lifetime and related aspects such as recyclability. There is a broad and comprehensive list of what consumer information could be about. It provides the scope for meaningful and specific provisions relevant to a product’s impact on the natural environment without placing overly complex or impractical requirements on manufacturers.

We want this to be simple for manufacturers and to help consumers make the right choices. It is a two-pronged attack: we want manufacturers to do the right thing, but they need to be able to do it, and we want to give the consumers the information to make the right choices. For example, we could require that items of clothing are sold with information about the resources used to make them, as well as about the pollution—for example, greenhouse gas emissions—arising from a garment’s production, use and disposal. All of those things could be possible. Customers, should they wish, could then use that information to choose products that have less impact on the environment across their life cycle.

I know from talking to people who watch the Attenborough documentaries, and others, that they know about the horrific impacts and consequences of the products they buy. They do not want that to happen, so the information and labelling will really help, as will the whole new life cycle approach that this Bill will introduce. I therefore ask the hon. Member for Southampton, Test to withdraw the amendment, given that the current provisions already do what it suggests.

Dr Whitehead: I am encouraged by the Minister’s response, although I am not sure that the wording is exactly as it should be. I, like, I suspect, her, am very taken by the idea of a backpack on a product. For example, if a pen has a gold nib—unfortunately, my pen has a steel nib, but there we are—it would have a substantial backpack outlining the cost of mining that gold and the amount of resources used, such as oil, in getting the gold out. Everything would have a backpack: some products would have huge backpacks, while others would have smaller ones. I take on board the Minister’s comments. The aim is to start talking about those backpacks and how we relate to products. The life cycle information relates to not just what is in the backpack but how far the backpack has travelled.

Rebecca Pow: This whole subject is interesting. “Product passport” is another term that could cover all that detail. The Bill will also allow us to introduce labelling requirements relating to water use and carbon footprint, so it will open up a wealth of opportunities in the space that the shadow Minister is talking about.

Dr Whitehead: Indeed. That is absolutely right: “passport” is another good way to describe it, although only a limited number of things can be jammed in a passport, whereas rather more things can be jammed in a backpack. The principle, however, is exactly the same, and I am encouraged to hear the Minister speaking of it in that particular way. I do not, therefore, wish to push the amendment to a vote and hope that what the Minister has said is how the schedule will be interpreted in future. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn. Schedule 6 agreed to.

Ordered, That further consideration be now adjourned.

—(Leo Docherty.)

3.39 pm

Adjourned till Thursday 12 November at half-past Eleven o’clock.
CONTENTS

Clause 50 agreed to, with amendments.
Schedule 7 agreed to.
Clause 51 agreed to, with amendments.
Schedule 8 agreed to, with amendments.
Clause 52 agreed to.
Schedule 9 under consideration when the Committee adjourned till this day at Two o'clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 16 November 2020
The Committee consisted of the following Members:

*Chairs: James Gray, Sir George Howarth*

† Afolami, Bim *Hitchin and Harpenden* (Con)
Anderson, Fleur *Putney* (Lab)
† Bhatti, Saqib *Meriden* (Con)
† Brock, Deidre *Edinburgh North and Leith* (SNP)
† Browne, Anthony *South Cambridgeshire* (Con)
† Docherty, Leo *Aldershot* (Con)
† Furniss, Gill *Sheffield, Brightside and Hillsborough* (Lab)
† Graham, Richard *Gloucester* (Con)
Jones, Fay *Brecon and Radnorshire* (Con)
† Jones, Ruth *Newport West* (Lab)
Longhi, Marco *Dudley North* (Con)
† Mackrory, Cherilyn *Truro and Falmouth* (Con)
† Moore, Robbie *Keighley* (Con)
† Pow, Rebecca *Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*
† Thomson, Richard *Gordon* (SNP)
† Whitehead, Dr Alan *Southampton, Test* (Lab)
† Zeichner, Daniel *Cambridge* (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 12 November 2020

(Morning)

[SIR GEORGE HOWARTH in the Chair]

Environment Bill

11.30 am

The Chair: Before we begin, I remind Members about social distancing. Spaces available to Members are clearly marked. Hansard colleagues will be grateful if you could send any speaking notes to hansardnotes@parliament.uk. I also remind Members, please, to switch electronic devices off or to silent. Teas and coffees are not allowed during sittings.

We will now continue with line-by-line consideration of the Bill. The selection list for today’s sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue. Please note that decisions on amendments do not take place in the order that they are debated, but in the order that they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

Clause 50

RESOURCE EFFICIENCY REQUIREMENTS

Amendments made: 39, in clause 50, page 30, line 20, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.

Amendment 40, in clause 50, page 30, line 21, leave out “Assembly” and insert “Senedd”.—(Rebecca Pow.)

See Amendment 28.

Clause 50, as amended, ordered to stand part of the Bill.

Schedule 7

RESOURCE EFFICIENCY REQUIREMENTS

Ruth Jones (Newport West) (Lab): I beg to move amendment 19 in schedule 7, page 165, line 30, leave out “may” and insert “must”.

It is a pleasure to see you back in the Chair, Sir George, and to serve under your chairmanship. The amendment is in the names of my hon. Friends. It is a pleasure to serve under your chairmanship, Sir George. I thank the hon. Member for the amendment. As with amendment 18 on the resource efficiency information power, it is not appropriate to have a duty to take action on all products or to specify particular products in advance. Our intention is to use the power to set resource efficiency eco-design requirements for products where the greatest benefit can be realised. As I did in respect of amendment 18, I reassure the hon. Member that we are committed to approaching the making of any regulations in that way.

It is really important that we have flexibility on setting standards on products that come to light as critical. It is not possible right now to identify products in advance, as it very much depends on industry practice, the environmental impact that the particular group of products being considered might have on the environment, and the feasibility of setting minimum eco-design requirements.

Daniel Zeichner (Cambridge) (Lab): It is a pleasure to continue with you in the Chair, Sir George. The Minister is making a fine speech, but on all the “may” and “must” issues I find myself casting my mind back to children on the streets on Fridays, as they left their
schools, to demand climate justice, and huge numbers of people expressing concern about the urgency of it. Would she really feel comfortable standing in front of those groups of people and dithering in this way on issues that need to be dealt with urgently?

Rebecca Pow: I thank the hon. Member for his slightly cheeky intervention. We are talking about the Environment Bill. I have outlined the difference between “may” and “must” in great detail. Importantly, we are not stopping it happening, but it has to happen in the right way and on the right products. A great deal of stakeholder engagement has already happened with industry and will continue, because industry has to be able to do such things, and we have to bring industry along with us.

I will give a good example of where we might soon need to use the measures. Evidence has suggested that absorbent hygiene products might be a good place to start. Similarly, we have identified some other waste streams. The powers might be useful on textiles, furniture, electronics and construction materials, so the provision will genuinely be used and it will genuinely be useful.

I believe that the prioritisation approach will also provide sufficient flexibility to implement or modify requirements at different times for different products, and within a reasonable time span. It will also facilitate the making of separate provisions for England, Wales, Scotland and Northern Ireland, should the devolved Administrations wish to exercise the powers, as the hon. Member for Newport West recognised. For those reasons, I believe it is appropriate to take regulation-making powers, rather than a duty on the Government to set requirements at different times for different products, including her explanation, and also for setting out the scope and reach of the Bill before we know where the challenges facing our environment are, what action may be required and when. Once again, I reiterate the point about language: it is vital that every word, every full stop and every sub-sub-paragraph enhances our ability to protect the natural world and preserve our environment. This amendment will help to do that and I hope that the Minister will accept it in the spirit that is intended.

Rebecca Pow: Again, I thank the hon. Member for tabling the amendment, but I also reassure her that the Government recognise the importance of measures to improve the durability, repairability and recyclability of both energy-related products and products that are not energy-related. The amendment is therefore not necessary, because at the end of the transition period the Government will have powers to set resource-efficiency requirements for energy-related products under the Ecodesign for Energy-Related Products Regulations 2010. Also, DEFRA is working closely with the Department of Business, Energy and Industrial Strategy in this regard.

In combination with the information power detailed in schedule 6, we could, for example, require that information be provided with electronic devices explaining their expected lifetime, and how to carry out repairs or upgrades. The retained eco-design legislation could be used in tandem to set requirements for the availability of spare parts and upgradeable design.

Lots of us who have our own washing machines, dishwashers and all of those sorts of equipment would probably be pretty much in favour of some of those ideas, so having two sets of powers covering resource efficiency for the same products risks being confusing for businesses and other stakeholders. Therefore, I ask that the hon. Member withdraw her amendment.

Ruth Jones: I thank the Minister for her words there, including her explanation, and also for setting out the scenarios that could be useful in the future. It is always useful to have practical examples to be able to think about how these measures will be applied in the future.

Obviously, while we are sad that the Minister is not going to take our amendment on board, we nevertheless now have it on the record. Therefore, I beg to ask leave to withdraw the amendment.

Ruth Jones: I beg to move amendment 162, in schedule 7, page 165, line 35, leave out sub-sub-paragraph (a).

As a consequence, I will not detain the Committee for longer than is necessary, but I will touch on a couple of important points.

First, our amendment proposes to remove sub-sub-paragraph (a). We tabled the amendment because Labour Members are conscious of the need to use the Bill both now and in the future. We do not want to reduce the scope and reach of the Bill before we know where the challenges facing our environment are, what action may be required and when. Once again, I reiterate the point about language: it is vital that every word, every full stop and every sub-sub-paragraph enhances our ability
to protect the natural world and preserve our environment. This amendment will help to do that and I hope that the Minister will accept it in the spirit that is intended.

Ruth Jones: I thank the Minister for her words there, including her explanation, and also for setting out the scenarios that could be useful in the future. It is always useful to have practical examples to be able to think about how these measures will be applied in the future.

Obviously, while we are sad that the Minister is not going to take our amendment on board, we nevertheless now have it on the record. Therefore, I beg to ask leave to withdraw the amendment.

Ruth Jones: I beg to move amendment 163, in schedule 7, page 166, line 13, at end insert “taking into account social dimensions such as human rights, public health and fair working conditions”.

The Chair: With this, it will be convenient to discuss amendment 164, in schedule 7, page 166, line 26, leave out lines 28 to 32 and insert—

“(b) the techniques and working conditions used in its manufacture and sourcing of resources;
(c) the resources consumed during its production or use;
(d) the pollutants (including greenhouse gases within the meaning of section 92 of the Climate Change Act 2008) released or emitted at any stage of the product’s production, use or disposal; with consideration of the social impacts these may result in, for example, public health concerns.

Amendment 165, in schedule 7, page 167, line 22, after “environment” insert “workers or communities”.
Amendment 166, in schedule 7, page 167, line 25, after “environment” insert “workers or communities”.
Amendment 167, in schedule 7, page 167, line 29, after “environment” insert “workers or communities”.

Richard Graham: This amendment has also been tabled in the names of the hon. Members I mentioned in relation to the previous two amendments.

Amendment 163 looks at the wider impact of how things are done, so it is not just a case of looking solely at what is produced and manufactured and its impact on the environment. It looks at the full package, which is why it seeks to insert into schedule 7 “taking into account social dimensions such as human rights, public health and fair working conditions”.

11.45 am

We all know from our constituency work the importance of all three of these social dimensions to workers and producers, and also to consumers. Certainly, my mailbag is full of people who want to do the right thing. As we said before, David Attenborough’s “Blue Planet” has raised awareness and consciousness among people out there who want to do the right thing. I get many emails from constituents asking how best to do the right thing, and they certainly want to take into account human rights, public health and fair working conditions. We see that in people using reusable coffee cups—obviously until the covid pandemic came in—and in campaigns for the real living wage and other important protections for working people.

As we seek to deliver this once-in-a-lifetime legislation, we need to make sure that all our bases are covered and that the impacts of the decisions we take are factored in and covered in detail. The amendment would allow Ministers to demonstrate their commitment to this once-in-a-lifetime legislation actually delivering change, and it would allow colleagues across the House to show that we will put our money and our legislation where our mouths are.

Rebecca Pow: I thank the hon. Lady for tabling these amendments. I share her view that human rights, working conditions, public health and the impact of product manufacture, use and disposal on workers and wider communities—I think those are the things that she was getting at—are of the utmost importance. However, the primary focus of the Bill, and the resource efficiency powers that we are currently debating, is improving the natural environment. That will benefit workers and communities who depend on their natural environment for clean air, clean water and a stable climate, as well as improving the durability and reparability of products so that they last longer and provide better value. Going beyond matters of the environment to incorporate social factors—such as labour conditions, as the amendments suggest—and other benefits to communities would be going beyond the scope of this legislative instrument.

I am grateful to the Minister for augmenting her comments. I agree it is good that we have the Modern Slavery Act and that is important, but there is no harm in putting an additional belt and braces on this Bill to ensure that human rights are taken into consideration, as are public health and fair working conditions. We have pushed for the minimum wage and the living wage, and it is important that those things are taken into consideration. There is no harm in our having integrated objectives across a number of Bills, because it shows that the Government are joined up and thinking across...
the piece. That is why we will push this amendment to a Division, because it is such an important one and we think it should be enshrined in law.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 23]

AYES
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Amendment proposed: 166, in schedule 7, page 167, line 25 after “environment” insert “workers or communities”.—(Ruth Jones.)

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

Division No. 26]

AYES
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard

Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Question proposed, That the schedule be the Seventh schedule to the Bill.

Dr Alan Whitehead (Southampton, Test) (Lab): I have a few things to say about the schedule, including some questions for the Minister about how it might best be implemented.

As I am sure all hon. Members know, how waste becomes a resource is set out substantially in the 2008 EU waste framework directive, which gives guidance to member states—to be placed into law—about how that process should be carried out. The Committee will also be aware that resource efficiency is a very real issue.

A big question is precisely when something in a stream should be defined as waste or as a resource. The waste framework directive contains a number of criteria about that end-of-waste transition, but the framework and the subsequent UK legislation have been fraught with difficulties and problems, because they have required waste to be categorised: as hazardous waste, as inert waste—that can be put in golf courses and so on—or as waste that must undergo various treatments, for example. The waste hierarchy, which the Committee has discussed, derives from a number of considerations not only about what waste is, but about what should be done with various waste streams.

12 noon

A problem arising from that is that quite often a waste stream entering the various processing, sorting and recycling arrangements carries a classification of what it consists of. There are circumstances where a particular waste stream is plainly potentially usable for another purpose, but because it is classified in a particular way going through the process, there are all sorts of complications about how it should be treated, making it virtually impossible to transfer it to a resource stream. The point at which waste becomes a resource is very important. Indeed, frequently in this country the complications surrounding the treatment, arrangements and the direction of waste mean it is far less likely than it might otherwise be that someone will come along and say, “That’s a resource we would like to take up. We can use it as a resource for our processes subsequently.”

Ruth Jones: My hon. Friend is making a powerful point. Would he agree that a good example of this is the supermarkets? In the past, food that had gone beyond
its use-by date went to waste, but nowadays, thanks to important communication between supermarkets and homeless people, for example, the latter can utilise this food for their evening meals. One man’s waste is another man’s supper.

Dr Whitehead: My hon. Friend is right. We have made considerable progress on food waste, and we will come to discuss some wider aspects of food waste later in the proceedings. Nevertheless, she rightly states the principle: if a piece of waste which would otherwise be taken out and processed in certain ways is stewarded through that process, knowing that the outcome of that process is a good outcome, that process can be much more easily streamlined to ensure that what was waste becomes a resource.

For years, the Environment Agency has been trying to tackle the many instances where something that goes into a waste stream, such as bones residual to animal rendering, carcases and various other things, may well be treated as hazardous and have particular measures apply to them. However, if those bones can be transferred for the making of bone china, that industry can take the bones and steward them through the process of becoming a resource for undertaking what the industry wants to do. That allows what looked like a problem to become a solution. That is just one example—perhaps, not a terribly good example—but there are many examples of that in industry, where one industry’s waste, which may be classified in particular ways, is desperately needed as a resource for another industry, which cannot unlock that resource from it being waste. We have never properly gotten to grips with that in this country.

The concept of stewardship, whereby what is a piece of waste can be certified as being stewarded, ready for the purpose of becoming a resource, has never properly been defined in regulations or in law. Hence, often by the time we have gotten around to thinking that something is a particular resource, it has already been disposed of down a particular waste stream and is lost for that resource purpose.

Daniel Zeichner: As ever, my hon. Friend is making a thoughtful and interesting speech. As he spoke, I thought of some of the examples that came up in the covid-19 crisis in the food chains, where we were at risk because one part of the system relied on another in exactly the ways he is describing. What struck me is that the economies of scale are critical. Are we not much better being part of a bigger, bigger system that allows us to use things of scale are critical. Are we not much better being part of a wider, bigger system that allows us to use things that are potentially regarded as waste? With a small, narrow system, they cannot be reused, but they can be if we are part of a bigger system.

Dr Whitehead: My hon. Friend is absolutely right. The concept of a larger system through which all of this works is key to this whole discussion. Indeed, what we have been talking about, and what the waste strategy document says about the circular economy, means that putting this into a wider frame of how we circulate products through the economy, so that we do not pull virgin materials in and that everything we are using as it goes through the economy is reusable, recyclable or replaceable in one way or another, is essential to a resource-efficient and low-carbon waste and resource economy.

In this part of the Bill, we are essentially replacing elements of the waste framework directive with UK law, but does not seem to me that what we have done allows the sort of processes that I have described to be properly incorporated in regulations so that the circular economy arrangement can be expedited. Does the Minister consider that the regulations that will be associated with schedule 7 are capable of allowing those sorts of changes to be made, to the benefit of the recycled and reclaimed resources industry in the UK; or does she consider that we have missed an opportunity here, and that further legislation and/or regulations may be necessary to ensure that that can be done?

Rebecca Pow: I thank the hon. Member for Southampton, Test for his thoughts. I shall stick to the detail of what the schedule is actually about in my answers, but I want to touch on his general points. Of course, the whole purpose of the waste and resources section of the Bill is to reduce all waste with a range of measures, and to make everything we produce recyclable, repairable and more durable. That is why we are focusing particularly on eco-design.

The hon. Gentleman touched on some issues relating to bones and various things like that. This is a slightly more general comment, but there are many health-related issues that would have to be taken into account. It takes me back to the time of bovine spongiform encephalopathy, when any food waste was banned from being fed to pigs. There were masses of knock-on effects, but as a pig keeper, I was mortified about that. He will know that such things are complicated, so one cannot go down that burrow without discussing a lot of other issues.

I want to get back to the purposes of the schedule, but I will touch on the point made by the hon. Member for Newport West about food waste. I am sure she is pleased that food waste is dealt with in the Bill—that is one of the really positive and exciting things about it. Food waste will now have to be collected from local authorities in the waste collections. Some local authorities already do it, but every one will have to do it. Clause 47 and schedule 4 will require producers that are responsible for food surplus and food waste to take action, and that includes redistributing it. Great work is already done by many people, but that will be a requirement for surplus food.

On the schedule, by applying the principle of eco-design to non-energy-related products, we can drive up resource efficiency by gradually removing the least resource efficient products from the market. That is the very point that the hon. Lady was getting at. Those requirements might relate to durability, recyclability, repairability or the sustainability of products for dismantling and remanufacture. I think the hon. Member for Southampton, Test was getting at that point; products can be taken apart and then the component parts could be reused.

The requirements might also concern the material composition of products and the way in which products are manufactured, and the pollutants emitted or produced by products throughout the full lifecycle. For example—the hon. Member for Newport West said she likes examples—that might include moving and load-bearing parts such as wheels and hinges from items of furniture, because they might wear out first. Making them removable and replaceable could be part of the design. Where that is not the case, the regulations might require that parts...
can be removed without damage to the rest of the product, and other wheels can be screwed back on, for example. That is the kind of thing we are discussing.

As has been explained in relation to the resource efficiency information power, we have identified priority areas for action, including clothing, furniture and electronic equipment, where we believe requirements such as this are likely to have the greatest impact.

**Dr Whitehead rose—**

Rebecca Pow: I am about to conclude, but I see that the hon. Gentleman is trying to intervene.

Dr Whitehead: I thank the Minister for giving way. I am not particularly criticising or wishing to take away from any of the excellent things the Minister has been saying about the purpose of these provisions. What I am trying to get at is what actually happens now—the way in which things are classified while they are going through the waste stream and before they turn into a resource, and the extent to which the classification under existing legislation hinders the process by which they may be liberated as a resource in exactly the way the Minister has described in her comments. That is what I am concerned about—whether those classifications can be substituted by a system of stewardship, which would enable that passage to be much more straightforward, good intentions notwithstanding concerning how that passage can result in a successful outcome.

Rebecca Pow: I understand the hon. Gentleman’s point, but I think he is overcomplicating the issue. Through the measures in the Bill, every single person who makes something will have to think about what it contains, what it is made of, what is going to happen to it, where it is going to go, who is going to reuse it and how long it will last. I think the issues he is worried about will solve themselves, in a way. If he wants more detail on that, I am sure we can write to him.

Daniel Zeichner: Will the Minister give way?

Rebecca Pow: I am going to plough on. The schedule considers eco-design. Clauses 49 and 50 and schedules 6 and 7 describe resource efficiency powers, which complement various other powers in the Bill, including the extended producer responsibility—that very much touches on what I have just said. They aim, as a minimum, to ensure that we can be ahead of the curve internationally and, ideally, to enable us to lead the way. Acquiring resource efficiency powers is an essential step towards delivering against the goals of the 25-year environment plan and the resources and waste strategy, and achieving net zero by 2050. I believe that all the things in the schedule will help that work.

We are ahead of the curve even compared with the EU on this matter. Once we have acquired the powers, it will be possible to set requirements for all products, whether they are energy related or not. That is not yet possible for the EU. At present, its eco legislation extends only to energy-related products. On those grounds alone, we are ahead, which I hope my hon. Friends and hon. Members will be pleased about.

**Question put and agreed to.**

Schedule 7 accordingly agreed to.
The amendment would allow the Government to do just that. A system that works for and with all nations of the UK would especially benefit those who live near the border between, say, England and Scotland and anyone travelling between the two nations. My Scottish colleagues have highlighted the matter in the House on previous occasions. We want to ensure that the systems are compatible, if not all encompassing, while ensuring that they do not undermine one another financially or environmentally. Likewise, that approach would facilitate a simple roll-out to Wales and Northern Ireland, and so would be a win-win for us all.

The Bill only states that the Secretary of State “may” establish a scheme. The amendment would ensure that the Secretary of State, whoever he or she might be, would actually deliver. Our amendment follows many others tabled to the Bill and moved in Committee. It is all about delivery, action and getting it right by writing it into the Bill.

Rebecca Pow: I thank the hon. Lady for her amendment. We obviously recognise the importance of reducing littering and increasing recycling rates as part of our commitment to leave the environment in a better state for the next generation. Our 2019 manifesto pledged to introduce a deposit return scheme to incentivise people to recycle plastic and glass.

This power enables us to establish deposit return schemes for different items, particularly those which are littered—it is important to try to cut those down—where we want to increase recycling, as well as the quality and value of recycled material. That is all part of that drive that this section is about.

A deposit return scheme will allow us to take plastic from drinks bottles and ensure it gets recycled back into a new bottle, reducing our reliance on virgin plastic material. We touched on that yesterday. So many companies would like a regular, consistent supply of the right kind of plastic to turn into other bottles. We are working on developing an evidence base that will include further consultation before finalising the design and scope of a DRS for drinks containers that will be set down in regulations made using this power.

We know that UK consumers go through a shocking 14 billion plastic drinks bottles, 9 billion drinks cans and 5 billion glass bottles a year. Although plastic bottles are fully recyclable, recent packaging recycling rates of 65% demonstrates that there is room for improvement. We consider that a well-designed deposit return scheme for drinks and containers could achieve something like 90% and higher, as countries that have already introduced the scheme are achieving.

This power gives the relevant national authority the flexibility to make regulations to establish deposit return schemes in relation to specific products or materials. It also gives the flexibility to decide which items are to be included in the DRS, to secure an increase in recycling and reuse of materials and to reduce the incidence of littering and fly-tipping.

It is entirely appropriate to be flexible here. It would not be appropriate for this power to be exercised in some circumstances. The discretionary element allows it to be used in a targeted manner for things that are, for example, the most littered items, such as drinks containers, that are often consumed away from the home. This comes out as one of the top lists on the “Keep Britain Tidy” surveys that are constantly conducted.

We need to have a system that allows us to add and adjust as we learn more about how a deposit return scheme works in practice. I have talked to lots of people involved in these types of schemes. Getting the system right is crucial. I ask the hon. Lady, therefore, to withdraw her amendment.

Ruth Jones: I thank the Minister for her comments. I am slightly anxious that she is talking about further consultation here, because the public just want us to get on with this. They are fed up with being consulted. They have given their views and they want it to happen now. As Greta Thunberg and all the young people, certainly in my constituency, are telling me, “Get on with it. We cannot afford to wait for you. This planet has to be there for us tomorrow.”

Daniel Zeichner: That is exactly the point. I was tempted to intervene on the Minister, but she seemed reluctant. The call from people out there is that this needs to be got on with. I do not understand why the Government persistently delay. There is a danger that the Government could be accused of virtue signalling.

Ruth Jones: That is an interesting point. As my hon. Friend said, if the Government are serious about this, they need to get on with it and they need to be seen to be getting on with it.

Rebecca Pow: The hon. Member for Cambridge has fired me up now. The point is that this scheme must also fit with other schemes, so it also must fit with the consistent collection of items by the local authorities. A great deal of work must be done to ensure that they all fit together. Even the hon. Member for Cambridge mentioned that one system must not undermine another; they must fit together. If we could get consistent systems across all the devolved Administrations, that would be useful. We are watching Scotland closely, because it is a little bit ahead, to see how that works. It is important that we bring all those things together.

Ruth Jones: Yes, of course we agree with her that these things have to be communicated clearly. We need to make sure that no one scheme undermines another. We do not want people crossing borders with lorryloads of plastic waste or whatever. That is not the intention. We understand that. However, it is important that we have clear communication across all four nations to make sure that that does not happen. The Minister outlined the regulations that will come through—

Rebecca Pow: I am sure the hon. Lady will agree and applaud the fact that we consulted closely with the Welsh Assembly Government, and on behalf of Northern Ireland. We are working closely with them on the proposals on exactly the grounds that she proposes.

Ruth Jones: I agree that it is important that we continue to make that point and communicate clearly across all four nations, but the Minister mentioned further regulations down the line. How will those be
enforced? We want to know the how, the what and the where. How will it all come together? I am still not clear on exactly what will happen, so perhaps in future debates the Minister will outline those regulations.

The Minister talked about flexibility. Again, I hark back to my physiotherapy days: we do not want to be so flexible that we fall over. We need some constraints and guidelines to help us to walk in the right path. We are all in favour of getting this done. It is just a question of how soon, how quickly and how best we can do it. With that, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Rebecca Pow: I beg to move amendment 68, in schedule 8, page 172, line 39, leave out from “scheme” to end of line 40 and insert

“in relation to which the Scottish deposit administrator is exercising functions”.

This amendment modifies the way in which the scheme administrator of a Scottish deposit and return scheme is described, by referring to the administrator “exercising functions” rather than being “designated”. This is consistent with the terminology used in the relevant Scottish legislation. A similar change is made by Amendment 69.

The Chair: With this it will be convenient to discuss Government amendments 69 and 70.

Rebecca Pow: Amendments 68 to 70 seek to correct a technical error concerning a reference to how a scheme administrator would be established in Scotland. The amendment will enable a scheme administrator to interact, engage and make payments to a scheme administrator established through a deposit and return scheme in Scotland. It was always our intention for schemes within the UK to be able to work together, as I have already highlighted, including being able to make payments between schemes. I think the hon. Member for Newport West asked about that. The measure will help ensure that schemes are easier for consumers to use, will help to reduce the risk of fraud between schemes, and provide coherence for producers and retailers. I hope the Committee will agree to the amendment.

Amendment 68 agreed to.

Amendments made: 69, in schedule 8, page 174, line 20, leave out from “person” to end of line 22 and insert “exercising the functions of a scheme administrator in relation to a Scottish deposit and return scheme”.

See Amendment 68.

Amendment 70, in schedule 8, page 174, line 24, leave out “that Act” and insert “the Climate Change (Scotland) Act 2009 (asp 12)”—(Rebecca Pow.)

This amendment is consequential on Amendment 69 and inserts the full name of the Act being referred to.

Question proposed, That the schedule, as amended, be the Eighth schedule to the Bill.

Dr Whitehead: I welcome the opportunity to have a brief debate on the schedule, which is all about deposit schemes. As the Minister has set out admirably, the deposit schemes can target things that cause particular problems, including litter, fly-tipping and various other activities. I want to ask the Minister what the deposit schemes might consist of and the extent to which the schedule would facilitate that extent being realised.

When talking about deposit schemes, we usually think about precisely the sort of things that my hon. Friend the Member for Cambridge talked about, with memories of kids hanging around lidos and swimming pools, nicking Coke and pop bottles from sunbathers to take them back to the shop and get thruppence on them—not that I did that, obviously.

12.30 pm

Daniel Zeichner: Of course not.

Rebecca Pow: That is how his early interest in waste started.

The Chair: Order. There is too much muttering.

Dr Whitehead: What occurred then, and what is occurring now—or what I hope will occur now—is that the motivation to recycle, return and sort out particular items comes from a value being given to the residual function of those items after their primary function has been carried out. In the previous example, the Coke bottle has been emptied, but it still has value because the child can get some money by returning it to the shop.

We have seen that process in operation in various parts of Europe. In France, a number of supermarkets have reverse vending machines, where bottles can be inserted into the machine in exchange for a credit. The value has been secured and the product has been safely restored for recycling. The consequence of a lack of such schemes is that people dump things in the street or, in more serious instances, engage in serious fly-tipping.

On deposit schemes for larger items, some really large items have effectively got themselves into that value chain by different means. Hon. Members who were local authority councillors for any long period may remember that there was a particular passage of time when many estates and other places were plagued with burnt-out cars. People had decided that their car had no value because it was an old banger or had broken down, and that the easiest thing to do was to go and dump it somewhere and/or burn it.

That was substantially resolved by the end-of-life vehicles directive and the beginnings of the idea that even an old banger had some value for recycling purposes. The person who might otherwise have put that car into a hedge or burnt it in a car park would be incentivised to drive it on its last lap—or push it if it did not work—down to the breaker’s yard, where they would get a couple of hundred pounds for it, because it had increased value that way.

In the waste electrical and electronic equipment directive, we have a sort-of attempt to give that value to white goods and various large items. The producer responsibility elements of WEEE required that the producer have a responsibility to get those products back. The process is very indirect. At the end of the life of a particular product, the producer is not necessarily in the same state as when the product was first produced, so you may have orphan products that require producer responsibility but are without a producer responsible for them. That producer responsibility is also a mediated process because someone else has to collect the product and establish what the responsibility should be.
Ruth Jones: Again, my hon. Friend is making a powerful and practical point. When ordering a new washing machine or dishwasher, for example, people have to pay if they want the person coming to fit the new one to take the old one away. That is almost a disincentive to recycle and reuse things. It is similar with mattresses. Does he agree that mattresses are the bane of local councils’ lives? They are dumped on the side of the road. We should make sure that they are recycled properly.

Dr Whitehead: My hon. Friend raises the issue of mattresses, which absolutely are the most difficult thing to properly dispose of. I was going to restrict my point to white goods, but it is absolutely true of mattresses. Even with better regulations in place than previously, we still find substantial fly-tipping, quite often of mattresses, old furniture and white goods—old fridges or whatever. It is not so much the fridges and white goods that could have been taken away when a new item is purchased. If that item has a second life and is reused after it has been taken away, at the end of its life it has no value, and we are lucky if it goes down to the council tip or whatever and back into the producer responsibility cycle.

We still have a considerable problem with fly-tipping of these particular products. One way to deal with that would be to give those items a residual value, like the pop bottles. There is no reason whatever why any hon. Member should remember this, but I put forward a ten-minute rule Bill, in about 2001, I think, to introduce a deposit scheme for white goods. That would have meant that, for a small additional outlay, the product would throughout its life have a value attached to it, even when not being used. It would be a tiny proportion of the original cost of the white good—let us say a refrigerator—and as that reduced in value over time, the proportion of the value represented by the deposit would increase. Therefore, by the end of that particular product’s life, even if it had gone through several owners, it would have a value attached to it, which might well impel someone to turn it in rather than put it in a hedge. That is the same principle as the value that was added to vehicles at the end of life.

I am not clear about whether the regulations in schedule 8 are actually generic, or whether they will actually enable that sort of thing to happen in addition to the things that we normally talk about, such as the easier recycling of small items. I think the Minister will agree that it is not just about littering, it is about these large items. We could do the same thing with mattresses. We could require a deposit on a mattress, and provided someone had a certification of the deposit, they could receive the value of the mattress at the end of its life. Mattresses actually have quite long lives in various iterations. Does the Minister think that these regulations could accommodate that sort of arrangement? Although she has said that these regulations should be targeted, does she consider that in the fullness of time, perhaps they could be expanded in ambition and scope to accommodate those sorts of arrangements for the future? Does she think that within the schedule as it stands, regulations can be made that allow that to happen, or does she consider that further work may be necessary to bring it about?

Rebecca Pow: I thank the hon. Member for his comments. I am pleased he raised those points, because it gives me a chance to expand a bit on a genuinely interesting subject by which most of the population are fascinated. As has been mentioned, people do want the schemes. In fact, I am old enough to remember those glass Tizer bottles that could be taken back.

To reiterate, we are talking about schedule 8, which deals with deposit return schemes and the issue of how many plastic drinks bottles we use—14 billion a year, as well as 9 billion cans and 5 billion glass bottles. A lot of them are recycled, but it is still only 65%, so we have a long way to go. That is why the schemes will be important.

We have had a consultation and we are in the process of developing proposals using further evidence and ongoing stakeholder engagement, which is important because we have to involve the industry and local authorities—all the people involved in that whole space. The final scope and model of the schemes for drinks containers, including whether it is all-in or on-the-go, will be presented in a second consultation. We are considering cans and plastic and glass bottles.

In the previous consultation, we also consulted on coffee cups, cartons and pouches, which are one of my bugbears. We seem to be forced to buy our cat food in pouches whereas most of it used to be in tins, which I can hardly find now. That is an interesting subject that we need to go into at some point.

The opportunity will be provided by the schedule, which sets out the framework for deposit return schemes, including what items would be subject to a deposit return scheme, how the deposit amount is set, the requirements that can be placed on scheme participants, and the enforcement requirements under a deposit return scheme. The crucial thing is that a scheme has to be well functioning to make it easy for consumers to use. That is incredibly important, otherwise they will not use it and it will not work.

Ruth Jones: The Minister raises an interesting point about cat food pouches that I will take away. Obviously it is importantly to address those things, so can she outline the timescale for that?

Rebecca Pow: I was going on to say, touching on the important point made by the hon. Member for Southampton, Test, that the powers will allow us and future Governments to introduce deposit return schemes for other items in future. That is the purpose of them, so they can be expanded in scope, exactly as he hopes. He makes a good point on those grounds.

For example, those schemes could be for batteries, electrical and electronic equipment, and bulky items, including mattresses. The point about mattresses is absolutely right. My family are farmers and they find many mattresses dumped in their gateways on the outskirts of Bath. I know other Committee members’ families are involved in recycling and waste, and they could probably tell similar stories. The schedule will give us that opportunity.

The schemes will work hand in hand with the extended producer responsibility schemes, which will also help to reduce the amount of waste being dumped. Takeaway cups are classed as packaging, so they will come under the extended producer responsibility schemes for packaging. We are committed, as I think I said on a previous day, to consulting on EPR for textiles and bulky household items, so mattresses could come under that category of extended producer responsibility. Thus, exactly as I think the hon. Member was suggesting, it will all be
factored into the costs of the mattress, but the manufacturer will have to abide by the EPR system for the mattresses. Other items that we have committed to consulting on for that EPR scheme are construction materials, tyres and fishing gear, so they should all work together.

12.45 pm

However, this power relating to deposit schemes will enable other items to be included where it is considered necessary to promote reuse and recycling, where they are difficult to manage at the end of life and are frequently fly-tipped or dumped. I hope that has given a bit more detail.

Question put and agreed to.

Schedule 8, as amended, accordingly agreed to.

Clause 52 ordered to stand part of the Bill.

Schedule 9

Charges for single-use plastic items

Ruth Jones: I beg to move amendment 21 to schedule 9, page 174, line 28, leave out “may” and insert “must”.

This amendment is another case of “may” and “must”; at the risk of harping on about these things, it is important that we get our language correct. For the benefit of colleagues, I refer them to page 174, line 28 of the Bill, where we want to leave out “may” and insert the word “must”. The reason is that we want Ministers to take to keep their promises and be honest and bold in their promises. Once again, we are looking to strengthen the Bill and make it fit for purpose, and that is why I am asking the Minister to accept this objective and balanced amendment.

This schedule allows for the making of regulations about charges for single-use plastic items. These charges, which we have seen right across the country, with a charge on plastic bags in supermarkets and large stores such as John Lewis and the Link, aim to deliver a reduction in the consumption of single-use plastic items. Our amendment follows on from many others tabled to this Bill and moved in Committee. It is about delivery, it is about action and it is about getting this right.

Rebecca Pow: I thank the hon. Member for her amendment. However, it is appropriate to provide the relevant national authority with flexibility regarding when and how this provision relating to littered plastics is given effect. We have seen similar amendments across the Bill, balancing powers, what “may” be done, with duties or what “must” be done. This amendment is no different.

It will not be appropriate for this power to be exercised in all circumstances: for instance, our extended producer responsibility reforms to the packaging waste regulations should make significant strides towards addressing unnecessary plastic waste in packaging. Adding an additional charge would be unnecessary and unfair to those producers, as they would face an overlap of multiple charges and fees. To avoid that, we must take care when deciding which policy instrument to use in order to bring about the most effective change.

We need to take a measured approach and introduce the charge for items where there is a clear, considered and evidenced need for us to intervene. Imposing a duty for the Government to do so without thorough investigation into which products we should charge for could, for instance, lead to the unintended consequences of driving the market away from a single-use plastic product because a suitable alternative is available. That could risk causing even more serious effects, such as increasing greenhouse gas emissions through poor material switches.

The UK is consistently and rightly seen as a world leader in the area of tackling plastic pollution. I recently met a group called Oceana, a global organisation, thinking we were going to pick up lots of tips from them about how they are dealing with it, but they said, “Oh, no, we are watching you, Minister!” That was interesting—we are very much being watched on what measures we are putting in place.

We want to continue to lead by example to ensure that we reduce the plastic pollution entering the environment in the right way to prevent greater issues further down the line. This power will allow us and the devolved Governments of Wales and Northern Ireland to intervene and, as and when there is a clear need for change. I therefore ask the hon. Lady whether she might withdraw her amendment.

Ruth Jones: I thank the Minister for her explanation. It is always helpful to hear her expand on matters. It is also good to hear that, yes, the Government are being scrutinised by non-governmental organisations out there. It is good to see that they are being held accountable by such people, who are, let us be honest, the watchdogs. They, too, want to ensure that we have action.

The argument about flexibility—that the danger with too much flexibility is that we cannot actually achieve anything—has been made many times, so I will not repeat it, but I am happy to hear about the progress being made in moving matters forward. Again, I press the Minister on timescales. If we are to consult, then how long for and when will action come through? However, I am sure we will discuss that later. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ruth Jones: I beg to move amendment 182 in schedule 9, page 174, line 32, leave out paragraph 1(2)(b) and insert—

“(b) are made of plastic or any other single use material, and”.

The schedule seeks to reduce the consumption of single-use plastic by allowing charges to be imposed. However, the provision for charges to apply only to single-use plastics risks merely shifting the environmental burden, as alternative materials may be used with equal environmental recklessness. The risks of material substitution are plentiful and well documented by the Environment, Food and Rural Affairs Committee, chaired by the hon. Member for Tiverton and Honiton (Neil Parish), a Conservative Member. They have also been covered in comprehensive reports from Greenpeace and the Green Alliance, and I thank both organisations for their work on this important area.

The deeper problem lies with the single-use, throwaway culture, not with plastic per se. We need to look at changing hearts and minds, as well as legislation. I am well aware that during the pandemic our progress on getting rid of single-use plastics has been set back, but I hope the Minister will take this serious and urgent issue forward.
To take fly-tipping, for example, one north London borough—I am sure that this is similar elsewhere—spends millions on collecting fly-tipping, because it has an obligation to keep streets clean, and residents complain when it does not. I am sure all hon. Members in the Committee have similar stories about the amounts their local councils have to fork out to ensure that their streets are kept clear of litter and fly-tipping.

It is not the council dumping mattresses, furniture, unwanted goods and so on; it is residents, businesses and the like, and we had a discussion about that, led by my hon. Friend the Member for Southampton, Test. To tackle the problem, therefore, we need to get it into people's heads that enough is enough. It is simply not acceptable to attack, damage and contaminate our environment like that. Similarly, with this amendment, we want to tackle the throwaway culture once and for all, and we can use the Bill to do just that.

The amendment would address that increasing challenge. We need to ensure that charges are possible for all single-use materials, not just the plastic ones. In simpler terms, our amendment would ensure that the Government can successfully tackle our throwaway culture at the same time as tackling plastic pollution. Treating plastic in a policy vacuum is a short-sighted approach that risks changes that could, for example, increase carbon emissions or result in more waste generation.

The amendment follows on from many others tabled to the Bill and moved in Committee. It is all about delivery, action and getting the Bill right.

**Rebecca Pow:** I appreciate the focus on this issue. However, I fear that the amendment has not taken enough account of the bespoke issue of plastics or of how much of the Bill is aimed at tackling our single-use culture. Applying charges to single-use plastic items will be an effective way of reducing the impact on the natural world. The measures are designed to focus specifically on single-use, hard-to-recycle plastics.

In 2019, the Marine Conservation Society recorded that, on average, per 100 metres of beach, more than 150 pieces of plastic were found, which is a shocking revelation. That is more than triple the second most commonly listed item, which is cigarette stubs, which also contain plastic. I do not know whether hon. Members have been to the Keep Britain Tidy events, but that organisation has a big drive on cigarette butts at the moment. They contain a horrifying amount of plastic, not to mention the other toxic chemicals.

The MCS's work showcases the prevalence of plastics in our environment and explains why this material needs a focused clause in the Bill. As we saw with our ban on plastic straws, plastics still have an important role to play in certain applications, but Government intervention is necessary to tackle unnecessary plastic. Many of our mailbags are full of messages about these items. Public opinion was demonstrated in HM Treasury's call for evidence on tackling the plastic problem in March 2018, which received an incredible 162,000 responses, with strong support for the use of taxes and charges to tackle single-use plastic waste.

A lot is already being done on single-use plastics. Great work is being done on microbeads and microplastics, which the hon. Member for Cambridge referred to. When I was a Back Bencher, I asked the Speaker whether he had had a shower that morning, with the intention to point out how many microbeads were in the shower gel that would have been used. We have brought in one of the toughest bans in the world. There is also the 5p single-use carrier bag charge, which has had a dramatic impact on the number of bags used. A lot of good work has already been done.

The Bill already provides a robust approach towards achieving a more circular economy. Our new powers to reform the packaging waste regulations will enable us to adapt the system to incentivise all packaging, not just plastic, to be more carefully designed and manufactured, with recyclability in mind. The eco-design measures and consumer information powers will enable regulations to be made that set basic standards with sustainability in mind and that require information provision to consumers, to drive the market towards products that are designed to last longer, perhaps through multiple uses, instead of being thrown away after first use. The House of Commons shop is selling some excellent cutlery packs, which are made of bamboo. My hon. Friends and hon. Members should all carry a pack in their pockets or bags, to cut down on single-use items.

Meanwhile, our powers to enable the implementation of a deposit return scheme and introduce consistency in household and business recycling collections will drive the capture of more material and all types of single-use items for recycling.

**Dr Whitehead rise—**

**Rebecca Pow:** I will give way quickly, before I wind up.

**Dr Whitehead:** I am slightly concerned that the Minister is not responding to exactly what we said in the amendment. We need to make a decision on what this is about. Is it about single-use items, or is it about plastic items? In this instance, the two have been elided for the purpose of a concentration on plastic single-use items.

Schedule 9 defines single-use items in paragraph 1(3). It does not define them as a plastic single-use item, but simply as a “single use item”. The schedule enables the Government to make specific regulations. Indeed, the regulations “may specify”—that is the correct use of a “may”—single-use items, but only those that “are made wholly or partly of plastic”, which narrows down the range of single-use items.

**The Chair:** Order. I think the hon. Gentleman has made his points—[Interruption. I cannot bring in any other Members until the Minister has resumed.]

**Rebecca Pow:** I was literally on my last paragraph. The ability to place a charge on single-use plastic items will be a powerful tool in our efforts to tackle the issues arising from our use of single-use plastic, while still allowing for their continued use by people who need them. I therefore ask the hon. Member for Newport West to withdraw the amendment.

**Ruth Jones:** Again, as my hon. Friend the Member for Southampton, Test has said, we are not talking about plastics; we are talking about single-use items.
Anthony Browne (South Cambridgeshire) (Con): There is a specific issue in terms of plastic and why there is a need to focus on it: it is not biodegradable. It stays permanently in the oceans and is often very difficult to recycle. That is why there are so many tonnes of plastic floating around in the oceans, but not tonnes of other materials. We cannot start saying, “We’ve got to clamp down on everything that is single use.”

I suspect that the hon. Lady tends to buy The Guardian, which she uses only once. Would she put a special charge on buying all paper that is single use? Pieces of paper are single use, as are many other products. The trouble is that if we introduce charges on them, we actually discourage companies from moving from something like plastic, which is environmentally damaging, to something that is more sustainable. For example, I am a subscriber to The Times newspaper. It used to come wrapped in single-use plastic, which was terrible. It now comes wrapped in something that is completely biodegradable, which can be put in the compost. If we introduce charges, we discourage companies from doing stuff that is more environmentally sustainable.

Ruth Jones: I am disturbed to hear that the hon. Member does not recycle The Guardian, because that is what we are doing.

Anthony Browne: I do. Well, I do not subscribe to The Guardian, but I recycle The Times.

The Chair: Order. The hon. Gentleman has had his intervention. He cannot continue to make interventions from a sedentary position.

Ruth Jones: Thank you, Sir George. I am sure we can continue this debate at length at a later date.

I would suggest that we recycle everything that can be recycled, but the important thing is that we do not take our eye off the ball by talking just about plastics. The danger is that by talking just about plastics, we limit ourselves to being able to control only single-use plastic with this legislation in the future. Two years down the line, the problem might be some other material that is single use. Again, we have a problem with the definition of single use. As my hon. Friend the Member for Southampton, Test said, the issue is the single-use sickness of it, rather than the actual product itself. That is why we think the amendment is so important, and we will push it to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 8.

Division No. 27]

AYES

Furniss, Gill
Jones, Ruth
Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Docherty, Leo
Graham, Richard
Mackrony, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

1.4 pm

The Chair adjourned the Committee without Question put (Standing Order No.88).

Adjourned till this day at Two o’clock.
CONTENTS

SCHEDULE 9 agreed to.
Clauses 54 to 63 agreed to, some with amendments.
SCHEDULE 10 agreed to.
Clauses 64 to 69 agreed to.
SCHEDULE 11 agreed to.
Clause 70 agreed to.
SCHEDULE 12 agreed to.
Clauses 71 to 74 agreed to.
Adjourned till Tuesday 17 November at twenty-five minutes past Nine o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 16 November 2020

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The Committee consisted of the following Members:

**Chairs: James Gray, †Sir George Howarth**

† Afolami, Bim (Hitchin and Harpenden) (Con)
Anderson, Fleur (Putney) (Lab)
† Bhatti, Saqib (Meriden) (Con)
Brock, Deidre (Edinburgh North and Leith) (SNP)
† Browne, Anthony (South Cambridgeshire) (Con)
† Docherty, Leo (Aldershot) (Con)
† Furniss, Gill (Sheffield, Brightside and Hillsborough) (Lab)
† Graham, Richard (Gloucester) (Con)
Jones, Fay (Brecon and Radnorshire) (Con)
† Jones, Ruth (Newport West) (Lab)
† Longhi, Marco (Dudley North) (Con)
Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Zeichner, Daniel (Cambridge) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 12 November 2020

(Afternoon)

[SIR GEORGE HOWARTH in the Chair]

Environment Bill

Schedule 9

CHARGES FOR SINGLE USE PLASTIC ITEMS

Question proposed, That the schedule be the Ninth schedule to the Bill.

2 pm

Dr Alan Whitehead (Southampton, Test) (Lab): As hon. Members will recall, before we adjourned we discussed an amendment that sought to place a slightly different emphasis on elements of the schedule; we wanted to emphasise the question of single use in general, rather than just single-use plastic. The argument is that a lot of things other than plastic are single-use.

The idea is not what the hon. Member for South Cambridgeshire suggested in his intervention—that we would tax everything that was single-use, which would clearly be absurd. Indeed, one would not want to tax some plastic single-use items, given that they may be appropriate in a number of circumstances. That is why, on this occasion, the use of the word “may” is correct.

Schedule 9, it appears, has been drawn narrowly in respect of plastic and therefore narrowly also in terms of single use. To emphasise that, the schedule is actually headed “Charges for single use plastic items”, not “Charges for single use items that may be plastic”. That is unfortunate because the issue is not just about manufacturers seeking to get round a ban or restriction on single-use plastic items by making single-use items from different materials; it is that the whole throwaway culture is based on single-use items in general, which may or may not be plastic.

As those who have had the pleasure of dining under covid restrictions in this building, a couple of floors down, will know, a number of throwaway items are put forward for our use, including knife, fork and spoon sets. Interestingly, those sets are sometimes made of bamboo and sometimes of plastic; that seems to depend on which night people turn up for what meal. The principle is exactly the same: people are supposed to put the knife, fork and spoon set in the bin afterwards. In the particular instance of covid-19 restrictions, I fully understand why. However, although it is the norm in a number of catering establishments to supply a knife, fork and spoon set that cannot be washed and used again, those knife, fork and spoon sets are not necessarily only plastic. They can be made of all sorts of other things; the principle is that something is being made available that is supposed to be thrown away and not used again, when it could very easily be used again, with fairly minor alterations to the spec and how things are done, thereby saving a great deal of resource and upholding the principles of the circular economy.

That is what we were trying to get at in amendment 182. There are clearly various things that fit in that category and that we as a society could do a great deal to sort out, so as not to bring virgin materials into the economy when we do not need to and to circularise things so that they go round the economy. Making the best use of those items when we can is something that should be agreed to. Indeed, we had a debate a little while ago in which the Minister extolled the virtues of recyclable nappies. Of course, a recyclable nappy is what used to be known as a nappy. That is what people did, because Pampers and all the rest of it were not available in those days. However, we now have a culture where the default is to buy a bag of Pampers and get through those, rather than even thinking about using recyclable nappies. Indeed, they are quite difficult to get hold of.

Recyclable or non-recyclable nappies need not necessarily be made of plastic; they could be made of various things. However, the principle is about moving from nappies that are used in one way to those used by default in another way, with the result—which we know, and which I am sure comes across the Minister’s desk every day—that nappies are now a substantial part of the waste stream and potentially part of fatbergs and various other things in our sewers, because of the change over time from multiple to single use.

We do not oppose the schedule, but can the Minister see circumstances in which discouraging but not necessarily removing single use could be incorporated into the schedule or introduced in further regulations, or does she think that that is it for the debate on single-use items? I cannot believe that it is; we need to take it further than just plastic items. I seek suggestions or an understanding for how we can best advance the debate, if not through this schedule, then maybe somewhere else.

In conclusion, I know personally that a number of items—some of which apply to me—including certain medical things, such as sealed eye drops, absolutely need to continue to be plastic single-use items, and it would be inappropriate were it otherwise. My view is not that we should remove all plastic single-use items—or use only single-use items—but we all ought to be seeking to give ourselves the possibility of ensuring between us that the most circularity is achieved. I hope the Minister can give us some guidance and assurances on that.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): The Government are committed to tackling plastic pollution and moving towards sustainable alternatives. The schedule outlines the various provisions that can be brought forward in secondary legislation to place new charges on single-use plastic items. That will provide the incentive needed for citizens to use reusable alternatives while ensuring that single-use options are still available to those who need them—examples such as those the hon. Gentleman mentioned. The success of the carrier bag charge, which has led to a 95% reduction in the use of plastic carrier bags in the main supermarkets since its introduction, demonstrates the difference that even a small incentive can make.

I want to wind up this debate by being clear that the power in schedule 9 is related to single-use plastic items, with the reason being that single-use plastic items, as I highlighted right at the beginning, are increasingly common
in daily life. They are a significant and ongoing environmental problem, in use and disposal, and given that they are not valued, they are indeed disposed of via black bins or littering. They are not commonly recycled. The measure will address that.

Other single-use items will be addressed through the other myriad measures in the Bill, including deposit return and extended producer responsibility. The general ethos of this whole part of the Bill is to drive down waste from the very beginning, and I believe that the hon. Member for Southampton, Test, has not fully taken all that into account. When he sits down tonight in bed with the Bill and goes over it and the explanatory notes, he will realise that the problem he is raising is dealt with. That has all been thought about. I am, however, grateful to him that he will not oppose the schedule.

Question put and agreed to.
Schedule 9 accordingly agreed to.
Clause 53 ordered to stand part of the Bill.

Clause 54
Separation of waste

Question proposed, That the clause stand part of the Bill.

Dr Whitehead: We do not seek to oppose the clause, but I want to ask about food waste, which we may come to when we debate later schedules.

Food waste is clearly an important issue. Indeed, it was highlighted in the resources and waste strategy for England, which came out a little while ago, in a chapter headed, “Enough is enough: cutting down on food waste”. At the time, the White Paper projected that total UK food waste was 10.2 million tonnes. Interestingly, that food waste was broken down by sector. It suggested that households produced 7.1 million tonnes of food waste, hospitality and food service 1 million tonnes, manufacturing 1.85 million tonnes and retail 0.25 million tonnes. The important thing about that particular distinction made in the White Paper is that, yes, there is a large amount of food waste, as we know, and we could have a long debate about the reasons for rising food waste, how we can suppress that rise in food waste and how we can do much better at ensuring that we use what we are producing.

2.15 pm

That includes things such as inappropriate courgettes that do not actually make their way to the supermarket because they are the wrong shape and go into the food waste chain, and how retailers, particularly large retailers, might actually offer us rather more funny-shaped courgettes. Certainly my garden has a proliferation of funny-shaped courgettes; in fact, all I ever get is funny-shaped courgettes, so I do not find a problem with eating them, although I do get a bit fed up with the number that I produce. The essential point is that there are a whole load of things we can do in various different ways about cutting down food waste and ensuring that the food that is coming our way is used appropriately.

However, the chart in the White Paper does two things. It shows that, while probably the majority of food waste comes through households, substantial amounts of food waste elsewhere come not from households, but from other particular sources. The importance of that point is underlined by the conditions put forward in clause 54 about the management of food waste in terms of separation of waste. The clause substitutes the existing provisions in the Environmental Protection Act 1990 with a new provision on separate collection of household waste.

It states:

“The first condition is that recyclable household waste must be collected separately from other household waste.”

That is recyclable waste, so that is a wider definition than food waste. Moving down, it continues:

“The fourth condition is that recyclable household waste which is food waste must be collected at least once a week.”

The Minister mentioned that this Bill makes it necessary to collect food waste, but I am not sure, reading this clause and the schedules that go with it, that that is exactly what the Bill says.

The first point is that the collection of food waste in the Bill is basically referring to municipal food waste collection which, as hon. Members know, only deals with a fraction of the total waste arising. Most of the waste arising in this country is not the responsibility of municipal collection, because it is industrial or commercial and is in a different bracket. The 1990 Act also accentuates that by underlining that this is municipal waste that we are talking about and that, therefore, the collection under this clause is municipal waste being collected separately from other household waste, but that remains within the household as a whole and does not go outside it.

Secondly, in that context, that waste, if it is food waste, must be collected at least once a week. Different local authorities have different collection agencies; the waste world is divided into collection agencies who hand it over to disposal agencies, which would normally be top-line authorities or consortia of authorities. There is an issue of who is collecting what and what belongs to whom at what point. However, the bottom line is that different practices remain in different parts of the country when it comes to the collection of food waste. Some authorities have little blue boxes for collecting it; some authorities intermingle their food waste with other streams.

The provisions that “recyclable household waste must be collected for recycling or composting” and “must be collected separately from other household waste” do not appear to me to automatically mean that the food waste has to be separated out from other recyclable waste. The condition could be fulfilled by a collecting authority including food waste with other recyclable collections. The second separation is not necessarily spelled out, although it is clearly strongly encouraged in the clause.

The fourth condition that “recyclable household waste which is food waste must be collected at least once a week” only applies, therefore, where food waste is wholly separated out from other recyclable waste. If the food waste is included in the general recyclable waste, it does not appear that it has to be collected once a week. A local authority can get round that by simply not mounting a separate food waste collection.
I do not think that the provision says—I could be wrong and I would be grateful if the Minister could elucidate on the point—that all local authorities collecting waste have to collect food waste, have to collect it separately from other recyclable waste and have to collect it once a week.

Ruth Jones (Newport West) (Lab): My hon. Friend is making an important and detailed point. We do need to clarify this issue: what is written in law is written in law, and we must make sure that we fully understand it.

The Welsh Government currently have higher recycling rates than the English rates, because of the way that food waste is dealt with. Food waste is separated by the household; at kerbside, it is separated again by the collection authorities. There is food waste as well as recycling. There is an important point to be made about weekly collections. If food collections are less than weekly, all sorts of contaminations can occur, such as maggots, infestations and so on. Does my hon. Friend agree that it is important that we clarify these points?

Dr Whitehead: My hon. Friend is absolutely right that clarity is important.

In clause 54(4), immediately after the conditions that are set out on recyclable and food waste, there is a separate amendment to the Environmental Protection Act 1990, which talks about the “separate collection of household waste from relevant non-domestic premises”.

The conditions in that proposed new section are different from those on household waste. We have an issue here about what it means to collect recyclable waste, which may be food waste, in the context of household collection; and what it means to collect food waste that is separate from recyclable waste, and appears to be collectable once a week.

Unless the join is properly made between the different provisions in legislation, it appears to me, the holes will not be completely filled. Can the Minister point me to exactly how that arrangement is not to be mingled with more general unmingled food waste collection arrangement and that collection. If they do provide a food waste collection, it is essential that we take action on that, but I remain unconvinced that the clause states exactly that every local collection authority has to provide a food waste collection. If they do provide a food waste collection, it will follow a similar model, so there will no longer be a postcode lottery with one place where they do collect it and another where they do not.

For the first time, there will also be a requirement, as was raised by the hon. Gentleman, for non-domestic premises and businesses to arrange to have the same recyclable waste streams as households, separately collected, with the exception of garden waste, and for them to present their waste in accordance with those arrangements. I honestly believe that the hon. Gentleman is getting a bit muddled in his interpretation of what he is reading, because what is envisaged is clear.

Daniel Zeichner: I do not mean to usurp my hon. Friend the Member for Southampton, Test, who I am sure will follow immediately afterwards, but I think much of that is to be welcomed—certainly weekly collections. As I am sure the Minister is aware, the Local Government Association has caved its support with a request for funding to be made available to carry those out. Can she point to where in the Bill that guarantee is given?

Rebecca Pow: We have made it very clear from the beginning that burdens to local authorities will be covered. If the hon. Gentleman wants us to write to him in more detail about that, we can, but that has been made quite clear.

Dr Whitehead: If I am being misled, I look to the Minister to provide clarification, which I hope she is beginning to do—indeed, that is what I want, to inform my understanding of how the clause will work. There are some things that I cannot quite get to the bottom of, however, so perhaps she can point me to exactly how they join together.

I very much welcome the advances on food waste and it is essential that we take action on that, but I remain unconvinced that the clause states exactly that every local collection authority has to provide a food waste collection. If they do provide a food waste collection, it will follow a similar model, so there will no longer be a postcode lottery with one place where they do collect it and another where they do not.

Through the Bill, no matter where people live in England, they will have their plastic, metal, glass, paper, card, food waste and garden waste all collected for recycling, with food waste being collected from households weekly. The unexpected consequences of leaving food waste longer than that were outlined by the hon. Member for Newport West.

Food waste should be collected separately unless absolutely not technically or economically practical, but there is a requirement for it to be collected every week. At the very least, however, clause 26 is not what is called dry recycling, which are the first things I mentioned, and another bin for residual waste, as we do in Taunton Deane already; I do not know whether they have those in Southampton, Test.
can be used for specific purposes. If food waste is mingled in with recycling, it is difficult to take it out subsequently, and it cannot be used entirely for the purposes for which we want food waste to be used: anaerobic digestion and various other things.

2.30 pm

The Chair: Order. Before I bring the Minister back in, I should say that I have allowed lengthy interventions on the basis that I think it is for the good conduct of the Committee that people have the opportunity to make these points, so no criticism is implied. However, I do hope people will try to be a bit briefer with their interventions as the Committee proceeds.

Rebecca Pow: I think the hon. Gentleman has made his own point, really. He has outlined why we do not want food waste mingled up with all the rest of the waste. That is why through this Bill, no matter where in England a person lives, they will see dry waste—plastic, metal, glass, paper and card—collected, and food, which is not dry waste, in a separate bin. That is all in the Bill. Food waste will be collected from households on a weekly basis—I do not know how much clearer I can be. That will make recycling more straightforward and, with all the other measures in the Bill, will help us to increase overall recycling rates to 65%.

These recyclable waste streams must be collected separately from other waste and separately from each other, except when it is technically or economically impractical to do so or there is no significant environmental benefit. That will lead to higher quality, driving up the value of all recycled materials and, in turn, encouraging more recycling through increased demand. The clause allows us to add additional recyclable waste streams in future, subject to certain conditions. It will provide consistency of recycling for the first time, and help us meet future recycling targets. I therefore commend it to the Committee.

Question put and agreed to.

Clause 54 accordingly ordered to stand part of the Bill

Clause 55

ELECTRONIC WASTE TRACKING: GREAT BRITAIN

Ruth Jones: I beg to move amendment 128, in clause 55, page 41, line 33, leave out “including” and insert “excluding”.

Clause 55 adds new text to the Environmental Protection Act 1990, and seeks to set up a new system of electronic tracking for waste. Our amendment, which stands in my name and that of my hon. colleagues, seeks to secure that new system. I say to the Minister that the proposed new system is very welcome, but although we welcome the proposal, we and many campaigners and experts want to go further. The new system needs to be expanded to track all materials in line with the National Materials Database, for which we have previously supported. I hope the Minister will understand the background and motivation behind what we are trying to do here, and I commend the amendment to the Committee.

Rebecca Pow: I thank the hon. Lady for the amendment. I would point out that in the resources and waste strategy, the Government committed to modernising, simplifying and harmonising current regulations relating to the transport, management and description of waste, which have been introduced in a very piecemeal fashion over the past 30 years or so. She will probably agree with me that the current system is in urgent need of an update, and I welcome the fact that she is supporting these general measures.

Waste tracking is still largely carried out using paper-based record keeping, which makes it very difficult to track waste effectively, as it provides organised criminals with the opportunity to hide evidence of the systematic mishandling of waste. In 2018, the independent review into serious and organised waste crime recommended that mandatory electronic tracking of waste should be introduced at the earliest opportunity to address the problems of illegality in the waste sector. In the current system, waste can be fraudulently re-classified and transferred on, or simply illegally dumped, and the paper trail then disappears. That makes it difficult to identify and deal with waste crime, including cases of fly-tipping, which concerns rural and urban areas.

To make essential improvements and create a digital waste-tracking system, amendments may be required to primary legislation or retained direct EU legislation. That does not mean that we are falling behind the EU, because we do not want to fall behind the EU either. That is paramount as we move forward from 1 January. With that in mind, we will not push the amendment to a Division. I beg to ask leave to withdraw the amendment.

Ruth Jones: I am grateful to the Minister for her expansion on the situation. We are singing from the same hymn sheet, because electronic tracking is so important, as the Minister said; the paperwork trail is not as accurate as the electronic one. We all want the same thing. I am pleased she has mentioned the EU, because we do not want to fall behind the EU either. That is paramount as we move forward from 1 January. With that in mind, we will not push the amendment to a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 43, in clause 55, page 41, line 44, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.—(Rebecca Pow.)

See Amendment 28.

Clause 55, as amended, agreed to.

Clause 56

ELECTRONIC WASTE TRACKING: NORTHERN IRELAND

Ruth Jones: I beg to move amendment 7, in clause 56, page 43, line 4, leave out “may” and insert “must”.

This amendment, again, is focused on language and the strength of the legislation. We want to replace “may” with “must”. I suspect the Minister is getting tired of hearing these amendments, but we are trying to
be helpful and ensure that the Bill is as strong and effective as possible. I will not repeat the benefits of “must” over “may”.

Rebecca Pow: I thank the hon. Member for the amendment. The introduction of a mandatory electronic waste tracking system will increase transparency in the waste industry, as I outlined earlier, and pose a barrier to organised criminals operating in the sector.

Clause 56 provides the regulation-making powers needed to legislate on how the system is set up and administered in Northern Ireland. It is entirely appropriate to provide the Department of Agriculture, Environment and Rural Affairs in Northern Ireland with the flexibility as to when and how the provision is given effect. Primary legislation consistently takes that approach to the balance between powers and duties. This enabling power should not be converted into a duty.

It should be for the Department of Agriculture, Environment and Rural Affairs to decide how and when to use the enabling power to bring forward legislation and, in turn, for the Northern Ireland Assembly to decide whether to approve this legislation. The Assembly must be given its proper place in terms of scrutiny when it comes to the commencement and implementation of the powers. The proposed amendment to place an absolute duty on the Department of Agriculture, Environment and Rural Affairs goes against the spirit of that. If the amendment is made, the Department could be subject to a duty to make regulations on waste tracking that it would then be unable to comply with if the Assembly did not approve the legislation. It would also not be appropriate for Northern Ireland to be subject to a duty to make waste tracking regulations that the other nations of the UK are not subject to. I therefore consider the amendment inappropriate and ask the hon. Lady if she will kindly withdraw it.

Ruth Jones: I thank the Minister for her comments. While I understand her reasoning, we want Northern Ireland to be in line with the rest of the UK in being as strong and far reaching as possible on waste and electronic tracking systems. It is important that we enable the Northern Ireland Assembly and the authorities there to do everything they want to. We had a long debate on powers and duties when considering the Agriculture Bill. If it is that important, it should be legislated for, and it should be in the Bill. However, having heard the Minister, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 56 agreed to.

Clauses 57 and 58 agreed to.

Clause 59

Transfrontier shipments of waste

Ruth Jones: I beg to move amendment 177, in clause 59, page 50, line 19, at end insert—

“(1C) The Secretary of State must by regulations make provision to prohibit the exportation of waste consisting wholly or mostly of plastic from no later than March 2025.”

The clause seeks to amend the Environmental Protection Act 1990 and give the Secretary of State new powers to regulate the export of waste from the United Kingdom. In principle, it is welcome, because a country of our wealth and location should absolutely not export polluting waste to countries in poorer parts of the world with economies nowhere near the size of ours. This is a question of morality in many ways. I touched on it earlier this week when I referenced the situation that the Government are now in with Sri Lanka and the 21 containers that were shipped there in 2017 that are now being returned.

For all the welcome that the clause deserves, existing international commitments mean that it is already illegal for the UK to send polluting waste to non-OECD countries. The international Basel convention obliges signatories, including the UK, to prohibit the export of waste to developing countries if they have reason to believe that the waste will not be managed in an environmentally sound manner. The convention will be strengthened in 2021, when most plastic will become non-OECD compliant, and that is exactly what the amendment inserts into the Bill—a sense of urgency.

I suspect that hon. Members have been into primary schools and talked to young children. I used to do that often, and I was struck by how many times environmental issues came up. I have had numerous letters from schools, and the issue of waste being transported elsewhere comes up time after time. So many of our fellow citizens do the
right thing. In so many households, particularly in a city such as Cambridge, people go to huge efforts to recycle, but then they ask themselves where it goes. When they read—possibly even in *The Guardian* occasionally—that all is not well on this front, it really demoralises them. They think, “What’s the point?” They are doing their bit, but their Government are not doing the bit that only Government can do.

That is why there is an opportunity to strengthen the Bill. The Minister should welcome the opportunity the Opposition are giving her today to do that and to perhaps begin to be able to say to the wider world that these things really are worth supporting. With all the caveats, all the “mays” and all the reasons why these things cannot be done yet because they are too difficult and complicated, the feeling out there in the wider world among the people we represent is that there really is not the sense of urgency that the situation requires.

**Dr Whitehead:** I echo my hon. Friend’s claim that the amendment is very important for how the country is seen to deal with its waste, and particularly for how we are seen by our own population. Hopefully, we are seen in a positive light. All that we have discussed about recycling, single-use plastics and such things is based, to a considerable extent, on the public’s confidence that what is going to happen is actually what does happen. If the public think that none of what is being said to them is true, the chances of them co-operating—by sorting everything into different bins, ensuring that things are returned, and stopping dumping things in hedges—will be undermined.

The fact that we are seen to be dealing with our own waste properly and safely, and that we are not simply using the export of waste as a safety valve for our inadequacies in processing waste fully in our country, ought to be something that should concern us very much. Frankly, that is what has happened over a number of years with our waste exports. We do import some waste, but we export quite a lot more than we import. The waste we import is usually waste that can be used for energy from waste and various other things, such as refuse-derived fuel. The waste we export is not only of a much wider variety, but actually goes to parts of the world where, in many instances, we cannot be sure—and certainly, people there cannot be sure—that the destination for that waste is of the standard we would expect if that waste were disposed of in our own country.

The Minister has said this legislation would ensure that we do not export waste other than to OECD countries. That sounds very reassuring, until we look at membership of OECD countries. It is not, shall we say, EU members and a couple of other states in the world. It is actually a wide variety of states across the world: for example, Chile, Colombia, Mexico and Turkey are members of the OECD. Therefore, that is not necessarily the quality standard route, as far as safety valves are concerned. The best thing to do is probably to ensure we have sufficient recycling collection, processing and reuse facilities here, so that we can really deal with all our waste in the UK. That is not just a practical thing; it is a moral obligation we have for the future, as far as waste management is concerned.

As my hon. Friend the Member for Newport West mentioned, what we really do not want is repeated scenes—not just repeated scenes, but repeated extremely embarrassing scenes—of bales of waste, mainly consisting of plastic, going to countries we think will quite easily accept them and say nothing, but that are now beginning to say, “This is not good enough. The quality of this material is not right. It is not what we thought it was going to be, so you can have it back.” That is not just one instance—Sri Lanka; we have form on this. This has happened with several countries, including Malaysia, which sent back 27 bales of waste. Indeed, I put a written question to the Minister a little while ago about how that had happened, what was going to happen with that material when it came back to the UK and whether it would be properly dealt with and disposed of.

Part of the reason these things have started to happen is that some of our traditional destinations, in terms of what have historically been fairly lazy assumptions about export of waste, have drawn the drawbridge up themselves. China’s great green wall policy means that the Chinese no longer want to receive anything that looks vaguely usable that we might put in a container back to China, and that we cannot work on the assumption that they can somehow reprocess some of it and will be quite pleased to do so because that will help their economy. They do not want it. They have put a green wall up to stop these things happening.

That has meant that the waste exports have gone to other countries, which it was thought are less particular about what they want to receive and, indeed, probably happy to receive stuff that is not what it says on the tin or on the bale. One issue from this particular return of bales of waste to the UK was that they were claimed to be high-quality waste that could be reused and remanufactured by those countries for recycling purposes. However, they were not. There was all sorts of old stuff, to coin a phrase, in those bales, and it was way beyond the standard that they would reasonably accept. Two questions arise from that. First, what were we doing continuing to export in that lazy way to those countries? Secondly, why did what I thought were our internal checks and balances to ensure the quality of what we export fail to work?

We have potentially considerable work to do. If we are to continue to export waste at all, we have to get our act together and ensure that that waste is as good as it could be and is absolutely not going to the wrong places. The Opposition think that the best way to deal with plastic or mostly plastic waste is simply to say that by 2025 we will stop doing that. Yes, that gives us a challenge, because we currently do not have sufficient good-quality plastic recycling facilities in this country, particularly those that can properly separate the 25 or 26 different kinds of plastic and put them at the right level in the plastics hierarchy so that we do not end up only making traffic cones with the plastic we recycle.

With plastic recycling, the production level of the plastic going into the system needs to be commensurate with the recycling that takes place, so that the plastic can be recycled at that level. For example, food-grade plastic has to be recycled with other food-grade plastic. If it is contaminated with anything else, it stops being food-grade plastic, recycled or not. Indeed, if we are not careful, it all goes to the bottom of the plastic hierarchy, and we get massive amounts of park benches and traffic cones and nothing else.
We need better facilities in this country for recycling and reprocessing plastic that can be recycled properly, according to the hierarchy. That is partly why the amendment says: “from no later than March 2025.” That would give us the space to start getting our act together in this country and ensuring that facilities are available to recycle properly. We really cannot accept, and I do not think any of us would want to accept, that exporting waste should in the future be seen as a safety valve for our own inadequacies. It has to be different from that. The amendment underlines why it has to be different, how it can be different and how we can set an example to the world by ensuring that we deal with what arises from our own backyard in our own backyard and do not send it out across the world, for purposes that we do not know too much about and that the people concerned are obviously increasingly upset about when it gets to them.

This is an important amendment that we hope the Minister will accept entirely in the spirit in which it is intended. I know that she is absolutely committed to those high standards in our waste management, and I hope that she will accept it in that spirit.

Rebecca Pow: I thank all hon. Members who have inputted, although I take slight issue with the “lost decade” for the environment. I think Labour needs to look at its own record prior to that and ask how we have come to this pass. Thank goodness we have a Government who are doing something about it. However, that is not to say that I do not welcome the Opposition’s support; I absolutely do.

Also, the hon. Member for Cambridge asked why people were not more excited about the Bill. I believe they are genuinely excited about it, and it is such a huge Bill. Other hon. Members have probably had this too, but when one meets groups of people who might be a wee bit, what I call controversial, and explains what is in the Bill, they are absolutely amazed. It literally addresses all the things that people write to us about and that fill our inboxes, so I for one am going to be that champion—indeed, I hope I already am. I hope that the hon. Gentleman will join me and promote the Bill, because I think it will do all the things we need for a sustainable future.

Anyway, to the amendment, for which I thank the hon. Member for Newport West and which would prohibit the export of “waste consisting wholly or mostly of plastic” by March 2025. However, the clause already provides powers to make regulations on a wide range of matters to do with the import and export of waste, including prohibiting and restricting its export. We will use powers in this clause to implement our manifesto commitment to ban the export of plastic waste to non-OECD countries—exactly what the hon. Member for Southampton, Test is asking for—as we recognise that some countries have difficulty processing imports of this type of waste. We are committed to dealing with more of our waste here in the UK through the measures I have been talking about today and previously. We will consult industry, NGOs and local authorities on the date by which the ban will be achieved.

Dr Whitehead: Will the Minister give way?

Rebecca Pow: I will, but very briefly, because the hon. Gentleman had a very long go just now.

The Chair: I am sure he will be very brief.

Dr Whitehead: I will indeed. I just wanted to correct what the Minister seemed to suggest I said about the OECD. I was not saying “Hooray for exports to the OECD!” Rather, I think we should see whether all OECD member countries keep to high standards of waste reception and export. My perusal of the membership suggests that not all do.

Rebecca Pow: I too looked at that great list of members yesterday and at non-OECD countries. The OECD countries represent 80% of the world’s investment and wealth. I just wanted to make a point about OECD countries and waste, though. We must not forget that waste is a commodity and that there is a legitimate global market for secondary materials. Exports of waste for recycling between OECD countries are already covered by an international agreement—the OECD decision—which provides the framework for the control of movements of waste.

Where the UK cannot currently recycle materials economically, exports can ensure in some cases that the materials are recycled, rather than sent to landfill or for incineration. Not all products sold in the UK are made in the UK. Waste exports can help to increase the amount of recycled materials going into new products we buy that are produced abroad. We must not forget the big picture where waste goes and what it is used for.

Making the amendment before the consultation on the date for stopping the exports of waste to non-OECD countries would pre-empt the result of the consultation. It is important that all stakeholders have a fair and equal opportunity to express their view on when the proposed prohibition should be implemented. The prohibition could have wide-ranging effects on local authorities and our wider waste infrastructure, and it is important to consider these effects fully before we set a timetable for implementing the ban.

I assure all hon. Members that the Government take very seriously the regulation of waste imports and exports, as well as the impact illegal waste shipments can have on the global environment—hence our manifesto commitments. Electronic waste tracking will help this agenda, as we will know what is going where and it will be harder to send the wrong products abroad. We reaffirm that we should be dealing with our own waste right here in the UK wherever possible. I ask the hon. Member for Newport West to withdraw her amendment.

Ruth Jones: I thank the Minister for her enthusiasm for this Bill. We are obviously all enthused, and it is important we get the word out about what is going on. I thank my hon. Friends the Members for Cambridge and for Southampton, Test for their eloquent speeches about the need to deal with things at home and not just shove them off into the far blue yonder. People at home have woke up and want to do the right thing. We go on and on about people’s awareness being raised, but we must ensure that they have the ability to do the right thing.
Greta Thunberg has spoken eloquently and young people around the UK especially have taken on board what she says. I was honoured to make my maiden speech on 1 May last year, when she addressed a number of us in Portcullis House. It was the day we declared the climate change emergency so it was important. She is seen as one of the leading lights in engaging young people and encouraging them to lobby those within and outside this room, so that we will do the right thing for them and for future generations.

The nub of the matter is the end result, which is that we are dumping containers in another country. I have seen TV pictures of young people—children—scavenging through waste sites, and the waste has clearly been identified as coming from the UK. That is not acceptable and we know it. We need to make sure we deal with our waste here in the United Kingdom, for the very reason that the Minister has outlined, and with the very mechanisms that she outlined. We make the waste and we must dispose of it properly ourselves though measures including proper processing and proper waste stations. Let us not forget, if we ship waste abroad, it contributes to climate change through the extra emissions from shipping freight.

The Minister has made an eloquent plea for us to withdraw the amendment because the deadline of March 2020 might hinder meaningful consultation, but I argue that the deadline is a helpful way to encourage people to consult and to decide how we can achieve what we want within the timeline. I should say it is a spur—a driver—to consult and to decide how we can achieve what we want. That is how we can start to demonstrate that this is about actions, not words. For that reason we shall divide the Committee.

**Question put.** That the amendment be made.

The Committee divided: Ayes 5, Noes 7.

**Division No. 28**

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**Question accordingly negatived.**

**Amendment made:** 44, in clause 59, page 51, line 47, leave out 'the National Assembly for Wales' and insert ‘Senedd Cymru’.—(Rebecca Pow.)

**See Amendment 28.**

Clause 59, as amended, ordered to stand part of the Bill.

**Clause 60**

**Hazardous waste: England and Wales**

**Amendments made:** 45, in clause 60, page 54, line 14, leave out ‘the National Assembly for Wales’ and insert “Senedd Cymru”.

See Amendment 28.

Amendment 46, in clause 60, page 54, line 17, leave out “the National Assembly for Wales” and insert “Senedd Cymru”—(Rebecca Pow.)

See Amendment 28.

Clause 60, as amended, ordered to stand part of the Bill.

Clauses 61 to 63 ordered to stand part of the Bill.

Schedule 10 agreed to.

Clauses 64 to 68 ordered to stand part of the Bill.

**Clause 69**

**Local air quality management framework**

**Question proposed.** That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to discuss the following: That schedule 11 be the Eleventh schedule to the Bill. Clause 70 stand part.

That schedule 12 be the Twelfth schedule to the Bill.

**Dr Whitehead:** I wanted to draw the Committee’s attention to schedule 11, which concerns the local authority management framework. As hon. Members will see, within that framework on air quality, an enormous amount is placed on the local authority’s plate. That is quite right because the people at local authorities are absolutely the right people to deal with air quality problems.

A little while ago there were exceedences of world standards on air quality. The Department for Environment, Food and Rural Affairs required a number of the local authorities that were in danger of infracting at that point to draw up local air quality plans and to produce proposals to improve air quality in certain areas. My city, Southampton, was one of those places. Generally, there was a good relationship between the Department and my local authority in drawing up those plans—that was before the more extensive plans set out in schedule 11—how those were looked at by the Department for Environment, Food and Rural Affairs, what sums of money were put in to support the plans in some instances, and how they then went forward. So far, so good.

3.15 pm

In a number of instances, however, as soon as local authorities started to put in their plans, other Government Departments piled in to slag them off for what they were doing—saying that they were impeding the proper passage of transport or whatever through city centres, that it would be bad for business and should not be done for all sorts of reasons. I regret to say that those local authorities were getting it in the neck for doing what DEFRA wanted them to do and was supporting them to do. Local Members in those areas, who were not necessarily of the party putting forward those proposals if those proposals were from an Opposition party administration, also piled in to slag off those local authorities, even though their own Government were supporting the local authorities in putting forward those plans. I thought that was quite reprehensible.
The local authorities were making honest efforts to try to get air quality under control and sort it out. In some instances, they were using seriously difficult measures to do that. For political purposes, and sometimes other purposes, other Departments and Members sought to belittle and downgrade those efforts, or even downright opposed them. I hope to hear from the Minister about that.

We fully support the plans for local authorities and how they work, but two things are necessary. First, sufficient funds have to be available to allow local authorities to do their work where those plans are being set out. It is by no means apparent at the moment that that will be the case. Secondly, where local authorities are doing what they should be doing, they deserve support from across Government to allow that to happen. Believe me, it is severely demoralising for local authorities that are working really hard to find that support is not there when they thought they were doing the right thing.

I hope the Minister will be able to assure us that this is essentially a cross-departmental initiative and that all Government Departments understand what is involved in the schedule—that it involves, particularly at local level, local authorities doing something for this specific purpose that another Department might not think is a great thing. Departments have to understand that that is how it must happen. It may even be a question of the Minister asserting her undoubtedly massive power within the Government to get it across to other Departments that they should refrain from casting aspersions on local authorities doing something for this specific purpose, other Departments and Members sought to oppose them. I, as the environment Minister, am working really hard to find that support is not there when they thought they were doing the right thing.

Ruth Jones: On that point about enforcement, while we agree that it is essential that local authorities are able to enforce, how does the Minister see that enforcement being undertaken? There are environmental health officers up to their eyes with covid, there are lots of people who are no longer in work because of the cuts the authorities have had to make and the funding is an issue. How will it happen?

Rebecca Pow: I thank the hon. Gentleman for his comments. Improving the quality of the air we breathe is an absolute priority for the Government. We are taking action to reduce pollution from a range of sources, including a £3.8 billion plan to reduce pollution from road vehicles and our commitment, set out in clause 2 of the Bill, to set a legally binding national target to reduce fine particulate matter, which we discussed a great deal on the very first day of this Committee, a long time ago. The current local air quality management framework places responsibility on local councils to assess local levels of air pollution and to address pollution exceedances. The framework—I think this is what the hon. Gentleman was suggesting, and I agree with him—is not sufficient for delivering the progress we want to see.

The hon. Gentleman has raised a number of issues, but, first of all, on cross-departmental working, I can assure him that I, as the environment Minister, am working increasingly across Departments. On air, we work with the Department for Transport in particular; we have the joint air quality unit with that Department and we are also increasingly working with the Department of Health and Social Care. That is really healthy and really important.

However, going back to that framework, local authorities have told us that they need greater co-operation from a range of bodies in order to deliver meaningful action to bring pollution levels to within statutory limits. The provisions in the schedule will drive greater co-operation between different levels of local government and allow the Secretary of State to designate other relevant public authorities that will also be required to take action. I think that is what the hon. Member for Southampton, Test is really driving at, but it is all in here, and we will consult on which bodies should be designated—actually, we launched a call for evidence on this on 5 October, so work is already under way.

As we set out in our clean air strategy, we also want to provide a quicker and more proportionate enforcement mechanism for smoke control areas, enabling greater local action on domestic solid fuel burning, which is a major contributor to national fine particulate matter emissions. I think the hon. Gentleman touched on funding. We anticipate only a small extra cost to local authorities from the revised local air quality management frameworks—the estimate we have had is around £13,000 per year per local authority.

Returning to the enforcement measures, especially in relation to the smoke control areas and domestic solid fuel burning, we are going to help tackle that, and we will achieve that by replacing the criminal offence in existing legislation with a civil penalty regime, which will allow for the removal of the statutory defences that currently hinder enforcement. This change will ensure that local authorities can avoid lengthy and costly court cases—many of them have mentioned this to us—in enforcing regulations on the smoke emissions, enabling much smarter enforcement. It will be much quicker and simpler for them to deal with an issue as and when they come across it if we make it a civil penalty.

Ruth Jones: On that point about enforcement, while we agree that it is essential that local authorities are able to enforce, how does the Minister see that enforcement being undertaken? There are environmental health officers up to their eyes with covid, there are lots of people who are no longer in work because of the cuts the authorities have had to make and the funding is an issue. How will it happen?

Rebecca Pow: The main way it will happen is that we will put the measures in the Bill to enable it to happen, so that the local authorities can take the action they are asking for. This is something they have been asking for and it will be made much simpler for them to take the action that they want to take, so they need to take it. We will have all our targets on smoke and fine particulate matter, so there will be even more reason to tackle any issues within one’s particular local authority.

These measures will also require retailers in England to notify customers of the law regarding the purchase of certain solid fuels for use in smoke control areas. These measures will all work together to improve compliance. They will remove the limit on the fine for the current offence of delivering these fuels to a building in a smoke control area. Local authorities will also be able to apply smoke control legislation to boats moored in their area, subject to consultation. Finally, criminal prosecution of serious offenders who repeatedly emit smoke that is prejudicial to health will be made possible by removing an exemption in existing statutory nuisance legislation. That is another thing that will definitely help the local authorities.
Ruth Jones: I beg to move amendment 8, in clause 71, page 61, line 25, leave out “may” and insert “must”.

The clause provides for the Secretary of State to make regulations providing for the recall of relevant products that do not meet the appropriate environmental standards. I am afraid that this is yet another case of mays and musts. The whole point of the Bill is to deliver real change and to ensure that we seize every opportunity to save our planet.

Do not forget, the Bill disappeared for more than 200 days, so we have lost a lot of time in the fight against climate change—but the fight is why we are here today. We cannot simply report back to the Floor of the House, and to the country, a Bill that is full of mays, ifs, and buts. Let us be confident and turn those mays into musts and whens. We can get the Bill through and get on with what we need to do about climate change.

Rebecca Pow: We know the harmful effect that pollution from vehicles and machinery has on our air quality and the health of our communities. I am sure that all Members are aware of the difficulties facing many local authorities in bringing down concentrations of dangerous air pollution. Much of that is due to vehicles that emit more pollution on the road than they do in a certification test. The Government therefore set out in our clean air strategy that vehicles that do not meet the relevant environmental standards must be recalled and fixed. The provisions will enable the Transport Secretary to issue a mandatory recall notice if vehicles or parts of vehicles do not meet the environmental standards required of them.

I assure hon. Members that my colleagues in the Department for Transport intend to lay secondary legislation at the earliest opportunity to ensure that non-compliant vehicles can be removed from the road. However, it is critical that the vehicle recall regime is fit for purpose. We therefore intend to have a full public consultation on the draft regulations, and we expect the secondary legislation to be in place as soon as possible after Royal Assent. That will depend on the outcome of the consultation. It is appropriate that the Secretary of State is provided with the flexibility as to when and how this provision is given effect. I therefore ask the hon. Lady to withdraw the amendment.

Ruth Jones: I am grateful to the Minister for her words. Obviously, we welcome the clean air strategy. The fact that secondary legislation will be introduced is also welcome but, again, we do not want it to be seen as an excuse to kick things further down the road. Kicking the can down the road is not a good idea, especially when it comes to people’s health. As we know, the lack of clean air can impact directly on people’s lung capacity, asthma, chronic obstructive pulmonary disease and things like that, which are all exacerbated by poor air quality.

My question to the Minister—it is rhetorical, of course—is, again, who will enforce? She has talked about secondary legislation, but who will actually enforce when a vehicle is seen emitting polluting smoke and particles? Who will do it? There is no money and no staff within the local authorities to do it.

Rebecca Pow: The measures will impose no additional cost on the motorists. All the recalls will continue to be fully funded by the affected vehicle manufacturers. When enacting a recall, the Government will now be able to impose supplementary conditions on vehicle manufacturers, which could include the requirement that the owner of the vehicle or equipment is compensated for any inconvenience. I hope that the hon. Lady will agree that that means there is a sound system, including setting it all in secondary legislation.

Ruth Jones: That is interesting. I am sure that we will have further debates on this with later parts of the Bill. When I ask who will enforce, I am talking about boots on the ground—who will physically get to the car, lorry or whatever, to pull it in for the assessment it needs in order to impose that secondary legislation? But I am grateful to her for her explanation and, on that note, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 71 ordered to stand part of the Bill.

Clauses 72 to 74 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.

—(Leo Docherty.)

3.32 pm

Adjourned till Tuesday 17 November at twenty-five minutes past Nine o’clock.
Written evidence reported to the House

EB76 People and Nature

EB77 UK Pesticides Campaign
Public Bill Committee

ENVIRONMENT BILL

Sixteenth Sitting

Tuesday 17 November 2020

(Morning)

CONTENTS

Clauses 75 to 78 agreed to, some with amendments.
Schedule 13 agreed to.
Clauses 79 and 80 agreed to.
Clause 81 under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 21 November 2020
The Committee consisted of the following Members:

**Chairs:** † JAMES GRAY, SIR GEORGE HOWARTH

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
† Anderson, Fleur (*Putney*) (Lab)
† Bhatti, Saqib (*Meriden*) (Con)
† Brock, Deidre (*Edinburgh North and Leith*) (SNP)
† Browne, Anthony (*South Cambridgeshire*) (Con)
† Crosbie, Virginia (*Ynys Môn*) (Con)
† Docherty, Leo (*Aldershot*) (Con)
† Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)
† Graham, Richard (*Gloucester*) (Con)
† Jones, Fay (*Brecon and Radnorshire*) (Con)
† Jones, Ruth (*Newport West*) (Lab)
† Mackrory, Cherilyn (*Truro and Falmouth*) (Con)
† Moore, Robbie (*Keighley*) (Con)
† Pow, Rebecca (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*) Thomson, Richard (*Gordon*) (SNP)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Zeichner, Daniel (*Cambridge*) (Lab)

Anwen Rees, Sarah Ioannou, *Committee Clerks*

† attended the Committee
Public Bill Committee

Tuesday 17 November 2020
(Morning)

[JAMES GRAY in the Chair]

Environment Bill

9.25 am

The Chair: I welcome hon. Members back to line-by-line consideration of the Environment Bill. I particularly welcome the hon. Member for Ynys Môn, who joins our Committee for the first time.

Clause 75

WATER RESOURCES MANAGEMENT PLANS, DROUGHT PLANS AND JOINT PROPOSALS

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 9, in clause 75, page 66, line 11, leave out “may” and insert “must”.

We start this morning with an amendment relating to clause 75. It will not be a surprise to any member of the Committee. The suggestion is to replace the word “may” in the line under the heading “Plans and joint proposals: regulations about procedure”. Proposed new section 39F of the Water Industry Act 1991 states:

“The Minister may by regulations make provision about the procedure for preparing and publishing—

(a) a water resources management plan,
(b) a drought plan, and
(c) a joint proposal”.

It seems to the Opposition that it is very important that these things—a management plan, drought plan and joint proposal—are actually published and that provision is made about the procedure for publishing them. That is a central part of this clause.

As we have said in this Committee previously, no aspersions are cast in any direction concerning the present intentions of Ministers, but I remind the Committee that we are making legislation for a very long time and that there might conceivably be circumstances in which Ministers less well inclined towards the process light upon this clause and decide that it is not really so important that regulations are made, hence we think that the word “must” should be inserted in the Bill.

We have pointed on a number of occasions to the lack of “musts” in the Bill. I think that this is one of the more important ones and I hope that the Minister, even if she is not prepared to consider a number of the other “musts”, will have laid by a little store of sympathy for this “must” proposal, because as I think she would agree, to a very important feature of this clause.

Fleur Anderson (Putney) (Lab): I would like to add to the argument about the fact that this legislation will stand for a long time. Even the fact that clause 75 amends the Water Industry Act 1991 is a reminder to us of how long we expect this legislation to be in force and people to be acting on it accordingly. The Water Industry Act became law 29 years ago and we are still discussing it, and how we will amend it, now. Many years from now, we will still be discussing this legislation, and therefore it is so important to get it right. That is why a “must” instead of a “may” is very important, especially in this clause.

This amendment seeks especially to talk about regional plans. Currently, planning on a regional rather than a company-by-company basis is non-statutory, and so to put this on a statutory basis would be a gear change in terms of water resource management. I would welcome any moves to put regional plans on a statutory footing, but the Government have to be clearer on the circumstances in which the Secretary of State would use the powers and how adherence to the regional plans would be encouraged if it were not clearly set out here. The current drafting is too weak and does not give this clause the teeth that it needs.

By changing “may” to “must”, amendment 9 would tighten up the clause considerably and make it far more effective. It would require the Secretary of State to make provision setting out the procedure for preparing and publishing water resources management plans, drought plans and joint proposals. I would like the Minister, before rejecting the amendment and dismissing it as unnecessary, to answer the following questions. Under what circumstances would the Secretary of State expect to use the powers created by clause 75 to direct water companies to prepare and publish joint proposals—the regional plans? There is a concern that that will not become standard practice if it is not expected. If the powers are not used and regional water resources planning remains on a non-statutory footing—if it is just a “may”—how will the Secretary of State ensure that companies produce water resources management plans that are aligned with the regional plans?

In the absence of a commitment to using the powers created under clause 75 to direct regional planning, can the Minister assure us that the Secretary of State will direct the Department for Environment, Food and Rural Affairs to set out the need for company plans to align fully with regional plans in its strategic policy statement to Ofwat? Otherwise, many who are listening to and reading this debate will remain concerned that companies’ individual plans could deviate from regional plans, affecting our ability to provide sustainable water resources for society in the light of the worrying projections set out in the Environment Agency’s national framework for water resources.

Anthony Browne (South Cambridgeshire) (Con): I want to make a general philosophical point about “mays” and “musts”. We have been talking about this matter a lot over the past couple of weeks. Obviously, our end objectives are the same: we all want a Bill that strengthens environmental protection, and a strong and independent Office for Environmental Protection.

I realise that this clause is slightly different from earlier clauses, but I will make the generic point that when we say that something should be a “must” rather than a “may”, we are often prescribing what the OEP can do. I realise that this amendment is about Ministers, but if we accepted all the amendments on this point, the OEP would end up with a whole list of things that it must do, as prescribed by the Committee, and it would spend all its time ticking those boxes. We would take agency away from the OEP.

As a parent, if I go around telling my children, “You must do this, and you must do that,” they do not feel very independent. If I tell them that they have to be
grown up and make their own decisions, they feel more empowered. Throughout this whole process—we have another couple of weeks to consider amendments—it is worth thinking about what being so directive towards the OEP would do to its agency and independence.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): It is good to be back this week. I welcome the shadow Minister again, and the new member of our Committee, my hon. Friend the Member for Ynys Môn. I thank the hon. Member for Southampton, Test for the amendment. I understand that the intention is to give certainty that Ministers will make secondary legislation about the procedure for preparing and publishing water resources management plans, drought plans and joint proposals, but he is again playing on my sympathies over “may” and “must”. He will not be surprised that I am not going to relent on this one.

I think the hon. Member will agree that the explanation is quite clear. The duties under sections 37A and 39B of the Water Industry Act 1991, which we have already heard about, to prepare and maintain water resources management plans and drought plans remain on statutory undertakers; they are “must” duties on the Minister. This was raised by the hon. Member for Putney. The plans are already on a statutory footing, and the Minister’s power to make regulations about procedural matters, to which the amendment refers, does not remove those duties. Ministers fully understand that water undertakers need to know the procedural requirements for fulfilling their duties in good time.

I thank my hon. Friend the Member for South Cambridgeshire for the good points that he made about independence and his children. It is entirely appropriate to provide Ministers with flexibility on when and how this provision is given effect.

Daniel Zeichner (Cambridge) (Lab): I come from a very dry region, which adjoins the constituency of the hon. Member for South Cambridgeshire. Some water companies, such as Anglian Water, are already working with other parts of the country, and there are regional plans coming into place. Does the Minister agree that it would be much better to give legal certainty by specifying that as the amendment suggests?

Rebecca Pow: I thank the hon. Gentleman for that point, and lots of companies are already working towards that. We will talk later in more detail about how water companies will work holistically together to deal with the whole water landscape.

In the Bill, the Secretary of State has powers to direct future procedure under statutory legislation if he thinks, for example, that more attention needs to be given to what the hon. Gentleman suggests. There are existing powers in section 37B of the 1991 Act to make regulations for procedural requirements, and those are replaced by new section 39F. The existing powers have already been used by Ministers to make the Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005.

Water companies’ plans are revised every five years. The plans are prepared at different times within their own five-year cycles. When exercising these powers, Ministers in England therefore need to be flexible and mindful of when to introduce the new planning requirements, so as not to have unnecessary impacts on the preparation of water companies’ plans, many of which are under way. I therefore ask the hon. Gentleman to withdraw the amendment.

Dr Whitehead: I thank the Minister knows what my answer is going to be. The hon. Member for South Cambridgeshire made a fair point about what would happen if we put in every “must” in every place in the Bill, and how that might constrain the agencies that are responsible for carrying out its business, but that is not what the Opposition has done with our repeated suggestions for the inclusion of “mays” and “musts”.

We agree with the hon. Gentleman that it is not appropriate for an agency to be constrained in that way if, for example, it may decide to carry out an action relating to an investigation or look at the extent to which it ought to do certain things. In that case, it is not appropriate to use “must”, and “may” is perfectly appropriate. There are, however, other circumstances where it is clear that an agency, or indeed the Minister, ought to do something.

In his analysis, the hon. Member for South Cambridgeshire made reference to parents and children, and I would say that this is on the parents’ side. It is a “must” in the same way as a parent must not leave their child on a bare hillside for the evening to see whether they survive. That is the sort of “must” this is, rather than a stipulation that a parent or a child must do certain things. I would put the Minister in the role of the parent, as far as this process is concerned. If the Minister is, in a sense, the parent of these activities, the Minister ought to act like a good parent. If there is a suggestion in the Bill that the Minister “may” not, that should be recognised.

In answer to the Minister’s question, I will not press this amendment to a Division. I know that this is becoming a little formulaic, but the Minister may want to reflect on whether drafting amendments need to be made at certain places in the Bill, either now or at a future date, bearing in mind that this is not a spray-paint job as far as “mays” and “musts” are concerned. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Alan Whitehead: I beg to move amendment 130, in clause 75, page 66, line 22, at end insert “including persons or bodies representing the interests of those likely to be affected.”

I will give the game away straight away by saying that this is a probing amendment, as I am sure the Minister will be pleased to learn, and we seek her comments on it. As my hon. Friend the Member for Putney said, the 1991 Act has been with us for a while. Does the Minister think that bodies that represent those who are likely to be affected by a water resources proposal or a drought plan should be included in the process of preparing and publishing regulations? There is a distinction to be made between the Government deciding to make a plan, and those who would be particularly affected by that plan—for example, the hon. Members who would then be affected by a drought plan in Cambridgeshire—having input into the process. There is a relationship between a high-level plan and the reality of any changes on the ground, and it is important to have both perspectives.
That is the reason for this amendment, and the Minister may wish to comment on whether she agrees with the principle behind it, even if the wording is not quite right. I would particularly like to hear whether she is signed up to the idea that I have set out and, if so, whether there are other ways of ensuring that the drawing up of these plans and proposals is a two-way process.

Fleur Anderson: I would like to unpack the amendment slightly more and highlight some areas that may be affected by the Government’s proposals. We would be very interested to hear from the Minister how this Bill will be enacted on the ground after it has progressed through both Houses.

Consultation is key during any planned preparation. The plans to clean up our water across the country are essential and, unless they are done correctly and with the full engagement of all the representative bodies, they will not work. If that happens, the current plateauing of environmental protection, which many people find very concerning, will continue.

The removal of section 37A(8) from the Water Industry Act 1991 will remove a list of other bodies. The Act states:

“Before preparing its water resources management plan...the water undertaker shall consult”—

the use of the word “shall” is interesting. Following on from the comments of the hon. Member for South Cambridgeshire, I think that our job in this Bill is to say what is within the OEP’s remit, what must happen and what the OEP, with its flexibility, can decide should happen. We need to set that framework, and an essential part of that is engagement with all the right agencies.

The proposed deletion will remove the Environment Agency; Natural Resources Wales; the Water Services Regulation Authority, or Ofwat; the Secretary of State; and any licensed water supplier, as listed in the 1991 Act. These bodies will not be included in this Bill unless we add the text of the amendment, which is, I think, very reasonable,

“including persons or bodies representing the interests of those likely to be affected”.

I do not think that that is overly restrictive, because it would give the OEP the ability to decide who those persons or bodies are. It does, though, say that they must be consulted. Has the Minister considered how to ensure that the new provisions on the preparation of plans by water undertakers will retain stakeholder engagement requirements? Does the Minister believe that the proposals are sufficient to ensure that the Environment Agency, in particular, is fully engaged in plan development? Its involvement is crucial to ensure a high level of environmental scrutiny of water resources options. That is essential for both the working of the Environment Agency and the effectiveness of any plans.

The Minister may suggest that this is dealt with through other requirements such as the customer challenge groups. However, those arrangements are typically extremely narrow and do not enable the wide engagement of the stakeholder that is necessary for the best plans—world-leading plans. Amendment 30 would ensure that consultation rights for stakeholders—

The Chair: It is amendment 130.

Fleur Anderson: Thank you, Mr Gray. Amendment 130 would ensure that consultation rights for stakeholders could be created under such regulations and allow these provisions to include a requirement for “persons or bodies representing the interests of those likely to be affected” by a plan to be consulted during the plan preparation. This requirement should be included in the Bill to make it as clear as possible and to ensure that full consultation with stakeholders takes place, so that we have the best possible water resources management plans and the best likelihood of increasing water quality across the country.

9.45 am

Rebecca Pow: I thank the shadow Minister for this amendment—a probing amendment, as he said. I understand the intention to ensure that those who are likely to be affected by water resource management plans, drought plans and joint proposals be consulted.

The Government recognise that planning for water resources is strengthened by the involvement of a range of stakeholders, both individuals and representative organisations, in the development of the plans, as was outlined by the hon. Members who spoke.

The Government intend that stakeholders will be involved in the preparation and delivery of these plans in England. Clause 75 enables Ministers to set out in regulations which bodies are to be consulted on the preparation of plans. Under existing powers, Ministers have set out a long list of relevant consultees in the Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005. The Environment Agency’s national framework for water resources in England, which was published in March, already gives further clarity. It sets out how we expect water undertakers in England to engage with stakeholders to prepare their plans in future.

Reflecting on the comments from the hon. Member for Putney, I want to clarify that Ministers in England want to ensure that the process of developing these plans is open and transparent—more so than ever—through these changes and that stakeholders are involved at the right time, so that they can effectively collaborate on the plans. If we are to encourage this more holistic joint-working approach, that is really important.

While the current wording of “persons” is not defined in the Water Industry Act 1991, the Interpretation Act 1978, which applies here, defines “persons” as including

“a body of persons corporate or unincorporate”—

that is, a natural person or a legal person. It includes a partnership, which would include representative bodies. The meaning of “persons” is very broad and would include representative bodies, making the amendment unnecessary. I hope that provides clarity.

The changes introduced by clause 75 will help the plans to deliver cross-sector and mutually beneficial outcomes, which we all want for the wider water environment, as well to secure water supplies. I hope, therefore, that the hon. Member for Southampton, Test will see that his probing amendment is unnecessary. He was right to ask those questions, but I hope that I have answered them. I respectfully ask him to withdraw his amendment.
Dr Whitehead: I have, as a result of this debate, begun to feel that this is less of a probing amendment than I initially thought. My hon. Friend the Member for Putney made an important point, which I neglected to include in my contribution. The Water Industry Act 1991 included these things. At that time, there were specifications about agencies and bodies that should be consulted and involved in the plans. That has all been swept away.

While the Minister makes the possibly important point about the phrase “persons to be consulted” in proposed new section 37F(3), that appears to be a rather feeble replacement for what was firmly in the previous piece of legislation. At the very least, I would like some assurance. The Minister says that the phrase “persons to be consulted” could be interpreted as persons in the collective. By a transfer of reasoning, we might therefore get to the Environment Agency and various other people in the end. I would like the Minister to actually shorten that course and say, “Yes, it will,” so far as the Bill is concerned.

Rebecca Pow: The hon. Gentleman makes a good point, but just for clarity, we can make regulations to specify what persons or bodies must be consulted during the plan preparations, and we plan to use that power. I just wanted to get that on the record.

Dr Whitehead: I think we may be getting there. When the Minister says, “we can make regulations”, is she saying that the Government will make regulations that effectively restore that arrangement, in terms of persons, by a regulatory route, as I was trying to tease out? It would be helpful if the Minister said that it is very likely that regulations will come about that include a better definition of persons, so that those bodies can effectively be brought back into the process in a way that the Bill seems to have neglected to do.

The Chair: Does the hon. Gentleman wish to withdraw the amendment?

Dr Whitehead: The hon. Gentleman would like to encourage the Minister to say something else on this.

Rebecca Pow: I will intervene one more time, just for clarity. As I said, we made the Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005, which demonstrates that we made an important point, which I neglected to include in my contribution. The Water Industry Act 1991 included these things. At that time, there were specifications about agencies and bodies that should be consulted and involved in the plans. That has all been swept away.

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The Chair: Does the hon. Gentleman wish to withdraw the amendment?

Dr Whitehead: The hon. Gentleman would like to encourage the Minister to say something else on this.

Rebecca Pow: I will intervene one more time, just for clarity. As I said, we made the Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005, which demonstrates that we have already done something like what the hon. Gentleman asks for. I reiterate that we can make regulations to specify what persons or bodies must be consulted during plan preparations, and we plan to use that power.

Dr Whitehead: I thank the Minister for that. That is 65% of the way there. On balance, I am happy to withdraw the amendment. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 47, in clause 75, page 67, line 20, leave out “the Assembly” and insert “Senedd Cymru”.

See Amendment 28.

Amendment 48, in clause 75, page 67, line 32, leave out “the Assembly” and insert “Senedd Cymru”.

(Richard Graham)

See Amendment 28.

Clause 75, as amended, ordered to stand part of the Bill.
just cover the traditional swimming months of May to September. I am sure the Minister will address that point.

Alongside a duty on water companies to ensure that untreated sewage is no longer pumped into the seas, the amendment would tackle a series of other actual and potential issues—for our water quality has implications across the whole ecological system, from plant life to fish stocks, as well as the health of the population. Our surface, coastal and ground waters suffer from significant pollution, as I have illustrated, and they also take that pollution into our seas and oceans. The Government have not made as much progress as we would have liked on meeting the targets established under the EU water framework directive, and the Bill is a step towards making significant improvements.

While diffuse pollution from agriculture, as I illustrated with the River Wye, accounts for 40% of river pollution, wastewater from sewage treatment accounts for almost as much, at 36% of river pollution.

Fay Jones (Brecon and Radnorshire) (Con): As a Parliamentary Private Secretary, I am not always meant to speak, but my hon. Friend mentions the River Wye, which runs through my constituency. It would be remiss of me not to mention that there are many actors in this space. We cannot solely blame farmers in their entirety. The issue needs a whole supply chain response, because it is too important a problem to lay solely at the door of agriculture.

Richard Graham: My hon. Friend makes a very good point. There will not be too much specific finger-pointing with the amendment, nor in the Bill in general. We have already referred to water companies. Agriculture, in the broadest sense, is a challenge along the river that she loves in her constituency so much. There are, of course, others who discharge pollution into our waterways. Everyone has to do their bit; that is why the amendment is so important.

Let us be clear that the drainage and wastewater management plans proposed under clause 76 are an excellent step forward. They seek to improve water company focus, and they send a clear message about improving the safe and environmentally responsible treatment of human effluent. However, there is an omission in the objectives. The amendment would therefore place the obligation on water companies, in their five-year plans, to consider the impact on water quality of the wastewater facilities for which they are responsible.

Sewage is estimated to account for 55% of the rivers that are failing to reach the good ecological status to which I referred. This can lead to pollutants such as organic material, which depletes the dissolved oxygen in the water, and other pollutants such as phosphorus, nitrates, ammonia, pathogens and man-made toxic chemicals entering the water environment.

10 am

We should acknowledge that water companies have made significant steps. The water company in my constituency, Severn Trent, has invested a huge amount in improvements. Overall, throughout the country, water companies have committed £4.5 billion between now and 2025 towards environmental improvements. Despite the significant investments already made and planned, the Government—that is, DEFRA—acknowledge that progress has flattened. The chair of the Environment Agency, Emma Howard Boyd, recently stated that, against environmental standards, the performance of water companies deteriorated in 2018, and was not showing much sign of improvement in 2019. In fact, at the current rate of progress, it is estimated it could take over 200 years to reach the Government’s 25-year environment plan target of 75% of waters being close to their natural state. Therefore, we can all agree that there are opportunities for improvement.

With the interventions from my hon. Friends the Members for Truro and Falmouth and for Brecon and Radnorshire, I have referred to the importance of swimming—both so-called wild swimming and holiday swimming on the coast—and that is an important point.

The amendment would make a very simple change to the Bill. On page 68, in proposed new section 94A(3) to the 1991 Act, after the words, “A drainage and sewerage plan must address”, it would insert: “the water quality and impact of the discharges of the undertaker’s drainage system and sewerage system”.

To be clear, in this context, “undertaker” is a sewerage undertaker, which is the word used for a sewerage company. When I first read it, I was rather confused, but it is the water quality and impact of the discharges of the sewerage company’s drainage system and sewerage system that this probing amendment attempts to improve.

The amendment has considerable support from non-governmental organisations, including Marinet, which has been fastidious in bombarding many Members’ inboxes with its support for the amendment. The amendment also has the support of the Conservative Environment Network, which includes some 70 MPs, many of whom support the private Member’s Bill of my right hon. Friend the Member for Ludlow, who would, had he been here, have made a much more persuasive and articulate case for this probing amendment. I hope they will not be unsatisfied with the key points I have highlighted today.

As it stands, the Bill has much to recommend it, but this particular omission is one that could be put right relatively straightforwardly. I therefore look forward to hearing the Government’s response.

Dr Whitehead: The hon. Member for Gloucester has made a powerful speech in support of the amendment, covering many points that I would have raised had he not done so. The Opposition would have tabled an amendment on this subject had amendment 200 not appeared. We did not, because we saw that a substantial number of Members from both sides of the House had put their names to the amendment, which I think adds to its gravity. Frankly, we felt that if we had proposed a separate but similar amendment, it might have decreased the chances of this one being made, so we kept the position as it was. The one point I would disagree with the hon. Gentleman on is that the amendment should not be probing; it should be a serious attempt, with cross-party support, to get a provision into the Bill that will undoubtedly be to the benefit of the natural environment and its users as a result of changes in water companies’ activities.
I want to reinforce what the hon. Gentleman had to say about discharges of sewage and similar activities that have taken place over a number of years. He is right to note that there were more than 200,000 releases of raw sewage into rivers last year. That number slightly underestimates the actual effect of the releases, since some occurred over an extended period rather than being instant. We should think about why that happens.

These are not accidents; they are provisions within the operating arrangements for water companies which allow the occasional release of raw sewage into watercourses. All water companies have an emergency release provision in their operations. They have a system of stop valves that normally separate the sewage from the water, but if the system is so suffused with water at certain points—during a heavy storm, for example—that it cannot cope, those valves are effectively released; the two flows are then mingled. That is the point at which raw sewage may be released into watercourses.

Water companies say that, generally speaking, the dilution of the sewage is such that it does not make a great deal of difference, particularly in heavy storms and similar conditions. That is partly overthrown by the fact that discharges sometimes take place over a substantial period and are not simply brief discharges into rivers at the height of a crisis like a storm. I do not think that anybody would say that in periods of severe crisis for a water company, those sorts of provisions should be removed, but that provision far exceeds what we might expect.

The discharge of spills came to an incredible 1.53 million hours across the nine English water companies last year. As I mentioned, a lot of the spills are not brief. The water companies could introduce procedures that would ensure that they were brief by improving how they separate out water and sewage, and ensuring that those flows can be combined only in the most critical circumstances. It is evident from what we know about those discharges that that is not the case. This is being used as a safety valve by water companies in many instances, rather than as an emergency, last-stop procedure. It is certainly within the companies’ ability to ensure that those safety valves become last-gasp emergency procedures just by improving their procedures to ensure that arrangements for the separation of water are maintained to a higher standard.

As a shadow Minister, I would say that, wouldn’t I? However, it is perhaps not surprising, given that this concern is shared pretty much across the House, that other people have said much the same thing. For example, I believe the Minister met chief executives of the 15 water companies in September, at which point she called on them to take further action to protect the environment, reduce leakage and safeguard water supply. She said that “we discussed a number of issues I feel strongly about, including storm overflows, and how we can work together to see much more ambitious improvements. This country’s green recovery from coronavirus can only happen if water companies step up and play their part.”

I could not have put it better, and the Minister indeed put it very well.

The hon. Member for Gloucester, who made an excellent contribution, reminded us that the amendment is supported, and was substantially crafted, by the Chair of the Environmental Audit Committee, the right hon. Member for Ludlow. Other hon. Members pointed out the concerns on this issue in their constituencies and why action needs to be taken. The entire Opposition think that this is a good idea and wish to pursue it, and of course the Minister has made admirable comments on how water companies need to step up their activity, particularly on storm overflows, to get things organised.

Basically, what is there not to like about the amendment, and why can it not just be instantly put into the Bill? It will not detract from anything; it will simply add a layer of urgency to something that we all think needs to be done, which surely is what Bills should be about. They should frame action in such a way that entreaties and suggestions are added to by a piece of legislation that says, “Go and do this over a period of time.”

We not think that this should be seen as a probing amendment. That is a very minor disagreement between the Opposition and the hon. Member for Gloucester, who I appreciate may have suggested that it should be deemed a probing amendment out of sensibility for his own side’s manoeuvrability, shall we say, on this issue. In his heart, I think, he would be absolutely behind the idea that it ought to go in the Bill straight away. I sense that very strongly from the vibrations that are coming across the room.

10.15 am

I hope that on this occasion the Minister can oblige us all and simply say, “Yes, this is a really good piece of work. It ought to be in the Bill.” I do not expect her to say, “Sorry we didn’t put it in the Bill in the first place,” but I expect her to say that we will proceed, either now with the present formulation, or on Report if a slightly different formulation is needed.

Rebecca Pow: I thank my hon. Friend the Member for Gloucester for the amendment and for painting such a charming picture of wild swimming in the River Wye, which I should think is quite chilly. I must also refer to my right hon. Friend the Member for Ludlow, who has done so much work on this. As my hon. Friend knows, I have met colleagues several times to discuss this very important issue. He quoted some, frankly, fairly ghastly statistics, as did the hon. Member for Southampton, Test. My hon. Friend is right that this matters and he knows, as does our right hon. Friend, that I take it extremely seriously. I think the hon. Gentleman knows that too.

The issue of river health and the impact of sewer overflows is a priority for me. One of my hats is Water Minister. I vowed that I must do something about that while I am in this role, and I am determined to take action. It has been overlooked for far too long. I have discussed that with my officials at great length. I will not say that they thanked me for it all the time, but it is a priority that I believe we have to get right.

I assure my hon. Friend the Member for Gloucester that controlled sewage discharge to watercourses from sewage treatment works are tightly regulated by the Environment Agency using powers under the environmental permitting regulations, so we obviously already have that in place. I want to be clear that when we were designing the current provisions in the Environment Bill on drainage and sewerage management plans, in clause 76, it was a prime objective to tackle the discharge of sewage into our waterways better.
Clause 76 specifically requires that each sewerage undertaker must prepare a drainage and sewerage management plan. Yes, there is a “must”—that got a cheer! The clause also specifically requires that a drainage and sewerage management plan “must” address relevant environmental “risks”—those two words are very important—and how they are to be mitigated. That will include sewer overflows and their impact on water quality.

Although I understand the intention for specific references to address sewer discharges and water quality, it is entirely appropriate in this case to provide a broad definition in primary legislation of relevant environmental risks. The provision needs to stand the test of time and be fit for the environmental challenges of tomorrow, not just of today. I can say unequivocally and can confirm that I and any future DEFRA Ministers will also have a failsafe power to make directions to specify any other matters that a plan must address. In simple terms, that will ensure that if a plan or plans are not adequate, the Government can take swift action. I will not hesitate to use that power to direct companies if I am not satisfied with their performance to address sewer discharges and water quality. They should consider themselves on notice; in the meeting that was referred to by the hon. Member for Southampton, Test, I pretty much gave that message. I am not messing about.

Ruth Jones (Newport West) (Lab): The Minister is making a powerful point. The Opposition have no problem at all with how diligent she is and how conscientiously she does her job. I am just wondering how she would feel if a successor—obviously in many years’ time—was not quite as diligent. We need to know that the safeguards are in the Bill. We want them enshrined in primary legislation. If the Minister is so keen on the power and so committed to it, what is the problem with putting it in the Bill?

Rebecca Pow: I thank the hon. Lady for reiterating my commitment. We believe the measures and steps that are here will ensure that that does happen—the sewerage and drainage management plans will come into use and the idea of that will become normal—but there will be an opportunity for a DEFRA Minister to have a failsafe power to make directions to specify any other matters that a plan must address. We also have the Environment Agency keeping abreast of all this. We even have the OEP, at the end of the day. We have so many checks and balances in the Bill that once we get the system going, it should be failsafe.

Richard Graham: The Minister has reiterated her own commitment, which none of us doubts. None the less, as the chair of the Environment Agency has said, despite all the various checks and balances, progress has not been as strong as any of us would have liked. Here is the opportunity to insert the words about “the water quality and impact of the discharges of the undertaker’s drainage system and sewerage system.”

Even if the Minister believes that the Bill has enough “musts” and enough powers for the Minister to direct, the explanatory notes are not that clear, saying simply that “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”, then adding, rather vaguely: “Should other factors become relevant?”

Dr Whitehead: The Minister talks about checks and balances, but I am sure she will know that, as far as the checks and balances relating to storm overflows are concerned, more than 60 discharges a year should trigger an investigation by the Environment Agency. Those storm overflows have been released hundreds of times per year by each water company. The Environment Agency relies on water companies to self-monitor their discharges, so the check and balance does not work as well as it should. Does the Minister think that arrangement is sufficient to keep those discharges under control?

Rebecca Pow: My hon. Friend is doing absolutely the right thing in checking up on the issues. I have been doing that myself, in fairness. He mentions the EA. As he said, Emma Howard Boyd, the chair, made it clear that much more is expected of water companies, which includes developing, publishing and implementing specific plans by the end of this year; to reduce pollution incidents. The Environment Agency is on the case. Following my meeting, the Secretary of State is meeting with water companies again very shortly. I repeat that “relevant environmental risks” will include sewer overflows and water quality; I said that just now and I hope my hon. Friend the Member for Gloucester was listening. Once that has been established as a risk, it would be very hard for anyone to argue in the future that it was not a risk. That addresses the point made by the hon. Member for Newport West, and I reiterate that point.

Let me clarify how important I think the issue is; we do not want to sit around waiting, but to get on and do something about it. In addition to the Environment Bill and the ongoing discussions around making it as strong as possible, I have set up a new storm overflows taskforce to make rapid progress in addressing the volumes of sewage discharge into our rivers. This has been done at speed and very recently, when all of this “stuff”, as they call it, came to my attention. I would like to thank everyone involved for moving so fast on this. I will set a long-term goal on the storm overflows for sewerage undertakers, which I will talk about in more detail later, but the work on that needs to start now. The taskforce is developing actions that will increase water company investment to tackle storm overflows in order to accelerate our progress.
Daniel Zeichner: The water companies operate in a tightly constrained regulatory framework, always having to balance bills, investment and shareholder returns. What impact does the Minister think her welcome initiative will have on that, and will she be directing them as to either what they do not do instead, or where that investment should come from?

Rebecca Pow: I thank the hon. Member for Cambridge for that, and of course he makes a really important point. All those things will be in the mix for consideration. The storm overflow taskforce has been set up between the EA, DEFRA, Ofwat, the Consumer Council for Water, Blueprint for Water and Water UK. These are all things they are well aware of and will be discussing, and they will be the ones setting out clear proposals to address the volumes of sewage discharge into our rivers. They are working on that now, at speed, and I anticipate we will have a good idea of their list of actions by spring. The hon. Member might say that that is a long time away, but we are already in November; it is actually only a few months’ time. I anticipate that this will be really beneficial and really helpful.

The whole thinking behind the taskforce’s action list is to increase the amount of sewage processed at treatment plants, for example through building additional sewage storage capacity, which I think my hon. Friend the Member for Gloucester might be pleased to hear, and separate surface water connections for the combined sewerage network.

I want to thank my hon. Friend the Member for Truro and Falmouth for her input; I have met her and others from Cornwall over the issue of surfers, as well as Surfers against Sewage, who do great work highlighting the issues. As I said, the taskforce is looking to all issues to do with water quality and sewerage overflows, which will include bathing water. We are looking into that.

I also want to thank my hon. Friend the Member for Brecon and Radnorshire, who makes a good point—always standing up for her farmers, in that great farming country she is in—and she is absolutely right. We cannot lay all of this at the door of the farmers. There are many causes and they all have to be looked at and tackled, but that is not to say that there is not work to be done with farmers—I believe they know that. Through our new environmental land management scheme, there will be opportunities to work with farmers to reduce pollution. That is coming down the tracks as well and will also help with the whole water pollution issue.

10.30 am

You will be pleased to hear, Chair, that I am going to wind up. I want explicitly to confirm that I expect a key outcome from the taskforce and our new statutory drainage and water management plans will be a sizeable reduction in uncontrolled discharges from sewerage assets such as storm overflows. I thank my hon. Friend the Member for Gloucester again and ask him to please pass on my thanks to my right hon. Friend the Member for Ludlow and others. He is trying to intervene.

Richard Graham: I am very grateful that the Minister has announced this storm overflow taskforce, which is an interesting new group. Taskforces come and go and they have occasionally been used in the past—surely not by this Government—as a sort of alternative to action. One thing that would make us all have greater confidence in the Bill being able to deliver the change that the Minister and all of us wish to see, if she is unwilling, at this stage, to amend clause 76 with the words the amendment suggests, would be if she would consider amending the explanatory notes. At the moment, the relevant sentence reads:

“Any relevant risks to the environment and mitigation measures should be recorded in the plan.”

The Minister could, if she wished, insert “any relevant risk to the environment and mitigation measures, including water quality and the impact of sewerage overflow.”

The Chair: Interventions must be brief, Minister.

Rebecca Pow: Thank you, Chair. I thought my hon. Friend would try and sneak in a final go. I do not blame him for that.

The Chair: He will have a final go in a moment.

Rebecca Pow: Thank you, Mr Gray.

On that note, I hear what my hon. Friend the Member for Gloucester says about the explanatory notes but I want to reiterate what I said earlier: relevant environmental risks will include sewer overflows and water quality. Once that has been established as a risk, it will be very hard for anyone to argue that it is not a future risk. I shall leave it there.

I thank my hon. Friend the Member for Gloucester, my right hon. Friend the Member for Ludlow and other Members for all their work, particularly in raising awareness of this issue. I hope, on the strength of the assurance that I have given today, that my hon. Friend will kindly consider withdrawing his amendment.

Richard Graham: This has been a helpful discussion, with Members contributing from all sides. The hon. Member for Southampton, Test is even able to detect vibrations from across the room, which perhaps none of the rest of us has been able to do. As for the key issue in the proposed amendment, my right hon. Friend the Member for Ludlow put it very well in a note to me where he said, “This amendment would require water companies, their regulators and overseeing Ministers to have regard to continuous improvement through these admirable five-yearly plans to ensure our rivers can gradually recover from their polluted state to once again become clear and clean for our children and grandchildren to enjoy.” Members on both sides have highlighted how, in their constituencies, that is relevant.

The Minister has tried to reassure us that that is exactly her own objective. I have no reason to doubt that, as she has confirmed it several times. However, it seems to me that were I to withdraw the probing amendment, it would be on the basis of the words she used, which were that the relevant risks would include water quality and the impact of sewerage overflow. It is great that the Minister has made that statement, but we need to see that in the explanatory notes. If she can give an indication that she would consider that on Report, I would be happy on that basis to withdraw the amendment.

Rebecca Pow: I thank my hon. Friend for his passionate words. I am happy to consider making it clearer in the explanatory notes.
Richard Graham: I am very grateful to the Minister for making a significant step to recognising the strength of feeling on this, and I beg to ask leave to withdraw the amendment.

Hon. Members: No.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 29

AYES

Furniss, Gill

Jones, Ruth

Ziechner, Daniel

Dr Whitehead: I beg to move amendment 199, in clause 76, page 69, line 25, leave out “the Assembly” and insert “Senedd Cymru”.

Amendment 199 relates to the amendments to the Water Industry Act 1991. This is about how regulations “may” make provision about consultation, which is a particularly weak “may”. I would have thought that consultation is an essential element of the process. In particular, we are talking about consultation to be carried out by sewerage undertakers—that is, water companies—who are required by regulation to make provision about the person to be consulted, the frequency and timing of the consultation and the publication of statements.

There is a pretty tight requirement on water companies to be clear about what their provision is, except they do not have to do it. That seems to me to be a suggestion that holds the entire subsection. There is quite a fierce thing in this subsection about consultation. This is a good thing. It covers not just consultation, but who it should be carried out by—the sewerage undertakers—as well as instructions on who should be consulted and so on. It is all spoiled by the “may” at the beginning of the sentence. I think this is another important “must”, which ought to go into the Bill. Again, I will not push the amendment to a Division, but I hope the Minister will take careful note of our strong feelings on the issue and will put it in the box of reconsiderations for when she gets around to deciding whether there should be drafting amendments to the Bill in the future.

Fleur Anderson: Which I should not do. I acknowledge that, but I would welcome the Minister’s comments on that.

Clause 76 amends the Water Industry Act 1991 by adding new section 94C. There are a whole rash of “mays”, and we have chosen modestly, and I think correctly, to identify one that should be a “must”. It is in new section 94C(3), which, again, talks about consultation on plans. We have talked about that previously, and it is absolutely vital for ensuring that those plans work and that they tackle the 39 million tonnes of sewage going into the River Thames and the similar incidences across the country. The Bill places obligations on water companies only for something they are already doing: it does not reflect the scale of the challenge from climate change or the fact that drainage is universally recognised to be a shared responsibility with other organisations that are also responsible for managing service water.

Water UK is concerned that, as written, clause 76 will exclude significant bodies that are involved in drainage and will eliminate much of the potential benefits that customers, society and the environment could otherwise gain. It is a fundamental feature of drainage and wastewater planning that water companies cannot do this in isolation, because drainage is shared with other risk management authorities, as defined in the Flood and Water Management Act 2010. For example, large numbers of drainage assets are not under the ownership of water companies, the management of which needs to be integrated into the drainage and wastewater management plans. That has been recognised by the National Infrastructure Commission in its recommendation that water companies and local authorities should work together to publish joint plans to manage surface water flood risk by 2020. Ensuring that such consultation is done as a “must” rather than a “may”, which is the aim behind the amendment, is absolutely essential.
As a minimum, all flood risk management authorities should have a duty to co-operate in the production of drainage and wastewater management plans. There should be the ability to require other flood risk management authorities to provide the information needed for the production of such plans. Clause 76 would ensure that that would happen as a directive to the OEP, which is needed to ensure that we have the best sewerage management plans and wastewater management plans that we can.

Rebecca Pow: I thank the hon. Member for Southampton, Test for the amendment. It is amazing that we have managed to get him excited—for me, that is a massive milestone in the Bill’s passage. I hope he does not mind my saying that.

I understand that the intention behind the amendment is to give certainty that Ministers will pass secondary legislation about the consultations to be carried out by sewerage undertakers on their drainage and sewerage management plans. Under proposed new section 94A of the Water Industry Act 1991, sewerage undertakers will have a duty to prepare drainage and sewerage management plans. Ministers understand that sewerage undertakers need to know the procedural requirements for fulfilling their duties in good time. Ministers require flexibility on when and how the provision is given effect so that procedural requirements for plans remain proportionate and current.

10.45 am

The UK Government intend to use the delegated powers for drainage and sewage management plans in a similar way to the approach used for water resources management planning, to which I referred earlier. The Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005 were made in that way. The existing powers have been used as needed. Those are good examples of dealing with procedural matters such as around the consultation to be carried out.

The hon. Member for Putney touched on the term, “sewerage system”. I want to pinpoint that it is defined in the Water Industry Act 1991 in a way that covers all relevant aspects of waste water. She also spoke about the Thames. I have been down the Thames Tideway—a huge channel down which one can go—and it is a fantastic project that will make a difference to the Thames river water.

Sewerage undertakers are currently developing the first tranche of plans on a non-statutory basis to a five-year cycle. Ministers in England, when exercising the powers, will therefore be mindful of when to introduce the procedural requirements so as not to cause unnecessary disruption—lots of them are in the middle of those, and a great deal of work has gone on—to the development of sewerage undertaker plans. On those grounds, I ask the hon. Member for Southampton, Test to withdraw his amendment.

Dr Whitehead: I thank the Minister for what she has said. She has gone some way towards assuring us on this matter, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
The clause refers repeatedly to such plans, but what we should be talking about are not Drainage and sewerage management plans but drainage and waste water management plans.

Some hon. Members may think there is not much of a distinction, but there is quite a substantial distinction, in that sewerage and waste water are not the same things. Waste water includes all the sources of waste water coming into a particular riverine or estuarial area, which may have a number of sources that are not sewerage-based. Therefore, the definition of these plans as drainage and sewerage management plans narrows what they might consist of—not only that, but the definition narrows who might be involved in these particular plans. It narrows it down to water companies, whereas a number of other companies are indeed involved in waste water management and properly ought to be within those plans, to make a comprehensive arrangement as far as waste water is concerned. What is a further source of puzzlement is that the Department and industry have actually worked on such plans for many years, and they are called drainage and waste water management plans.

The Minister may say, as she did a moment ago, that in the Water Industry Act 1991 the words “drainage and sewerage management” effectively mean a wider issue as far as waste water is concerned, but of course the wording in clause 76 is not what was in the 1991 Act but is actually an amendment to that Act. It would have been easily possible, as far as the construction of the Bill is concerned, to include the words “sewerage and waste water management” in the Bill, with no cost to anybody—no additional amendments; nothing—whereas the less than adequate wording in the 1991 Act has been retained for the purpose of these amendments.

I wondered why that was the case. Is it an omission or is it deliberate? Other than the rather obscure reference to the 1991 Act, why does not the Bill state what plans the Department has and what the plans should consist of if they are properly to take account of what “waste water” defines and accommodates?

Rebecca Pow: How quickly, in the space of 10 minutes, we have gone from excitement to puzzlement. I hope I can, however, assuage some of the puzzlement.

Clause 76 amends the Water Industry Act 1991 to place drainage and sewerage management plans on a statutory footing to match the status of water resource management plans. The provisions are modelled closely on the existing approach to water resource management plans.

I shall deal with the interesting point about the distinction between sewerage and waste water. The clause amends the 1991 Act, which defines the term “sewerage system” in a way that covers all relevant aspects of waste water, so we have used that wording. This includes facilities to empty public sewers and other facilities such as waste water treatment works and pumping stations.

The term “waste water” is not defined in the 1991 Act. The statutory name is not intended to dictate what the water industry chooses to call the plans as part of its daily operations; it might have some other casual term for it. Drainage and sewerage planning is the only key planning process without a formal statutory status in the water sector. Placing plans on a statutory basis will ensure a more robust planning and investment process to meet future needs, including housing.

Statutory plans will also allow waste water network capacity to be fully assessed and encourage sewerage companies to develop collaborative solutions with local authorities and others who have responsibility for parts of the drainage system. They should also sit with planning for population and economic growth and therefore help to deliver improved resilience in sewerage and drainage sources over the long term.

There is strong cross-sectoral support for the measure. When we consulted publicly on making plans statutory, over three quarters of respondents supported the proposal. The statutory production of the plans will clearly demonstrate how a sewerage undertaker intends to fulfil its duty under the Act to provide, improve and extend the public sewerage system to ensure that its area is effectively drained. A statutory plan will help to set out the actions needed to address the risks that some assess that might pose to the environment or customers.

Dr Whitehead: I think the Minister should accept that I am one of the least puzzled Members of the House, but I do admit to puzzlement sometimes. On this occasion, my puzzlement has not been assuaged. The Minister is talking about how good these plans could be, but that does not take us much further in terms of why the wording is as it is when it would have been so easy to put it right when the Bill was introduced. I take on board the Minister’s assurances that, in practice, the word “sewerage” can be used by reference back to the bits of the 1991 Act that have not been amended by this legislation to expand its remit, but it would have been easier to get it right first time round, but I shall not pursue this. It can go into the Minister’s box of things to think about should she wish to clarify this part of the Bill any further.

Question put and agreed to.

Clause 76, as amended, accordingly ordered to stand part of the Bill.

11 am

Clauses 77 and 78 ordered to stand part of the Bill.

Schedule 13 agreed to.

Clause 79 ordered to stand part of the Bill.

Clause 80

WATER ABSTRACTION: NO COMPENSATION FOR CERTAIN LICENCE MODIFICATIONS

Dr Whitehead: I beg to move amendment 132, in clause 80, page 78, line 1, leave out “2028” and insert “2021”

The Chair: With this it will be convenient to discuss the following:

Amendment 133, in clause 80, page 78, line 34, leave out “2028” and insert “2021”.

Amendment 134, in clause 80, page 79, line 7, leave out “2028” and insert “2021”.

11 am
Dr Whitehead: These amendments all make the same point about there being no compensation for certain licence modifications in water abstraction. Should licences be modified as a result of environmental considerations, especially with the uprating of environmental legislation, water companies and other organisations will have to undertake additional actions to ensure that their licences are adhered to, but they will not receive compensation for those modifications. That is all well and good, except when those licences come to be revoked or varied, in pursuit of a direction under a section of the Water Act.

The no compensation clause comes in on 1 January 2028, so it could be argued that that gives the water undertakings a reasonable period to adjust to the changes, but it may have the reverse effect of what is intended. If companies were to make changes that might need to be undertaken before 2028, they would get compensation. I am not sure whether the clause requires a period of notice for changes caused by increased environmental protection—it is reasonable to give water companies time to adapt—or is it a device that allows water companies to get some money for environmental changes that they should be doing anyway, if they do them before 2028? It is a pretty long run-in for changes. I ask the Minister—and this goes for all these amendments, because they all seek to change the date from 2028 to 2021—whether she thinks that the 2028 date is satisfactory in terms of a run-in for the water companies to make their changes.

If they make the necessary changes before 2028, would they be protected from a legal requirement to enter into and discuss compensation? I would suggest that that is less than satisfactory. The Minister faces a dilemma this morning on which way she jumps; or perhaps, with great dexterity, she could jump in both directions.

Not only is there potential confusion about the precise intention of this clause, but the 2028 date itself seems to be excessively generous by any measure. If the Minister is not able to at least give us an indication that that date might be considered for foreshortening, we may wish to divide the Committee.

Fleur Anderson: I would like to speak in support of the concerns raised by my hon. Friend the shadow Minister about the long deadlines of this Bill, which would be rectified by amendments 132, 133 and 134.

Clause 80 amends the Water Resources Act 1991 to improve the way in which the abstraction is managed. This additional Environment Agency power, to act on licensing that causes environmental harm, is welcome. However, the timescale proposed in the Bill is too long, as the changes will apply to licenses revoked or varied on or after January 2028. With compensation remaining payable on any license changes opposed by the agency before that time, budgetary constraints will significantly limit its scope to act, which cannot be the aim of this Bill.

The current timescale does not appear to fully grasp the severity and immediacy of the problems facing UK waterways and the poor performance of water companies to date. Four out of nine companies assessed by the Environment Agency require improvement. We cannot wait until 2028 to start revoking licenses and take action, when there is clearly systemic underperformance in the water industry.

Moreover, water companies in England were responsible for their worst ever levels of environmental pollution in the five years up to 2019, leading to condemnation from Ministers and the Environment Agency. In the agency’s annual assessment of the nine privatised water and sewage companies, its chair, Emma Howard Boyd, said that their performance continued to be unacceptable.

Unsustainable abstraction can do serious environmental damage, particularly by changing the natural flow regime. This results in lower flows and reduced water levels which, in turn, may limit ecological health and result in changes and reductions of river flows and groundwater levels. This is about far more than just hosepipe bans.

The Government’s own analysis has shown that 5% of surface water bodies and 15% of groundwater bodies are at risk from increasing water use by current license holders, which could damage the environment. With the Environment Agency recently warning that in 25 years, England’s water supply may no longer meet demand, we will have to clamp down on over-abstraction now.

Before becoming an MP, I worked for the aid agency WaterAid, where I saw the result of over-abstraction and how damaging that was for communities around the world. We do not want to face that here.

Abstracters are unlikely to give up these abstraction rights voluntarily and forfeit potential compensation payments. It means that over-abstracted rivers and groundwater-dependent habitats will continue to suffer for at least another eight years under the clauses of this Bill, putting threatened habitats and public water supplies at risk. Further clarification could then ensure that the new date would not impose unrealistic time pressures on water abstractors.

Variations to licences could then be made, setting out a reasonable compliance period for changes to be put in place before the abstractor would be in breach of the new conditions. That would give fair notice to abstractors, which I understand is a concern for the Minister and is the original purpose of the 2028 date, while also enabling swift action on the mounting environmental harm caused by damaging abstraction. It would put environmental risks in the driving seat, not the concerns of water companies, which is what the Bill does at the moment.

Does the Minister agree that without bringing forward the date from which environmentally damaging abstraction licences could be amended without compensation, we are unlikely to achieve the existing Government targets for the health of the water environment, which require us to bring our waters into good status by 2027 at the latest? Bringing the date forward to 2021 will allow action to be taken within the final cycle of the river basin management plans for 2021 to 2027, and allow us to reduce abstraction damage in line with Government targets set under the water environmental regulations of 2017. The dates need to add up.

In its report, “Water supply and demand management”, published in July, the Public Accounts Committee advised:

“The Environment Agency should write...within three months setting out clear objectives, and its planned mitigation actions and associated timescales for eliminating environmental damage from over-abstraction”.

The Committee wants immediate action and we should, too. Has the Environment Agency yet been able to outline how it will eliminate the environmental damage
in line with statutory deadlines, given that this power will not come into effect until after those deadlines have passed?

I support these amendments, in order to put the Government’s own targets in line with each other and make sure that we take action against over-abstraction as urgently as necessary.

**Rebecca Pow:** The hon. Member for Putney has highlighted why we need to control water abstraction, which is why these clauses are so important. The Government would strongly prefer that solutions are found at a local level between abstractors and the Environment Agency, before these new powers are utilised. A lot of work is already going on to look at abstraction licences, to find different ways of working and to reduce quantities of water abstraction. Indeed, the Government’s 2017 abstraction plan sets out the Government’s commitment and actions to protect our water environment, and it is already beginning to have some effect. Since 2014, a total of 31 billion litres of water has been returned to the environment, and a further 456 billion litres has been recovered from unused or underused licences.

The implementation date of 2028 will afford the Environment Agency the time to engage directly with abstractors to resolve situations without the need to use these powers. That is one of the main pieces of work in progress, as I have outlined. It will also allow time for a catchment-based approach to water resources, to produce solutions. There is a lot of catchment-based work going on. Opportunities will come through the new environment and land management scheme and its systems of new environmental management, where farmers and catchments work together, which is crucial in a holistic approach to the water landscape.

Finally, the date allows time for the transfer of abstraction licensing into the new environmental permitting regime. The powers are more of a big stick, but we are hoping that these other things will swing into place before they have to be used.

**Ruth Jones:** Does the Minister agree that 2028 is a long time into the future? By then, small water bodies and wetland habitats, which are an essential but unnecessarily overlooked part of our water environment, may be lost. Something that has already gone cannot be brought back. The year 2028 is far too far into the future and we do not want things to be lost in the meantime.

**Rebecca Pow:** I thank the hon. Lady for her intervention, but I hope she realises, as I have just outlined, that we are taking action now. The Environment Agency is already working on reducing abstraction with these licence holders in many cases, and that work must carry on at pace.

I also want to be clear—the hon. Member for Putney touched on this—that these measures do not apply to water company abstraction licences. Following the Water Act 2014, water companies are not eligible for compensation for any revocation variation of their abstraction licences, so it is not the water companies we are actually talking about, but the other abstractors of water.

11.15 am

The Bill measures complement the progress that is already being made, widening the circumstances in which the EA can take action against unsustainable abstraction without the liability to pay compensation, because that can be somewhat debilitating. It can do this where it is necessary to protect the environment from damage, including our internationally important chalk streams, which are a priority for me, and which I am doing a great deal of work on, because that whole habitat and environment is something we need to look after. The Environment Agency will also be able to vary a licence that has excess headroom without the payment of compensation. However, this action should not be taken prematurely.

Water abstraction is also vital to the economy—that has to be remembered—for example, to generate power, run industries, grow food, and to be used by all our farmers. Meanwhile, access to clean, safe and secure water supplies is fundamental to society, so actions we are taking now and these new future measures will enable us to balance these competing demands on our precious water resources. It is a fine balance.

I trust that hon. Members now understand the context for selection of the implementation date, and the ongoing action being taken by Government to ensure that changes to ensure sustainable abstraction are already being implemented. I therefore ask the hon. Member for Southampton, Test to withdraw his amendment.

**Dr Whitehead:** I would have thought that if measures to sort out sustainable abstraction were already being taken, that would be a compelling argument for bringing the date forward from 2028. It is, after all, a longer period than the second world war. I am not convinced by the Minister’s arguments, and on the basis of that date we would like to pursue a Division.

**Question put.** That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

**Division No. 30**

**AYES**

Anderson, Fleur
Furniss, Gill
Jones, Ruth

**NOES**

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

**Question accordingly negatived.**

**Amendment proposed:** 133, in clause 80, page 78, line 34, leave out “2028” and insert “2021”.—(Dr Whitehead.)

**Question put.** That the amendment be made.

**Question negatived.**

**Amendment proposed:** 134, in clause 80, page 79, line 7, leave out “2028” and insert “2021”.—(Dr Whitehead.)

**Question put.** That the amendment be made.

**Question negatived.**

Clause 80 ordered to stand part of the Bill.
Clause 81

Dr Whitehead: I beg to move amendment 135, in clause 81, page 80, line 28, leave out subsection (9) and insert—

“(9) Regulations under this section are subject to the super-affirmative resolution procedure.

(10) In this subsection, ‘super-affirmative resolution procedure’ has the same meaning as it does in Section 18 of the Legislative and Regulatory Reform Act 2006.”

I will not detain the Committee for long. Our amendment suggests that instead of regulations under this section being subject to the negative procedure, they should be subject to the super-affirmative procedure. There is a real difference between the two because, as hon. Members will know, the negative procedure for secondary legislation requires merely that the legislation be laid before the House, and if no one objects to it within 21 days, it automatically becomes law. The affirmative procedure, on the other hand, means that under normal circumstances, the House is entitled to a debate on the legislation, in which the Minister is required to take part, at least to air the reasons behind the introduction of the regulations.

The affirmative procedure is potentially an important protection for Parliament to hear properly what is happening with secondary legislation. The super-affirmative procedure guarantees a 90-minute maximum debate on a piece of secondary legislation, and that is the procedure that we would prefer for this clause. We will not press the amendment to a vote, but we would be grateful if the Minister reflected briefly on why she thinks the negative procedure is the right way to go.

Fleur Anderson: Although there is some justification for a power to make technical updates to regulations, as my hon. Friend the shadow Minister has set out, the clause could provide a licence for the Secretary of State to weaken, via secondary legislation, the standards of our waters, and their chemical status in particular. Secondary legislation has caused a huge amount of division between the Opposition and the Government, as we have asked that much more of it be put into primary legislation. If there is more secondary legislation, and “may” does not become “must”, it is really important that it is debated under the super-affirmative procedure. That is particularly worrying in the light of Sir James Bevan’s speech, which suggested possible reform of the way in which the status of our water is considered. What is behind that suggestion? The last thing we need now is a regression of water quality standards. According to data released by the Environment Agency last month, not a single lake or river in England that has been recently tested has achieved a good chemical status. We are experiencing a five-year high for environmental pollution by the water industry.

Stakeholder concerns about the unmitigated power in the clause would be unlikely to evaporate if there were a commitment to non-regression of environmental standards. Given the public support for environmental protection, which I am sure the Committee will acknowledge, why are the Government reluctant to provide assurances and to agree to the amendment? That goes to the heart of many of the issues at the centre of the Bill. Time and again, we have heard assurances of non-regression, but the Government have so far avoided every single opportunity to put those promises into statute. That persistent refusal makes us all highly suspicious.

At the heart of the water framework directive is the principle that the water environment is a system and that all its parts need to be in good working order for it to operate effectively. That principle remains true. The clarity of the one in, one out rule should not be abandoned, and any weakening of chemical standards would be a backward step in the light of growing public concern about water pollution and the new data showing the extent of water quality failures across England.

I urge the Committee to support the amendment, which goes some way towards addressing that significant risk, and would ensure that any changes to water quality regulations would be subject not to the negative procedure, as the Bill currently states, but to the super-affirmative procedure—as a new MP, I had to go and look it up and have learned a lot about it—as defined in section 18 of the Legislative and Regulatory Reform Act 2006. That would give stakeholders the right to input into any water quality regulation changes, including UKTAG, the UK technical advisory group that currently advises on standards—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
Public Bill Committee

ENVIRONMENT BILL

Seventeenth Sitting

Tuesday 17 November 2020

(Afternoon)

CONTENTS

Clauses 81 to 90 agreed to, some with amendments.
Schedule 14 agreed to.
Clauses 91 and 92 agreed to.
Clause 93 under consideration when the Committee adjourned till Thursday 19 November at half-past Eleven o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 21 November 2020

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The Committee consisted of the following Members:

**Chairs:** †James Gray, Sir George Howarth

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
† Anderson, Fleur (*Putney*) (Lab)
† Bhatti, Saqib (*Meriden*) (Con)
† Brock, Deidre (*Edinburgh North and Leith*) (SNP)
† Browne, Anthony (*South Cambridgeshire*) (Con)
† Crosbie, Virginia (*Ynys Môn*) (Con)
† Docherty, Leo (*Aldershot*) (Con)
† Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)
† Graham, Richard (*Gloucester*) (Con)
† Jones, Fay (*Brecon and Radnorshire*) (Con)
† Jones, Ruth (*Newport West*) (Lab)
† Mackrory, Cherilyn (*Truro and Falmouth*) (Con)
† Moore, Robbie (*Keighley*) (Con)
† Pow, Rebecca (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
† Thomson, Richard (*Gordon*) (SNP)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Zeichner, Daniel (*Cambridge*) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Tuesday 17 November 2020

(Afternoon)

[James Gray in the Chair]

Environment Bill

Clause 81

Water quality: powers of Secretary of State

Amendment proposed (this day): 135, in clause 81, page 80, line 28, leave out subsection (9) and insert—

“(9) Regulations under this section are subject to the super-affirmative resolution procedure.

(10) In this subsection, ‘super-affirmative resolution procedure’ has the same meaning as it does in Section 18 of the Legislative and Regulatory Reform Act 2006.”—[Dr Whitehead.]"}

2 pm

Question again proposed. That the amendment be made.

Fleur Anderson (Putney) (Lab): Before our lunch break, we were discussing clause 81, on water quality and the powers of the Secretary of State. The clause gives the Secretary of State a wide-ranging power to amend the regulations that implement the EU water framework directive, particularly as they relate to the chemical pollutants that should be considered under the regulations and the standards applied to them.

I have some concluding comments to my earlier statement. The amendment would ensure that any changes to water quality regulations would be subject not to the negative procedure, as the Bill sets out, but to the super-affirmative procedure. This would give stakeholders—including UKTAG, the UK technical advisory group, which currently advises on standards and which should retain a lead role in this process—the right to input into any water quality regulations changes. It would also legally require the Secretary of State to have regard to that input, ensuring that standards and targets are altered only in line with scientific advice and following appropriate stakeholder consultation.

A robust, binding legal assurance of non-regression on environmental standards would give further assurance on that point. The Government still have the opportunity to give such assurance through the Bill, and that would be warmly welcomed by the environmental sector and many other stakeholders.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I thank the hon. Member for Putney for tabling the amendment. I understand entirely the desire to ensure an appropriate level of scrutiny when this delegated power is exercised. The clause creates a narrow power for the Secretary of State to maintain a list of the most harmful chemical substances that could enter watercourses and sets out measures to monitor and tackle them, keeping pace with the latest scientific knowledge. This is a key aspect of our wider regulations that protect and enhance our water environment. The exercise of the power in the clause is subject to consultation with experts in the Environment Agency who provide scientific opinion and have a statutory duty to monitor water.

I highlight the fact that the Secretary of State will take into account the latest scientific evidence when updating lists. In addition to the EA, a lot of that evidence comes through the UK technical advisory group, a working group of experts drawn from the environment and conservation agencies for England, Wales, Scotland and Northern Ireland who already derive threshold values for UK-specified pollutants, which are monitored for the purposes of contributing to the ecological status of our surface waters. A statutory consultation requirement could not be placed on the UK technical advisory group as it is not a statutory body, but it offers valued expert advice. The Secretary of State must also consult any person or bodies appearing to represent the interests of those likely to be affected by these provisions.

I understand that the amendment seeks to increase the level of parliamentary scrutiny of the exercise of the power by upgrading to the super-affirmative resolution procedure, as the hon. Member for Putney mentioned. As we have mentioned, this procedure is used extremely rarely for statutory instruments that are considered to need a particularly high level of scrutiny—for example, legislative reform orders under the Legislative and Regulatory Reform Act 2006, which could be used to abolish, confer or transfer statutory functions or create or abolish a statutory body or office—so we do not feel that that would be appropriate.

The hon. Member was concerned about a lowering of standards, which is absolutely not the case. I know that she has a particular interest in this, and I was so interested to hear earlier that she worked for WaterAid. Lots of Back Benchers engage with WaterAid—I did—when it holds events in Parliament. It does really good work. The wider regulations require the EA to have an extensive and robust monitoring regime for chemicals in the water environment and refer to the priority substances as those that must be used to assess chemical status in surface waters. The EA will monitor for new and emerging harmful substances through an early warning system and, in consultation with the EA, the updates to the list will be based on the latest science and monitoring data, which currently suggest a potential increase in the number of substances of concern, rather than a reduction. An eye will certainly be kept on that, because it is so important.

Although I fully acknowledge the importance of parliamentary scrutiny, a super-affirmative, or indeed a standard affirmative, resolution procedure is wholly disproportionate in this instance. This power can be used only to make relatively narrow changes to existing transposing legislation for the purpose of updating certain water quality standards. The power does not extend to changing the wider regime for assessing and monitoring water quality, which is enshrined in the Water Environment (Water Framework Directive) Regulations 2017. An update to the list of priority substances involves highly technical discussions, as I have mentioned, around emerging pollutants and their threshold values, measured in micrograms per litre, and sophisticated monitoring techniques, including biota testing.
I hope that clarifies the position, and I therefore ask the hon. Member for Southampton, Test to withdraw the amendment.

Dr Alan Whitehead (Southampton, Test) (Lab): As the Minister indicated, the name super-affirmative suggests that this is not an everyday procedure. It has been suggested in the amendment because the clause would allow the Secretary of State, albeit on a reasonably narrow basis, to amend or modify legislation, and thereby to degrade or completely remove environmental protections that are already in the regulations. That would essentially be a power to deregulate current regulations, underpinned by the ability to do so by simply notifying the House. We do not think that is good enough.

As my hon. Friend the Member for Putney emphasised, the super-affirmative procedure would not just allow for greater parliamentary scrutiny but would allow for greater consultation in the process. We think it is an appropriate device to add, although it is a relatively new one. It has been in place, as the Minister alluded to, since 2016.

However, the Minister has given some assurances on the limit of the Secretary of State’s power to degrade or remove secondary legislation. She has also indicated that that would not be the intention of the Government, and that, on the contrary, it is their intention to try to uprate those regulations.

Rebecca Pow: Apologies; I was mistaken earlier. It was the shadow Minister who tabled the amendment. In addition to all these matters, the Secretary of State will conduct a two-yearly review of significant developments in international legislation on the environment. That is another prong that will help to keep up the standards of environmental protection. I thought the hon. Gentleman might be interested to hear some of the ways we might use—

The Chair: Interventions must be very brief.

Dr Whitehead: I thank the Minister for her intervention. Alas, we will never hear the detail of what those changes might be, but the fact that she was brandishing a sheet of paper that clearly had them written on it is perhaps further assurance. I did indeed move this amendment, but the multi-talented nature of Opposition Members could have led one to believe that someone else had done so, such is the power of our interventions this afternoon.

We do not intend to press the amendment to a Division, but I hope that this is another thing for the Minister’s “to think about” box. I do not think that it is generally a good idea for secondary legislation to be put through the negative procedure on this catch-all basis. Among other things, doing so puts considerable impediments in the face of Parliamentary scrutiny, because the negative procedure requires the legislation to be prayed against. That means that the right to a debate lies with the usual channels rather than being guaranteed, as it is with the affirmative procedure.

I hope the Minister will take the general point on board for future legislative purposes that we do not think that is a good idea. We would be grateful if the Minister could have that in mind when she is reviewing the legislation. On this occasion, we are reasonably happy with the Minister’s assurances on this clause and the additional—alas, secret—assurances that she has on her piece of paper. Therefore, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 81 ordered to stand part of the Bill.

Clause 82

WATER QUALITY: POWERS OF WELSH MINISTERS

Amendments made: 53, in clause 82, page 81, line 19, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.
See Amendment 28.

Amendment 54, in clause 82, page 81, line 21, leave out “Assembly” and insert “Senedd”—(Rebecca Pow.)
See Amendment 28.
Clause 82, as amended, ordered to stand part of the Bill.
Clauses 83 to 86 ordered to stand part of the Bill.

Clause 87

VALUATION OF OTHER LAND IN DRAINAGE DISTRICT: WALES

Amendment made: 55, in clause 87, page 85, line 9, leave out “the National Assembly for Wales” and insert “Senedd Cymru”—(Rebecca Pow.)
See Amendment 28.
Clause 87, as amended, ordered to stand part of the Bill.

Clause 88

VALUATION OF AGRICULTURAL LAND IN DRAINAGE DISTRICT: ENGLAND AND WALES

Amendment made: 56, in clause 88, page 87, line 33, leave out “the National Assembly for Wales” and insert “Senedd Cymru”—(Rebecca Pow.)
See Amendment 28.
Clause 88, as amended, ordered to stand part of the Bill.

Clause 89

DISCLOSURE OF REVENUE AND CUSTOMS INFORMATION

Amendment made: 57, in clause 89, page 89, line 9, leave out “the National Assembly for Wales” and insert “Senedd Cymru”—(Rebecca Pow.)
See Amendment 28.
Clause 89, as amended, ordered to stand part of the Bill.
Clause 90 ordered to stand part of the Bill.
2.15 pm

Schedule 14

Biodiversity Gain as Condition of Planning Permission

Dr Whitehead: Apologies, Mr Gray, but we had previously notified the Committee that our amendments to the natural environment and environmental protection elements of the Bill would be moved by my hon. Friend the Member for Cambridge.

Daniel Zeichner (Cambridge) (Lab): I beg to move amendment 169, in schedule 14, page 207, line 26, leave out paragraphs (3) and (4) and insert—

“(3) The relevant percentage is a minimum of 10%.
(4) The Secretary of State may by regulations amend this paragraph so as to increase the relevant percentage.
(5) The Secretary of State shall review the relevant percentage after 5 years or sooner.”

This amendment amends the power to vary the 10% level so that it can only be increased.

I apologise to anyone who was expecting to continue to hear the mellifluous tones of my esteemed colleague, my hon. Friend the Member for Southampton, Test. I am grateful to have a backing part; it is a huge honour.

After all the excitement this morning, I hope we can have a similarly exciting afternoon. We are coming to the bit that I have been looking forward to most since I first read the Bill: the exciting part around nature and biodiversity. Part 6 is fascinating. It is hard to imagine a more important and pressing subject when we all know that around the world, the targets we have collectively set ourselves continue, sadly, to be missed. At the same time, we look to find ways out of the economic crisis stemming from covid.

Part 6 is a very important part of the Bill. As I looked at the Bill last night in revising for today, I reread some of the 25-year environment plan. What an optimistic, forward-looking and exciting document it is, full of “wills”, “shall”s and “musts”. The trouble is that some of that enthusiasm seems to have been mislaid en route.

One of the key things is that somewhere along the line, the planning White Paper came along, and there is an unresolved tension between the excellent ambition of the new system and irreplaceable habitats; the exemptions, too.

As my hon. Friend the Member for Southampton, Test said at the beginning of our discussions, we think this is a good Bill, but we want to make it better. My task this afternoon is to try to help the Minister restore it to the Bill it might once have been. We could see this as a bit of a whodunnit. Who was it, and how did the changes creep in? Who did such harm to it, and how did the bit that I have been looking forward to most since I read the Bill last night in revising for today, I reread some of the 25-year environment plan. What an optimistic, forward-looking and exciting document it is, full of “wills”, “shall”s and “musts”. The trouble is that some of that enthusiasm seems to have been mislaid en route.

One of the key things is that somewhere along the line, the planning White Paper came along, and there is an unresolved tension between the excellent ambition of the new system and irreplaceable habitats; the exemptions, too.

As my hon. Friend the Member for Southampton, Test said at the beginning of our discussions, we think this is a good Bill, but we want to make it better. My task this afternoon is to try to help the Minister restore it to the Bill it might once have been. We could see this as a bit of a whodunnit. Who was it, and how did the changes creep in? Who did such harm to it, and how can we now help the Government make good? In some of the discussions on this schedule, the Government thought about going beyond net biodiversity gain towards net environmental gain, and we would really like that aspiration to be addressed.

Much of the schedule is about the planning system. I suspect many Members here have direct or indirect experience of our planning system and know how important it is. For the moment, the provisions for reducing environmental impact in the planning system are focused on preventing and mitigating harm. The net gain objective has been embraced in the national planning policy framework since 2012, when it replaced the previous policy objective of no net loss, which sought only a neutral outcome after losses and gains were accounted for. Thanks to the rules for site-based protection in the Conservation of Habitats and Species Regulations 2017, the net gain objective has been relatively effective in reducing loss of habitats and species without slowing down development, but it has been far from enough to turn the tide in nature’s decline. The principle of taking a more strategic approach to restoring nature and requiring a 10% net gain in biodiversity is one we fully support. That is what is addressed in this schedule.

We know how important that is because, sadly, the UK continues to suffer rapid biodiversity loss. The Government have failed on too many metrics: 46% of conservation priority species in England declined between 2013 and 2018. This is serious. We welcome the fact the Government have begun to address some of the issues, although we think we need to approach this serious issue in an open and clear way. We note the Prime Minister’s announcement a few weeks ago about 30% of land being protected, but we also gently point out that some 26% of that is achieved through a counting mechanism that includes areas of outstanding natural beauty and national parks. We want to address this problem. We have to be serious about it and not try to play with the figures, and our view is that at the moment the Bill is a lost opportunity to stop the decline. However, the new general condition has the potential to be an effective tool to boost biodiversity across the country, and there are many issues we want to address in the amendments to see how the Bill can be improved.

I will touch on several of our amendments, including on the length of time for which habitats should be maintained, which is 30 years; the exemptions, too many, in our view, from the biodiversity gain condition; the relationship between the new system and irreplaceable habitats; and the lack of a mechanism to guarantee what is prescribed in the biodiversity gain plan to ensure it is actually delivered on the ground. To turn to the detail of amendment 169, our fear is that we are in danger of being left with a rather unambitious percentage of biodiversity net gain that is all too easy for the Government to decrease if they choose to do so. At first sight, setting the condition for planning permission at 10% biodiversity net gain seems a reasonable thing to do, but it is important to note that the impact assessment published alongside the biodiversity net gain consultation in December 2018 said that 10% is merely the lowest level of net gain at which the Department “could confidently expect to deliver...net gain, or at least no net loss”.

It does not appear that this is taking us very far forward. Indeed, 10% net gain is less ambitious than the current practice of some local authorities. I am told that Lichfield District Council already requires 20% net gain on new development, so although we welcome the Government’s statement and its response to the biodiversity net gain consultation, the 10% should not be viewed as a cap on the aspirations of developers who want to go further. I was pleased that the Minister reiterated this point on Second Reading. It would be very helpful if she could make a clear statement, to facilitate ambitious developers and to help them and local planning authorities, underlining that the aspiration is to go further.
A number of changes need to be made. Under schedule 14, the Secretary of State has a number of powers to make regulations, including a Henry VIII power to amend the 10% biodiversity net gain objective and to amend the types of developments the net gain will apply to. The Bill’s provisions read that “the relevant percentage” of biodiversity net gain for developers is 10%, and:

“The Secretary of State may by regulations amend this paragraph so as to change the relevant percentage.”

Our amendment is very clear: that must be amended to include a commitment to monitor and review practice, so that the level of gain can be increased in future if evidence demonstrates this is possible and needed. We also need a lock-in so that the percentage can only be increased by the Government, not simply decreased at a later date. There must be no mechanism in the Bill to lower the level of gain; that would seriously undermine the objectives of the system as a whole, and would likely result in little or no gain being achieved in practice.

Amendment 169 would ensure that the only way the 10% net gain figure could be changed is by being increased after review by the Secretary of State. It would also lock in a timeframe to ensure the percentage is reassessed after an appropriate amount of time, within a maximum period of five years.

I am sure the Minister will, as she has throughout, assure us that there is no need for concern. But to return to my whodunnit, I fear that there may be a villain in my story and Members might be able to guess who some of the contenders might be. Looking back at the Prime Minister’s “Build, build, build” speech in July, he did claim—spuriously in our view—that:

“...net gain and there were calls for both a higher and a lower percentage. It was quite interesting how that came...”

I am sure the Minister will, as she has throughout, assure us that there is no need for concern. But to return to my whodunnit, I fear that there may be a villain in my story and Members might be able to guess who some of the contenders might be. Looking back at the Prime Minister’s “Build, build, build” speech in July, he did claim—spuriously in our view—that:

“...net gain and there were calls for both a higher and a lower percentage. It was quite interesting how that came...”

We will discuss news in more detail later, but when Government policy lurches from one approach to another, we need certainty that the commitment of the current Minister will not be trumped by future Ministers who might take a different view. Unless we get that certainty, we will certainly wish to press this amendment to a Division.

**Rebecca Pow:** I welcome the hon. Member for Cambridge as he takes the floor this afternoon. This is a tremendously exciting part of the Bill, through which we can all be a part in doing our hugely important bit for nature in this country. He is right about degradation—I am not even going to think about denying that—and about how important the Bill is. This is the tool for achieving the measures in the 25-year environment plan, which was the first environmental improvement plan. It is great that the plan is full of optimism because it sets out what we want to do and where we want to go, and these measures will be in this Bill.

Let me turn to the amendment. Responses to the net gain consultation revealed that some developers have already made voluntary commitments to no net loss or net gain and there were calls for both a higher and a lower percentage. It was quite interesting how that came out. On balance and having considered all responses, we believe that requiring at least a 10% gain strikes the right balance between ambition, creating certainty in achieving environmental outcomes, deliverability and costs for developers. It should not be viewed as a cap and the hon. Member for Cambridge has already mentioned a local authority that has set its sights higher. Many more are doing that and going voluntarily above 10%.

The hon. Gentleman mentioned the “Planning for the future” White Paper, which I think will probably be referred to a lot today. It specifically sets out support for biodiversity 10% gain and rightly identifies improving biodiversity as one of our most important national challenges. It is important to build the houses people want and all of the developments that we need, but that cannot be done to the detriment of the environment.

That is quite clear in the White Paper that biodiversity net gain and biodiversity more generally are one of our most important challenges. The Department for Environment, Food and Rural Affairs is working closely with the Ministry of Housing, Communities and Local Government on the implementation of biodiversity net gain to make sure it is fully integrated into the planning system. I have already said that the 25-year environment plan is the first environmental improvement plan, and all these things will work as part and parcel of one another.

The ambition of 10% net gain represents a significant step forward beyond current practice while striking a balance and meaning it does not have to be reviewed as a cap. Restricting the ability to set a lower percentage requirement may force the Government to exempt any development types that cannot achieve a 10% net gain, rather than keeping them in scope and subjecting them to a lower percentage requirement. Broader exemptions would be a greater risk to the achievement of the wide policy aims than targeted application of a lower percentage gain.

Limiting the power might therefore compel future Governments to make other adjustments to the requirement, which could compromise environmental and development outcomes more fundamentally than a lower percentage of net gain.

**Dr Whitehead:** The Minister is making an interesting case for the clause. However, does she accept that it is a particularly egregious example of “first you have it, then you don’t” legislation appearing in consecutive paragraphs? That is to say—a bald statement, as she said—the relevant percentage is 10%, but then the Secretary of State can take that away. Does she have any suggestions as to how one might make that a little less alarming, if she is indeed suggesting that that sort of arrangement needs to be in place?

2.30 pm

**Rebecca Pow:** I reiterate how closely we are working with other Departments and on the “Planning for the future” White Paper to make sure that biodiversity remains the significant objective that it needs to be, as has been indicated already.

Other measures in the Bill, such as the local nature recovery strategies that we will come on to talk about, will help with our moving towards biodiversity net gain. There are a lot of measures that will make it much clearer where the net gain is, what the advantages and benefits of it are, and where it should go.

One of the main aims of our planning reforms is to enhance the environment while having the development that we need. We want environmental assets to be protected. We want to provide more green spaces, more sustainable development and new homes that are energy-efficient. Many of these measures have already been announced and are being introduced, such as the measures...
on houses and on the reduction of carbon-intensive modes of transport. All these things will work together, and measures in the Bill will help that process. We will also work through the White Paper to deliver even further on the net gain.

Let me reiterate that limiting the power might compel future Governments to make other adjustments to the requirement that would compromise environmental and development outcomes more fundamentally than a lower percentage of net gain. What we are trying to do overall is to raise up the whole net gain.

Ruth Jones (Newport West) (Lab): Does the Minister agree that these amendments are very moderate? We are not looking to limit things down, but to raise things up. The Bill already has the relevant percentage—10%—so to put that as a minimum is surely a very moderate thing. That word is a very important one. As she has already said, she is very ambitious, so adding that word would surely increase the ambition.

Rebecca Pow: I hear what the hon. Lady says, but I still stick to my point that restricting the ability to set a low percentage requirement might force Government to exempt any development types that cannot achieve the 10%. What we are trying to do is to make sure that everyone gets to the 10% mark, and others might go above that voluntarily.

On the final point about the amendment, about compelling the Secretary of State to review the percentage within five years, I offer my assurances that the Government intend to monitor closely the policy outcome of net gain after its implementation. Of course, Members should remember that we have our Office for Environmental Protection; we have a great big monitoring and reporting body. It will be very difficult for anyone not to stick to these measures. They are all in the Bill and they add to the overall enhancing of the environment. I respectfully ask the hon. Member for Cambridge to withdraw the amendment.

Daniel Zeichner: I am grateful to the Minister. I suspect that a theme is already emerging from this discussion, whereby the Minister tries very hard to explain away the differences that have emerged. That is her job and she has made a very good attempt at it. However, it seems counterintuitive to argue that, on the one hand, the Government are going to introduce this level and, on the other hand, they will have the ability to reduce it. As for the argument that somehow protects the measure, I think that the cat was slightly let out of the bag by the suggestion that there might be exemptions that will allow another way round it. We will come on to that in a moment.

In some ways, this is a strange discussion, because the White Paper on planning emerged in the summer, after this Committee was in abeyance. It seemed to us—we made this point very strongly—that this process is a complicated set of interactions that would have benefited from the detailed interrogation of experts. We will get into some quite detailed planning law issues in the coming hours, I suspect, and many of us possibly do not realise that some of our witnesses might have been able to bring to these discussions. It is a great pity that we are not able to explore that in more detail. But we are where we are and we will have to do our best.

The problem is that a lot of this goes back to the question of trust. Basically, the Minister is asking us to trust the Government. She says that they are introducing the OEP, but the OEP will work to the legislation that we are putting in place today. Inevitably, there is pressure—we know that there is huge pressure and we understand why—from local developers and a Government who want to build, build, build. That is why nature needs a voice: it needs the legislative protection that the Minister is so passionate about. There should not be any loopholes, because we know what will happen: if we leave loopholes, people will use them. That is why—and I will keep repeating this point—I want to understand what changed, who did it and why, because if we get an answer to those questions, we will understand what is likely to happen in future.

This Bill might look lovely and sound great, but when we begin to delve down into the detail and look at the “mays” rather than the “musts” and at the exemptions and loopholes it introduces, we may find that, like so many other occasions in the past, it is a great disappointment. That is why we want to absolutely tie this down. On that basis, we wish to divide the Committee.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 31]

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Question accordingly negatived.
Amendment 230, in clause 91, page 92, line 1, leave out “for at least 30 years” and insert “secured in its target condition and maintained in perpetuity”. This amendment would require habitat enhancements created under net gain to be secured in perpetuity.

Daniel Zeichner: The theme continues with this set of amendments because, in exactly the same way as I have just explained, there is a risk of not achieving the desired outcome and ambition of the 25-year environment plan.

The amendment relates to the length of time that the biodiversity gain habitats should be maintained. Our amendment challenges the Government’s suggestion of 30 years. In our view, both schedule 14 and clause 91(2)(b) would allow protected sites potentially to be downgraded or destroyed after 30 years, thereby destroying the ecological gains and carbon storage benefits, and any prospect of those gains and benefits making a long-term impact.

That is essentially the issue: we are talking about the long term. I am sure the Minister will explain in a moment the logic for the Government’s 30-year proposal, but this takes us back to the basic point about how serious and ambitious we are about embedding these changes for the future. There will be little point to the provisions if they do not work in practice. For instance, if someone gets rid of a pond that has been in place for hundreds of years, with all the richness in biodiversity it has developed, and replaces it with another pond nearby, that replacement could be let go after 30 years. Our concern is that the provisions do not give the necessary strong support. The danger is that too short a period could simply see the biodiversity gains swiftly lost. Thirty years sounds like quite a long time, but when one bears in mind that we are already two years down the line from the 25-year environment plan and that politics does not always move at a frightfully great pace, it is not hard to imagine things moving quickly and those gains being quickly lost. If biodiversity gains are to properly contribute to the 25-year environment plan commitments to a nature recovery network and to provide carbon sequestration, which is so crucial to our net zero targets, these areas must be secured and maintained for the long term, because only through that kind of approach will we secure long-term nature recovery.

There really ought to be some binding mechanisms to ensure that the habitat condition target is reached in a timely way. One does not want to be cynical about some of these things, but one can well imagine that people could consider the 30-year provision and say, “Yippee! Now we can let everything rip.” It is a question of getting to net zero and staying there.

2.45 pm

Dr Whitehead: I want to add a few thoughts to the excellent introduction to the clause from my hon. Friend the Member for Cambridge. This issue has a considerable relationship to not only biodiversity gains generally but our targets under climate change legislation.

Part of the purpose of a number of the biodiversity gains that may arise as a result of putting percentages on biodiversity gain is not only to make a little gain but to actually sequester what is in that gain. That sequestration should and will count towards the carbon balance, so far as getting to net zero is concerned. We will discuss, when considering a new clause later in Committee, the whole question of what to do about planting trees over a period of time and how the planting of those trees leads, as those trees mature—my hon. Friend alluded to this—to substantial gains in net negative emissions, which are absolutely essential for reaching a net zero target in the future. The assumption would be that the carbon embedded in those trees is permanently placed on the carbon account as a negative input, because it has been effectively sequestered by the trees. That means not only that we can get to net zero, but that the whole question of net negative in the net zero equation is an essential starting point, and without that net negative input, there is no way we will get to net zero by 2050. As we in this House have all agreed, 2050 is the proper target, although we would like net zero to be achieved sooner in this country as far as emissions are concerned.

The Government’s proposals seem to suggest—I think this is probably a coincidence, but it is a very neat elision—that the moment we get to 2050, all the sequestering of carbon that we decided to start doing in 2020 could be over, because someone could dig up all the stuff that had been laid down. The whole point of anything that relates to the carbon account going to 2050 is that it has to continue after that date, otherwise the whole purpose will be overthrown. It is not a case of getting to net zero and then saying, “Yippee! Now we can let everything rip.” It is a question of getting to net zero and staying there. There must be a guarantee that whatever we put into the negative carbon account will be there for the long term, otherwise it will not work. The proposals fail in seeming not to show any understanding that that is what is required.

By the way, it is not beyond the reach of imagination—we have seen this with land banking, because of the number of people working on very long-term timescales—that people could consider the 30-year provision and say,
“Okay, this land is in my company or family’s purview, and it will not be developed for the time being because it is in this structure, but as long as I keep it in reasonably good order and keep it in my ownership, something good can happen with it in 30 years’ time. It is just 30 years; that is all we need to worry about.”

That combination of matters suggests to me that the 30-year limit is just wrong, and it should not be in the Bill. We have suggested “in perpetuity”, and there may be other suggestions for timescales that are long enough to make sure that these effects work. As far as the 30-year rule is concerned, we think it is best simply to say that—with the exception of very specific circumstances, where things can be untangled or undone by other means—the default position is that once it is done, it is done, and it is not to be undone thereafter. We think that that is an important principle that should be enshrined in this Bill, as far as biodiversity gains are concerned.

Rebecca Pow: I thank both hon. Members for their comments. The 25-year environment plan has been referred to, and I would say that Opposition Members are talking about weakening the commitments on biodiversity net gain in the 25-year plan. The Bill actually takes us further on biodiversity net gain. The plan only included a commitment to consult on a mandatory approach and strengthened policy. We are proposing a robust mandatory requirement with a broad scope of mechanisms for securing gains. I think that is important to register at the beginning.

The schedule states that “any habitat enhancement” within a development site that is considered significant by the planning authority must be “maintained for at least 30 years after the development is completed.” Respondents to the net gain consultation expressed strong support for a minimum period of maintenance, and Government responded by confirming that they would introduce a minimum period—hence the 30 years.

Ruth Jones: I am just seeking some clarification on the definition. The Minister said the amendment appears to weaken the Bill, but “in perpetuity” cannot be weaker than 25 years, because perpetuity is longer than 25 years.

Rebecca Pow: My point was that what we are introducing in the Bill is much stronger than what was in the 25-year environment plan. That was the point I was making. I will press on—

Dr Whitehead: We did not write that.

Rebecca Pow: But it was referred to earlier. It is a commitment we have made, and we are strengthening it. Credit should be given where credit is due. A great amount of work has advanced since the launch of that plan, which I went to in 2018 with the then Prime Minister, my right hon. Friend the Member for Maidenhead (Mrs May). We are forging on and doing even more than was promised in that plan.

I welcome the acknowledgment by hon. Members of the importance of long-term maintenance of biodiversity gain sites to ensure that we provide long-lasting benefits for wildlife and communities and for climate change, as was ably referred to by the hon. Member for Southampton, Test. There are, however, practical reasons why we should keep the minimum requirement to a 30-year duration.

We need to create the right habitats in the right places for wildlife. Increasing the minimum required duration of maintenance might dissuade key landowners from volunteering their land for gains. Agreements made for perpetuity would also risk creating permanent conditions or obligations to maintain particular types of habitat, when future changes in climate or ecological conditions might make a different type of habitat more suitable. The Bill leaves space for flexibility.

I want to give some more detail about what we term conservation covenants. Any conservation covenant used for net gain would be drafted to secure the carrying out of habitat enhancement works and maintenance of the enhancement for at least 30 years. We would expect responsible bodies to respect that purpose when deciding whether or how to modify or discharge a conservation covenant. They might consider whether any flexibility for landowners would better serve that purpose than retaining the conservation covenant unchanged. I have talked to landowners about this, and it is a point they make, so that has to be respected. The Bill leaves the flexibility for that.

There are also a range of existing protections for habitats, which will not be going away. They could apply to biodiversity gain sites even after the 30 years have expired. These are principally of relevance to off-site habitat enhancements, but would still apply to habitats created within developments. We understand from stakeholders that there may, in some cases, be little difference in funding requirements between the minimum 30-year agreement and a longer agreement.

In cases where it is acceptable to a landowner and would deliver greater biodiversity benefits, we would, of course, encourage longer-term agreements. We would do that initially through guidance. Should further evaluation of the policy show that this is not achieving the right outcomes, the encouragement might be adjusted through policy, the biodiversity metric, which has been in existence for about five years and is currently being updated by Natural England, or further guidance. Any future decision relating to the mechanisms of the encouragement will be made by Government on the basis of evaluation of the biodiversity net gain practice rather than speculation, which, I suggest, is what is being done at the moment.

Dr Whitehead: First, I think it should be put on record that suggesting that a Government initiative is better than an amendment being proposed, when the comparison is made between two Government initiatives, one of which is better than the other, really should not stand. We did not write the 25-year environment plan; the Government did. If this improves on the 25-year environment plan, fair enough, but it is not to do with us.

Secondly, in law, 30 years means 30 years. It will be found out whether that was the right thing by encouragement only after 30 years. If someone rips everything up after 30 years, they will find the Government’s encouragement was not as good as it should have been. I am puzzled as to how the Minister will find out whether this is working short of the 30-year period. Would it not be better not to have that 30-year period, to ensure that we do not have to find out the hard way at the end of 30 years, when that change is made in law?

Rebecca Pow: I take the point that the hon. Gentleman made earlier. I put on record that I hear what he has said. We will not fall out.
Things will not stop after 30 years. For example, while the agreements made for biodiversity net gain might expire, the created habitats will remain subject to a wide range of protections at that point, as I just said. For example, if a woodland had been created, it would benefit from existing protections for woodland and would then fall into the scope of the felling licence and potential environmental impact assessment regulations for forestry. All those other protections would come into play.

I reiterate that people can voluntarily enter into contracts longer than 30 years if they so wish. I am sure that certain people will want to do that. In light of the reasons I have set out, I ask the hon. Member for Cambridge to withdraw his amendment.

The Chair: I call Dr Zeichner.

Daniel Zeichner: I have been elevated, Mr Gray, to doctor. Thank you very much.

The Chair: You look like a doctor.

Daniel Zeichner: I am not sure what a doctor looks like, but thank you.

This has been a useful discussion, because it begins to show how complicated some of this is. It shows—we will come to this in subsequent discussions—that the interactions between the different pieces of protection legislation are complicated, as I have already hinted. This is possibly already a discussion for lawyers, and my fear is that it will become a discussion for lawyers in the future, because these things will be disputed. If we do not get the legislation clear now, it will lead, I suspect, to disappointment in the future.

Perhaps I was overly gushing in my praise for the 25-year environment plan at the beginning, but I was seeking to make a broader point, which is that in too many cases we have stepped back. This is a case in point. The Minister, in explaining the logic behind the 30 years, has raised more concerns in people’s minds than she might have alleviated. I am grateful to my hon. Member for Cambridge to withdraw his amendment. For example, if a woodland had been created, it would benefit from existing protections for woodland and would then fall into the scope of the felling licence and potential environmental impact assessment regulations for forestry. All those other protections would come into play.

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It is striking that, in this schedule, this is the key tool that the Government are adopting. They are using the planning process. If that is the key path to protecting nature in future, we do not want to start introducing loopholes and qualifications in this way. I understand the debate around the 30 years—I was ploughing my way through the submissions to the net gain consultation and the Government’s responses—but I am sure that the Minister will concede that many people agree with our position, which is that this needs to be seen in perpetuity. An additional point is about how we monitor and check that progress in between. As we all know, it is all too easy for this place to pass legislation and think, “job done,” only to wonder why it has not had an effect in the real world. We will probably touch on some of those points as the debate continues.

3 pm
I am afraid that local councils do not always cover themselves in glory when it comes to ensuring that the conditions that they put on planning consents are abided by. That is not a criticism of the local authorities, which rightly ask, “How on earth do you expect us to do all this when we have limited resources?”—I suspect I shall be asking that on their behalf when discussing some of the subsequent amendments. It is a fair question; if we are asking them to do more, we must ensure that they have the ability, skills, training, knowledge and time to do it.

How can we be sure that these net gain proposals are not only implemented, but monitored and maintained over time? My fear is that what sounds like a good idea risks not becoming practice, which would be a great disappointment, and we will divide the Committee because we think that is a very important point.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 32]

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth
Zeichner, Daniel

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo
Jones, Fay
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

Daniel Zeichner: I beg to move amendment 22, in schedule 14, page 212, line 15 leave out “may” and insert “must”.

Amendment 22 would make it a duty for the Secretary of State to provide a clear procedure to planning authorities. Here, again, we come back to the realms of local government. I should perhaps have said earlier that some years ago I was a district councillor in rural Norfolk. I very much enjoyed the experience, and spent many hours—as, I suspect, did many other members of the Committee—on local planning processes. I learned that planning law is lengthy, complicated and sometimes controversial, but very important when it comes to protecting and developing local communities.

This is another one of those “may” and “must” issues. The amendment would strengthen the Bill, which states only that

“The Secretary of State may make regulations as to the procedure which a planning authority is to follow in determining whether to approve a biodiversity gain plan”.

I fear, yet again, that the devil is in the detail. I remember being quite impressed as a district councillor some years ago that there was an interest in biodiversity. We had a biodiversity committee, which meant that we had some fascinating discussions, but I fear that nothing much happened. That is so often the problem: that there is concern but no means of translating intent into action.

Whether the Secretary of State “may” or “must” make regulations is therefore quite important. I fear that many planning authorities that do not have to engage with this will look at it sympathetically, because people want it, but it will be the usual thing: when they
are constrained by so many competing requirements, it is tough to do something unless they have to, which is what we are in this place to ensure.

Regulations may specify the details of the "time by which a determination must be made... factors which may or must be taken into account in making such a determination", and appeals against the planning authority's decisions. I suspect that we are all familiar with the dilemmas that local councillors often face. We give them a huge range of things to take into consideration while trying to achieve balanced outcomes that can withstand scrutiny and appeal, and quite often—and rightly so—they have to take direction from their expert officers who have already made those calculations.

The question is where we balance this issue as a priority against the other things that councillors take into account. My sense is that unless we strengthen the Bill, it will become one more on the list of things that they really ought to take into account. At best, it may become a line on an agenda that gets ticked: "Yes, we have taken it into account, because somebody raised it," but will it actually be considered among the trade-offs in the decision-making process? I am not convinced.

We also wish to raise the question of how the regulations will be decided here; again, we believe that they should be subject to the affirmative procedure to allow proper parliamentary scrutiny. They should also be subject to proper public consultation; because the issue is complicated, the input of biodiversity and planning professionals through public consultation would strengthen discussion and improve procedures. These are not simple matters—they have significant consequences and significant costs—but in due course such input would improve the overall planning outcomes. Improved procedures could ensure that all planning authorities' biodiversity gain plans are sufficiently detailed, subject to public consultation, and made available in draft so as to inform planning applications. That is a part of the democratic process that we believe very valuable, although the planning White Paper seems to make such decisions will take away local input—that that process may not be continued in future.

We want to get the Minister's thinking on this, because it is not clear why she would not want to accept the amendment. We will not press it to a Division, but we would like an explanation.

Rebecca Pow: I thank the hon. Member for moving the amendment. Paragraph 16 of schedule 14 sets out the Secretary of State with flexibility as to how the provision is given effect. Forcing the use of regulations when they might not be needed risks creating unnecessary complication, or even weakening the purpose of the measures. It may not be necessary for the regulations to cover all the areas in paragraph 16; they are set out to give the Secretary of State discretion to address them if it is considered necessary. While we cannot rule out needing to address appeals in the regulations, that may not be necessary. Forcing the Secretary of State to regulate such matters immediately when that may not be a clear necessity would risk adding complexity to a process that we aim to keep straightforward. The addition of undue complexity risks undermining the benefits of the approach for the planning authorities, the communities—which are obviously so important—and the developers using it.

The biodiversity gain plan is simply the document that allows the developer to demonstrate to the planning authority how it has satisfied the biodiversity net gain requirement. A typical biodiversity gain plan will consist of the completed biodiversity metric and some supplementary information. We expect that the consistency of the algorithms will make their assessment easier for the planning authorities, and reduce the risk of miscommunication. I therefore ask the hon. Gentleman to kindly withdraw his amendment.

Daniel Zeichner: I listened with interest to the Minister's explanation. I am not entirely sure that I am convinced by it, because it is not clear to me why making regulations at a later date, rather than making things clear sooner, will make the position less complex. Having the discretion to make them or not does not seem helpful.

The Minister also raised an issue about the biodiversity net gain metric, which is worthier of comment. There is a worry that we are creating yet another algorithm that people will not understand—the phrase "mutant algorithm" has already been bandied about with regard to housing numbers and the planning White Paper. As someone who is interested in data, I am not convinced that it is the algorithm that is mutant, the issue is those who put the data in, or interpret or programme it in a certain way.

Clearly, there is concern that technocratic approaches to making such decisions will take away local input—that those with unique knowledge of the local community and local biodiversity could in some way be excluded. That is a concern. The amendment has the potential to explain to local planning authorities how things should work, so the Minister is missing an opportunity.

An important point was made to me by the Town and Country Planning Association: if there is just a simple metric, where sites have apparently lower biodiversity value, people's attachment to that local open space and its social values could somehow be lost. There is a big debate to be had about how the metric works, and what parameters feed into it in.

Rebecca Pow: I am sure the hon. Gentleman is aware of this, but although he suggests that the metric is a new thing being imposed on people, it has been used for about five years, and is referred to by planning authorities and developers. As I think I just mentioned, Natural England is working on updating it, because it is complicated—it is not a simple thing, but it is a very useful thing. We want to know what is there, what the value is, and
what the value could be—all that. We must also remember that all of this will link into the local nature recovery networks, which local communities will be really involved with.

**Daniel Zeichner:** Yes, and we will discuss those local nature recovery networks. The point that I am making is that the amendment was an opportunity for the Government to give direction to local planning authorities. Different planning authorities would do this differently—some would probably not do it at all, some would do it well, and some less well. It is sufficiently important for the Government to give direction. That is the point of our probing amendment.

To some extent, the Minister has clarified things, although I am not sure that has left us any more hopeful about the impacts, but at least we have had clarification. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

3.15 pm

**Daniel Zeichner:** I beg to move amendment 170, in schedule 14, page 212, leave out line 26.

**The Chair:** With this it will be convenient to discuss amendment 171, in schedule 14, page 212, leave out lines 29 and 30.

**Daniel Zeichner:** Amendments 170 and 171 relate to a major concern about the proposals, which is that a number of exceptions have been made to the condition to provide a biodiversity net gain. As I said earlier, a noble ambition can be undone if there are too many exceptions and loopholes.

Under the Bill’s schedule 14 amendments to the Town and Country Planning Act 1990, biodiversity net gain provisions will not apply to development for which planning permission is granted by a development order, an urgent Crown development, or a “development of such other description as the Secretary of State may by regulations specify”.

I hope Members are all still with me. The excitement of this morning cannot necessarily be replicated when discussing this provision, but it is clear that, in the wrong hands, it could lead to some pretty major exemptions.

In order to maximise the benefits of biodiversity gain, provide developers with certainty and create a level playing field, it is important that the application of the biodiversity gain system is broad, and that most development is part of the net gain system. As I said, the intention is noble, but if people want to find gaps and we give them the opportunity to find lots of them, I am afraid that that is what is likely to happen. We have probably seen that kind of thing happen in the past. If biodiversity gains are to be delivered on the scale that I genuinely think we all agree is needed, we need to ensure that the exemptions and loopholes are limited.

We think that the exemptions for development orders could have a very broad application in practice, particularly if they are extended to the full range of development orders, which include local or neighbourhood development orders, and development orders brought forward by development corporations. That could lead to major developments such as new towns, and wider proposals for free ports, being exempt from the biodiversity gain provisions. That is a significant loophole, and a major missed opportunity to deliver biodiversity gains at scale.

The problem that we face, which goes right back to where the discussion started, is that the challenge is pressing and huge. We know that. If we start introducing exemptions and loopholes, we know what happens. It is not an aspersion on developers; we know that lots of people are paid in the development sector to find ways around planning laws. In my part of the world, there are many of them, and they are very good. They are assiduous, and they probably know planning law better than I do—in fact, I think I can guarantee it. That is why we need to ensure that we do not give them extra opportunities to get around it. Clarification on the development orders exemption and its intended scope would be very welcome from the Minister, not least because I think her words might be useful in future, as local authorities try to defend themselves against clever people who are trying to find ways through this.

I am sorry to have to go back to the planning White Paper, but it is relevant because of its proposals. Incidentally—I do not think I made this point earlier—the Minister had to search pretty hard in the planning White Paper to find references to net gain and biodiversity; the mention of it is very tangential. Anyway, the White Paper includes proposals for the extended use of development orders for large-scale development, as well as wider permission in principle.

We fear that significant swathes of development could be taken out of the system of net gain. If I were being kind, I would say that that would be an unintended consequence of the planning White Paper, but I think that there are some who know full well what they are doing with this. It allows the Government on the one hand to say, “Look what we’re doing with our wonderful new Environment Bill. We’re delivering on our 25-year environment plan,” and on the other hand, it is business as usual. That is really not what we need. Perhaps the Minister could use this moment to explain how she sees the relationship between the Bill and the planning White Paper. It is highly significant, and difficult, because the White Paper has come along since the Bill Committee was originally formed, but it is hardly irrelevant.

Paragraph 17(b) of the proposed new schedule introduced by schedule 14, which effectively enables the Secretary of State to exempt any type of development in future, could lead to wide exemptions from net gain. I note that in their response to the net gain consultation, the Government have outlined that a “targeted exemption” may be intended for brownfield sites. That is quite a significant statement. For many years, there has been considerable interest in pursuing brownfield sites. I think there is sometimes a misunderstanding that nature exists only in some parts of our landscape. It can, of course, exist everywhere. Brownfield sites are no exception to that. It may not always be as diverse and high grade, but it is still very important to our overall attempt to restore and recover nature.

I understand that some environmental organisations such as Greener UK have expressed concerns that the proposed targeted exemption for brownfield sites could undermine the delivery of biodiversity gain as a whole, if a substantial amount of brownfield land is brought forward for housing development. One can see how that could begin to happen. If it is predominantly brownfield
land, frankly, for all our good intentions, we are not making sufficient progress. The sites can have significant biodiversity interest, even when there is no formal biodiversity designation. Under these proposals, we could see damage to brownfield land of high environmental value, which sometimes is not really appreciated until the planning process is well under way. That raises some issues around how the process will happen. At some point in the process, it has to be assessed. The point at which that assessment is done is quite significant. We will come on to that with other amendments.

Will the Minister clarify how brownfield land of high environmental value will be protected and enhanced? What steps will the Government take to ensure that any brownfield site exemption does not undermine our goal of biodiversity gain as a whole? Will she also clarify by what process any future exemptions will be considered by the Secretary of State before being pursued under the broad power in the Bill?

Will there be any public consultation on further significant exemptions from biodiversity net gain? That is a very important point. In my part of the country, which the hon. Member for South Cambridgeshire will be familiar with, we have a very engaged electorate, to put it mildly, which is a good thing, but it means that people are interested and would not want to be excluded from a discussion. It would be hard to exclude some of them, frankly, but they should have a proper, formal role in that discussion, and a sense that their involvement affects the outcome. Otherwise, it leads to further disenchantment in the way our politics works.

There is a range of weaknesses and loopholes, even before we get to what I have described as the real whopper. It is deeply concerning that nationally significant infrastructure projects and other large-scale infrastructure projects are currently exempted from mandatory biodiversity gains. That is a bigger discussion, but it is a factor in this discussion. We know that such projects can cause significant damage to nature and we believe that provision must be made to include such developments within the scope of mandatory biodiversity gain, in line with the Government's 25-year environment plan to embed environmental net gain in infrastructure. We will return to this point later in Committee when we discuss new clause 32.

Amendments 170 and 171 would strengthen what the Government are trying to do, by removing the potentially very wide exemption from net gain for development orders, and remove the broad power given to the Secretary of State in the Bill to lay down regulations exempting further development from biodiversity gain as and when they wish. We are genuinely interested in the Minister's response. I have posed a series of questions. We do not seek to divide the Committee on the amendment, but it is important that people in the wider world get a sense of what the Government are trying to do through this measure.

The Chair: I call the Minister. [Interjection.] I call Dr Alan Whitehead. I am terribly sorry. I would be most grateful if you would indicate more clearly if you wish to speak. The order of speaking goes from the proposer of the amendment to the Minister, but if you wish to add anything, please indicate that to me by standing up or by any other method that is clear.

Dr Whitehead: Thank you, Mr Gray. I escalated from a pen to a hand, but I can escalate to a full body motion, if that is acceptable.

I want to add to the admirable exposition of the two amendments by my hon. Friend the Member for Cambridge by drawing attention to amendment 171, which would leave out two lines from paragraph 17 of the proposed new schedule, which has the heading, “Exceptions”. I ask members of the Committee to see what has been done here, because I think it is shocking. At the start of part 2 of the proposed new schedule, conditions for planning permission relating to biodiversity are laid down:

“Every planning permission granted for the development of land in England shall be deemed to have been granted subject to the condition in sub-paragraph (2),”

which is,

“The condition is that the development may not be begun unless”

there is a biodiversity gain plan. That looks terrific. The casual observer would think, “That’s it sorted out. The biodiversity gain plan has to be in place. That’s what the Bill’s about.”

On turning to paragraph 17, we see that there are some exceptions:

“development for which planning permission is granted...by a development order, or...under section 293A (urgent Crown development)”.

That is arguable, but then we have this sentence:

“development of such other description as the Secretary of State may by regulations specify.”

Put into English, that means that if the Secretary of State introduces a regulation, development is exempted. The whole thing is meaningless from the beginning. All it needs is a regulation, which I presume may well be under the negative procedure, for this to be completely undone.

I know that it is fashionable to blame drafting for these issues, but something as shocking as this has to have had an intention behind it. This cannot arise from someone taking a lax instruction, writing the provision in the bowels of a building, presenting it and no one noticing. How these things are written is instructed by Ministers, who under the Bill can simply remove stuff that the Government do not feel like doing. It refers to all development, not just to some developments—it says “development”. That really is not good enough for a Bill of this kind.
will be used to make narrow practical exemptions in order to keep net gain requirements proportionate. Exemptions will ensure that the mandatory requirement is not applied to development on such a small scale that it could be negligible, and I will go on to talk a bit more about that and about no losses in terms of habitat value. Some development will result in negligible losses or degradation of habitat. Examples of such development might include changes or alterations to buildings and house extensions, for example. Applying the 10% targets to such development would not generate significant ecological gains, and the requirement might result in undue process costs for developers and planning authorities alike.

3.30 pm
The removal of the power for the Secretary of State to exempt certain types of development by regulations is likely to create the need to exempt certain classes of development from the requirement on the face of the Bill. As developers become increasingly familiar with the biodiversity gain approach in the future, Government and stakeholders may come to deem some initial exemptions unnecessary as they get used to the way it works, and it will be easier to review and remove any such exemptions in regulations than it would be if they were all in primary legislation.

Ruth Jones: The Minister has talked about targeted, narrow exemptions, but that is not what it says in the Bill. I take on board the fact that she is enthusiastic about and fully committed to this, but somebody coming after her—heaven forbid—could use the wording in a completely different way and we would need to follow that is actually in the Bill, rather than what is in an explanatory note.

Rebecca Pow: I thank the hon. Lady for that and I reiterate my first sentence. The Government will not introduce broad exemptions from delivering biodiversity net gain, and we have made that quite clear.

Amendment 170 would undo the exemption for permitted development from the net gain requirement. Permitted development rights play a vital role in freeing up local planning authorities to deal with planning applications that really matter to local communities, and have a wider social, economic and environmental impact. The hon. Member for Cambridge will know that from his time on the planning committee at the district council. Many permitted development rights are for small-scale development or changes of use, such as modest alterations to buildings, small fences or temporary use of land for fairs, where there is little or no impact on biodiversity.

Development undertaken through local planning orders is not exempt from net gain, as we have touched on. Only development under the general permitted development order, such as adding a conservatory, is exempt. It is true that we have extended the scope of the permitted development rights in recent years in order to deliver more homes, but permitted development rights such as allowing office-to-residential conversions and allowing residential blocks to be built up are principally about the use of existing developments and development land, and so are generally outside the scope of biodiversity net gain.

Brownfield sites were mentioned. It is not the Government’s intention to exempt brownfield sites. We absolutely recognise the biodiversity value those sites can have and, indeed, their value to communities—many of them are right in the centre of towns and cities. Any brownfield exemptions will be narrow and will have to recognise biodiversity value. We will consult further on the details of exemptions. For example, brownfield sites will have a set of criteria that would relate to them when these matters were being considered.

Special development orders are rarely used, but it is important to retain the legislative flexibility to make them very quickly to respond to urgent priorities. For instance, in recent years they have been used to secure urgent planning permission for the temporary lorry parks as part of the Brexit preparations, and Members will be able to see the benefit of that and why it is important to do that quickly.

New towns were also touched on, and we are aware that there are extant powers in the New Towns Act 1981 to use special development orders to set out the planning framework for new towns. There are no plans to use those powers at present, and the Government recently consulted on modernising the planning powers of development corporations to ensure that they are fit for purpose. However, we are clear that any new town would need to contribute to biodiversity gain: indeed, one of the great things about new towns is that there is the opportunity and scope to make them wonderful, green, biodiverse spaces in which to live. We have learned so many lessons this year about how important those things are.

We think it is right that the legislation is clear that biodiversity gain should not be included in permitted development rights, and that a clear exemption for development orders is the best way forward. I hope I have given clarity on some of those other areas, and for the reasons I have set out, I ask the hon. Gentleman not to press amendments 170 and 171.

Daniel Zeichner: I thank the Minister, and I do think that some of what she said was helpful. However, I have to say that not only was my hon. Friend the Member for Southampton, Test excited this morning; he is now shocked. Being excited and shocked in the same day is a bit worrying, but the Minister will have heard the shocked tones from the Opposition Benches.

I think a close reading of the text gives cause for concern, and I hope that the Minister might, on reflection, look at what she described as “narrow”. One person’s flexibility is sometimes another person’s loophole. There are different definitions of narrow, and some of us can see a yawning chasm—a big gap that anyone who is astride a bulldozer could drive straight through—so we do think there is legitimate cause for concern. Clearly, the permitted development rights extensions have been extremely controversial and a cause for concern, so I am not entirely sure that the Minister’s defence would reassure everyone. Certainly in my part of the world, some huge problems have arisen from some of those changes, and I am not convinced that any concern was given to restoring nature when making those changes. I also have to say that whenever a Minister says there are no plans to do something at present, that is generally a good sign that it may happen sometime soon, so that is also a cause for worry.
I do think this issue needs to be further examined, and I suspect we will be coming back to it. I also suspect that the other place will look quite closely at this, so I do not think today’s discussion will be the end of the matter. However, it is useful to have had it, because if the Bill is not precise, the words that Ministers use become more helpful in defining and limiting.

I suspect that many people will look at the Bill and think that this is too big a loophole, and ask—exactly as my hon. Friend the Member for Southampton, Test, did—what was the thinking behind doing this? That is the question I keep going back to: why has there been this change from the optimism of a couple of years ago? It may just be that this is what happens in government: officials look at it more closely and say, “You really do not want to do that, because”—and then the Government find that they are losing out on the noble ambition they had at the outset. We are pretty determined to make sure that that noble ambition stays on track.

I hope the Minister thinks we are in being in some way helpful to her; I am sure that is not how it feels at the moment, but she may come to see that in time. With the reset of Government policy, she may suddenly be flavour of the month. Maybe she can feature in a 10-point green plan—who knows? However, we do not need to pursue this issue further at the moment, so I beg to move amendment 172, in schedule 14, page 212, line 32, leave out “may” and insert “must”.

This amendment would commit the Secretary of State to make regulations excluding irreplaceable habitats from the net gain policy.

I am afraid that we are going to go further into the legalities of the planning system. I apologise: mid-afternoon is probably not the time to be doing this, but it needs to be gone into. This amendment is another may/must one. We are concerned about the provisions for net gain in the Bill, and the relationship between this new system and the irreplaceable habitats that, in many places, we treasure and love. These irreplaceable habitats are very precious places and include ancient woodlands, salt marshes, blanket bog and lowland fens, which, if destroyed, are technically extremely difficult to restore, and it takes a hugely long time to do so. By their very nature, these habitats cannot be properly recreated, so this is not a case of providing a replacement or, in any real sense, a gain.

The national planning policy framework sets out that “development resulting in the loss or deterioration of irreplaceable habitats...should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”.

We need further clarity that provisions on biodiversity net gain will not undermine existing protections for irreplaceable habitats. The amendment seeks to explore the complicated relationship between these new provisions and the existing protections.

Schedule 14 gives the Secretary of State powers to define what is meant by “irreplaceable habitat” and to exclude such habitats from net gain or amend how the legislation applies to them. Amendment 172 would place a duty on the Secretary of State to make such regulations, such that they “must” rather than “may” make them.

Any regulations and associated guidance on irreplaceable habitats should make it clear that current legal protections and requirements for irreplaceable habitats are fully retained and take precedence.

That is the problem with the interpretation of the different pieces of legislation. I suspect that the Minister has probably had these conversations. We want to add clarity to the process. If that is not done, we fear that it will be open to dispute in future. Not only that, but people would also be able to do things that they would not have been able to do before. The theme of some of the upcoming amendments is that there is a danger that something that looks good could end up doing harm as a result of unintended consequences. I am not in any way suggesting that that is the intention, but it is the risk, and that is why it is important that this is sorted out.

The Government should also reiterate that adverse impacts from development should be avoided, not just minimised. Our concern is that if the requirements for irreplaceable habitats are less arduous than those for other habitats, a perverse incentive could be created. We do not want the regulations to do that or to end up with the extraordinary situation of developers being incentivised to target irreplaceable habitats instead.

The Bill should be absolutely explicit that the mitigation hierarchy, existing designations, and statutory and planning protections for sites and species are not undermined by any of the new proposals. Net gain should be what happens right at the end of the process, if planners cannot find a way of stopping damage to habitats along the way. These protected sites should remain inviolate and rely on and benefit from the current protections and systems, which we want to ensure are in no way diminished.

Any regulations proposed by the Secretary of State should be taken under the affirmative procedure, and there should be public consultation because there is very real public interest in these issues. We believe that allowing third parties, including experts in the nature sector, to input into those regulations through public consultation would ensure that new net gain conditions would not inadvertently provide the kinds of loopholes that I have been describing. I do not think that the Minister will disagree with this, but in my experience local people invariably know their own locality best, and we should not be silencing them.

I say again that this amendment is an attempt to tease out from the Minister some safeguards and words of reassurance, and that we will not need to divide the Committee.

Rebecca Pow: I thank the hon. Gentleman for looking into this issue and for the amendment. Some habitats include ancient woodland, with which I have a great affinity, having been chair of the all-party parliamentary group on ancient woodland and veteran trees. We did a lot of cross-party work on this habitat. These habitats cannot be recreated and are typically considered irreplaceable. They are of enormous ecological and cultural importance and significance.

3.45 pm

National planning policy already provides that such irreplaceable habitat is affected by development only where there are exceptional reasons for doing so. Where such exceptional reasons exist, we do not want to prevent such exceptionally important development, nor do we
want those circumstances to weaken the requirement in the planning policy for suitable compensation to be agreed down the line, as the hon. Member for Cambridge suggested.

Paragraph 18 of proposed part 1 under schedule 14 grants the Secretary of State the power to modify or exclude the application of the biodiversity gain condition to develop where irreplaceable habitat is present on the development site. I welcome the hon. Gentleman’s acknowledgment of the importance of the provisions for irreplaceable habitat and understand the Opposition’s wish that these powers should be exercised. Without regulations made under paragraph 18, a development with irreplaceable habitat on the proposed site may not be able to legally satisfy the biodiversity requirement at all. Such a development might, therefore, be unable to proceed, even if it were fully compliant with planning policy, justified by exceptional reasons and had perfectly followed the mitigation hierarchy.

I confirm, therefore, that we intend to make regulations that will disapply the requirement for the 10% biodiversity gain on irreplaceable habitats before commencement of the mandatory net gain requirement. Furthermore, I confirm that the strong planning policy protections for irreplaceable habitats will not be undermined in any way. That is something that the hon. Gentleman specifically asked about. The existing strong statutory and policy protection for our statutory protected sites and species will not be undermined by the Bill’s biodiversity net gain measures or any other measures in the Bill. A proposal to deliver biodiversity net gain does not affect the weight that should be given to other planning considerations, matters of planning policy or legal obligations, including those relating to protected sites, protected species and irreplaceable habitats.

The key to achieving the objective of continued strong protections for these irreplaceable habitats will be not only in the presence of these regulations, but in the quality of their content. Forcing the creation of regulations without guaranteeing their quality or purpose will not help to meet their objective. I therefore ask the hon. Gentleman to withdraw his amendment.

Daniel Zeichner: I welcome the Minister’s helpful comments. I do not think anyone doubts her commitment to those irreplaceable habitats. The key points are ensuring that that message is clear and understood and that the regulations are made, and the relationship between them explained, in the correct way. We are concerned about future arguments as a result of misunderstanding the gaps. We are all trying to get to the same place. I therefore ask the hon. Gentleman to withdraw his amendment.

Amendment, by leave, withdrawn.

Schedule 14 agreed to.

 Clause 91

Biodiversity gain site register

Daniel Zeichner: I beg to move amendment 10, in clause 91, page 91, line 37, leave out “may” and insert “must”.

I am sure you will be delighted, Mr Gray, that we have moved on to another clause, but the previous schedule was a big and important one. The biodiversity gain site register requires another discussion about “may” and “must”. The amendment seeks to tease out the intention behind the measure.

Clause 91 sets out that the Secretary of State may make provision for a biodiversity gain site register to be created. To some extent, this is the last stage of the mitigation hierarchy: it is not something that anyone would want to do, but we recognise that it might sometimes be necessary. It is very important that a register of compensatory habitat sites is publicly available and updated regularly, and that we are able to see how the process works.

All our amendment does is seek to tighten the Government’s responsibility to provide the register by turning it into a duty for them to do so. A register of sites is essential to secure and record meaningful and lasting net gain. I refer to some of my earlier comments: we worry that in some cases there will be not necessarily a lack of will but a lack of capacity to check and monitor. Not only does this have to work, but the message needs to go out that it works, such that, as my hon. Friend the Member for Southamptom, Test said earlier, people will not think, “Well, no one is ever going to check. It’s not going to matter, and after 30 years who’s going to know and who’s going to care?” If that becomes the attitude, clearly this whole process and system will have failed in its intentions.

We do not want a simple tick-box exercise where it looks as if it has been done but no one knows what is happening in the real world. We think the amendment would help check on progress in delivering and maintaining enhanced habitat sites. We think it would help with the checking, monitoring, and enforcement function, even though we worry whether it will actually be done. This is a probing amendment, so we will not seek a Division. The question to the Minister is: why would one not do it? If the net gain system is to be established respective of mitigation hierarchy, it is hard to see why one would not do this as soon as possible.

Rebecca Pow: I thank the hon. Member for his amendment. It is definitely worth enquiring about this register, so I am pleased to have the opportunity to talk about it.

Clause 91 makes provisions for the creation of a register of these biodiversity gain sites. The register is necessary for the biodiversity gain condition to work effectively. Without a register, no habitat enforcement outside development sites would be undertaken in pursuit of biodiversity net gain. Furthermore, without the register, a development that is unable to achieve biodiversity net gain within its site boundary may not be able to commence development at all. That would block a significant proportion of new development, so the register is useful in a number of ways.

I welcome the hon. Member’s acknowledgement of the importance of the register and the provisions in this clause, and understand his wish that the powers within it should be exercised in good time. There is a clear need for the Government to design and implement this register before the biodiversity gain condition comes into effect, and I can confirm that, while the hon. Member seemed to suggest that one or may not create the register, it is the Government’s intention to do so.

I want to clarify that this clause provides this power for the Secretary of State to make regulations that will set out the rules and procedures for the operation and maintenance of the new register of biodiversity gain sites. That will include setting fees for applications to proceed, even if it were fully compliant with planning policy, justified by exceptional reasons and had perfectly followed the mitigation hierarchy.
add land to the register, criteria for determining eligibility of land to be added to the register, and rules for the allocation of land in the register in relation to developments. The use and nature of the register is likely to evolve, and flexibility will be needed to update its requirements. Before making an order under this power, the Department wants to consult stakeholders. Detailed regulations will need to be in place to provide all parties with sufficient guidance on how the biodiversity gain register will operate. This will help create confidence that the system can achieve the intended environmental outcomes. I hope I am answering all the things that the hon. Member has on his mind.

Primary legislation consistently takes this approach to the balance between powers and duties, as I have said many times before. It is entirely appropriate to provide the Secretary of State with the flexibility as to how this provision is given effect. I hope that provides clarity. I think it is a probing amendment, and I ask the hon. Member to withdraw it.

**Daniel Zeichner:** I am grateful to the Minister. This is a probing amendment, so we will not divide the Committee, but it is extraordinary that it almost seems like a global change has resulted in “shall” or “will” appearing as “may” throughout the Bill. We could do a global change back again. It is clear that the system cannot work without the register, which gives rise to the question: why the delays? The Minister may be slightly nervous, in the sense that she said that we will need to design and implement the register. It comes from a 25-year environment plan from two or three years ago, so how long is this all going to take? She might want to intervene to say roughly how long she thinks it will take, but I suspect she will not want to do so.

Why is there not a greater sense of urgency? To go right back to where we started, it is urgent and crucial that we tackle this crisis, yet in designing the system it appears that there was a presumption that it would take a few months for the legislation to get through and that the register would then need to be designed.

**Rebecca Pow:** I will intervene. I am sure the hon. Gentleman will agree that local authorities in particular will want a system that works, not some flim-flam, half-developed thing that is going to go wrong. That is why it is so important to do it step by step. There is urgency, hence the Bill and all the measures in it. All this has to work with the local nature recovery strategies and the overall nature recovery strategy. The targets and all the rest of it will fit together, and it will come on stream with some urgency. Was that an intervention? Does he agree?

**Daniel Zeichner:** I have clearly touched a nerve. I am delighted to hear that. All I gently observe is that things move rather slowly sometimes. I am sure that the Minister wants it to happen quickly, just as we all want it to happen quickly and to work. I am not entirely sure that those two things have to be mutually exclusive, but I suppose experience suggests that things do not always instantly work smoothly. I appreciate the Minister’s contribution, and having heard what she has had to say, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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**[Rebecca Pow]**

The Chair: Amendment 74 was discussed previously. It was originally tabled by the hon. Member for Chatham and Aylesford (Tracey Crouch). I suspect that it will not be taken forward by another Member. Perhaps the Committee might like to send our warmest, best wishes to the hon. Lady. Perhaps the Minister might like to take that forward.

Amendment proposed: 230, in clause 91, page 92, line 1, leave out “for at least 30 years” and insert “secured in its target condition and maintained in perpetuity”.—(Dr Whitehead.)

This amendment would require habitat enhancements created under net gain to be secured in perpetuity.

**Question put.** That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

**Division No. 33**

**AYES**

Anderson, Fleur
Furniss, Gill
Jones, Ruth

**NOES**

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

**Question accordingly negatived. Clause 91 ordered to stand part of the Bill.**

**Clause 92**

**Biodiversity credits**

**Daniel Zeichner:** I beg to move amendment 11, in clause 92, page 93, line 5, leave out “may” and insert “must”.

I am afraid that this is going to sound remarkably similar to the previous discussion. We welcome the measures in the Bill to ensure that developers who cannot achieve biodiversity net gain on a particular site will be required to fund improvements elsewhere, through purchasing biodiversity credits, to make up their required 10%—we would say at least 10%, but that is what the Bill requires—biodiversity net gain. We also welcome that the funds from these credits must be used for projects to enhance habitats and biodiversity. However, we have some concerns about clause 92, which we will interrogate with amendment 11 and amendment 136, which we will come to next. On amendment 11, clause 92(1) uses the wording:

“The Secretary of State may make arrangements under which a person who is entitled to carry out the development of any land may purchase a credit from the Secretary of State for the purpose of meeting the biodiversity gain objective.”

This is exactly the same point as in the previous discussion: the system cannot work unless that is done. The amendment would tighten the Government’s responsibility to operate those credits by requiring them to get on with it—to put it crudely.
4 pm

Again, we think that subjecting the regulations to parliamentary scrutiny and public consultation, with input from biodiversity experts, would likely improve the effectiveness of the credit scheme and deliver better outcomes for nature. I ask the same question again: will the Minister explain why the Government are not getting on with it? Once again, we will not seek a Division on this probing amendment.

Rebecca Pow: Clause 92 makes provision for the Secretary of State to set up a system of statutory biodiversity credits. Some developers might find that there are no suitable local habitat enhancement schemes to enable them to achieve net gain, and in such cases, a biodiversity gain requirement might become a barrier even to the most appropriate and sustainable of developments. To mitigate that risk, the Government will sell biodiversity credits, which may be counted towards a development's net gain. That will allow us to achieve biodiversity net gains through strategic investment in habitat restoration, while reducing the risk of undue delay to development.

I welcome the hon. Gentleman's clear acknowledgment that this and the environmental potential of the statutory biodiversity credits system are important. Obviously, there is a clear need for the Government to design and implement the credits system before the biodiversity net gain requirement comes into effect, and I can confirm that that is the Government's intention. He is right about urgency and about wanting it to happen now, but it all has to happen step by step. The Government have every intention of doing that, because it will be an important part of the whole machine.

The Government will apply principles for setting the tariff rate—that was set out in the net gain consultation—in setting the standard costs of statutory biodiversity units. Although the Government still consider the consultation's proposed range of between £9,000 and £15,000 for the cost of a biodiversity unit to be broadly appropriate, some respondents raised concerns that it was too low and would stifle habitat creation, while others thought it was too high. Several respondents asked for further evidence and work to refine the cost per unit.

The Government will undertake a review of the rate and seek further stakeholder engagement on this subject before announcing specific costs per unit of biodiversity. That is really important. I have spoken to a whole range of different people, from those who have land and who might want to offer it up for the offsetting, to the agents operating for them. Loads of people in this space clearly need to be consulted. I hope this explanation gives a bit more clarity.

Primary legislation consistently takes the approach, as we have set out in the clause, of balance between powers and duties. Forcing the creation of arrangements that might not be needed risks creating unnecessary complication in the process, or even a weakening of the purposes of the measures. In the long-term, for example, we might no longer need a credit system if sufficient habitat enhancement opportunities were offered by local landowners or conservation bodies. I hope that has given a bit more clarity and I ask the hon. Gentleman to withdraw his probing amendment.

Daniel Zeichner: The Minister's comments are helpful. There is concern that if the system does not work appropriately, we could end up with credits stacking up without the work being done, which is clearly not the aim of the exercise. I think that we are all trying to get to the same place, so there is no need for me to re-rehearse the previous arguments. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 136, in clause 92, page 94, line 5, at end insert—

"(11) In accordance with the biodiversity metric, the Secretary of State or another person, is obliged to carry out such works as necessary to enhance the biodiversity of habitat associated with the sale of biodiversity credits.

(12) The Secretary of State or another person is required to secure and maintain the enhancement in perpetuity after the habitat enhancement has reached its target condition."

There is concern that biodiversity credits could undermine the biodiversity gains system as a whole. Our worry—to some extent this touches on my previous point—is that it is obviously uncharted territory. We do not entirely know how it will work, but the key thing, in our view, is that it is linked as much as possible to local priorities. The Minister hinted in her previous reply that it may be a touch optimistic to imagine that local alternatives will always be found, which is the reason for setting this up in the first place, but through the amendment we want to press her on how the Government can guard against the long-term pooling of revenue, instead of funds being used to achieve the net gain that we all want. That is our worry.

We also think—this goes back to an earlier discussion—that it would have been possible to make a requirement for habitats created through the purchase of biodiversity credits to be maintained in perpetuity. I suppose our worry throughout is that, for all the good intentions, it is possible that the system could end up not achieving what we want it to. It could be abused, and could, in effect, buy a way through for developers to access habitats that none of us would want to see developed. That is the danger and the risk, and we want to help the Government, through the amendments, to ensure that is not the case.

We also think that there ought to be a reporting function, and that the added value of biodiversity credits to local habitat creation projects and strategic ecological networks should be set out clearly in an annual report. To ensure transparency, habitats created through biodiversity credits should also be held on a register of biodiversity gain sites. That is partly about ensuring that the mechanisms work in an open and transparent way.

We have had strong representations from both the Town and Country Planning Association and the Local Government Association, which are genuinely worried about the possibility that biodiversity credits really will not be reinvested in their own locality. I think that is a reasonable concern. The danger, as those organisations see it, is that communities that accept developments might not see improved biodiversity, which could, in turn, make the process really quite hard to justify to local people. I can see how that could happen.

There is a question about whether credits should be retained by local authorities, so that funding stays in the area where development takes place, and local people
can have a say in how the funding can be used to improve the natural environment. What level we should set that at is quite a big question. To some extent, we are trying to tease out from the Minister what she thinks it should be. We think that there is a genuine discussion to be had. I think she has already hinted that she shares my view that the overwhelming priority should be to get new development to achieve net gain onsite and locally, and that offsite contributions and credits should be a last resort. Further reassurance on that would be helpful.

We are placing, through the amendments, two key requirements on the Secretary of State, or any other body charged with using biodiversity credit funds, to ensure that natural sites created or enhanced by biodiversity credit funds are held to a high and lasting standard. I guess one of the running themes through our amendments is the sense of the provisions actually being for the long-term, rather than a mechanism for developers to find a way through to sites that they might not have had access to before.

The first requirement is that all habitat work carried out using biodiversity credits would have to achieve an actual enhancement in biodiversity, as measured by the biodiversity metric. The second requirement is that enhancement be maintained in perpetuity. I anticipate the Minister’s answers, because I think we have heard some of them before, but this amendment is sufficiently significant that, unless she comes back with a miraculous response, we will seek to divide on it.

**Rebecca Pow:** I thank the hon. Gentleman for his acknowledgement of the importance of the long-term maintenance of biodiversity gains in order to ensure that we provide that long-lasting benefit to wildlife and communities. The Government, too, recognise the importance of those long-term benefits. Indeed, the Government response to the net gain consultation confirmed that through the stated criteria for selecting habitat projects. The response stated that enhancement projects will be selected

> “on the basis of their additionality, their long-term environmental benefits and their contribution to strategic ecological networks.”

Obviously, they have to have some real value.

The long-term benefits of habitats are vital, but binding future Secretaries of State to deliver only habitats that can be secured “in perpetuity” risks compromising another of the criteria: that of delivering habitats in strategically critical networks. We would not want to see new habitat creation fail to provide the coherent networks that our wildlife needs because we are bound only to use land that can be secured forever. Where enhancements in perpetuity are an appropriate option, the Secretary of State will have powers under the clause to use payments to purchase land interests in England for habitat restorations, or to secure the enhancements through other means.

With regard to the obligation on the Secretary of State to spend those credit sale funds, I draw the Committee’s attention to the reporting requirement under the clause, which will create a strong incentive for the Secretary of State to spend the funds both promptly and prudently. It was intimated by the hon. Gentleman, I think, that the Secretary of State might be hoarding the funds, but the idea is that this becomes its own trading platform—a bit like the nitrates trading platform, for example. DEFRA would only get involved were the market not working, or potentially just at the beginning when it is getting going. The intention is not that he or she is the banker—that is absolutely not how it should work.

Subsection (6) of the clause should also provide some reassurance. It clarifies that funds may only be used for activities related to habitat enhancement. I think the hon. Member for Cambridge was pressing to ensure that that is what would happen, but that is absolutely what they are for. Furthermore, subsection (10) will ensure that the long-term value of the money received from the sale of credits and the use of biodiversity enhancements can be monitored. That is important as well.

In the light of the reasons that I have set out, I ask the hon. Gentleman to withdraw his amendment.

**Daniel Zeichner:** I welcome much of what the Minister has said but, as I intimated, the perpetuity issue, and the concern about what might happen with the system not working and the potential for achieving outcomes other than those we are all trying to achieve, mean that we think our amendment would strongly improve the clause.

On that basis, we seek to divide the Committee.

**Question put.** That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 34]

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Question accordingly negatived.

Clause 92 ordered to stand part of the Bill.

Clause 93

**GENERAL DUTY TO CONSERVE AND ENHANCE BIODIVERSITY**

4.15 pm

**Daniel Zeichner:** I beg to move amendment 140, in clause 93, page 94, line 13, after “biodiversity in England” insert

> “, including in particular the species and habitats listed in section 41, “.

The amendment clarifies the intent of the duty in relation to the conservation of priority species and habitats.

I am afraid that we are back to some of the interaction with different pieces of legislation. We welcome the change in the Bill to strengthen the Natural Environment and Rural Communities Act 2006—abbreviated to NERC—so that local authorities have a duty not just to
conserve but to enhance biodiversity, as well as to follow the obligations of public authorities to plan for appropriate action in order to fulfill their duty and to report on their actions regarding their duty. That is the good news. That is the bit we support.

However, we have some concerns. Public authorities have a key role to play in turning around the state of nature, and the current duty on public bodies to have regard to conserving biodiversity has been rightly criticised for not being strong enough. A House of Lords Select Committee report on NERC in 2018 clearly outlined that “the duty is ineffective as it stands, as a result of limited awareness and understanding among public bodies, weak wording and the lack of clear reporting requirements and enforcement measures.”

I cannot help but notice that those are exactly the kinds of concerns that I have been expressing all the way through this Bill as well. I guess what it shows is that there is nothing new about the difficulties that people have had trying to do good things but not necessarily doing them in ways that are clear and specific enough to translate into action.

The Lords Select Committee said: “We recommend that the NERC Act should be amended in order to add a reporting requirement to the duty; the Government should also consider strengthening the wording.”

The measures taken in the Bill to do so are welcome, but we have concerns about the rewording of the duty of public authorities. We want to probe some of those points with some amendments. We will come to the more serious changes, but the first one is proposed in amendment 140. Currently, clause 93 stipulates that the “general biodiversity objective” be defined as “the conservation and enhancement of biodiversity in England”.

Our amendment would broaden that to include the species and habitats listed in section 41 of the NERC Act. In effect, it is a clarifying amendment, as we feel that the provisions in the duty could be seen as being too open-ended to guide everyday action by public authorities.

We think it would be more helpful for there to be a direction that the biodiversity duty clearly requires authorities to act in order to further the conservation of the species and habitats listed under section 41. For those who are not familiar with section 41, it is a list of some of our most precious and vulnerable species, from water voles and otters to particular species of orchids and the short-haired bumble bee. We believe the amendment would provide a closer link between the public duty to enhance biodiversity and the species that need the most attention. Although I will listen with interest to the Minister’s comments, I do not think it is an amendment on which we will seek a Division.

Rebecca Pow: I appreciate that the intent behind the amendment is to ensure that action that might be taken under the biodiversity duty is effective and is targeted where it is most needed. At the same time, one of the strengths of the duty is that it is broad, and we want public authorities to consider all functions when determining the best action to take. That could be action on limiting their biodiversity footprint or addressing wider, indirect impacts on biodiversity, such as from transport policy, water use or energy consumption. We would not want to stop authorities considering such action, even inadvertently, by focusing their attention on what can be done for a targeted set of species and habitats. Also, there are some 943 species, some of which the hon. Member for Cambridge named, including the hairy bumble bee.

Daniel Zeichner: The short-haired bumble bee.

Rebecca Pow: There are some fantastic creatures and 56 habitats of importance on that list, as set out under section 41 of the Natural Environment and Rural Communities Act 2006. Interpreting this list and the actions required is likely to require specialist knowledge, which may not be available within every public authority.

In complying with the strengthened biodiversity duty, public authorities must have regard to any relevant local nature recovery strategy. If Government amendment 222 is agreed to, public authorities must also have regard to relevant species conservation strategies and protected site strategies, which will help public authorities to identify the actions with the most benefits for biodiversity, including for species and habitats listed in section 41 of the 2006 Act. I therefore suggest that the amendment is not needed; indeed, it might constrain public authorities’ actions to conserve and enhance biodiversity. While I think that it was a probing amendment, I urge the hon. Member to withdraw it.

Daniel Zeichner: We will not press the amendment to a Division. While the Minister and I might have a slight difference of opinion, the approaches are legitimately different. I was grateful for her reference to the short-haired bumblebee. Like many Members, I am a species champion. I stand up for the ruderal bumblebee, although I have never had the pleasure of meeting one—I live in hope. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner (Cambridge) (Lab): I beg to move amendment 138, in clause 93, page 94, line 18, at end insert—

“(1ZA) A public authority which has any functions exercisable in relation to England must exercise those functions consistently with the aim of furthering the general biodiversity objective.”

This amendment requires public authorities to apply the biodiversity duty in the exercising of all of their functions.

This is a slightly more serious amendment, in the sense that this is a more difficult issue, as we think that the clause has a couple of key weaknesses. Section 40 of the 2006 Act currently states that any public authority must, “in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.” That implies a biodiversity duty in all day-to-day public authority decision making. As it stands, although the new duty widens public authorities’ responsibility to both conserve and enhance biodiversity, the wording narrows the application of the duty. Its current drafting applies only to actions taken in line with specific policies and objectives developed in relation to clause 93(3), which requires authorities to consider from time to time what action they can take to further the biodiversity objective and to take the actions appropriate to do so.

I apologise that this is slightly complicated, Mr Gray, but, yet again, we see the interaction between different forms of wording in various pieces of legislation. The risk
is that the Government are changing the duty on public authorities to have regard to conserving biodiversity in all their functions to a duty on conserving and enhancing biodiversity with specific considerations that they must make from time to time. The reach into their everyday functions is not made clear.

This is, I guess, a discussion about how local authority members should make their decisions—what they should take into consideration and when. We fear that a key opportunity is being missed to improve the effectiveness of public authorities’ biodiversity work, namely by requiring them to factor in the need to conserve and enhance biodiversity in all decision making, including statutorily required planning and spending decisions. This is actually quite a big issue.

Biodiversity work is in continual danger of being marginalised. I referred to that when I spoke about my experience as a councillor, and I suspect that others will have had the same experience. This is not a criticism of councils or local government—they are under pressure, and many, many demands are put on them. However, if we have the challenge of restoring nature to a level that every member of the Committee would agree is what we are seeking, and if that is actually going to happen, the agenda needs to be taken up in local government. Embedding biodiversity into all public authority decision making is vital to ensure that we do not miss the opportunities that are available.

During my time as a councillor, I very much enjoyed our discussions but, as I have said, I do not think I could honestly say that I recall, when we came to make big decisions—we did make some quite big decisions, such as when the new Norfolk and Norwich hospital was discussed, which was referenced at today’s Health questions—any discussion around biodiversity, although we tried to take many things into account. It would make a real difference if biodiversity was central to decision making.

It is worth noting that the House of Lords Select Committee identified the “have regard” wording in the current obligation as the main reason, in its view, why the duty has been ineffective. That point has not been properly addressed. “Have regard” is a perfectly innocuous term, but it is just that—have regard in passing, not as a central part of decision making. We would welcome an explanation from the Minister on that point.

The amendment would fix the problem with the current wording of legislation and prevent biodiversity opportunities from being missed by requiring public authorities to exercise all their functions consistently with the aim of furthering the general biodiversity objective. That would prevent biodiversity being siloed. It would be rendered as a critical factor to be considered in all public authority decisions, including statutory planning and spending decisions, which can have significant impacts on nature and biodiversity.

Rebecca Pow: Our purpose in strengthening the current biodiversity duty is to ensure that public authorities take robust action to drive nature recovery. It is absolutely not the intention for biodiversity to become siloed, as the hon. Member has just said. He referred to the Norfolk hospital planning having no reference to biodiversity. I do not know what year that was—

Daniel Zeichner: A while ago.

Rebecca Pow: How times have changed. That will change—biodiversity will come into the general parlance. This is an ambitious duty. All public authorities will have to undertake a thorough consideration of what they can do to enhance biodiversity at least every five years, and then take action. As I said before, they will need to have regard to local nature recovery strategies and, if Government amendment 222 is accepted, relevant species conservation strategies and protected site strategies will provide information, data and tools to identify the most beneficial action to be taken in the region.

Clause 93 requires all public authorities to take a broad look across all their functions to identify the action they can take that would be most beneficial for nature. In our view, the strengthened duty in the Bill strikes the right balance by supporting action to conserve and enhance biodiversity while retaining the flexibility for public authorities to balance competing priorities. The amendment risks distorting those priorities by requiring public authorities always to exercise their functions to further the objective of conserving and enhancing biodiversity. Public authorities must retain the power to decide the best use of their resources. I am sure that the hon. Member for Cambridge, having been a councillor, appreciates that point.

We expect public authorities to look across all their functions and prioritise the actions that will have the most impact, in contrast to the existing biodiversity duty, which is a reactive duty. It is intended to be universal but, as we know, in many cases it has not driven action on the ground, as the hon. Member suggests. The amendment risks replicating the reactive nature of the existing duty by requiring a case-by-case assessment of each individual function and decision to ensure that it is furthering the biodiversity objectives. We would thereby lose the advantages of the more strategic view, which allows the most effective measures to be prioritised, so I urge the hon. Member to withdraw the amendment.

Daniel Zeichner: I hear what the Minister says, but the amendment is crucial to tilt the balance in local authorities. On that basis, I wish to divide the Committee.

The Committee divided: Ayes 5, Noes 8.

Division No. 35]

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth

NOES
Afzal, Bim
Browne, Anthony
Docherty, Leo
Graham, Richard

Question accordingly negatived.

4.30 pm

Daniel Zeichner: I beg to move amendment 139, in clause 93, page 94, line 42, at end insert—

‘(1G) In this part, “public authority” has the meaning given by section 28(3) of the Environment Act 2020.’
The Chair: With this it will be convenient to discuss the following:

Amendment 147, in clause 99, page 99, line 16, leave out “95” and insert “93”.

Amendment 148, in clause 99, page 99, line 31, at end insert—

“(4) “Public Authority” means—

(a) a Minister of the Crown, a government department and public body (including a local authority), and

(b) a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons—

(i) the OEP;

(ii) a court or tribunal;

(iii) either House of Parliament;

(iv) a devolved legislature;

(v) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998.”

Daniel Zeichner: We tabled these technical but important amendments to interrogate the definition of “public authority” in the Bill as it applies to the biodiversity objective and the local nature recovery strategies—they are linked. Amendment 139 is consequential on amendment 147 and would clarify the meaning of “public authority” under section 40 of the Natural Environment and Rural Communities Act 2006 by using the definition set out in clause 28(3) of the Bill, as that particularly strong definition would apply well to biodiversity provisions. It would make it clear that the term “public authority” would apply to local authorities or organisations “carrying out any function of a public nature”, which would ensure that bodies with key public statutory undertakings, such as water companies or rail providers, would have a responsibility to comply with the enhanced biodiversity duty.

Such bodies might not be included in a narrower definition, and that is important because we know that they have many responsibilities, or a lot of land or many rivers to look after. Keeping them within the ambit of the biodiversity duty would therefore give them a much stronger incentive to do the right thing. Such bodies’ legal status or corporate structures might be different from those of local government authorities, but they still provide key public functions. Amendment 148, like amendment 139, would make it clear that the term “public authority” in relation to local nature recovery strategies applies to planning authorities and all planning functions.

Amendment 147 would amend clause 99, which currently provides definitions of a “local authority” and a “national conservation site”. However, that clause applies only to clauses 95 to 98, which set out provisions for local conservation sites. Our amendment would extend the definition of local authorities and national conservation sites to the Bill’s broader provisions on biodiversity objectives and reporting—clause 93 on the general duty to conserve and enhance biodiversity; and clause 94 on biodiversity reports. Yet again, our proposals would strengthen the Bill, so my question to the Minister is: why would she not choose to support us on that?

Rebecca Pow: I thank the hon. Member for Cambridge to withdraw the amendment. Amendment 139 would change the definition of “public authority” in relation to the strengthened biodiversity duty to that used in clause 28. Taken together, amendments 147 and 148 would have the same effect. Clause 93 does not alter the definition of public authority under section 40 of the Natural Environment and Rural Communities Act 2006, but clause 28 represents a different approach: it is drafted to be UK-wide, and then has carve-outs. Amending the definition to that in clause 28 would not make a significant difference to the bodies covered by the duty, although it would mean that the parliamentary estate would not be captured.

Amendment 147 would apply two additional definitions to the Bill’s biodiversity duty provisions, the first being “local authority”. The definition in clause 99 is very similar to the existing definition in section 40 of the 2006 Act. However, that definition includes parish councils, so the amendment would remove parish councils from the scope of the biodiversity duty—[Interruption.] “Shocking,” says the hon. Member’s colleague, the hon. Member for Southampton, Test.

I accept that many parish councils are very small and have limited resources, but they are likely to make a contribution to local biodiversity and we do not want to exclude them from the duty. I speak from experience: the hon. Member for Cambridge might have been a district councillor, but I was on my parish council for 10 years—I am very proud of it. We did a great amount of work on biodiversity, including by planting a chestnut avenue and creating a village garden out of a piece of tarmac. There is biodiversity if ever I saw it—we walk past it every day.

The second definition, “national conservation site”, is not a term used in the Bill’s biodiversity provisions, so applying it would have no practical effect. On its own, amendment 148 would have no effect. It would insert a new definition of “public authority” into clause 99. The definitions in clause 99 apply to the provisions relating to local nature recovery strategies, which are set out in clauses 95 to 98, but the term “public authority” is not used in a way that has an effect in those clauses.

I hope that that information was helpful, and I ask the hon. Member for Cambridge to withdraw the amendment.

Daniel Zeichner: I am grateful for the Minister’s clarification and I endorse her comments about parish councils. I, too, started on a parish council, and as a district councillor, I diligently attended my five parish councils regularly. They have a hugely important role to play. We were trying to widen the scope of the bodies that would be drawn into the process. That might be something that we need to revisit in order to embrace both points, which would be a good outcome.

The amendments were probing, so we will not need to divide the Committee. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 137, in clause 93, page 95, line 1, leave out subsection (5) and insert—

“(5) After subsection (2) insert—

“(2A) the authority must act in accordance with any relevant local nature recovery strategy in the exercise of relevant public functions, including strategic and local land-use planning and decision making and in spending decisions, and in particular in complying with subsections (1) and (1A).”
how much would be needed—but I ask the Minister for an impact assessment about how it was not entirely clear how available it would be. I recognise that at this stage it seems difficult to note that the success of the measures in general will be insufficient without clarity that it is enough. It is important that the outcomes rarely transmit. They often end up in the central Government frequently make promises, while local government well knows the problem that resources are considered in day-to-day planning and spending decisions. This mirrors arguments that have been made in the House of Commons. I hope to do so again soon, and I will be keen to bring news of a strengthened Bill.

At the moment, despite local enthusiasm, the duty to use local nature recovery strategies is very weak. It is included in the duty to conserve and enhance biodiversity under clause 93(5), which requires local authorities to “have regard” to the strategies when making plans to conserve or enhance biodiversity, but that risks creating obligations for local authorities to develop local nature recovery strategies, thereby expending precious local resources, only to see that effort might be wasted through a failure to give the strategies any influence on real decision making. That is a problem.

The duty should be a much stronger requirement to take the strategies into account in the exercise of public functions, including in the statutory planning system and in spending decisions. This mirrors arguments that I have previously made. Unless such a change is made, there is a real risk that local nature recovery strategies will overburden local authorities and once again risk sitting on the proverbial dusty policy shelf.

This is not a criticism of local authorities, but a reflection of the fact that many are already hard pressed and will not have the capacity to do what is asked of them. When I raised this previously, the Minister reassured me that all necessary funding will be made available under the Bill. I liked her reassurance, but she was not able to point me to where that was specified. I invite her to do so again, but I do not think she will be able to do so, because it is not specified—it is just an aspiration. This is not a party political point, but anyone who has been in local government well knows the problem that while central Government frequently make promises, the outcomes rarely transmit. They often end up in general funding, and we are told that it is in there somewhere, without clarity that it is enough. It is important to note that the success of the measures in general will be dependent on the Government making those funds available. I recognise that at this stage it seems difficult to predict the costs—there was some discussion in the House of Commons about how it was not entirely clear how much would be needed—but I ask the Minister how the Government intend to carry out an assessment of how the new duties operate and how they can ensure that resources are available to make the duties work.

The strategies are potentially a very useful tool. If they work well, they could effectively co-ordinate the actions of multiple stakeholders and direct local use of biodiversity gains from the planning system, environmental land management systems and other sources, helping to build and maintain ecologically coherent networks and nature recovery sites. That leads me back to the 25-year environment plan, particularly page 58, which is littered with “we will”, “we shall” and “it will happen”, including the statement that we “will coordinate our action in England with that of external nature conservation…as well as farmers and land managers.”

That is great, but I have to ask when that will happen. I had the pleasure of being an Opposition spokesman on the Agriculture Bill, and we were begging constantly, and tabling amendments, for an integrated approach between this Bill and the Agriculture Bill. I am afraid that we were constantly knocked back. Here we are, just a few weeks from the beginning of the phasing out of basic payments, and we do not have ELM schemes in place. The Secretary of State will have to deliver a fix in 10 days’ time. I am happy to be corrected by hon. Members on the other side if that is not correct, but that is what I hear. While the sustainable farming initiative sounds fine, it is a missed opportunity to link to the local nature recovery strategies that we are discussing today. Because of this weak duty to apply the strategies in decision making, I am afraid the potential that these may have will fall short.

Amendment 137 aims to strengthen the duty to use local nature recovery strategies by requiring all public authorities to “act in accordance with” any relevant local nature recovery strategy in exercising their duties, including the statutory requirements, planning and spending decisions. That would make a big difference and deliver real change, and that is why I worry that it is not in the legislation as it stands at the moment. It is essential to ensure that the local nature recovery strategies actively influence important day-to-day decisions that affect nature.

Fleur Anderson: I, too, would like to support amendment 137. I can picture the scene in the drafting committee. One group wanted to have “act in accordance with”, to make the duty very strong so “we would definitely put this into action”, and on the other side was the “must have regard to” group. I would like to speak on behalf of the “act in accordance with” group, and it was a mistake that the “have regard to” group won the day.

The provision for planning to work for nature is very welcome, but there is a risk that it will be stalled indefinitely if we do not have the amendment in the Bill. The duty to use local nature recovery strategies is very weak. The environmental coalition, Greener UK, has similar concerns. The amendment would embed biodiversity in public authority decision making, because here the rubber hits the road—or the hedgerow or the green area of a siding. The amendment includes complying with spending decisions, and that is what will ultimately decide whether this is put into action.

There is great potential for these strategies to be a highly effective tool, and I welcome the five pilot schemes, as I know the Minister does. However, as it stands, the
potential will not be realised because the duty is so weak. The amendment would ensure that local nature recovery strategies actually influence day-to-day decisions that affect nature. There are two examples of how that would work out in my constituency. We have many wonderful green spaces which have “friends of” groups, and they are knocking on the door and trying to get the attention of the local authority all the time. It is not a given that that will happen. Those groups really care about biodiversity, but the day-to-day work of the local authority is not reflecting that.

I have a very active save our hedgehogs group, and I am surprised that they have not been mentioned this afternoon up to now, so I want to put that straight. Those vulnerable mammals have been in decline by 30% in urban areas and 50% in rural areas since 2000. That is dreadful. If the local authority will have regard to the local nature recovery strategies, rather than acting in accordance with those strategies, there is a danger that the work to reverse the decline of hedgehogs will not happen. There is a mention of hedgehogs in the environment plan, but this amendment would cement action to save hedgehogs and all other biodiversity in our planning system.

4.45 pm

Rebecca Pow: Some strong points have been made about local nature recovery strategies. I think we all agree that they are a good idea. When I was a trustee of the Somerset Wildlife Trust many years ago, it was working on a similar idea to that which is now coming into legislation. Subsequent Government amendment 222 changes the provision so, if accepted, public authorities will be required to have regard to species conservation strategies and protected site strategies. However, I will speak only to the original purpose of the amendment now.

We want public, private and voluntary groups to engage openly in the development of local nature recovery strategies and for this to follow through into their implementation. That is exactly what the hon. Member for Putney is asking for, so that those hedgehog highways and interlinking runways through fences in towns will stay there. I love a hedgehog as much as she does. I had some rescue ones from the rescue centre sent to my garden. We need to look after our hedgehogs.

Requiring public authorities to have regard to a specific document is an established and effective means of achieving that aim. I have discussed this with the officials. They have convinced me that this is the right terminology. We should also be mindful that public authorities have a wide range of existing duties such as housing, health and social care, which have to be considered. Some flexibility to take these wider considerations into account is important. Similarly, local planning authorities are required to balance a wide range of important considerations when establishing their planning policy for this area. I am keen that we continue to work with the planning system, rather than create complexity by making separate demands on planning authorities. The spatial information provided by the local nature recovery strategies will support the development of local plans.

I want to reassure the hon. Member for Cambridge that the Department for Environment, Food and Rural Affairs, will continue to work closely with the Ministry of Housing, Communities and Local Government to set out clearly the role for local nature recovery strategies as part of the ongoing planning reforms. The work has already started, and it has been clear that this must be an integral part of our future going forward. Those five pilots will inform the local nature recovery strategies. They have already been announced and money has been agreed for them. We will learn a lot from those about how these strategies will work.

We want the reformed system to play a proactive role in promoting environmental recovery and long-term sustainability. We have really high ambitions for the local nature recovery strategies in helping to do this. They are a crucial tool towards the whole endeavour of biodiversity from the ground upwards. I therefore urge the hon. Gentleman to withdraw his amendment.

Daniel Zeichner: I am grateful particularly to my hon. Friend the Member for Putney for enlivening our discussions late in the afternoon—well past teatime, in some people’s view, which I understand—and for introducing hedgehogs into the discussion. I had a side bet with one of my colleagues as to how long it would take for the Minister to raise a hedgehog highway. I am grateful to my hon. Friend the Member for Putney because that allows me to mention Nora the rescue hedgehog. The Cambridge Wildlife Trust allowed her to escape down a hedgehog highway in my sight. I am not sure where she went, but hedgehogs are very important.

The problem was confirmed by the Minister, who admitted that she had been convinced by her officials that this is the correct terminology. We do not think that it is the correct terminology; it is not strong enough. I invite the Minister perhaps to go and have that conversation again. That point takes us back to the beginning of our sitting, when my hon. Friend the Member for Southampton, Test and I questioned why some of these things are as they are. I am led to conclude, I am afraid, that despite the admirable enthusiasm, there are flaws in the process.

The Minister said that we do not want to put too many demands on planning authorities. Actually, we do want to put demands on planning authorities; that is exactly what this will be about if our goals are to be achieved. We get distracted by the hedgehogs and the bumblebees, but at heart there is a serious question of allocation of resources, effort and money through the planning process. That is often what it is about, and my fear is that, wonderful though much local effort is, sadly if it cannot be translated into action it will go on being just good effort, without the kind of gain that we want to see.

I suggested at the beginning of our sitting that there were some villains in the piece, and I think the Committee has a sense of who I think one villain is, but it is not just about the current Prime Minister. It is worth remembering that in 2011 the then Chancellor, George Osborne, described the EU habitats directive as placing “ridiculous costs on British businesses”, and spoke about companies being burdened with “endless social and environmental goals”.—[Official Report, 29 November 2011; Vol. 536, c. 807-808.]

The point is that there is a view out there that this is all “green crap”, as another eminent former Prime Minister described it. That is why we are worried, why this matters, and why the Bill needs to be strengthened.
The Chair: The hon. Gentleman used the word “villain” with regard to the Prime Minister. He might wish to withdraw it as unparsniporry.

Daniel Zeichner: “Pantomime villain”—will that do?

The Chair indicated dissent.

Daniel Zeichner: I withdraw the comment. [Interruption.] But I would like to press the amendment to a Division. I was distracted by the pantomime.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 36]

AYES
Anderson, Fleur Whitehead, Dr Alan
Furniss, Gill Jones, Ruth

NOES
Afolami, Bim Jones, Fay
Browne, Anthony Mackrory, Cherilyn
Docherty, Leo Moore, Robbie
Graham, Richard Pow, Rebecca

Question accordingly negatived.

Rebecca Pow: I beg to move amendment 222, in clause 93, page 95, line 3, at end insert

“and

(b) any relevant species conservation strategy or protected site strategy prepared by Natural England.”

This amendment requires a public authority to have regard to a species conservation strategy or protected site strategy in complying with its duties under section 40 of the Natural Environment and Rural Communities Act 2006.

The Chair: With this it will be convenient to discuss the following:

Government new clause 25—Species conservation strategies.

Government new clause 26—Protected site strategies.


Rebecca Pow: The overall purpose of this group of amendments is to enable better species and habitat conservation in England as part of the Government’s commitment to growing back better, faster, greener. They will allow for the creation of two new types of strategies and will resolve inconsistencies regarding the licensing of development.

New clause 25 will allow Natural England to create species conservation strategies, which are innovative approaches to safeguard the long-term future of species that are at greater risk. The strategies will be developed using up-front surveying, planning and zoning across a wide area. Natural England will then develop measures to mitigate, or compensate for, the impact on species—from building projects, for example. This approach helps to avoid the need for reactive site-based assessments and mitigation.

The legislation is based on the successful district-level licensing approach to the conservation of great crested newts, which have already been mentioned today. An area is comprehensively surveyed in advance and a licensing strategy is developed. Up-front mitigation work is then carried out to cover the creation or restoration of ponds in areas that are known to provide the best habitats for newts to thrive in. Developers then make a conservation payment and can begin work without delays.

New clause 26 will allow Natural England to prepare and consult on protected site strategies. These will enable the design of bespoke solutions for sites that are affected by a combination of different impacts, such as pollution from agriculture and pressure from development. Protected site strategies are also based on existing, innovative schemes such as that in the South Humber Gateway, which has unlocked development on hundreds of hectares of land while creating 275 hectares of new wet grassland for birds, and is held up as something of a model.

For both species conservation and protected site strategies, local planning authorities will be placed under a duty to co-operate with Natural England. They will also be required to have regard to relevant strategies as they carry out their planning functions. These new strategies will deliver better environmental protections through simpler processes, and are therefore fully aligned with the proposals set out in the “Planning for the future” White Paper. The planning reforms will reinforce the implementation of these measures.

Amendment 222 adds an important provision to support the new strategies. Clause 93 strengthens the existing duty under the Natural Environment and Rural Communities Act 2006 to require public authorities to take action to further the conservation and enhancement of biodiversity. It also requires public authorities to have regard to local nature recovery strategies as they do so. This amendment extends that duty so that public authorities must also have regard to any relevant conservation strategy or protected site strategy as they consider what action to take, so the three kinds of strategies are designed to work together. The local nature recovery strategies will be a system of strategies covering the whole of England, and will identify where action can be taken to reverse the decline of nature as a whole. Species conservation and protected site strategies are more bespoke, targeted measures to help protect specific species and sites that are at risk, and are intended to ensure public authorities comply with legal protections in a way that achieves better outcomes for nature. It is therefore important to make this amendment, to ensure public authorities have regard to all three types of the new strategies.

Finally, new clause 27 makes three changes related to protecting species licences granted under section 16 of the Wildlife and Countryside Act 1981. Those changes are intended to unlock the full potential of strategic licensing for protected species. First, the new clause will introduce an additional “overriding public interest” purpose for granting a licence. Secondly, it will introduce two additional tests that must be met before a licence can be granted if “there is no other satisfactory solution, and...the grant of the licence is not detrimental to the survival of any population of the species”.

Thirdly, the new clause will extend the maximum permitted licence period from two years to five years.
Taken together, the amendment and new clauses strengthen the nature chapter of the Bill and help to protect and restore species and habitats at risk, while also enabling much-needed development. I have rattled through them, Chair, and there is a lot of detail there, but I commend amendment 222 to the Committee.

Amendment 222 agreed to.

Daniel Zeichner: I think I may have missed a point. We discussed all those new clauses, did we?

The Chair: Yes.

Daniel Zeichner: In which case I apologise. I should have come in earlier.

The Chair: There was no sign from the Opposition that the hon. Gentleman wished to discuss Government amendment 222, so it was passed. Therefore, we will move on to Government amendment 223. If you are waiting for votes on Government new clauses 25, 26 and 27, they will come at the appropriate point in the consideration of the Bill—not now.

Dr Whitehead: May I seek your guidance, Mr Gray? Presumably, we will want to have a stand part debate on the clause.

The Chair: We can perfectly happily do so if that is what people like.

Daniel Zeichner: That may be the way out of the dilemma.

The Chair: Hang on, this is not a general conversation. It is of course possible that if anyone in Committee wishes to have a stand part debate, they may do so at the appropriate moment. That is absolutely fine, but it is not to become a discussion.

5 pm

Rebecca Pow: I beg to move amendment 223, in clause 93, page 95, line 21, after “England))” insert—

“(a) in subsection (1), after ‘conserving’ insert ‘or enhancing’;”.

This amendment adds a reference to enhancing biodiversity to section 41(1) of the Natural Environment and Rural Communities Act 2006.

This amendment makes a small change to section 41 of the NERC Act. The section requires the Secretary of State for Environment, Food and Rural Affairs to publish a list of species and habitats that are of principal importance to conserving biodiversity. The amendment will change the requirement to “conserving or enhancing” biodiversity.

The language mirrors that of the strengthened biodiversity duty under section 40 of the NERC Act, as amended by clause 93. The duty will require public authorities to take action to further the conservation and enhancement of biodiversity. The amendment will therefore create consistent language across two related sections of the NERC Act.

When the list is updated in future, the amendment will allow wider consideration of which species and habitats should be included. That is consistent with our intention, as expressed in the 25-year environment plan, to improve beyond merely trying to maintain the status quo—or conserving—and instead recovering and restoring nature. This small amendment further signals our ambitions to enhance biodiversity.

Daniel Zeichner: I regret to say that we have some extensive questions about clause 93 as amended, which may not come as a welcome moment for the Government. I get the sense, however, from looking at the Government Whip, that he may think tea has come.

Ordered, That the debate be now adjourned.—(Leo Docherty.)

5.3 pm

Adjourned till Thursday 19 November 2020 at half-past Eleven o’clock.
Written evidence reported to the House

EB78 Agricultural Industries Confederation (AIC)
(Due diligence on forest risk commodities for NS1)

EB79 Energy UK and RenewableUK (Schedule 14 amendments 75 and 168)
EB80 British Glass
EB81 Letter from Rebecca Pow to Dr Alan Whitehead re: OFGEM
Public Bill Committee

ENVIRONMENT BILL

Eighteenth Sitting
Thursday 19 November 2020
(Morning)

CONTENTS

Clauses 93 to 96 agreed to, one with an amendment.
Clause 97 under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 23 November 2020

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The Committee consisted of the following Members:

**Chairs: James Gray, Sir George Howarth**

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Anderson, Fleur *(Putney)* (Lab)
† Bhatti, Saqib *(Meriden)* (Con)
† Brock, Deidre *(Edinburgh North and Leith)* (SNP)
† Browne, Anthony *(South Cambridgeshire)* (Con)
† Crosbie, Virginia *(Ynys Môn)* (Con)
† Docherty, Leo *(Aldershot)* (Con)
† Furniss, Gill *(Sheffield, Brightside and Hillsborough)* (Lab)
† Graham, Richard *(Gloucester)* (Con)
† Jones, Fay *(Brecon and Radnorshire)* (Con)
† Jones, Ruth *(Newport West)* (Lab)
† Mackrory, Cherilyn *(Truro and Falmouth)* (Con)
† Moore, Robbie *(Keighley)* (Con)
† Pow, Rebecca *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Thomson, Richard *(Gordon)* (SNP)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 19 November 2020

(Morning)

[SIR GEORGE HOWARTH in the Chair]

Environment Bill

11.30 am

The Chair: Before we begin, I would like to remind hon. Members about social distancing. Spaces are available to Members who are already clearly marked. Hansard colleagues would be grateful if you could send any speaking notes to hansardnotes@parliament.uk. I also remind Members to please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

We continue with line-by-line consideration of the Bill. The selection list for today’s sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or similar issues. Please note that decisions on amendments do not take place in the order they are debated, but in the order they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

Richard Graham (Gloucester) (Con): On a point of order, may I highlight the terrific leaf-covered suits of the Minister and her PPS and, indeed, the green jacket of the hon. Member for Putney, as part of a tribute to the cause of this great Environment Bill Committee?

The Chair: As the hon. Gentleman is fully aware, that is not a point of order. However, the point has been made and I am sure it will be appreciated by those to whom it was directed.

Clause 93

GENERAL DUTY TO CONSERVE AND ENHANCE BIODIVERSITY

Amendment made: 223, in clause 93, page 95, line 21, after “England”)” insert—

“(a) in subsection (1), after ‘conserving’ insert ‘or enhancing’;”.

—[Rebecca Pow.]

This amendment adds a reference to enhancing biodiversity to section 41(1) of the Natural Environment and Rural Communities Act 2006.

Question put, That the clause, as amended, stand part of the Bill.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I thank my hon. Friend the Member for Gloucester for his lovely comment on my suit. As I explained to the Chair earlier, it is my lucky suit. I wore it for both Second Readings—we have had two already—and I thought, as we are doing nature, I should wear it today.

Public authorities can and should play an important role in improving our nature. Under the current duty, a number of public authorities have undertaken projects with the aim of conserving biodiversity, such as changing cutting regimes for roadside verges to allow wild flowers to flourish. The hon. Member for Cambridge mentioned something going on in his own area along those lines, and I am pushing my county council in Somerset to do exactly that.

Such efforts are not consistent across public authorities, nor are they enough when compared with the Government’s wider ambitions for recovering nature and the country’s desire to build back better. They are also not enough to address the drastic decline in biodiversity seen over past decades, which we have referenced several times in Committee. I believe we all agree about the need to address it.

The existing duty was criticised in a House of Lords Select Committee report in 2017, with environmental groups such as Wildlife and Countryside Link giving evidence that the duty was ineffective. We have listened and clause 93 therefore strengthens the biodiversity duty to better reflect the ambition set out in the 25-year environment plan and to give public authorities a better approach to building biodiversity into their core activities. It just needs to be part and parcel of everything in the future. We are changing the nature of the duty away from considering biodiversity every time that a function is exercised, when in many cases it will not be relevant or it will be too late in the implementation process to make the most effective change. We want public authorities periodically to take a strategic look over all their functions, identify where they can make a change that will improve biodiversity as they are developing their policies and procedures, and then take action.

Public authorities must also have regard to local nature recovery strategies, species conservation strategies and protected site strategies—I mentioned those in the previous sitting—when they consider biodiversity. That is an important underpinning for the strategies and is crucial to their implementation.

The strengthened duty seeks to embed consideration of how biodiversity can be conserved and enhanced in the overall performance of public authorities’ functions across England. I urge that clause 93 stand part of the Bill.

Daniel Zeichner (Cambridge) (Lab): Let me start by reassuring hon. Members that my hon. Friend the Member for Southampton, Test is not suffering undue excitement from the previous sitting, but is on a late-running train from Southampton and will join us soon.

May I also thank you, Sir George, for allowing us to sort out the slight procedural difficulty that we had at the end of the previous sitting? It was a long sitting and finished in a bit of a rush. The Government introduced a whole range of important new clauses relating to clause 93, to which I will now be making reference. A huge set of amendments were introduced about species conservation strategies and protected site strategies. Of course, it was not possible to discuss that provision in evidence sessions, and the Opposition were disappointed that that was not possible. It prompts a whole range of questions, and perhaps the Minister can answer some of them in her reply. We are not clear on why the provision...
was introduced at such a late stage. Although some of it is welcome, there are some questions of detail, which I will go into. It is not clear to us why the provision was introduced at such a late moment.

I have to say that this goes back to the argument that I have been making—you missed the first half of it, Sir George—as I have questioned who was responsible for, in the Opposition's view, so diminishing the power of the Environment Bill. We think that there is an interaction with the Government's planning White Paper, and I ask the Minister just to say a little more about the interaction that she thinks that there will be with these proposals.

I draw the Minister's attention to a piece in *The Planner*, which I am not sure she is a regular reader of—I confess I am not. The question was raised over the summer of the interaction between the planning White Paper and the good proposals in this Bill and clause 93. One question raised by Huw Morris, one of that publication's key writers, is this: in a streamlined planning system, how will local plans be assessed from an environmental and sustainability point of view, and how will individual schemes be environmentally assessed to provide the right mitigation? The point is that in the planning White Paper, we have new categories, including of course the growth category, where none of these things will be done in detail. Huw Morris says that the picture gets murkier in growth zones, where schemes will be allowed automatically. With sustainability appraisal scrapped and environmental impact assessments not carried out at the outline stage, how will a development's green footprint be judged, if at all?

That is a very big question. I appreciate that the Minister might not want to respond immediately, but I hope that she has some opportunity, in the discussions, to give some reassurance to people, because this potentially, in our view, undermines many of the good points that we have talked about. That is why we were so keen to have an evidence session.

In relation to clause 93 and new clause 25 on species strategies and licensing, we have looked at this provision closely and are disappointed that we were not able to examine it more closely in a proper evidence session, because the interaction between some of these suggestions and existing legislation is quite detailed. Strategic approaches to species conservation are clearly essential. We agree with them. It is vital to preserve biodiversity and enable the recovery of nature. As I think we have already said, that is important because 46% of conservation priority species in England declined between 2013 and 2018, and many of those species would certainly benefit from a strategic plan resulting in all relevant public bodies taking appropriate actions to save and restore them.

Sadly, this proposal has to be understood in the context of the net-gain offsetting that we have already discussed, and our fear is that there could be unintended consequences. We are advised that the overall result could sadly be to allow the destruction of habitats and protected species in return for new habitat creation elsewhere. A developer could be licensed to proceed with activities that destroy habitats and species in return for contributing to habitats that support the wider population of that species.

It is a complicated point, but I am sure that the Minister knows what we are driving at. Our worry is that it would allow a developer to proceed without protecting every specimen of a protected species and without always undertaking site-specific survey work. The result would be to speed up development and reduce costs, which seems to us—this is the argument that I am trying to build—to be the effect of the planning White Paper. It seems to be the very opposite of what we are trying to achieve in the Bill.

If the proposal is implemented well, it certainly could be a positive way to contribute to the conservation of certain species, but if it is managed badly or applied to inappropriate species it could sadly become a shortcut to getting round some of the protected species obligations. The evidence for that is provided by conservation organisations that tell us that the implementation of strategic approaches to species protection, such as district licensing for great crested newts, have not been proven effective. The Minister claimed that they had been, but that is not their view.

The Government notes do not give us cause for optimism. In the fourth bullet point of the notes that were issued alongside the clauses, the Government say that there are

“concerns limiting the development and roll-out of such existing schemes: 1) uncertainty about how effective they are and 2) whether they can be considered to meet the high standard of certainty required by law.”

That is the point that we are seeking to pursue.

We are told by environmental organisations that monitoring has been incomplete, that there is little evidence that it has protected the most important newt populations from development, and that the overall benefits for the species are unproven. That could have been probed and tested in evidence, but sadly we have not been given that opportunity. We are concerned that the Government seek to advance on the roll-out of district licensing around the country, with a duty to co-operate forcing the hand of local authorities, many of which are already saying that they are concerned about the effectiveness of the scheme.

We can see the dangers, and we think that high risks would come from extending that kind of approach to other species that have distinct conservation needs. As far as we are aware, no assessment has been undertaken to establish which, if any, other species would be ecologically amenable to this or similar approaches. Can the Minister tell us whether that work has been done? Again, I do not necessarily expect her to have the answer to hand, but if she cannot tell us today, she could write to us.

We are looking for some serious reassurance that the species conservation strategies will not lead to perverse outcomes. We need to ensure that they are delivering gains for nature rather than gains for developers. This may be slightly tedious, and I apologise, but again because we have not had the opportunity to interrogate these matters we think it is important to put it on the record.

Greener UK has raised several legal details with us that we would like addressed. It asked us why the clause has not been worded to ensure that each species strategy is required to identify priorities for the protection of habitats in addition to the existing priorities of creation or enhancement of habitats. Greener UK’s concern is that purely focusing on enhancements, as is currently the case in the clause, would undermine the planning process by undervaluing the need to protect existing
habitats, and it wonders why the clause has not been worded to ensure that each strategy must give precedence to the mitigation hierarchy.

That is an important point because, as we said in earlier discussions, offsetting and licensing through species plans should be the very last option rather than considered earlier in the process. Greener UK is particularly concerned that site surveys should still take place when existing data is inadequate to identify impacts on key species. The worry through all this is that this is an attempt to speed up the process for development rather than to protect species.

Site surveys covering features important to species as well as habitats are particularly important for bats and invertebrates. Bat roosts, which are essential to the species’ survival, and endangered insects on private sites, are easily overlooked and are often detected only in pre-development site surveys.

11.45 am

To return to the powers, why is it only a power, rather than a duty, for Natural England to publish the species conservation strategies for species listed under section 41 of the Natural Environment and Rural Communities Act 2006 that are in decline or are persisting at unsustainable levels where, under that legislation, actions by any public body are likely to contribute to the recovery of that species? A duty would help to ensure that species conservation strategies focus on environmental rather than development needs. Again, the point is about the interaction between new and existing legislation.

We are concerned that, on the evidence we have seen, it is pretty clear that when authorities only have to have regard to wildlife, sadly, that is often interpreted as thinking about rather than taking action. Why has that not been strengthened to ensure that authorities have to take actions that will contribute to the objectives of the species conservation strategies?

Currently, there is no duty to report on the status of a species subject to a species conservation strategy. There should be clear responsibilities for monitoring and reporting on the status of species within the areas covered, with relevant data published to enable scrutiny. The clause also contains no wording to prevent the continuance of species conservation strategies that are not working. It would help to ensure that species conservation strategies focus on environmental rather than development needs. Again, the point is about the interaction between new and existing legislation.

Can the Minister explain why those things have not been done? Can she confirm that, in every case, conservation gain and the method of achieving it within each strategy will be agreed by the Natural England species specialist and external non-governmental organisations before strategic approaches are applied, and that each strategy will be framed around the action needed to achieve specific conservation objectives and favourable conservation status? Those objectives will vary across species, as each species requires a tailored approach based on its specific needs and area-specific pressures.

I would also like the Minister to confirm that, where species conservation strategies are used in cases of development planning, species’ needs will dictate the outcome, with the overriding presumption and priority being for on-site or local, rather than off-site, mitigations. Will she also confirm that biodiversity net gains will be additional to meeting the legal and policy requirements within the species conservation strategies?

As the clause stands, it looks as if the Government are racing ahead to deploy strategic approaches as a licence to give developers freedom to potentially destroy important species that they view as an impediment to planning. That is a seriously different outcome from the one that I suspect all Committee members would like.

We welcome the principle of new clause 26. At the moment, sites are often harmed by the cumulative effect of successive developments without a strategic view of how they can be alleviated. Of course, that then leads to disputes later when those sites are pushed to breaking point. That is in the context of 61% of sites of special scientific interest being in an unfavourable condition. Frankly, I am surprised we even know that, because I am told that half of those SSSIs have not been monitored for more than 60 years. That is not a criticism of Natural England.

An excellent report published by the Prospect trade union last week indicated—that this goes back to earlier points about funding and capacity—that Natural England’s grant in aid budget has declined by 49% in the last six years. Its chair said:

“We are now running with some serious risk to our core, statutory functions.”

There is a real risk that the good intentions will not be realised, so it is important that we take a more strategic view of the conservation needs of sites. The measures in new clause 26 aim to do that by mitigating those pressures in advance and ensuring that the needs of the ecosystem are considered as part of each individual application and in the round.

Many sites are also affected by water extraction, pollution from nearby land, and a range of other activities that are regulated by public bodies and could be addressed in a co-ordinated way by a protected site strategy. Again, those must not serve as an excuse to destroy valuable habitat for development or forgo the need for site-specific consideration, assessment and advice.

Organisations have raised legal issues with us. Why is the preparation and publication of protected site strategies a power of Natural England, rather than a duty on them? A cynic would say that it is a way of helping Natural England solve a funding crisis. Frankly, it is passing the buck and will not achieve the outcome we are looking for. We would like confirmation that site-specific impact assessments at the time of planning or of other consent applications should still be carried out to ensure that all impacts are identified and addressed. We need confirmation that each strategy will be framed around the conservation objectives of the sites concerned, as well as any other conservation considerations. Each strategy should be properly underpinned by a clear understanding of what successful achievement of those conservation objectives should look like for those sites, with clear monitoring and reporting.

Finally, new clause 27 is a particularly difficult one: it tackles a complicated issue around the way licences are granted for activities that could “harm, remove or disturb” wild animals and wild plant species that are protected either under the Wildlife and Countryside Act 1981 or under the Conservation of Habitats and Species Regulations 2017. The issue is particularly complicated, and has not
been subject to consultation. Strong concerns have been expressed to us that the changes could weaken the protection for some species. Greener UK are certainly recommending that aspects of new clause 27—particularly subsection (1) and subsection (2)—should not be agreed until further consultation has taken place. I seek the Minister’s assurance that there could be further consultation on that. On that basis, I will not go into the fine details of the relationship between these pieces of legislation, which are tricky. Subsection (1) could result in a licence under habitat regulations overriding the additional protection currently afforded by the Wildlife and Countryside Act 1981.

An example I have been given is that a licence to allow the capture of natterjack toads under the habitats regulations could then permit reckless disturbance of the natterjacks that is otherwise prohibited under section 9(4)(b) and (5) of the Wildlife and Countryside Act 1981, but not under the habitats regulations. It is complex stuff, and it does require looking at, as otherwise we may end up with unintended consequences.

Similarly, subsection (2) of new clause 27 amends the Wildlife and Countryside Act 1981 to allow for licensing activities to take place under a new ground of so-called “overriding public interest”. That would allow development to proceed if it meets the bar of „overriding public interest” even when it would result in the killing of protected species such as grass snakes, if licences are granted to cover that.

There is a range of difficulties in terms of the different levels of protection in different pieces of legislation, and we want those to be resolved, if possible. I apologise for speaking at some length on the matter. They are important amendments that have been introduced late in the process, and we seek reassurances from the Minister that these questions can be answered.

Fleur Anderson (Putney) (Lab): I rise in support of the objections and concerns raised by the shadow Minister about clause 93 and, specifically, new clauses 25 and 26 on species conservation strategies. The strategic approaches to species conservation are essential to preserving biodiversity and enabling nature’s recovery. They should include protecting, restoring and creating habitat over a wider area to meet the needs of individual species. The additional clauses, along with shining a light on species conservation, are welcome. It is clear that current rules are not working and—as already mentioned—46% of conservation priority species in England declined between 2013 and 2018.

I was concerned, however, to read the reports from Greener UK, which is a coalition of 13 major conservation and environmental organisations. It says that the various strategies may be undermined by the way they are written and the way they are enforced, actually resulting in faster development with lower standards. That cannot be the aim of the clauses at all. Were the strategic powers to be managed badly or applied to inappropriate species, they could become the loopholes that developers would use straightaway to put costs before species protection, and to get away with undermining species protection. That would be as a result of these clauses, which cannot be right.

I am concerned that it has been raised by Greener UK that experienced operators of existing licensing systems are not currently providing protection for animals such as great crested newts, so the district licensing does not work at the moment. Has the Minister met those organisations? Has she talked about these issues and the outcomes on the ground?

I ask the Minister to look again at this clause, which must be amended to explicitly state that site surveys should take place when existing data is inadequate. If the barrier is too high to progress with the site survey, it will not be done, except in abnormal situations or when it is too high a bar. It will not be done in all the places where conservation is failing, which is why we are having this decline. Such an amendment would be vital to this clause so it will be enacted in a way that means we can conserve species.

There is no room for error on this. We cannot wait for 10 years then review this, and find out that lots of habitats have been decimated, and that species have not been conserved and have gone because of this. We need to do it right from the start. What will be the monitoring of the impact of these clauses? Will the monitoring be fast and rigorous, to ensure that the outcome is conservation and protection of special sites, rather than seeing developers riding roughshod over the regulations and using the rules as a loophole for continuing decimation of our important sites?

Rebecca Pow: I thank hon. Members for their comments. As the hon. Member for Cambridge said, he has raised a large number of points in one go. He has given me a large task, and I will write to him if there are points that I miss out, because it was an awful lot to take in at speed.

The hon. Gentleman is right to be asking these questions because we need to make sure that we have got this right. I give him the assurance straight away that new clauses 25 to 27 will not diminish the Bill, but will add to it. That is what we have in mind and there has been a lot of discussion in order to come to that conclusion. We have listened to a lot of comments. That is why clause 93 strengthens the biodiversity duty, to better effect the ambition set out in the 25-year environment plan and to give public authorities a much better approach to building biodiversity into their core activities, so that that is part and parcel of everything rather than being done on an itsy-bitsy, one-off basis.

Daniel Zeichner: No one on the Opposition Benches questions the Minister’s commitment to this, but why was it introduced at a late stage? If she can explain that, it would go some way to assuaging some of our fears.

Rebecca Pow: As the hon. Gentleman knows, this Bill has been in the making for a very long time. It began long before I came along as the Environment Minister. We have spent a whole year working on it, which has enabled us to strengthen it and to work more closely with all the bodies and organisations, particularly Natural England.

The hon. Member for Cambridge talked about Natural England, with whom we have worked really closely. In fact, it will play a big role in all this and we have had full discussions with it. Indeed, Natural England launched a project about 10 days ago. I would have gone, had it not been for the lockdown, so all I could do was a speech. The project was about how nature recovery
networks, which is a generic term, and strategies will be pulled together with the protected sites. The launch went well and about 500 people attended the Zoom event, to show how these things will work as we go forward and make sure that in the future biodiversity is embedded into all that we do.

Daniel Zeichner: I will not keep intervening, but my concern is about the section on nature in the 10-point plan that the Prime Minister launched yesterday. There is no mention of net biodiversity gain, which seemed to us to be surprising. That is why we are suspicious. It is difficult, because we have new proposals coming forward from other bits of Government and our worry is that the strength of this Bill has been undermined.

Rebecca Pow: I thought the 10-point plan was brilliant. It put a massive focus on decarbonising and the renewable energy sector, which I know the hon. Member for Southampton, Test is particularly interested in. It was addressing other elements of the whole green recovery. We were really pleased that we got the tree mentioned in there.

12 noon

The whole area of net gain and biodiversity is another huge agenda for this Government. We have made it a top priority in everything that we say. It was in our manifesto to improve the environment and leave it in a better state. I can assure the hon. Member for Cambridge alluded to the state going forwards. We fully intend to do that. The planning reforms will reinforce the implementation of these measures, including the biodiversity duty. They should not contradict them.

I want to say a bit about the individual strategies. We have protected site strategies and conservation species strategies. The protected site strategies will be targeted and designed to help protect specific sites where they can be most efficient and effective. They will be particularly useful where we have problems. Maybe it is all hunky-dory in Cambridge, but in Somerset we have had a recent issue with nitrates. We have to come up with helpful plans, so we can look after our wonderful Somerset levels, which are an internationally acclaimed wetland site where lots of great work already goes on, but we do not want to stagnate everything to do with development. Coming up with strategies for that would be helpful.

We already have some good examples of that. The South Humber Gateway is an award-winning scheme. I do not know if the hon. Gentleman has visited it, but I think it would be a good plan. We cannot do any visits now, but when we can, we should go on a joint visit. That mitigation scheme successfully unlocked the development of hundreds of hectares of land, helping to deliver an anticipated £2 billion of investment and 15,000 associated jobs. At the same time, funding has been secured to create 275 hectares of new wet grassland habitat. That will be an enormous benefit for the birds that go there in numbers of up to 175,000. That is a good example of a scheme developed by people involved locally. Having this better protected site strategy will really help.

I visited another project in the Solent, where they also have an issue with nitrates—now we will have a phosphates issue as well—because too much nitrate is going into the Solent, and they had to work out how they could build the houses, because a lot of nitrate is associated with waste water and increased housing, as well as agriculture. They have offset some land. The farmer will reduce his usage of fertilisers and nitrates, and they can build the houses: everybody is happy.

That is a really good example. We have now launched five pilots on schemes like that one across the country to assess them, see what they are doing and whether we could copy them or tweak them for other areas. That is what the protected site strategies are. The hon. Member for Cambridge asked—it was a good point, and a question that I have asked myself—whether they alter existing legal protections on designated sites; they do not. They are still there. Where a development project impacts adversely on a protected site, a habitat regulations assessment will be needed. The protected sites strategy will make it easier and quicker to find solutions where we have problems. I hope that gives some clarity. I am convinced that it is a very sensible idea.

Let us move on to species strategies. The hon. Member for Cambridge mentioned district-level licensing for great crested newts, which everybody keeps talking about. I am a great newt lover. Some 85% of funding goes directly towards habitat creation and habitat restoration management and monitoring, compared with 16% approximately under the traditional licensing approach. He had some information that showed that those schemes were not working. We have lots of data to say that they are very successful, on the whole. The additional investment is really working and early monitoring data shows that 34% of new ponds are colonised in the first year, which is more than double the rate that would normally be expected. There is a lot of good data to say
that those schemes are working. Natural England has been very involved in developing those schemes and scaling them up so they can be used elsewhere.

The idea is to then come up with other strategies for other species. Of course, they would not be the same as for newts. Bats, for example, have different habitats—they live in roofs and churches, have different flightpaths and need to have avenues of trees where they can do their echolocation to get to their roosts. I have actually made a few films about lesser horseshoe bats, which I would love to share with the Committee—I think they are on YouTube.

I know what the hon. Member for Cambridge means and great care has to be taken. There is potential to come up with a specific approach for other species—for example, bats or dormice. The idea is not to be detrimental to our lovely bats and dormice; it is to help them. That is the idea behind this measure.

Natural England has been piloting a system for self-licensing by independently accredited surveyors. The hon. Member for Putney touched on that point, which is really important. Who will do all that work? Natural England is already working on that and has some pilots running.

I will write to the hon. Member for Cambridge about the points on the Wildlife and Countryside Act, because they were very specific and very detailed. I hope that I have covered a lot of the issues he touched on.

All the measures in the Bill will be knitted together so that they work together for the overall fabric, which should be better for our nature and the environment, and we have to work with MHCLG on the planning White Paper so that the environment is absolutely integrated into our building back faster and better, which is something I believe the people of this country want.

Question accordingly agreed to.

Clause 93, as amended, ordered to stand part of the Bill.

Clause 94

Biodiversity reports

**Daniel Zeichner:** I beg to move amendment 142, in clause 94, page 95, leave out lines 28 and 29 and insert—

“(a) all public authorities and persons or bodies exercising functions of a public nature, and”.

**The Chair:** With this it will be convenient to discuss the following:

Amendment 186, in clause 94, page 95, line 30, at the end insert—

“(d) Natural England and the Environment Agency”.

**Daniel Zeichner:** I assure the Committee the going may be slightly lighter for the next period. That was complicated. I appreciated the Minister’s response, but I think there are two takes we can have on this: one is the optimistic take, which she presents, but others are a little more sceptical and suggest that even if the bulldozer is hydrogen-powered, it is still a bulldozer, so we need to be careful.

We welcome clause 94, because it remedies a weakness in the Natural Environment and Rural Communities Act 2006, which lacked a reporting duty for public authorities with regard to the biodiversity objective. The world moves on and we want to do better, so the clause is good. Those reports will be important in regularly recording the actions that public authorities take to conserve and enhance biodiversity.

I am grateful to the Minister for her letter referring to the burdens on local authorities. She was very swift in writing to me. I am not certain that my council colleagues will be totally convinced, but apparently there is a new burdens doctrine, which sounds slightly severe. In her letter, she was very specific about some elements that will apparently be funded, but I suspect that, with all these measures, whether it is the reporting duty or anything else, many local authorities will ask where the resources will come from to enable them to do it. Nevertheless, we would like it to be done, because we think that these reports will help to improve information on protected sites, priority habitats and priority species.

The clause could helpfully be amended, to realise the full potential of those reports, so I will continue my theme of trying to strengthen the legislation and achieve the outcome that we all want. Extending the range of public authorities that are required to provide reports, providing more direction on report content and expanding the list of topics that public authorities should report on would be helpful. Currently, the requirement to produce biodiversity reports applies only to local authorities in England other than parish councils, local planning authorities in England and designated authorities. We think that it would be beneficial to extend the range of public authorities required to provide reports, to make sure that all bodies that have influence over the natural environment are properly included. Our amendments 142 and 186 seek to do that.

Amendment 142 would make it a requirement that “all public authorities and persons or bodies exercising functions of a public nature” have to produce these reports, spelling out how they are meeting the biodiversity objective; and amendment 186 would add Natural England and the Environment Agency to the list of designated authorities required to publish biodiversity reports. We think these amendments would be helpful. We will not pursue a vote, but it would be helpful to hear the Minister’s response.

**Rebecca Pow:** You will be very pleased to hear that I will not speak for as long as I did previously, Mr Howarth.

I thank the hon. Gentleman for his amendments. Importantly, the addition of a reporting requirement strengthens the Bill. The reports will be a valuable source of information, facilitating the sharing of best practice and providing both transparency and accountability.

Clause 94 designates some public authorities and provides the Secretary of State with a power to designate in secondary legislation which other bodies will be required to report. We are clear that local authorities and other planning authorities have important contributions to make to restoring nature, so we have designated those authorities in the Bill. We will require reporting from other relevant public authorities, including Government Departments with large estates and bodies that undertake statutory requirements, such as the public utility companies.

Amendment 142 would significantly broaden the duty to report on action taken under the biodiversity duty, which would not be appropriate for some public authorities.
that are small and have few resources. Parish councils, which we have mentioned previously, are a clear example of such authorities, but there will be others for which it would not be a sensible use of their limited resources to produce and publish biodiversity reports. I am sure that they will all want to have their say, but they could feed that in to their local authority.

Under amendment 186, Natural England and the Environment Agency would be named specifically in the 2006 Act as needing to produce biodiversity reports. The decisions on which public authority should be asked to report are best considered in detail as we develop the regulations that will flow from the Bill. All interested stakeholders will have the opportunity to engage with us to make sure we get the list of public authorities right. I think it is important that that is done. Consideration and consultation are important parts of the process, and while Natural England and the Environment Agency undoubtedly have crucial roles in our effort to enhance biodiversity, there are other important public authorities. I urge the hon. Member to withdraw his amendment.

12.15 pm

Daniel Zeichner: I anticipated that response, but I do think there is a missed opportunity here. Part of the problem goes back to the existing pressures on organisations like Natural England and the Environment Agency. They have to prioritise. The danger is that they will not be able to do some of the things we are asking them to do unless we actually specify and lay them out. The worry that has been expressed to me is that they sometimes struggle to carry out their biodiversity duties. Unless we actually press them and make it an obligation, they are not going to report on it or be able to do it. That is not a criticism of them; they are working with limited resources.

It comes back to the very basic point that it depends on how important one thinks any of this is. We think it is really important. I will gently say that, in the lead-up to COP26, where nature-based solutions are going to be a key theme, we could be setting a lead here by showing how we are pushing nature and biodiversity up the agenda—not at No. 9 on the 10-point plan, but much higher up, which is certainly where we would put it. I think it is a missed opportunity.

On parish councils and other authorities, which we will perhaps come on to a bit later, perhaps I am slightly obsessed by environmental land management schemes because of my role on the Agriculture Bill, but it seems to me that an awful lot is being put on these schemes. I said during the discussions on that Bill that there was a clear opportunity for local input, and it would be local knowledge that made these measures work. There is a role for these authorities, and this is exactly the kind of place where we could set that obligation.

Rebecca Pow: I have been wanting to intervene and give reassurances on that very point that everything in the Bill will also dovetail with the measures in the Agriculture Bill and the environmental land management schemes. That is essential. I am working very closely with the Farms Minister and the Secretary of State to make sure the Bills work together. The environmental land management schemes will deliver much of the biodiversity and nature enhancement, and public goods including clean water, carbon capture and climate change mitigation, in large part through nature-based solutions. The measures in this Bill will help towards that, and the local authority biodiversity reports will particularly help, as well as the local networks that are developed. They show what nature is where, what needs enhancing where, and how different groups of people can join up through catchment-based approaches. I think what the hon. Gentleman wants to happen is what has been designed. Does he agree?

Daniel Zeichner: I am grateful to the Minister for giving me the opportunity to say how disappointed we were that the Government did not take the opportunity we offered in our amendment to link the Bills together, not least because they came in the wrong order, being driven by a Brexit timetable rather than an appropriate timetable to do this in the right way. We are not convinced they have been integrated in the correct way. We are only a few weeks away from that new system potentially beginning, and there is a lot of work to do, to put it mildly.

We think that there should be local input from the very beginning, much like the schemes we are losing—economic development, leader schemes and so on—that worked on a local level before. Who knows where the sustainable investment is going? A lot is being lost at the moment. To return to the amendment, we feel that a strengthened reporting obligation would actually help the Government, as we are trying to do, to achieve the outcomes they are seeking more effectively. None the less, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 141, in clause 94, page 95, line 43, at end insert—

"(e) an analysis of how actions taken have contributed to delivery of priorities identified in the Local Nature Recovery Strategies."

This is a continuation of the same discussion, in effect, because we are looking at how the biodiversity reports could be improved. In the Bill, in the list of topics that the biodiversity reports should contain, there is no reference to any consideration of local nature recovery strategies. I have already spoken with some passion about the need to link all these things up to make them work. We agree that if we are going to tackle the biodiversity challenge, co-ordination is needed. The local nature recovery strategies are designed to do just that, so tying them into biodiversity reports would help to achieve that core purpose of directing local nature recovery activity.

Our amendment would do that by adding to the clause that biodiversity reports must contain analysis of how the actions of public authorities have contributed to the delivery of the priorities identified in the local nature recovery strategies. Our concern—this is a consistent theme—is to lock in a guarantee that something actually happens. The danger is that often good intentions are parked somewhere within authorities that, quite understandably, have many other things going on, and nothing happens. We need to ensure that things are considered in key decision-making processes and that actions are properly monitored, with decision makers
Rebecca Pow: I thank the hon. Gentleman for the amendment. We intend the biodiversity reports to be proportionate and flexible. Designated public authorities will report every five years on how the measures throughout the clauses dealing with nature and biodiversity deliver the intended improvements for nature. To achieve that aim, we should not be too prescriptive by specifying in the Bill what the reports must contain.

There will be considerable variety across the public authorities designated to report. For many, it might well make sense to frame reports against the context of the relevant local nature recovery strategy. The requirement in the clause to “have regard” to the strategies while determining what action to take will encourage that. Indeed, we anticipate that biodiversity reports will be a valuable source of information for local nature recovery strategies when they are reviewed and republished. This should be a two-way process.

For many public authorities, however, having to specify the contribution to every relevant strategy would be a disproportionate burden. A public authority with national reach would find it challenging to provide a meaningful analysis of its contribution across a very large number of strategies. As I said, the idea is that the report is workable, is flexible, but that people are actually able to do it. A lengthy analysis could prevent the public authority from producing a report that is clear, readable and focused on the most important action that it has taken to help nature recover.

We therefore believe that such detail is best left to regulations and guidance, which allow for greater flexibility and, where suggested, content can be better tailored to individual circumstances. On those grounds, I urge the hon. Gentleman to withdraw his amendment—I think he said it was just a probing amendment.

Daniel Zeichner: Once again, I might have anticipated that response. My concern continues to be that insufficient leverage is being applied to ensure that such things actually happen. That is the only point at issue. Having heard the Minister’s response, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 12, in clause 94, page 96, line 27, leave out “may” and insert “must”.

This is our familiar “may” or “must” discussion. In this case, clause 94 currently outlines that the Secretary of State “may” make regulations to “require biodiversity reports to include specified quantitative data relating to biodiversity”.

I want to say a little about some of the data issues, because we think that this is rather important. Paragraph 846 of the explanatory notes makes a very good case for the amendment. It says:

“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.”

The Minister will say that that means it is good to have it in the regulations, but we think it should be stated up front.

We believe that good data will make a big difference to how effective public authorities can be in improving biodiversity outcomes. This carries over into some of the discussions around the environmental land management scheme, which is why we pressed very hard for an environmental baseline to be established. Sadly, that was not taken up by the Government, but we think that they will probably have to do it at some point anyway. None of these worthy processes will be possible without good data. Of course, the world has changed in that there are many new and innovative ways of scanning, recording and assessing that may not have been possible a decade ago.

The Secretary of State himself said in his speech on environmental recovery in July:

“We want everyone to be able to access an accurate, centralised body of data on species populations so that taking nature into account is the first, speedy step to a planning application. That is a laudable ambition, which we absolutely support, but to do that the Government have to get the data in place. I pay tribute to the army of volunteers who gather data at the moment. We have fantastic volunteers in this country. I suspect that many people here watch and count butterflies, bees, birds and so on, which is all helpful. I have been very impressed by the Bumblebee Conservation Trust—I have already mentioned the ruderal bumblebee—which does excellent work in recording what is happening to bumblebees.

All such organisations require support and the volunteers sometimes need training, because is not always obvious how to gather the data. There then needs to be a process of recording, verification and infrastructure, and there are costs to all of that. Although we have some wonderful not-for-profit organisations and there is a good tradition of volunteering, we feel that it is important that the Government provide support to ensure that we get the centralised, accurate body of data that the Secretary of State referred to. That, of course, will then allow the data sharing, the comparison and the mechanisms that are needed to ensure that we get the biodiversity gains that we are looking for.

I have said on many occasions that we think that local authorities are already struggling to fund, resource and support the kind of work that will be needed to make all these good intentions come to fruition. Fewer than a third of them have an in-house ecologist or biodiversity officer, and we fear that Natural England does not even have the required resources, as I have said, to carry out its current statutory duties in some cases, let alone the extra responsibilities. We think that there needs to be an investment from Government in the right data and environmental information infrastructure to ensure that nature conservation can work.

Again, this is not an issue on which we wish to divide the Committee. However, I would be grateful to hear from the Minister how she proposes to make sure that that fantastic pool of data is going to be put in place and maintained, to ensure that we can make the progress we are all looking for.

Rebecca Pow: I will narrow my comments down because this is a “may” and “must” amendment again. As I have previously explained during discussion of similar amendments from the hon. Member and others,
primary legislation consistently takes this approach to the balance between powers and duties. I assure the hon. Member that the Government intend to make the regulations.

12.30 pm

We cannot ask public authorities to produce such reports unless we set out via regulations which bodies should do so and what the report should contain. However, as I have said previously, it is entirely appropriate to provide the Secretary of State with flexibility as to how the provision is given effect. To turn a power to make regulations into a meaningful duty risks rushing consideration of the potential content of reports when an alternative approach may be more suited as some of the potential content. For example, we will want reports from local planning authorities to include detail about biodiversity net gain, but we will want to ensure that that fits with the implementation of those measures.

The hon. Gentleman is right about the importance of data and how crucial that will be to informing all the plans and strategies. I want to reassure him that we are exploring the potential for an environmental census, which was recommended by the Natural Capital Committee as I am sure he will know. That would ensure that we get good baseline data against which to measure progress towards improving the environment. I am particularly interested in that, and believe it is important. Work is going on exploring that. I hope that gives the hon. Gentleman some reassurances.

I agree with the hon. Gentleman that citizen science and the army of volunteers are so wonderful, helpful and knowledgeable in many cases in gathering a lot of our species data, so we want to harness that too. As he says, they already feed a lot of valuable data into our environmental record centres, for example, to which our local authorities often go when they need data in discussing planning applications and such like. Those things will remain important.

I reassure the hon. Gentleman that the Government intend to make the regulations and that the Bill provides an appropriate power for the Secretary of State to do so. As such, we believe the amendment is not needed. I respectfully ask him to kindly stick to what he suggested earlier and treat this as a probing amendment.

Daniel Zeichner: I find much of that reassuring.

Anthony Browne (South Cambridgeshire) (Con): As a trained mathematician, I fully support the use of data supporting policy and as chair of the Government’s Regulatory Policy Committee, it was my job to ensure that we had evidence-based policy making. However, I do not think it is good enough just to say that there should or must be data unless we specify what that data is. The risk, otherwise, is that we come up with the wrong sort of data.

Given our shared belief in data, I have been doing a bit of data gathering myself—not counting butterflies and so on, but counting “musts” and “mays”. In clause 94, I counted not just one or two—not three, four or five—but six “musts” and only two “mays”. That shows how strong the paragraph is, with the “musts” outnumbering the “mays” by three to one. Do Opposition Committee members welcome that fact?

The Chair: Order. We are straying into the territory of the Shakespearian debate about the use of “thee” and “thou”. Interesting though it is, I am not quite sure it adds any edification to our proceedings. It is for the hon. Member for Cambridge to decide whether that intervention has any influence on him.

Daniel Zeichner: I am grateful, Sir George, and I am grateful to my constituency neighbour, the hon. Member for South Cambridgeshire. As the chair of the all-party group on data analytics, I, too, can bore for Britain on that. He is right about the “musts” and the “mays”, but a lot depends on where they come in the paragraph. Sadly, there are lots of “musts” and then, quite often, whether something will be implemented or not is followed by a may. There is a hierarchy of “musts” and “mays” that also needs to be taken into account, which shows the difficulties that sometimes arise with using data. It does not always tell the whole story.

Data will be important, particularly as we go down the environmental land management route. I have concerns about that because of the complexities involved. The only way they will be able to work, I suspect, will be through good collection of data. If we are going to move to outcome-based measures—and I think that is where many people want to get to, finally, on many such issues—it will be essential to be able to measure, record and draw conclusions. I think that we are probably all going in the same direction, and I suspect that we all want the things that are proposed to happen. It is just a question of how quickly they happen, and when. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 94 ordered to stand part of the Bill.

Clause 95 ordered to stand part of the Bill.

Clause 96

PREPARATION OF LOCAL NATURE RECOVERY STRATEGIES

Daniel Zeichner: I beg to move amendment 13, in clause 96, page 97, line 27, leave out “may” and insert “must”.

This is one of the most exciting provisions. I do not want to be in danger of getting over-excited, but we think that the set of provisions that we have now reached is very important. That is why I must go back to the ninth of the 10 points yesterday, and say that I found the references—and there is a reference to a local nature recovery network—slightly confusing, as it was in the context of landscape recovery projects.

We are in danger of drowning in a sea of acronyms, I fear, and one thing that we would look for from the Minister is clarity about how all those things will work together. We want a coherent framework that will drive an approach that will reverse nature’s decline across the country. We genuinely believe that that can be done, but we feel that the potential for the local nature recovery strategies is constrained by the current wording and, yet again, we are trying to suggest improvements to help the Minister.

We have already touched on some of the weaknesses of the duty in question, and the need for monitoring in biodiversity reports. The amendment has been tabled to underline the point that the full positive impact of local
nature recovery strategies will be realised only if authorities are given clear and effective procedures to follow when they are preparing, producing, reviewing and publishing their local strategies. I am afraid that it is again a may/must issue.

Also, it is a concern of ours that in some instances the affirmative procedure will not be used. There is a strong feeling that, were there to be wider discussion, the legislation would be improved. Allowing third parties, including experts in a sector, to have input into the procedures through public consultation, would be only to the good. We seek the Minister’s comments on whether she can make sure that happens.

We worry, also, about the timing. There is no date to begin the preparation of some of the things in the clause and our worry that they could go on the back burner. Will the Minister give some indication of when she thinks they will be in place and implemented, and when the good work is to begin? Once again, we are trying to find out information. We do not seek to divide the Committee—I can anticipate the Minister’s response. I should like to hear what she has to say.

Rebecca Pow: I thank the hon. Gentleman for the amendment, but it will not surprise him to hear that we do not believe it is necessary. The backbone of the local nature recovery strategy clauses is a series of duties on the Secretary of State: first, to ensure that there are local nature recovery strategy areas covering the whole of England; secondly, to appoint responsible authorities to lead local nature recovery strategy preparation; and, thirdly, to provide the responsible authorities with the necessary information. The Government are also seeking the power to create regulations to establish the process for preparing a local nature recovery strategy. That is to enable that process to work smoothly and to create consistency in what each responsible authority produces.

I am not sure whether the hon. Member for Cambridge is aware, but just for information, I point out that five pilots are already running on local nature recovery strategies. One is in Cornwall. There were lots of areas where the pilots on the strategies could have run, but on the whole the areas chosen were those that had already done quite a lot of work in this respect and so had lots of good processes and plans and thoughts. My hon. Friend the Member for Truro and Falmouth probably knows about that initiative, given that it covers her patch. I hope that that explanation gives assurances. The work is ongoing, so the lessons will be learned about all that. That will help for the quick roll-out of these things; others will be able to copy what has been done and put them in process.

We have developed local nature recovery strategies to be an important new tool in delivering a wide range of environmental commitments, such as tree planting, peat restoration, natural flood management and the creation of the nature recovery network, which was touched on by the hon. Member for Cambridge. These commitments for this overarching improvement of nature—that is, the nature recovery network—are set out in the 25-year environment plan. The environmental improvement plan clauses in the Bill will establish duties to monitor and report performance against the commitments—it should be remembered that the first environmental improvement plan is the 25-year environment plan; that is how this all knits together—creating ample incentive for Government to ensure that local nature recovery strategies work effectively to help to meet all our commitments. That will very much be part of it.

I would like to provide reassurance that we intend to waste no time in producing the regulations following Royal Assent to the Bill. It has to happen that we get on with these things pretty fast. Changing this proposed power to produce regulations into a duty to do so would serve no purpose. The Government are clearly committed both to the establishment of local nature recovery strategies and to the role that the regulations will play.

I hope that what I have said gives a bit more clarity on the direction that the hon. Gentleman was asking about and I ask him whether he would kindly withdraw the amendment.

Daniel Zeichner: We still do not feel that there is sufficient speed. That is our concern. Pilots are great, but we have seen with the environmental land management scheme that we can go through pilots and pilots and pilots; the question is whether the crisis is being addressed sufficiently speedily. We would like things to move more quickly, but I hear what the Minister says, and on that basis I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 96 ordered to stand part of the Bill.

Clause 97

CONTENT OF LOCAL NATURE RECOVERY STRATEGIES

Daniel Zeichner: I beg to move amendment 143, in clause 97, page 98, line 6, at end insert—

“(c) a statement of how the strategy is expected to contribute to achievement of relevant environmental targets.”

We move from pace to content. We would like to say a little about this—we have a number of amendments, which we can probably go through fairly swiftly—because we think that some things could be done to strengthen the content of local nature recovery strategies. Amendment 143 is to underline that we believe that there need to be clearer links between these requirements and the target-setting framework established at the outset of the Bill.

We believe that the strategies should be required to be developed with regard to the need to contribute to delivery of the environmental targets. We fear that, without that, there will be no means to measure how well the nature provisions are contributing to the overall goal of nature recovery. A clear link would ensure that each local nature recovery strategy delivered local and national objectives, as intended.

Local nature recovery strategies need to be the primary means by which ambitious national environmental commitments, priorities and investments are targeted to deliver maximum public and ecological benefits—the whole range, from tree planting to nature-based flood defences. In combination with those clear national priorities and ecological advice, working with local knowledge and expertise, they can be channelled into delivering measurable achievements through the local strategies. That is the way to make these strategies a success.
We think this amendment is helpful, provides clarity and knits the Bill together. From the outset, our worry has been that the Bill is a rather disparate set of measures. Through the amendment, we could tie it all together and make it work better. Once again, the amendment is an attempt to draw out from the Minister the Government’s thinking on the issue, and we will not seek to divide the Committee.

12.45 pm

Rebecca Pow: I understand the hon. Member’s intent in tabling the amendment, but I do not think it is necessary. The Government already have ample measures at their disposal to ensure that the local nature recovery strategies play their part in meeting the relevant targets, once those have been determined. As time goes on there will be opportunity for all manner of targets on nature to be set. That link has already been made.

First, as we have discussed, the Bill gives the Government the power to issue regulations setting out how each local nature recovery strategy must be prepared. Secondly, it will enable Government to issue statutory guidance on what local nature recovery strategies must contain, expanding on the detail on the face of the Bill. Thirdly, it will require the Government to provide the responsible authority with information to assist in preparing these strategies. That information includes a national habitat map as well as the location areas that the Secretary of State believes could contribute to the establishment of a network of areas across England for the recovery and enhancement of biodiversity in England as a whole.

In combination, these measures provide the opportunity for Government to set out a national spatial framework for the nature recovery network and to shape how it is reflected in each local strategy. The Bill also introduces a duty on the Secretary of State to meet the long-term environmental targets. All that reporting and monitoring will feed into that, starting from the ground upwards. All these measures will feed into achieving those targets.

The duty will be sufficient to ensure that the Secretary of State will use the tools referred to and provide responsible authorities with clear information on how local nature recovery strategies should contribute to achieving those specific targets. It will ensure that the Secretary of State has every incentive to monitor the effectiveness of these contributions. I urge the hon. Member to remember that the framework of reporting, monitoring and being held to account will all be part of making sure that we improve nature. I urge him to withdraw the amendment.

Daniel Zeichner: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 144, in clause 97, page 98, line 16, at end insert—

“(e) a description of how actions intended to meet the net gain objective and land management changes supported by public funds should be spatially targeted through Local Nature Recovery Strategies in order to contribute most effectively to environmental improvement.”

This amendment clarifies the relationship between LNRSs, net gain, ELM and other policies.

I suspect that we are trying to achieve the same things through slightly different means. Amendment 144 seeks to ensure that local nature recovery strategies are comprehensive and bring all an area’s environmental gains into a cohesive plan. They should co-ordinate all the local biodiversity net gains arising from planning as well as from the land management changes pursued under ELM schemes. As I have said, we think that linkage to ELM is absolutely key to ensuring a cohesive approach. Again, we think the amendment would strengthen the Bill, which is rather important. I have referred to the Prime Minister’s 10-point plan, which I think needs to be strengthened.

We are helping the Minister here; she could win many brownie points by pointing out to her colleagues that, given that COP26 is nature-based, this is an opportunity to absolutely deliver on nature recovery. I am offering her an early Christmas present, really, and I am afraid that on this occasion we will divide the Committee, because it is a perfect opportunity for her to show that she wants to join us in strengthening her very own Bill.

The Chair: Christmas seems to come earlier and earlier.

Rebecca Pow: I thank the hon. Member for Cambridge for the amendment and for his constant endeavour to strengthen the Bill, which we want to be a strong one—he is right about that—but I do not believe that this amendment is necessary, and I will set out why.

Local nature recovery strategies will be a powerful new tool to help us take a more strategic approach to how we plan for nature’s recovery and to how we use nature-based solutions to address wider environmental challenges. The hon. Gentleman is absolutely right about nature-based solutions, but they are very much part and parcel of this new will to deliver for nature and for all those other benefits—flood control, better water quality, carbon capture and sequestration, and so on—so I think we are on the same page on that.

Cherilyn Mackrory (Truro and Falmouth) (Con): I think the point that the Minister is trying to make, which I reiterate, is that a lot of those schemes are in their infancy. We have just discussed the five pilot plans, one of which my constituency is involved in. If the Bill is too prescriptive, we will be unable to tweak those plans later if they do not work. It is important that we set out the intention on the face of the Bill and let the pilots do their work, so that Ministers and experts in the field have the flexibility to learn from and use best practice moving forward.

Rebecca Pow: I thank my hon. Friend for highlighting that; I could not have put it better myself. That is why we are running the pilots, and it is great that they are already running. The hon. Member for Cambridge asks when we are going to do all this, but we are actually already doing it. My hon. Friend is absolutely right to say that each area will be different: Cornwall will be quite different from south Humber or Keighley. Those areas’ requirements and demands will vary and that is why we need to run pilots.

We do not want the pilots to go on forever—the hon. Member for Cambridge is absolutely right about that—and the Secretary of State and I are at pains to say, “Yes, we
want all the data and feed-in, but we do need action.” I like to think that we will see action. The Secretary of State said on Second Reading that we have to ensure that we work to promote actions through the environmental land management scheme and that those actions work with what we are putting into our local nature recovery strategies. The idea is that those will all work together and that we will then deliver our biodiversity net gain, which will also be helped by the strengthened biodiversity duty on public authorities in the Bill.

Beyond the Bill, the strategies will support local authorities in protecting and enhancing biodiversity through the planning system, and encourage more collaborative working between the public, private and voluntary sectors, to establish and achieve common goals. We are keen that each responsible authority leading production of a strategy properly understands and considers the different mechanisms through which the net gain and adding to nature could be achieved. The responsible authority will not always have direct control of all those different delivery mechanisms, however, so they will need to work collaboratively with other organisations, as we have proposed.

Simply requiring the responsible authority to give its opinion on processes that it does not control will add little to the strategy and could deter partners from engaging constructively. My intention is instead to use the statutory guidance provided with the clauses to explain how the responsible authority should take account of potential delivery mechanisms when preparing its strategy. I agree with the hon. Member for Cambridge: he is absolutely right that we are coming up to a crucial year, with COP26. However, I hope he is very pleased that nature and adaptation are part of the COP. That is why it is so important that we demonstrate that we are going to lead by example, with the pilots and all the measures in the Bill, which show that we are taking these issues seriously; it can work and add to nature. I therefore kindly ask the hon. Member to withdraw the amendment.

Daniel Zeichner: That was a helpful set of interchanges, but I have to say that we need something stronger than, “I’d like to think that we are going to see some action.” The urgency is much more pressing. There is a danger of ending up with perpetual pilots, and we want to go much more quickly and more strongly. On that basis, we do want to see some action. We will press the amendment to a Division.

Question accordingly negatived.

The Committee divided: Ayes 4, Noes 10.

Division No. 37]

**AYES**

Anderson, Fleur
Furniss, Gill
Whitehead, Dr Alan
Zeichner, Daniel

**NOES**

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crobbie, Virginia
Docherty, Leo

Graham, Richard
Jones, Fay
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Rebecca Pow: I have to go back to the last comments from the hon. Member for Cambridge. He said that, “I’d like to think” we might have some environmental improvement. I am thinking about it all the time, as my team know. All my thinking will lead to action, through the Bill—I just want to make that very clear.

I understand that the intention behind the amendment is to ensure that local nature recovery strategies consider the ecological coherence of any areas that they identify in their local habitat map, and I reassure the Committee that I recognise how important ecological coherence will be in the strategies. The current clauses allow us to publish statutory guidance to set out in more detail what each strategy must contain, so we intend to draw on examples of existing good practice in spatial prioritisation for nature, to ensure that ecological coherence is reflected in the strategies. Quite clearly, “link up” and “join up” are very important, and wildlife corridors are exceptionally important.

1 pm

Without ecological coherence, local nature recovery strategies will not be able to perform their essential role of proposing suitable locations to create or improve habitat in order to establish the nature recovery network.
As I have said before, the nature recovery network is obviously a key commitment in the 25-year environment plan, and the Bill makes that plan statutory. I have already referred to the national partnership that was launched earlier this month by Natural England to bring together key bodies to support the establishment of the network. It is really important that we pull together all those that might have an influence on a large area’s ecological coherence, so that they can all work together.

The amendment would limit the consideration of ecological coherence to only part of the strategy, excluding existing protected sites, which are the areas of greatest value for nature. I am sure that is not what is intended, but that is how it might be interpreted. Nor would the requirement apply to locations where the recovery or enhancement of biodiversity could make a particular contribution to other environmental benefits, which is a key aspect of the strategies. I do not believe that is the intention of the hon. Member for Cambridge. I therefore ask him to consider the reassurances I have given and to withdraw the amendment.

Daniel Zeichner: I am grateful to the Minister for her reply. We probably have slightly different views on this issue, but we are both trying to get to the same place. My concern—it goes right back to the planning White Paper, where these issues are touched on very lightly—is about the lack of integration, rather than having a coherent, planned overall approach. That makes the whole approach less effective. We have heard what the Minister says, however, and we do not seek to push the amendment to a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Ordered, That further consideration be now adjourned.
—(Leo Docherty.)
1.3 pm
Adjourned till this day at Two o’clock.
CONTENTS

Clauses 98 to 122 agreed to, some with amendments.
Schedule 17 agreed to, with an amendment.
Clauses 123 and 124 agreed to.
Schedule 18 agreed to.
Clause 125 agreed to.
Schedule 19 agreed to, with amendments.
Clauses 126 to 129 agreed to, some with amendments.
Adjourned till Tuesday 24 November at twenty-five minutes past Nine o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 23 November 2020

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The Committee consisted of the following Members:

Chairs: James Gray, Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Anderson, Fleur (Putney) (Lab)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Browne, Anthony (South Cambridgeshire) (Con)
† Crosbie, Virginia (Ynys Môn) (Con)
† Docherty, Leo (Aldershot) (Con)
† Furniss, Gill (Sheffield, Brightside and Hillsborough) (Lab)
† Graham, Richard (Gloucester) (Con)
† Jones, Fay (Brecon and Radnorshire) (Con)
† Jones, Ruth (Newport West) (Lab)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Zeichner, Daniel (Cambridge) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 19 November 2020

[Afternoon]

[Sir George Howarth in the Chair]

Environment Bill

2 pm
Clause 97 ordered to stand part of the Bill.

Clause 98

Information to be provided by the Secretary of State

Daniel Zeichner (Cambridge) (Lab): I beg to move amendment 146, in clause 98, page 98, line 45, at end insert—

“(3A) The Secretary of State must produce a strategy to inform the development of a Nature Recovery Network, including a spatial description of the opportunities for recovering or enhancing the environment through actions to protect or restore biodiversity, in terms of habitats and species, in England.

(3B) The Secretary of State must publish guidelines that set out a process for review and approval of Local Nature Recovery Strategies by Natural England to confirm the priorities and proposals identified in the Local Nature Recovery Strategy would contribute adequately to the delivery of a national Nature Recovery Network and relevant environmental targets.”

The amendment requires the Secretary of State to undertake the mapping and planning work necessary to carry out their functions in relation to the national habitat map.

We welcome the provisions of the clause. It requires the Secretary of State to assist public authorities in preparing their local nature recovery strategy by publishing a national habitat map for England, and to help identify national conservation sites and other areas of particular importance to biodiversity. Predictably enough, we have one or two concerns and comments about that, which our amendment 146 allows us to address.

If this national habitat map is to be effective in informing the preparation of local nature recovery strategies, it needs to be available in good time for the preparation of local nature recovery strategies. As we touched on earlier, we want that to be done speedily, so the national map needs to be done speedily.

It will not be sufficient simply to present national conservation sites on the map. We will also need critical information—on, for example, the condition of sites and the opportunities for recovery—to help direct public authorities in their important work to improve and restore national conservation sites.

The Government’s proposal is a start—it provides some of the information that authorities will need—but good planning for the natural environment requires more than the identification of isolated patches of nature on a map; it requires a strategy for enhancing and linking sites, throughout urban and rural areas, to facilitate nature’s recovery. What is missing from the clause is provision for the Government to undertake work to identify habitat opportunities. Nor is there any national system of review of the local and national recovery strategies put in place—any quality control to check that each one is making a meaningful contribution. Our amendment 146 would address these omissions by requiring the Secretary of State to “produce a strategy to inform the development of a Nature Recovery Network”; to “set out a process for review and approval of Local Nature Recovery Strategies by Natural England”; and to confirm that each one “would contribute adequately to the delivery” of the national nature recovery networks that we need. Those requirements would give the Secretary of State responsibility for knitting local nature recovery strategies together, which is what the Minister said she wishes to do, so that they function as a coherent national network.

As this is a good opportunity to help the Minister in her endeavours to rescue and strengthen the Bill, I will give her one last opportunity to accept our assistance; we will seek a Division on the amendment.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I welcome the hon. Member’s ambition of providing a national framework to inform the development of the nature recovery network, but the Bill already provides for a framework.

Part 1 of the Bill requires the Government to publish an environmental improvement plan, setting out the steps that they intend to take to improve the natural environment. It also establishes the 25-year environment plan, which, as I said this morning and so many other times, is the first environmental improvement plan. That first plan commits the Government to establishing a nature recovery network, and to publishing a new strategy for nature that includes the network. We have no intention of reversing any commitments made in the 25-year environment plan. Of course, the Office for Environmental Protection will also hold the Government to account on their progress in implementing the environmental improvement plans, including for the nature recovery network.

The clause requires the Secretary of State to provide information that we intend will offer a national spatial framework for the network. This framework includes a national map of areas of existing value for biodiversity, as well as areas where there are opportunities to enhance biodiversity and associated wider environmental benefits. There is also provision in the Bill for the Secretary of State to issue statutory guidance on what the local natural recovery networks should contain and regulations on how they should be protected. These mechanisms will allow the shaping of how each responsible authority reflects the information provided under clause 98.

Natural England has a key role to play in supporting the establishment of the local nature recovery strategy, as I explained earlier. We want them to help produce national guidance to support the responsible authority in producing each strategy and to be the responsible authority themselves where needed. These roles are
provided for in the Bill. Regulations produced under clause 96 will be crucial for establishing roles and responsibilities. Provisions for local nature recovery strategies in the Bill will form part of environmental law. This means that the Office for Environmental Protection will have oversight of these provisions, as it does over all aspects of environmental law.

I hope that the hon. Member is reassured that the Bill, as a whole, provides a suitable framework for the nature recovery network, as well as appropriate mechanisms to ensure that local nature recovery strategies contribute to its development. Therefore, I request that amendment 146 be withdrawn.

Daniel Zeichner: I am grateful for the Minister’s response and to her for reintroducing the OEP at this stage. As she will recall, this side were not entirely convinced of the efficacy of this new organisation, and some of us do worry that it will just be a desk in the Department for Environment, Food and Rural Affairs in the early new year, and we want it to be much tougher than that. I suspect her response on this has been the same as on many of these attempts from our side to strengthen and add vim and vigour to this process. However, I am afraid I am still not persuaded or convinced, but I do thank her for the charm and courtesy she has shown in our exchanges. I would still caution her to beware the bloke on the bulldozer, and we do think there is a danger that this Bill’s good intentions are undermined. We would like to press the amendment to a vote.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 38

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth
Whitehead, Dr Alan
Zeichner, Daniel

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo
Graham, Richard
Jones, Fay
Mackrory, Cherylyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.
Clause 98 ordered to stand part of the Bill.

Clause 99

INTERPRETATION

Amendment proposed: 147, in clause 99, page 99, line 16, leave out “95” and insert “93”.—(Dr Whitehead.)

Question put. That the amendment be made.

Question accordingly negatived.

Amendment proposed: 148, in clause 99, page 99, line 31, at end insert—

“(4) ‘Public Authority’ means—

(a) a Minister of the Crown, a government department and public body (including a local authority), and
(b) a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons—

(i) the OEP;
(ii) a court or tribunal;
(iii) either House of Parliament;
(iv) a devolved legislature;
(v) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998.”—(Dr Whitehead.)

Question put. That the amendment be made.

Question accordingly negatived.
Clause 99 ordered to stand part of the Bill.

Clause 100

CONTROLLING THE FELLING OF TREES IN ENGLAND

Question proposed. That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 15 be the Fifteenth schedule to the Bill.
Clause 101 stand part.

Dr Alan Whitehead (Southampton, Test) (Lab): I appreciate that there are no amendments in this group, but I think it is worth having a brief stand part debate here to mark the fact that we have moved from talking about nature and biodiversity to a very brief section in this Bill on trees. I say very brief section, because even though the heading above clauses 100 and 101 and schedule 15 is “Tree felling and planting”, it does not actually deal with planting at all. It only deals with cutting trees down.

We think, among other things, that is a tremendous opportunity missed. Although we are limited in this particular group to talking about the clauses and schedule, I ought to draw the Committee’s attention to our proposed new clauses later in the Bill on this particular subject that do address tree planting. As we know from the Prime Minister’s 10-point plan, the question of tree planting is very much on everyone’s minds, and for the obvious reason that tree planting is going to be crucial to reaching our future net zero targets.

There have been various estimates of how many trees need to be planted over the next period to sequester the relevant amounts of CO₂ to create a significant negative contribution to our net zero target by 2050. The tree-planting ambition is not a question of running on to a site, sticking a number of saplings in the ground, running away again, and hoping that they will all have grown into large trees in 30 years and will sequester carbon satisfactorily. The process of planting trees requires an enormous amount of loving care and attention, both in the planting and in the subsequent maintenance of the trees.

2.15 pm

If we were running around planting large numbers of trees, squirrels, deer and various other animals might get to them over a short time, or landowners
might decide, after a rush of enthusiasm for planting on their land, that they did not like the trees very much—we will discuss nature covenants later. Come 2050, if those trees are to count not just for the sake of counting, but for the purpose of sequestration, they have to go through their lives more or less intact, subject to some natural losses.

At the moment, there are some agreements and controls on planting trees in return for grants for management, stewardship and development, but one would have thought that on planting, the Bill presents an opportunity to put precisely those sorts of protective measures in place to ensure that trees are not only planted, but actually go ahead in their careers and become the best trees that they can be for the purpose of sequestration. Indeed, the Government are drawing up a tree strategy at the moment, but it does not seem to have come anywhere near the Bill. We have no clear understanding of what legislation that strategy might lead to or whether it will end up being entirely voluntary, which would be a terrible idea if we want to ensure that planted trees live their lives in the best way possible.

Ruth Jones (Newport West) (Lab): My hon. Friend is making a powerful point. After all, page 99 of the Bill includes “Tree felling and planting”, which are the two sides of the coin, but the whole of the next page gives everybody the authority to cut down trees, as he has quite rightly pointed out. Does he agree that that is a rather negative way forward?

Dr Whitehead: My hon. Friend makes an important point. If someone chanced upon the Bill, flicked through it, looked at the contents at the front and said, “There is a section on tree felling and planting; that’s good, because we want to know about tree planting,” and then found that there was no tree planting, that would be rather an odd outcome, yet that is what we have in front of us. I would like to know, at the very least, what the Minister thinks can be done to rectify that omission and whether she intends, when the tree strategy is mature, to amend the Bill or, if this Bill has already gone through the whole of the House, introduce a subsequent Bill that will match up with what will be in the Environment Act, to give whole-life regulation and protection to tree planting, which is absolutely necessary for our ambitions for the future. Although we do not want to amend these clauses, because we accept that they are within the limitations written into the Bill, we give notice that we intend to proceed to rectify at least part of the issue concerning the heading of the clauses as we move on to the new clauses.

There is an indication, certainly in schedule 15, that the problem of maintenance and stewardship for the future is not anticipated, even on the question of felling and restocking trees. Schedule 15, which is an amendment to the Forestry Act 1967, requires restoration orders to be put in place—a good thing in itself—where people have felled trees when they should not have done or without the proper provisions being applied for.

Schedule 15 provides a welcome advance, in that there is clear regulatory guidance on restocking, but that guidance then starts to fall down, inasmuch as the restocking orders last for only 10 years. The precise problem that we have outlined with replanting could arise for the restocking orders. The person who has knocked the trees down might grudgingly replant more under the restocking order, but 10 years later, he or she can pull them all up again.

That is certainly not in line with the sort of stewardship that we think has to take place for trees, both in general and in particular with regard to the restocking orders. I would appreciate it if the Minister could comment this afternoon on whether she thinks the provisions in schedule 15 for the duration of restocking orders are sufficient in the light of our discussion, or whether she might review that for future reference.

Fleur Anderson (Putney) (Lab): I know that I represent millions of people across the country in wanting to speak more about trees and seek more about trees in the Bill. There are some things in these clauses that we can agree on. I know that the Minister is a lover of ancient woodland and that the clauses are close to her heart as a chair of the all-party parliamentary group on ancient woodland and veteran trees.

Rebecca Pow: I am no longer allowed to be the chair.

Fleur Anderson: As a former chair, she has said of ancient woodland:

“It is an absolute travesty that only 2% remains and we must ensure that no more is lost.”

We agree on proposed new section 96A(1) of the Highways Act 1980, as inserted by clause 101, in which it becomes statutory for local authorities to “consult members of the public before felling a tree on an urban road”.

Constituents in Putney will welcome that measure, because in many cases, they do not know why a tree has been felled and they would like to have had a say. It gives our fantastic volunteer tree wardens more power to look at the trees in our urban areas.

We also agree that the Bill is landmark legislation that legislates for urgent action on the biggest environmental challenges of our time. Therefore, it is disappointing that clause 100 is sadly lacking. We will talk about a tree strategy later when we debate new clause 19, but that is where this clause could have come in. Putting an English tree strategy on a statutory footing is key to delivering the commitments in the 25-year environment plan, alongside which the Bill sits.

The 25-year environment plan has targets for net zero carbon emissions by 2050 and for planting 30,000 hectares of trees a year across the UK. We need interim and overall targets in the Bill to ensure that we deliver on those targets. Why is that? Trees sequester carbon, support biodiversity, protect against floods, stabilise the soil, improve our physical and mental wellbeing, filter air pollutants and help to regulate temperatures. The Environment Bill seeks to do all of these, and more on trees would enable us to do it better and make it that landmark legislation. However, 53% of UK woodland wildlife is in decline. Woodland expansion is well below the rate necessary for the future. DEFRA has a woeful track record of missing tree planting targets. It cannot be left out of this Bill and just left to happen. History shows that it does not just happen. We really need a statutory England tree strategy.
There is currently no formal mechanism to set targets for protection, restoration and expansion of trees and woodland in England. Here is the opportunity to legislate and address the importance of trees in tackling the climate and nature crisis we face. This Bill aims to restore and enhance green spaces, yet it falls short in not containing a necessary clause about a tree strategy. There should be a strategy with the following objectives: increasing the percentage of tree cover in England, increasing the hectares of new, native woodland creation by planting and natural regeneration, and increasing the hectarage of plantation of ancient woodland undergoing restoration.

Richard Graham (Gloucester) (Con): I pay tribute to the work of the Woodland Trust, which has helped schools in the hon. Lady’s constituency, I am sure, as well as those of all members of the Committee. Does she agree that the sort of projects it leads will help the Government to achieve their goals of planting masses more trees across the country and involving school children?

Fleur Anderson: I thank the hon. Member for his intervention noting the work of the Woodland Trust, which is in agreement with the points I have just made. In fact, this is exactly what it is calling for. Indeed, given that he has talked about the excellent work of the Woodland Trust, I hope he will be supporting new clause 19 when we come back to it. The Woodland Trust would like an English tree strategy to be put on a statutory footing and gave evidence to that effect to this Committee previously, and many constituents from across the country have written in to support this also.

Richard Graham: The point I was trying to make was to highlight the good work that the Woodland Trust is doing alongside the Government, rather than to necessarily support the Opposition’s suggested amendments to the Bill.

Fleur Anderson: I understand the clarification. I would say that the Woodland Trust is doing fantastic work, but it is also calling for this statutory framework. I put Members on notice that we will return to this issue when we come to new clause 19. Therefore, I ask all Committee members to hastily look that up and, I hope, support it when it comes. Alternatively, as the shadow Minister has mentioned, let us see an actual, whole tree Bill come to Parliament with all urgency. That would be excellent as well.

Rebecca Pow: I thank the hon. Member for Edinburgh North and Leith for that intervention. Indeed, it is all credit to Scotland. It has a different, much wilder landscape, where trees are very well adapted to the landscape. I do take my hat off to the tree planting that Scotland does, and we all like to learn from good practice across borders. Forestry is, of course, devolved, and that is why introducing a statutory target for the UK is not appropriate for this stage. I just want to touch on general points about tree planting before I address what the actual clause is dealing with, which really pertains to tree felling.

Yes, we do have an England tree strategy, which does set out the means to protect existing trees and see more planted across the country. We have a massive commitment to more tree planting to the tune of 30,000 hectares by 2025. It is ambitious, but we do have, and we are bringing forward, the measures to make that possible. That long-awaited and talked-about tree strategy will be launched in the spring of 2021. A huge amount of work has gone into liaising on that consultation.

2.30 pm

Richard Graham: The Minister is quite right to highlight the good work that has already been done. Does she agree that there is a specific opportunity in many parts of the country in recycling centres? As more councils gradually get out of the business of landfill, there is an opportunity to transform the landscape of these existing recycling centres into places that can generate eco-woodland and green energy and fulfil lots of good environmental purposes.

Rebecca Pow: I thank my hon. Friend for a slightly off-the-wall intervention. I bet he has a recycling centre in his own constituency in mind. There will obviously be opportunities.

I will not say that the whole tree planting industry has to be kick-started, because there was a brilliant piece on “Farming Today” this morning—I do not know whether anyone was awake that early—about massive tree planting going on in the north. There is a huge private forestry scheme; it is private and has lots of input by Natural England and the Forestry Commission. It feeds into a big sawmill; the sawmills need the wood, and we want to stop the wood being imported, so we need to grow it at home. Although one may not think that the word “trees” is mentioned enough, all the policies we are putting in place to deliver biodiversity net gain and local nature recovery, or a great many of them, will involve tree planting.

Ruth Jones: Does the Minister not agree that, although it is great to have the tree planting strategy coming up next year, this is a missed opportunity to put it in the Bill, making it a really good, comprehensive, joined-up piece of work?

Rebecca Pow: I thank the hon. Member for that. While she makes a good point, I point her to the fact that we did a public paper this summer, which explored whether a statutory target for trees in England would be appropriate under the target-setting process of the Environment Bill. Perhaps the shadow Minister missed it, but it shows that all of this work is ongoing. We have this target-setting measure in the Bill, and this will be a prime example of where a target ought to be set.

Deidre Brock (Edinburgh North and Leith) (SNP): I wonder whether the Minister will also pay tribute to the work of the Scottish Government, as over 80% of new plantings in 2018-19 were in Scotland. Are there lessons to be learned there?
I would take issue. I do not honestly believe that picking out individual things right now, putting them in the Bill and saying there should be a target on them is the right way to go about it. We need the ability to make the target, but we also need to get absolutely right what that target should be. On those grounds, one could say, “We’ll have a target for reeds, for pennywort and for some corncockle.” That is not the way the Bill works. I hope I am making that quite clear. I hope I am also making it quite clear that we have this massive commitment to tree planting. Indeed, that was outlined in our manifesto, making it quite clear that we have this massive commitment to plant nearly 12,000 trees in the first year? It did not need a statutory footing to do so.

Rebecca Pow: I absolutely applaud Solihull if it has already planted that many trees. There is a massive amount of voluntary work and other initiatives going on. I will also point out that tree planting will completely dovetail with the environmental land management scheme to deliver lots of those big projects, especially the landscape-scale projects. That will obviously help the climate change, the carbon sequestration work and all the things that Members have touched on.

Richard Graham: Does the Minister agree that the Queen’s Commonwealth Canopy has also played a helpful role? Many of these plantings were done specifically by primary school children.

Rebecca Pow: I meant to reference that just now, so I am glad my hon. Friend mentioned it. I believe that all MPs got sent three trees—I cannot remember what year that was, but we were—and I planted my tree using the instructions. Some other MPs called me up to say, “Gosh, what do I do with these things that look like twigs? How do I plant them?” I talked them through it, because some of the trees had obviously been in the box for quite a long time. It is a great project to link up these areas and to get children, in particular, planting trees.

I am going to deal now with what is actually in the clause. I would not belittle this clause about tree felling and planting at all. It is very important. We have committed to planting and protecting all these trees, and the clause will help us to protect the trees we plant. Street trees are often the closest green infrastructure to people’s homes—the hon. Member for Putney talked about how much value people in urban areas get from trees.

Clause 101 places a duty on local highway authorities to consult before felling street trees, guaranteeing the local public an opportunity to understand why a tree may be felled and to raise concerns if they wish. That is really important, because we have had issues elsewhere in the country, where it has caused an absolute storm when the council has come and cut down trees and people simply cannot understand why that was being done. It is really important to get the messaging right.

Local highway authorities should have regard to guidance the Government will publish. This will provide certainty on how the duty should be implemented, as well as consistent street tree management across the country. Under certain circumstances, however, trees are exempt from the duty, thereby not impeding action to address trees that might have to be urgently felled—for example, due to a tree disease, which would then make them a danger. The introduction of this duty reflects the Government’s commitment to protecting our urban trees, which people value so highly and which are important in the urban space.

While reported illegal tree felling rates are low, no level of illegal felling is acceptable. We propose to address this through clause 100 and schedule 15. The felling licence system works well, but is now over 50 years old. Since its introduction, the driving forces behind illegal felling have changed, and statutory protections no longer serve as a deterrent to some illegal felling. Our forestry enforcement measures resolve this and support effective enforcement of the felling licence regime.

First, we will increase the penalty for illegal felling to an unlimited fine, addressing the gains that can be made from illegal felling to realise the value of the land. Court powers to compel replanting will also be increased. Secondly, the measures will ensure that potential buyers or new owners of illegally felled land are made aware of their obligation to replant that land. That will ensure that restocking is achieved, regardless of whether that land is sold.

The hon. Member for Southampton, Test raised the issue of restocking and the 10-year issue in the schedule. If a person replants following the restocking order, but then fells the trees again, that is breaking the law. The trees can be felled only with a licence; so a fine could be applied in those circumstances. It is thanks to other changes in the Forestry Act 1967 and the changes that the Environment Bill is making that that will be the case. I hope that clarifies the issue.

The public obviously care very deeply about trees, and clauses 100 and 101 and schedule 15 will ensure that we have powers to protect and value them. That will allow us to retain the benefits they deliver for us—capturing carbon, providing shade in our streets and homes, creating homes for wildlife and, not least, looking beautiful. When I chose my flat to live in in London with my allowance, one of my chief criteria was that I could see a tree from the window, which I can. It gives me a great deal of pleasure and makes me breathe easy.
This issue is not just about felling; it is about a number of other aspects of good forestry management of trees as they grow to maturity.

Rebecca Pow: I think I have given a very clear answer about the felling. If someone replants, that is an offence; they will be prosecuted for it. I think I have made that very clear. I agree with the hon. Gentleman that maintenance is important; quite clearly it is. I also agree that planting a tree is not a simple thing; it has to be planted, watered, maintained and protected from pests, and there is a great deal of work to be done. However, I think there is an understanding of that for anybody who plants trees. Indeed, particularly when we bring forward these bigger schemes, maintenance and all that side of it will be an important part and parcel of those projects and those schemes.

I hope that I have covered this issue quite clearly in my explanation and answered the questions, and I ask the Committee to agree that clause 100 stand part of the Bill.

Question put and agreed to.

Clause 100 accordingly ordered to stand part of the Bill.

Schedule 15 agreed to.

Clause 101 ordered to stand part of the Bill.

Clause 102

Conservation covenant agreements

Question proposed, That the clause stand part of the Bill.

The Chair: With this, it will be convenient to discuss the following:

Clauses 103 to 106 stand part.

Clause 107 stand part.

Government amendments 224 and 225.

Clause 108 stand part.

Clauses 109 to 115 stand part.

That Schedule 16 be the Sixteenth schedule to the Bill.

Clauses 116 to 120 stand part.

Rebecca Pow: Can I just check that I am speaking about all those clauses in one go, because that was a lot to take in?

The Chair: Yes.

Rebecca Pow: Thank you. This part of the Bill is based, by and large, on the excellent work done by the Law Commission; I thank the Law Commission for the ongoing support that it has given us.

Conservation covenants are private agreements entered into voluntarily to deliver a conservation purpose for the public good. They can cover conservation of the natural or heritage features of the land; that is set out in clause 102(3). Importantly, they can bind subsequent landowners, giving them the potential to deliver lasting conservation benefits for future generations; that is referred to in clause 107.

Conservation covenants are crucial, because there is currently no simple legal tool that landowners can use to ensure that conservation benefits are maintained when land is sold or passed on. Current workarounds are costly, complex and have limitations, so opportunities to secure long-term conservation outcomes are being lost. Our consultation last year found significant support from a range of bodies, including farmers, landowners, and conservation organisations, for the whole idea of conservation covenants. The covenants will provide a way of giving biodiversity net gain sites and other key areas for nature the long-term conservation management that they need, and will make it easier for businesses and others to fund nature recovery.

2.45 pm

Conservation covenants are made between a landowner and a designated responsible body, such as a conservation charity or a public or for-profit body. Organisations must apply to the Secretary of State to be designated and show that conservation is one of their core functions. Applications will be assessed by the Secretary of State against published criteria, as outlined in clause 104.

Responsible bodies will monitor delivery of the covenants and can take enforcement action if necessary.

Conservation covenants are a flexible tool: the parties can design them to suit their own circumstances, and the duration of a covenant will be whatever the landowner and responsible body specify and agree. If they choose not to specify a duration, it will default to an indefinite period for freeholders and to the remainder of the lease for leaseholders, as covered in clause 106.

Conservation covenants can include positive as well as restrictive land management obligations. A conservation covenant might be used, for example, when a wildlife charity that is a responsible body identifies an area of land containing the habitat of a key species. The responsible body could offer to make a payment to the landowner in return for the landowner’s agreement to maintain the land as a habitat for that species. The conservation covenant agreement would set out the steps that the landowner would need to take, such as coppicing woodland, maintaining a wild flower meadow, or any other kind of land management that might be required.

A conservation covenant agreement must be in writing and signed by the parties, and it must appear from the agreement that the parties intend to create a conservation covenant, as referred to in clause 102. Our guidance on conservation covenants will emphasise those requirements and include suggested wording that could be used to demonstrate that an agreement is intended to create a conservation covenant. We have engaged with stakeholders on our draft guidance, and we will continue to do so before it is finalised. I have had meetings and discussions with a range of organisations, including the National Farmers Union, which particularly wanted to talk about the issue. As outlined in clause 107(5)(b), a conservation covenant has to be registered on the local land charges register to bind subsequent landowners, and that register is available to the public.

Finally, Government amendments 224 and 225 to clauses 107 and 116 respectively will clarify that the reference in the clauses to section 3 of the Local Land Charges Act 1975 is to the version that has been substituted
by schedule 5 of the Infrastructure Act 2015, and not to the original version. I have covered quite a lot there, Sir George.

Dr Whitehead: We have no feelings this afternoon that we want to oppose these clauses. On the contrary, we think that the establishment of conservation covenants is a good idea, provided that those covenants can really last in the way they work. The Minister has given a good account of how the covenants will work and can be enforced. Although this is a lengthy number of clauses in a lengthy part of the Bill, I hope hon. Members will not feel that we have failed to examine it. Indeed, having examined it, we think that these are a proper series of measures to take, and we hope that conservation covenants will, as the Minister mentioned, be an important part of the process in years to come.

Question put and agreed to.

Clause 102 accordingly ordered to stand part of the Bill.

Clauses 103 to 106 ordered to stand part of the Bill.

Clause 107

Benefit and Burden of Obligation of Landowner

Amendment made: 224, in clause 107, page 105, line 10, after “1975” insert “(as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015)”.—[Rebecca Pow]

This amendment clarifies that the reference in clause 107(6) to section 3 of the Local Land Charges Act 1975 is to the text as substituted by the Infrastructure Act 2015 and not the original text.

Clauses 107, as amended, ordered to stand part of the Bill.

Clauses 108 to 115 ordered to stand part of the Bill.

Schedule 16 agreed to.

Clause 116

Power of Responsible Body To Appoint Replacement

Amendment made: 225, in clause 116, page 109, line 13, after “1975” insert “(as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015)”.—[Rebecca Pow]

This amendment clarifies that the reference in clause 116(4) to section 3 of the Local Land Charges Act 1975 is to the text as substituted by the Infrastructure Act 2015 and not the original text.

The original text still has effect in certain local authority areas to which the new text does not yet apply.

Clause 116, as amended, ordered to stand part of the Bill.

Clauses 117 to 120 ordered to stand part of the Bill.

Clause 121

Duty of Responsible Bodies to Make Annual Return

Dr Whitehead: I beg to move amendment 14, in clause 121, page 111, line 17, leave out “may” and insert “must”.

I will be brief. This is a further clause concerning mays and musts. I am sure that my hon. Friend the Member for Cambridge will be fascinated by this clause. He will observe that, in the clause, two musts are cancelled out by one may. The clause states that a designated body must make an annual return to the Secretary of State and that the annual return must give any information that is prescribed under subsection (4). However, that subsection states that the Secretary of State may by regulations make that provision in the first place. Basically, clause 121(1) and (3) put in two musts and, indeed, there are further musts below that. I am sure that my hon. Friend will want to reflect that in his calculations on these matters in the future. Perhaps there will be further opportunities to reflect further as the Bill progresses, but I do not want to press the amendment to a Division. I merely wish to point out that the musts and mays continue in substantial numbers as we progress through the Bill.

Rebecca Pow: I thank the hon. Member for welcoming the conservation covenant, and I am tempted to ask whether it has driven him to excitement.

Dr Whitehead: Steady on. I would not go quite that far. I am sort of elevated.

The Chair: Order. This is all very entertaining, but it is not getting us any further with the Bill.

Rebecca Pow: Sorry, Sir George. I could not resist it, because we were referring to the hon. Member’s excitement on Tuesday. I thank him for his proposed amendment.

Clause 121 places a duty on responsible bodies to make an annual return to the Secretary of State. The return must state whether they held any conservation covenants during the relevant period, the number of covenants and the area of land that each one covers. As the duty is already on the face of the Bill, in clause 121, no regulations will be needed to require responsible bodies to provide that information. However, conservation covenants are a tool that are intended to be used over the long term. It is therefore important that the Secretary of State should be able to obtain additional information in annual returns, if that proves necessary in the future.

Consequently, the clause also provides the Secretary of State with the power to make regulations about the annual returns. That power can be used, if needed, to require from responsible bodies more information than that already required by the Bill. I cannot anticipate at this point what such additional information might be, but any information required to be provided must be about, or connected with, the responsible body, its activities, any conservation covenant that it held during the relevant period, or the land covered by any such covenant.

As I have previously explained about similar amendments, it is therefore entirely appropriate to provide the Secretary of State with flexibility as to when and how the regulation-making provision is given effect. Primary legislation consistently takes such an approach to the balance between powers, which are mays, and duties, which are musts. I therefore ask the hon. Member to withdraw what I think is just a probing amendment anyway.

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 121 ordered to stand part of the Bill.

Clause 122 ordered to stand part of the Bill.
Schedule 17

APPLICATION OF PART 7 TO CROWN LAND

Rebecca Pow: I beg to move amendment 71, in schedule 17, page 222, line 36, leave out from beginning to end of line 9 on page 223 and insert—

"Demesne land

3 (1) Where land belongs to Her Majesty in right of the Crown but is not held for an estate in fee simple absolute in possession—

(a) Her Majesty in right of the Crown is to be regarded for the purposes of Part 7 and this Schedule as holding an estate in fee simple absolute in possession in the land, and

(b) any estate granted or created out of the land is to be regarded for those purposes as derived from that estate in fee simple.

(2) The land referred to in sub-paragraph (1) does not include land which becomes subject to escheat on the determination of an estate in fee simple absolute in possession in the land if—

(a) it is land to which an obligation under a conservation covenant related when the estate determined, or

(b) it is not land to which such an obligation related at that time and Her Majesty in right of the Crown has not taken possession or control of the land, or entered into occupation of it.

Land subject to escheat

3A (1) This paragraph applies where land becomes subject to escheat on the determination of an estate in fee simple absolute in possession in land to which an obligation under a conservation covenant relates.

(2) The conservation covenant is not terminated on the determination of that estate, even though the appropriate authority has no liability in respect of the obligation unless and until the Crown—

(a) takes possession or control of the land, or enters into occupation of it, or

(b) becomes the holder of—

(i) an estate granted by the Crown out of the land, or

(ii) an estate in land derived (whether immediately or otherwise) from an estate falling within sub-paragraph (i).

(3) If the Crown takes possession or control of the land, or enters into occupation of it—

(a) the Crown is to be regarded for the purposes of Part 7 and this Schedule as holding an estate in fee simple absolute in possession in the land, and

(b) that estate is to be regarded for those purposes as immediately derived from the determined estate.

(4) If the Crown grants an estate out of the land after having previously taken possession or control of the land, or entered into occupation of it, the estate is to be regarded for the purposes of Part 7 and this Schedule as immediately derived from the estate mentioned in sub-paragraph (3)(a).

(5) But if the Crown grants an estate out of the land without having previously taken possession or control of the land, or entered into occupation of it—

(a) the acts of the Crown in granting that estate are not to be regarded for the purposes of Part 7 and this Schedule as taking possession or control of the land, or entering into occupation of it, and

(b) the new estate is to be regarded for those purposes as immediately derived from the determined estate.

(6) In this paragraph and paragraph 3B ‘the Crown’ means Her Majesty in right of the Crown or of the Duchy of Lancaster, or the Duchy of Cornwall, as the case may be.

Bona vacantia

3B (1) This paragraph applies where an estate in land to which an obligation of the landowner under a conservation covenant relates vests in the Crown as bona vacantia.

(2) The appropriate authority has no liability in respect of the obligation in relation to any period before the Crown takes possession or control of the land or enters into occupation of it.”

This amendment replaces paragraphs 3 and 4 of Schedule 17 with three new paragraphs. Paragraph 3A is new and deals with the application of Part 7 to land to which a conservation covenant relates which becomes subject to escheat to the Crown (for example where the land is disclaimed by a trustee in bankruptcy). Paragraphs 3A and 3B are derived from the current paragraph 3, subject to some minor changes arising from consideration of paragraph 3A.

This amendment ensures that conservation covenants survive when land passes to the Crown through a process known as escheat. Doing so provides consistency in our overall policy on conservation covenants, which is to ensure that they can continue to affect land when it changes hands. The Bill as introduced has the effect that conservation covenants survive when land passes to the Crown as bona vacantia, or ownerless property. Land passes on bona vacantia in various circumstances, such as—in some cases—when a person dies without a will. That actually happened to the house I bought: they could not find who the house was left to in a will, so it went to the Crown and was sold by auction. This Government amendment replicates that effect for land that passes to the Crown by virtue of a process known as escheat. That can happen in a range of circumstances—for example, when a liquidator disclaims freehold land that belonged to a company that is wound up. The purpose of the amendment is to ensure that, in those circumstances, the conservation covenant is not extinguished by the escheat of the land.

Amendment 71 agreed to.

Schedule 17, as amended, agreed to.

Clauses 123 and 124 ordered to stand part of the Bill.

Schedule 18 agreed to.

Clause 125 ordered to stand part of the Bill.

3 pm

Schedule 19

CHARGES FOR SINGLE USE PLASTIC ITEMS

Dr Whitehead: I beg to move amendment 187, in schedule 19, page 229, line 9, at end insert—

“provided that such regulations do not regress upon the scope or purpose of REACH regulations as applied prior to the amended regulations being enacted”.

The Chair: With this it will be convenient to discuss the following:

Amendment 3, in schedule 19, page 229, line 9, at end insert—

“(1A) Regulations made under this paragraph must not regress upon the protections or standards of any Article or Annex of the REACH Regulation.

(1B) Subject to sub-paragraph (1A), the Secretary of State—

(a) must make regulations under this paragraph to maintain, and

(b) may make regulations under this paragraph to exceed parity of all protections and standards of chemical regulation with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals.”

This amendment would set a minimum of protections under REACH and remove the possibility that a Secretary of State might lower standards than are in place currently, whilst reserving the right for them to set higher standards should they choose.
Amendment 198, in schedule 19, page 229, line 13, at end insert—
“both in general and, in particular, the precautionary principle referred to in Article 1(3).”

This amendment would require Ministers, in considering consistency with Article 1 of the REACH Regulation, to pay specific attention to the precautionary principle.

Amendment 174, in schedule 19, page 229, line 32, at end insert—
“provided that such regulations do not repress upon the scope or purpose of the REACH enforcement regulations as applied prior to the amended regulations being enacted”.

New clause 11—Ongoing relationship with EU-REACH—
“(1) The Secretary of State must not use regulations under Schedule 19 to diminish protections provided by REACH legislation.

(2) The Secretary of State must by regulations seek to maintain regulatory parity with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals after IP completion day.

(3) It is an objective of Her Majesty’s Government as part of any trade negotiations with the European Union to seek to secure associate membership of the European Chemicals Agency for the United Kingdom after IP completion day to enable it to continue to participate in the EU-REACH framework.

(4) Regulations under subsection (2) are subject to the affirmative procedure.

(5) In this section, ‘IP completion day’ has the same meaning as in section 39 of the European Union (Withdrawal Agreement) Act 2020.

This new clause would require continued parity with REACH.

Dr Whitehead: As you have indicated, Sir George, amendment 187 is being dealt with alongside a number of other amendments, in my name and those of other Opposition Members, and a new clause, which we fully support, in the names of a number of Members who were on the Committee but are on it no longer.

Hon. Members will be aware that we have now moved away from conservation covenants, trees and biodiversity towards a very important new issue: chemical regulation, imports, exports and trading in this country post January 2021. The amendments, and indeed the schedule that they amend, deal with a particularly perverse decision by Her Majesty’s Government upon leaving the EU. They do not wish to have a negotiation or a discussion with the ECHA, the European Chemicals Agency, about associate membership of the agency, under which the REACH regulations—on the registration, evaluation, authorisation and restriction of chemicals—sit, and I will come to that in a moment. Instead, they wish to wholly recreate a UK series of REACH regulations to be regulated by the Health and Safety Executive rather than the ECHA.

The REACH regulations are one of the substantial achievements of the EU. They are a series of regulations that comprehensively sort out the transportation, trade, appearance on particular markets, and safety of chemicals across the EU. They also provide a comprehensive regime for identifying chemicals—a sort of institutional memory of what has gone on with chemicals. Companies that deal with chemicals have to systematically provide additions to the European database of chemicals, which now stands at something like 23,000 different chemicals. That database is available to all EU member states to inform their policies relating to what they consider acceptable for chemical trade and chemicals landing in their countries, what they can avoid bringing into their countries, and what safety regulations should be applied to the chemicals. All of that has a tremendously advantageous effect on how we steward our environment.

I would go so far as to say that the REACH regulations have played a tremendous role in protecting Europe from all sorts of chemical harm, chemical malpractice and dumping of chemicals in markets across Europe. It is generally environmentally advantageous to have regulations in such a good form, in such a comprehensive way and available for all to look at.

I might add that the REACH regulations were brought about in the EU substantially through the agency of the UK. It was UK regulations and the advance of the situation that we had in the UK at the time that persuaded those involved and assisted the development of the REACH regulations. What we did for European chemical safety is something we can proud of.

One might think that one threw all that away at one’s peril, but that is precisely what the Government have just done. They have decided that, despite quite strong indications that the UK could have engineered an associate relationship with the ECHA. The EU would have been happy for that to proceed, not least because a close, harmonious relationship in dealing with activities relating to various chemicals across Europe is a great advantage for everybody across Europe. Close harmony on chemical standards is beneficial all round. Frankly, the Government have made a perverse decision, which I cannot fully understand, to effectively completely recreate everything that was in EU REACH on a free-standing basis, subsequent to the HSE in the UK.

Ruth Jones: My hon. Friend is making a powerful and important point from a safety perspective. Does he agree that it is odd that the Government have yet to provide a single good practical reason or advantage for severing ties with the world-leading EU chemicals system?

Dr Whitehead: Yes, indeed. My hon. Friend is right. I have not found anyone who has said what the reason is for doing it. On the contrary, every professional body and every joint industry body in this country—all the bodies concerned with chemicals; there is not one dissenter—has said that a close relationship with the EU and a continuing close association with or within the REACH regulations would be immeasurably to the UK’s advantage, and, indeed, would be an advantage all round.

Hon. Members might say, “Well, they would say that, wouldn’t they?” because the estimated cost of the industry variously accommodating itself to the new duplicate regulations in the way that is proposed is about £1 billion. That is damaging to our economy, and needless expenditure for a lot of people. Not only that, but it is needless expenditure for what appears to be, in the Bill at the moment, a substantially deficient system in the UK.

Among other things, the suggested system does not take account of a lot of the checks and balances and arrangements in the original REACH articles, which we will come to later. The database that I have talked about, if it is recreated in the UK, will take an estimated six, seven or eight years to get to a position where it will be even remotely comprehensive regarding chemical lists. Again, that is a huge amount of work for no purpose,
other than us apparently having a sovereign REACH—now known in the trade as British REACH or BREACH. I think that describes fairly well what it looks like there will be in the UK REACH arrangements as set out in the Bill.

The amendments that we will put forward this afternoon would not on their own make up for the Government’s calamitous decision to go their own way on REACH in the UK, but would at least ameliorate some of the worst effects of that changeover. I will not speak to the amendments in the first group individually, but they seek, in different ways, to try to make sure that the starting point for UK REACH is that we do not, at least consciously, regress from what there was before, so that its starting framework is as close as possible, including those articles, to what REACH consists of at the moment. Yes, that does mean we would be duplicating something, but at least it would be duplicated properly, with a number of safeguards and checks and balances. I will come later to protected and non-protected articles, which, frankly, the Government appear to want to play games with.

3.15 pm

The amendments would set a framework for how REACH is to be brought about for the UK. New clause 11 was tabled by the hon. Member for Hendon (Dr Offord) and by my hon. Friend the Member for Leeds North West (Alex Sobel), who was previously a member of the Committee. I think my name and that of my hon. Friend the Member for Cambridge were added to it. Nevertheless, we want to support it.

The new clause sets out clearly:

“The Secretary of State must not use regulations under Schedule 19 to diminish protections provided by REACH legislation.”

It continues:

“The Secretary of State must”—

I emphasise must—

“by regulations seek to maintain regulatory parity with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals”

and that it should be

“an objective of Her Majesty’s Government as part of any trade negotiations... to secure associate membership of the European Chemicals Agency for the United Kingdom”

if possible. The Government would therefore be rowing back on some of the decisions made about going it alone.

Other amendments state how there should be no regression, which is a principle we stand by. That is the minimum we would expect from any new regime in the UK, even if it is not based on associate membership of the ECHA. I therefore commend the amendments to the Committee and ask it, for the sake of good chemical regulation, whichever route we take, to think about them carefully.

We have one go at this and, if we do not demand in the legislation now that the new regulations are as good as the existing ones, we may open all sorts of doors to future chicanery, malpractice, poor decision making, chemical dumping and so on. I am sure the Committee wants nothing to do with any of that, and by agreeing to the amendments and setting down a series of principles by which REACH will be undertaken in the UK, we have an opportunity to have nothing to do with any of it in the future, with REACH working properly, even if it is separate from its EU counterpart.

The Chair: I can put the hon. Gentleman’s mind at rest. His memory was not defective: he has attached his name to new clause 11.

Rebecca Pow: I thank the hon. Member for his comments. Like him, I take this whole area extremely seriously. It is imperative that we establish our own independent chemicals regulatory framework for Great Britain, UK REACH, and that we do not diverge in terms of our standards. I must say that EU REACH will continue to apply in Northern Ireland under the terms of the Northern Ireland protocol.

We are absolutely committed to maintaining high standards of protection for the environment, consumers and workers, but we want the autonomy to decide how best to achieve that for Great Britain. We will consider the best ideas from both inside and outside the EU, alongside the best evidence within the UK, but there are no plans to diverge from EU REACH for the sake of it.

As the hon. Gentleman pointed out, we were instrumental in designing the whole process in the first place, which we kicked off during our presidency in 1990. That should provide some reassurance about how seriously we take this and how there is no intention to regress. I assure stakeholders that our regulatory system will be developed and managed in line with what is best for the UK and reflect our commitment to high levels of environmental protections.

I understand what hon. Members are aiming for in amendments 187, 3, 198 and 174 and new clause 11 as regards not reducing standards of protection, but I do not believe that the amendments are necessary. There are already a number of safeguards in schedule 19. Any changes to REACH must be consistent with article 1, which includes the purpose of ensuring a high level of protection of human health and the environment. We are not moving away from that and schedule 19 clarifies that.

There are 23 protected provisions—principles that cannot be changed. These include provisions relating to the fundamental principles of REACH, such as the progressive replacement of substances of very high concern. I think the hon. Member is going to deal with those shortly, so I will not go into any more detail about them yet. The Secretary of State must also consult on any proposed amendments and obtain the consent of the devolved Administrations in respect of devolved matters.

I particularly do not agree with amendment 3 or new clause 11(2). What they seek to do is impose dynamic alignment with the EU going forward. They would lock the UK into the EU’s orbit. We must be able to follow the evidence and have the freedom to adopt approaches that are the most appropriate for us. We should be able to look inside this country and elsewhere in the world, not just in the EU, for the best ideas.

New clause 11 goes further still. It would require the Government to seek to negotiate associate membership of the European Chemicals Agency, ECHA. We continue to push for a chemicals annex to a free trade agreement to enable data sharing, but the Government have been clear that the UK will not agree to any outcomes that bring with them an obligation to align with EU laws or
give jurisdiction to any EU institutions, including EU agencies or the European Court of Justice. Associate membership of ECHA would bring all of those consequences with it.

**Dr Whitehead:** Will the Minister give way?

**Rebecca Pow:** I am loth to give way, but I will be kind and will do so.

**Dr Whitehead:** I want to tease out what the Minister is saying about the fact that there is a proposal to try to get some data sharing under way with the EU. I presume she is referring to access to the wonderful database of 23,000 products that ECHA controls. The Minister appears to be saying, “Wouldn’t it be nice if we had access to that database, without any of the obligations that go with maintaining the database in the first place?” I would not have thought it likely that anyone would agree to that in a hurry. Would she agree with it, if it were the other way around? I do not think so. Surely that is not a serious proposal and should only go ahead on the basis that some sort of obligation sharing was also part of the offer.

**Rebecca Pow:** I am grateful to the hon. Gentleman for that long intervention.

**Daniel Zeichner:** I thought it was short.

**Rebecca Pow:** It was short for the shadow Minister. The Government’s approach to negotiating a future relationship with the EU includes a proposal for a chemicals annex as part of the EU free trade agreement. I thought the hon. Member for Southampton, Test might welcome that. A deal on data sharing with the EU could mitigate the need for industry to provide full-data packages. If that were to happen, we would be responsible for the updating of this as it went along. That is a clear direction of travel.

We continue to push for that, but the EU continues to reject any sectoral annexes. However, securing the chemicals annex is still our preferred outcome. It would obviously be in the interests of both UK and EU businesses, including those that will want to continue selling their chemicals into the GB market. The EU must, though, respect the UK’s position on no ECJ jurisdiction and no alignment.

As regards amendment 198, I recognise the importance of the precautionary principle for each, but I do not believe the amendment is necessary or desirable. Article 1 states that REACH is underpinned by the precautionary principle: that means that it is firmly bound into the safeguards I have already described. However, emphasising the precautionary principle could also have unintended consequences. It risks creating uncertainty about how to interpret article 1 as a whole. This is because article 1 sets out a series of overarching aims for REACH, as well as underpinning it with the precautionary principle, so I do not believe that such a consequence would be desirable.

Amendment 174 moves on from REACH itself to the UK REACH enforcement regulations. Paragraph 2(2) of schedule 19 says that any amendments must be “necessary or appropriate” for the enforcement of REACH. Taken with the protections in paragraph 1 of the schedule, I believe we are already providing what the hon. Member actually wants. There is a lot of detail there, but I therefore ask the hon. Member to withdraw these amendments.

**Dr Whitehead:** Well, the hon. Member is certainly not going to withdraw these amendments, because they are crucial to the establishment of any reasonable REACH regime in the UK. In a minute, we will come to some further particularly bad elements of schedule 19, which even allow the Secretary of State to chip away at protected areas that are in that schedule in the first place. What we are doing is laying down a marker that seeks to hold a line somewhere, as far as diminution and dilution of REACH regulations in future are concerned, so it is important that we put these amendments to a Division. We would particularly like to ensure that amendments 187, 198 and 174 and proposed new clause 11 are all recorded as a divided vote this afternoon.

**Question put.** That the amendment be made.

**The Committee divided:** Ayes 5, Noes 9.

**Division No. 39**

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**Question accordingly negatived.**

**Amendment proposed:** 3, in schedule 19, page 229, line 9, at end insert—

“(1A) Regulations made under this paragraph must not regress upon the protections or standards of any Article or Annex of the REACH Regulation.

(1B) Subject to sub-paragraph (1A), the Secretary of State—

(a) must make regulations under this paragraph to maintain, and

(b) may make regulations under this paragraph to exceed parity of all protections and standards of chemical regulation with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals.”—(Dr Whitehead.)

This amendment would set a minimum of protections under REACH and remove the possibility that a Secretary of State might lower standards than are in place currently, whilst reserving the right for them to set higher standards should they choose.

**Question put.** That the amendment be made.

**Question negatived.**

3.30 pm

**Amendment proposed:** 198, in schedule 19, page 229, line 13, at end insert “both in general and, in particular, the precautionary principle referred to in Article 1(3).”—(Dr Whitehead.)

This amendment would require Ministers, in considering consistency with Article 1 of the REACH Regulation, to pay specific attention to the precautionary principle.
The Committee divided: Ayes 5, Noes 9.

Division No. 40

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crozier, Virginia
Docherty, Leo

Question accordingly negatived.

Dr Whitehead: I beg to move amendment 107, in schedule 19, page 229, line 16, leave out sub-paragraph (4).

This amendment removes the high degree of discretion when setting REACH Chemical regulations afforded the Secretary of State by Clause 127 in the Bill. Without this amendment the Secretary of State is able to make wide provisions to chemical regulations.

This amendment illustrates the continuing problem we perceive with the way the REACH regulations—or the breach regulations, as I call them—are to be set out in the Bill and implemented as the new regime. Paragraph 1(3) of schedule 19 refers to the “protected provision of the REACH Regulation”, which are set out in the schedule. Having indicated that there are protected provisions in the REACH regulations, sub-paragraph (4) states that there is nothing to prevent any protected provision...being amended by provision made under this paragraph by virtue of section 127(1)(a).”

What appears to be the case here is like other elements of the Bill. The protected provisions of the REACH regulations under paragraph 6 of the schedule include articles that deal with its principles and scope, animal testing, information for workers, and so on. By the way, we shall later consider the fact that a number of the articles that we think should be protected do not appear in the list, and our amendments would include them in it. However, we must first address the point that the list, even once it is agreed, seems to be infinitely malleable.

I wonder what is the purpose of our agreeing the protected list this afternoon if there will continue to be a sub-paragraph in the schedule stating that if someone decides in future that they do not particularly like it, they can zap particular protected provisions, which will no longer be protected. That is a rather cavalier way, at the very least, of going about translating protections that were in the REACH regulations into a UK equivalent. It must be apparent to anyone that the measure is not, perhaps because they thought we should have a let-it-all-hang-out, free trade, laissez-faire arrangement that would let all sorts of stuff come in from all over the world that was not subject to that high standard of chemical protection—someone who would be quite happy for those items to flood into the country at a future date—and there would be nothing we could do about it, because our protections would have been knocked over by our own Government.

Dr Whitehead: I presume it would be someone at a future date who did not particularly like the idea that we should have high standards of chemical protection, perhaps because they thought we should have a let-it-all-hang-out, free trade, laissez-faire arrangement that would let all sorts of stuff come in from all over the world that was not subject to that high standard of chemical protection—one who would be quite happy for those items to flood into the country at a future date—and there would be nothing we could do about it, because our protections would have been knocked over by our own Government.

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[Rebecca Pow]

Article 55 covers the aim of the authorisation process to progressively replace substances of very high concern. Article 4A covers the principle that decisions that affect devolved matters can be taken only with the consent of devolved Administrations. Article 109 covers the duty on HSE to adopt operational rules to ensure transparency in matters of chemical safety. None of those things is going to change. They are all in there. The annexes are included among the protected provisions, as REACH already contains all the necessary powers to amend them. Duplicating powers in the Bill would cause legal confusion and uncertainty.

I want to give an explanation of where a little bit of tweaking might be required, as an example of how we could use the consequential amendment power, which I think is what the hon. Gentleman is worried about. One of the REACH protected provisions, article 35, states that workers and their representatives shall be granted access by their employer to the information they receive on chemical safety under articles 31 and 32. However, articles 31 and 32 apply only to substances such as individual chemicals and mixtures of chemicals—for example, commercial preparations such as paints and cleaning fluids. They do not apply to substances in what are called articles—for example, toxic heavy metals that might have been used in a piece of electronic equipment. The worker does not have that knowledge at this date in time.

If we decided to expand articles 31 and 32, so that information on dangerous substances in items such as electrical products must be sent down the supply chain, we would want to make consequential amendments to article 35, so that workers would have the right to access that information. As we gather more evidence and science moves on, more comes to light about all those different chemicals and whether, for example, something used in my hairdryer, which I use every other day, is damaging me. We want the right to amend that so that the people who produce those items, and everybody else, would know.

3.45 pm

Dr Whitehead: The Minister is making a quite a substantial case. She is stating that the apparent contradiction between paragraphs 1(3) and 1(4) of schedule 19 is resolved by reference to clause 127(1)(a), which includes “supplementary, incidental, transitional or saving provision”, meaning that those protected articles could be amended so that, at a subsequent date, they would do what they are supposed to do rather better. Clause 127(1)(b), however, states:

“A power to make regulations under any provision of this Act includes power to make...different provision for different purposes or areas.”

Will the Minister explain how that complete power to do something different if she feels like it does not undermine the idea that amendments should only be “supplementary, incidental, transition or saving provision”?

The Chair: Order. I have been very tolerant of the length of interventions, because I genuinely believe that sometimes an intervention can help to progress the discussion. I make no criticism of the hon. Member for Southampton, Test, but I hope that future interventions will be kept to a single point and will be as brief as possible.

Rebecca Pow: Thank you, Sir George. It was a detailed intervention. I reiterate what I said about the purpose of the consequential amendments and how useful they will be. I will not run through the whole example again, but there are others like it. Those provisions are in the Bill with a view to protecting people, not to undermine or regress.

Richard Graham: I was not going to come in on the point about hairdryers, which we do not all use. The general element of scaremongering from the Opposition effectively amounts to a feeling that once we are out of reach of the REACH regulation, we are going to be vulnerable to all sorts of horrors. In fact, pages 187 and 188 of the explanatory notes are clear that the Bill allows the Secretary of State the future power to amend the REACH regulation, but only in very specific ways, and almost everything currently in those regulations will be recreated under a UK banner. Does the Minister agree that we should be more confident of what the future will look like?

Rebecca Pow: I wholeheartedly agree. That is what I was trying to get at in the beginning: given that we basically helped to set up those regulations in the first place, we are hardly likely to want to lower standards. Indeed, I would say that we might want to raise them. That will all have to be done on the advice of the experts and the rest. We have no intention whatsoever of lowering our standards.

Ruth Jones: The Minister says that the Government have no intention of lowering standards, but the ECHA—the European Chemicals Agency—has an annual budget of approximately £100 million and 400 staff, while the Government have promised only £13 million to cover those costs. How can that be commensurate with the protection that we need?

Richard Graham: By using it better and more efficiently!

Rebecca Pow: In the chuntering from the Back Benches, some sensible points are being made. Work is ongoing, but given that we were so influential on this in the first place, we have a lot of specialists and experts who are and will be engaged in setting up the system.

I am going to wind up now, Sir George. I think I have addressed all the points I wanted to address, and given quite a detailed explanation. I ask the hon. Member for Southampton, Test if he will kindly withdraw amendment 107, but I am not holding out much hope.

Dr Whitehead: We will not withdraw this amendment. The Minister’s attempted explanation has increased our resolve, because I do not think it took account of what is in the legislation. By the way, explanatory notes are not legislation—we ought to bear that in mind.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 41]

AYES

Anderson, Fleur

Furniss, Gill

Jones, Ruth

Zeichner, Daniel
Docherty, Leo
Crosbie, Virginia
Browne, Anthony
Bhatti, Saqib
Afolami, Bim

Question accordingly negatived.
Amendment proposed: 174, in schedule 19, page 229, line 32, at end insert
“provided that such regulations do not regress upon the scope or purpose of the REACH enforcement regulations as applied prior to the amended regulations being enacted”.—(Dr Whitehead.)

Question put, That the amendment be made.
The Committee divided: Ayes 5, Noes 9.

Division No. 42]

Dr Whitehead: I beg to move amendment 227, in schedule 19, page 230, line 47, leave out
“the National Assembly for Wales”, and insert “Senedd Cymru”.

Amendments made: 72, in schedule 19, page 230, line 47, leave out “Assembly” and insert “Senedd”.—(Rebecca Pow.)

The Chair: With this it will be convenient to discuss amendment 228, in schedule 19, page 231, line 22, at end insert
“and take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”. This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

Dr Whitehead: These two amendments are what one might call blindingly obvious amendments. They seek to ensure that, before making regulations, the Secretary of State should not only consult with the bodies and persons indicated, but “take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”.

Be guided by the science, quite simply. That might be quite important in terms of some of our concerns about other clauses.

That is why we have tabled the amendments. I fear that they will not get a very positive hearing, but I feel sure that the Minister will agree with the sentiments behind them. I would not like us to end up as Trumpton-on-Sea and go in the opposite direction. I offer the amendments for the purpose of elucidation. We think that it is a very important principle, albeit a rather obvious one, and will therefore divide the Committee if the Minister is unable to take the amendments on board. It would be nice if she took some amendments on board, given that they are meant in the best possible way, but I fear that that will not be the case.

Rebecca Pow: I understand why the hon. Gentleman has tabled amendments 227 and 228. It is obviously really important that decisions in the field of chemicals regulation are based on strong science and robust evidence. That is a no-brainer. That is why any proposals to amend REACH in the future must be subject to consultation, and the agency in particular must always be consulted. We are absolutely in agreement on that. It is up to the agency to decide how to mobilise its various scientific advice mechanisms and then reflect the opinions that emerge in its consultation response. That is the role of the Health and Safety Executive, as it has the necessary expertise and experience. The Government will of course take the agency’s considered advice into account.

To that extent the amendment is necessary, but it goes beyond that, requiring the Government to go back and take those opinions into account directly. That would require the Secretary of State to bypass the agency’s expert assessment and potentially replace it with his own interpretation. Perhaps the current Secretary of State would be quite capable of that, but who is going to come along afterwards? We do not want that to happen, and I do not believe that it would be a desirable outcome or a good use of HSE’s scientific expertise.

Amendment 228 has the same aim, but in respect of the REA CH enforcement regulations. Again, I understand why the hon. Gentleman has tabled the amendment. Obviously, I absolutely agree with him about the importance of science and the evidence, but the amendment risks the same undesirable consequences as amendment 227. I am sure that that is not really his intention, and therefore ask him to withdraw the amendment.

Dr Whitehead: I am sorry to have to do this again, but we do not think that such an obvious addition can be subject to the undesirable side-effects in the way that the Minister describes. We think that the amendments should simply be added to the Bill and we wish to emphasise that by dividing the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 43]

Dr Whitehead: I beg to move amendment 228, in schedule 19, page 231, line 30, at end insert
“take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”. This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

The Chair: With this it will be convenient to discuss amendment 228, in schedule 19, page 231, line 30, at end insert
“take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”. This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

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Division No. 43]

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth
Graham, Richard
Jones, Fay
Moore, Robbie
Pow, Rebecca
Zeichner, Daniel

Question accordingly negatived.
Amendment proposed: 174, in schedule 19, page 229, line 32, at end insert
“provided that such regulations do not regress upon the scope or purpose of the REACH enforcement regulations as applied prior to the amended regulations being enacted”.—(Dr Whitehead.)

Question put, That the amendment be made.
The Committee divided: Ayes 5, Noes 9.

Division No. 42]

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth
Graham, Richard
Jones, Fay
Moore, Robbie
Pow, Rebecca
Zeichner, Daniel

Question accordingly negatived.
Amendments made: 72, in schedule 19, page 230, line 47, leave out
“the National Assembly for Wales”, and insert “Senedd Cymru”.

See Amendment 28.

Amendment 73, in schedule 19, page 230, line 48, leave out “Assembly” and insert “Senedd”.—(Rebecca Pow.)

See Amendment 28.

Dr Whitehead: I beg to move amendment 227, in schedule 19, page 231, line 22, at end insert
“and take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”. This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

Dr Whitehead: These two amendments are what one might call blindingly obvious amendments. They seek to ensure that, before making regulations, the Secretary of State should not only consult with the bodies and persons indicated, but “take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”.

Be guided by the science, quite simply. That might be quite important in terms of some of our concerns about other clauses.

That is why we have tabled the amendments. I fear that they will not get a very positive hearing, but I feel sure that the Minister will agree with the sentiments behind them. I would not like us to end up as Trumpton-on-Sea and go in the opposite direction. I offer the amendments for the purpose of elucidation. We think that it is a very important principle, albeit a rather obvious one, and will therefore divide the Committee if the Minister is unable to take the amendments on board. It would be nice if she took some amendments on board, given that they are meant in the best possible way, but I fear that that will not be the case.

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Dr Whitehead: I am sorry to have to do this again, but we do not think that such an obvious addition can be subject to the undesirable side-effects in the way that the Minister describes. We think that the amendments should simply be added to the Bill and we wish to emphasise that by dividing the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 43]

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth
Graham, Richard
Jones, Fay
Moore, Robbie
Pow, Rebecca
Zeichner, Daniel
Amendment proposed: 228, in schedule 19, page 231, line 30, at end insert

begin quote
"take account of all relevant scientific evidence and advice through the Agency's science advice mechanisms, and".
end quote

This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

The Committee divided: Ayes 5, Noes 9.

Division No. 44

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Brown, Anthony
Crosbie, Virginia
Docherty, Leo

Graham, Richard
Jones, Fay
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

4 pm

Dr Whitehead: I beg to move amendment 229, in schedule 19, page 231, line 31, at end insert—

begin quote
“(4) The Secretary of State, or any relevant devolved authority, shall make transparent the reasons for all decisions taken under this regulation by publishing this information in the public domain.”
end quote

This amendment requires the Secretary of State, or any relevant devolved authority, to publish an explanation as to how they reached a decision.

Although the amendments are set out for individual debate, they all refer in one way or another to a requirement to operate the UK REACH regulations transparently, publicly and openly. They mandate giving access to information by providing requirements to publish and for Ministers to report. Later amendments address the question of whether the elements that are in the REACH articles at the moment are not included in the protected articles that the Minister has already talked about—articles concerned with the right to know, the publication of material and so on.

The question we want to ask through these amendments is related to basic issues around transporting chemicals, the harm that they might do and what might happen to people if they ingest products that have not been properly certified—all those things. Why are protections in terms of the publication of documents or decisions and the public right to have access to the decision-making process all missing from this part of the Bill? I would have thought that the Minister would agree that they should be present in some form or other. I do not know whether it has just been overlooked or whether there is any reason—I am jumping forward a little—why the very good protections in terms of transparency, public access and so on in the original REACH articles should not be translated directly into protected articles in the UK.

We will seek to divide the Committee on some of the amendments. In different ways, they are designed to place in the UK REACH regulations those issues of the right to know, public access and the interrogation of decisions. I am sorry that they are not in there. They should be. I do not think, Sir George, that we need separate debates on all these amendments, because they all address that principle in different ways and, for that reason, they should all be supported.

The Chair: I will have to take the further amendments the hon. Gentleman refers to, because they are all on the amendment paper, but if Members do not want to proceed with them, that is relatively easily dealt with—if nobody wishes to speak to them or move them, they effectively fall.

Rebecca Pow: I understand why the hon. Member for Southampton, Test tabled amendment 229, which I will talk to now. The amendment calls for transparency in decision making, which I completely support, but I do not think that the amendment is necessary. There must be consultation on any proposals under these provisions, as set out in paragraph 5 of schedule 19. The timely publication of responses is a fundamental part of the Government’s consultation principles. Any legislative changes as a result of that consultation will be subject to the affirmative procedure, which gives the opportunity for explanation and scrutiny, which I know the hon. Gentleman will welcome.

There is an important difference in procedure between the powers in the Bill and decision making under REACH. The Secretary of State’s decisions under REACH are given effect through a statutory instrument using the negative procedure or through Executive action, whereas powers in the Bill are exercised through the affirmative procedure, with the higher levels of explanation and scrutiny that that entails. I therefore ask the hon. Gentleman to withdraw the amendment.

Dr Whitehead: I am anxious not to overthrow procedure completely, but it might be acceptable to the Committee if we were able to indicate that we would, in principle, wish to divide the Committee on a number of amendments that we feel particularly strongly about, without actually proceeding to divide the Committee. Might the Committee think that that was an acceptable procedure at this time in the afternoon?

The Chair: I am not quite sure what the hon. Gentleman proposes. Can he be a bit clearer?

Dr Whitehead: Yes, I can. We face a debate on essentially the same points about transparency, public access and so on, which we feel strongly about. We particularly want the Minister to explain why articles are missing from that list of potential REACH articles. We may have a brief debate about that subsequently. However, we intend, in principle, to divide the Committee on all these amendments, which would of course take quite a while to complete. However, if we were able to state
that, in principle, we wish to divide the Committee on those amendments, we could perhaps have an indicative Division on this this particular amendment.

The Chair: I think I now understand what the hon. Gentleman is saying. It would be an ingenious new addition to the rules of the House, but I am afraid that that is way above my pay grade.

Leo Docherty (Aldershot) (Con): On a point of order, Sir George. Would it be helpful to suggest to the shadow Minister that we debate the current amendment, but that he does not press the subsequent amendments to a Division?

The Chair: The situation is straightforward. If the hon. Member for Southampton, Test wants to make his point about the issue, the best way to do it is to have a Division on the lead amendment. When we come to the subsequent amendments, it is a question of saying, “Not moved,” or of saying, “Moved formally” and we will then take a vote. There will have to be some sort of Division, but the hon. Member for Southampton, Test does not have to take part in it if he feels that the point he is trying to make has already been established with regard to the lead amendment.

Dr Whitehead: Thank you, Sir George. We wish to seek a Division on this amendment, and we may seek a Division on subsequent lead amendments when they come up.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.
Division No. 45

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

Question accordingly negatived.

Dr Whitehead: I beg to move amendment 108, in schedule 19, page 231, line 37, at end insert—
“Article 13 (General requirements for generation of information on intrinsic properties of substances)”. Amendment 176, in schedule 19, page 231, line 38, at end insert—
“Articles 32, 33 and 34 (communication in the supply chain & a right to know for consumers)”.

This amendment includes Article 32, 33 and 34 of REACH (communication in the supply chain & a right to know for consumers) in the “protected provisions” that may not be amended under Schedule 19.

Amendment 110, in schedule 19, page 231, line 39, at end insert—
“Article 40(2) (third party information)”.

Amendment 111, in schedule 19, page 232, line 25, at end insert—
“save insofar as they contain endpoints for tests using animals”.

Dr Whitehead: As I said, these amendments deal with elements of the REACH articles as they stand that we would seek to be protected in the translation into UK jurisdiction. We are concerned that the articles mentioned in the amendments have been left out, all of which are concerned, one way or another, with public access, the right to know and transparency. My hon. Friend the Member for Putney may say a few words on that in a minute, so I will restrict my remarks to that.

I also indicate to you, Sir George, that although we would in principle seek to divide on all the amendments if the Minister is not able to accept them or to give a fully satisfactory explanation, we will seek to divide on the lead amendment only.

4.15 pm

Fleur Anderson: The Bill gives the Secretary of State for Environment, Food and Rural Affairs the power to amend UK REACH and the REACH Enforcement Regulations 2008—REACH being the registration, evaluation, authorisation and restriction of chemicals, for the benefit of those reading in Hansard. However, specified elements of REACH are excluded, as we said earlier, from the Secretary of State’s amending power. We are referred to the table that the Minister mentioned earlier and told, “It is all there and included.” It is not all there and included.

We would like to highlight some articles that have not been included in the protected provisions—specifically, article 13 in amendment 108, articles 26, 27 and 30 in amendment 109 and—an interesting set of articles—articles 32, 33 and 34 in amendment 176, which are highly important to the REACH regulations actually working for consumers and those within the supply chain of chemicals. The provisions refer to everyday products that we and our constituents would all use, including paints, cleaning products, clothes, furniture, electrical appliances and, as already mentioned, hairdryers.

In article 32, which I would argue should be a protected principle, there is the duty to communicate information down the supply chain free of charge and without delay. In article 33, the duty is to communicate information on substances in articles for the consumer free of charge within 45 days. In article 34, the duty is to communicate information on substances and preparations up the supply chain.

There are duties up the supply chain, down the supply chain and to the consumer. That is all protected, and it absolutely should happen to ensure that, as the Minister has said, when more information, science and
data come to light as we go along with new products and chemicals, the consumer and all of those in the supply chain have a right to know what that new information is, and what is up and down the supply chain. The consumer should know what is in the products that we consume.

Under article 33, suppliers of articles that contain a substance of very high concern are required to provide sufficient information in response to consumer requests about those products to allow their safe use, including disclosing the name of the substance that is used. However, that will be taken out of a protected requirement. There are substances that, for example, meet the criteria for classification as carcinogenic, mutagenic, toxic to reproduction and persistent bioaccumulative toxic. This is an essential public policy safeguard, and it is unclear why the Government wish to exclude it from the list of protected provisions. Other things are included in that list. It is seen as beneficial to have a list of protected provisions. Why are those provisions not protected?

That is the question we are asking by tabling these amendments. We are saying that it is important to the whole of the REACH regulation that these things are included and cannot be subject to change by the Secretary of State.

Rebecca Pow: I thank hon. Members for amendments 108, 109, 176, 110 and 111. I understand the desire to protect further provisions of UK REACH in the Environment Bill. However, I do not believe that these amendments are necessary or, in many cases, desirable—shock, horror!

The protected provisions of REACH are intended to ensure that the fundamental principles of REACH cannot be changed, while allowing a flexibility to ensure UK REACH remains fit for purpose. The intention is not to freeze detailed processes. Any proposed amendments by the Secretary of State are subject to consultation, to the consent of the devolved Administrations in respect of devolved matters and to the affirmative procedure, ensuring a full debate in Parliament, which I know Opposition Members will welcome.

Amendment 108 applies to article 13 of REACH, which sets out detailed provisions about alternatives to animal testing, including when animal tests can be waived—I think the hon. Member for Putney was referring to that. She wants us to avoid unnecessary animal testing and to promote alternative approaches. We agree with that aim, but adding this article to the list of protected provisions could make that more difficult.

The same objections apply to the articles that would be affected by amendment 109, that is, articles 26, 27 and 30, and by amendment 176, that is, articles 32, 33 and 34. These articles are not just about the principles of information sharing. They also include prescriptive details about how information should be shared with the REACH supply chain and how the agency should deal with inquiries. We should not bind ourselves to these detailed procedures going forward but instead remain free to adopt new ways of working that draw on our experience of applying REACH in the UK. The whole idea is that we will improve and benefit.

Amendment 110 would protect REACH article 40(2). Again, the point is that we do not want to freeze the detail of how REACH operates. Instead, we need the flexibility to amend REACH, to ensure that it works for the UK. In this case, article 40(2) includes specific details, such as timescales for publishing information.

I do not believe that amendment 111 is necessary or desirable. I agree that we may consider it appropriate to amend the REACH annexes to drive the use of non-animal alternatives, but the power to amend the REACH annexes is already within REACH itself, which makes it unnecessary to add an overlapping power to the Bill.

I therefore ask the hon. Member for Southampton, Test to consider withdrawing his amendments.

Dr Whitehead: I think I have already indicated that although we do not wish to withdraw these amendments, we will seek—for the purpose of the record, as it were—an indicative division on amendment 108. However, the fact that we will not press all the subsequent amendments to a vote does not mean that we would not ideally like to divide on them. However, we are doing this for the sake of the comfort and sanity of the Committee this afternoon, and I hope that will be appreciated.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 46

AYES

Andersen, Fleur

Furniss, Gill

Jones, Ruth

Zeichner, Daniel

NOES

Afolami, Bim

Bhatti, Saqib

Brown, Anthony

Crosbie, Virginia

Doherity, Leo

Graham, Richard

Jones, Fay

Moore, Robbie

Pow, Rebecca

Question accordingly negatived.

The Chair: Before I put the question on amendment 109, which again was tabled by Dr Whitehead, I wonder if it would be helpful if I try to explain the hon. Gentleman can achieve what he wants to achieve. With advice, I think there are two options, which apply to amendments 109, 176 and 110. I take it that the hon. Gentleman, in principle, does not want to have a Division, but does not want to concede the principle: I think that that is approximately his position. When I call each amendment and he says, “Not moved”, then there would not be a Division. The other option is that he can move each amendment, but then simply remain silent when I put the question. So, when I say, “As many of that opinion say aye”, he should just not say anything and then there will not be a Division in that instance either. Those are the only two options available to the hon. Gentleman, so I will leave them with him. The advice I have given is intended to be helpful to him and to the Committee.

Amendment proposed: 109, in schedule 19, page 231, line 38, at end insert—

“Article 26 (Duty to inquire prior to registration)
Article 27 (Sharing of existing data in the case of registered substances)
Article 30 (Sharing of information involving tests).—(Dr Whitehead.)

Question put, That the amendment be made.

Question negatived.

Amendment proposed: 176, in schedule 19, page 231, line 38, at end insert—
“Articles 32, 33 and 34 (communication in the supply chain & a right to know for consumers)”.—(Dr Whitehead.)

Question put, That the amendment be made.

Question negatived.

Amendment proposed: 110, in schedule 19, page 231, line 39, at end insert—
“Article 40(2) (third party information)”.—(Dr Whitehead.)

Question put, That the amendment be made.

Question negatived.

Amendment proposed: 111, in schedule 19, page 232, line 25, at end insert—
“save insofar as they contain endpoints for tests using animals”.—(Dr Whitehead.)

Question put, That the amendment be made.

Question negatived.

Schedule 19 agreed to.

Clause 126

Consequential provision

Amendments made: 58, in clause 126, page 113, line 28, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.

Amendment 59, in clause 126, page 113, line 36, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.

Amendment 60, in clause 126, page 113, line 37, leave out “Assembly” and insert “Senedd”.—(Rebecca Pow.)

See Amendment 28.

Clause 126, as amended, ordered to stand part of the Bill.

Clause 127

Regulations

Dr Whitehead: I beg to move amendment 149, in clause 127, page 114, line 11, leave out subsection (1)(b).

I have alluded to this amendment previously. I must admit that, having read the clause on a number of occasions for different purposes, I cannot come to any other conclusion than that subsection (1)(b) is a serious attempt to destabilise what happens before it in the clause. One has to read it differently from common English to conclude that “different provision for different purposes or areas” means anything other than that the Minister can do what he or she wants. That should not have a place in the Bill. I would be grateful if the Minister would explain briefly—I mean briefly—why that is in the Bill. We do not intend to divide the Committee, but we would like to hear something from the Minister to that purpose.

Rebecca Pow: I thank the hon. Gentleman for his contribution on this matter. Clause 127 sets out the scope of regulation-making powers as well as the procedures to be used when making those regulations. Subsection (1)(b) makes it clear that regulations made under the Bill are able to make “different provision for different purposes or areas.” That is a standard provision that has been used for many years in any Bill that includes delegated powers. It is necessary to provide clarification as to the flexibility of the delegated powers. Different circumstances may require different provisions. The amendment would remove necessary, proportionate and appropriate flexibility from the delegated powers, making it more difficult to deliver the ambitions set out in the Bill, including setting targets, creating deposit return schemes or delivering biodiversity net gain. I hope that was brief enough to clarify what is meant. I ask the hon. Gentleman to withdraw the amendment.

4.30 pm

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 61, in clause 127, page 114, line 32 and insert “Senedd Cymru”.

See Amendment 28.

Amendment 62, in clause 127, page 114, line 35, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.—(Rebecca Pow.)

See Amendment 28.

Clause 127, as amended, ordered to stand part of the Bill.

4.32 pm

Adjourned till Tuesday 24 November at twenty-five minutes past Nine o’clock.
Written evidence reported to the House

EB82 Letter from Rebecca Pow to Dr Alan Whitehead re: Resource efficiency requirements (Schedule 7)

EB83 Letter from Rebecca Pow to Daniel Zeichner re: new burdens on local authorities (Clause 54)
Public Bill Committee

ENVIRONMENT BILL

Twentieth Sitting
Tuesday 24 November 2020
(Morning)

CONTENTS

Clauses 130 to 133 agreed to, some with amendments.
New clauses considered.
Adjourned till this day at Two o'clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons, not later than Saturday 28 November 2020.
The Committee consisted of the following Members:

**Chairs:** † James Gray, Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Anderson, Fleur (Putney) (Lab)
† Bhatti, Saqib (Meriden) (Con)
† Browne, Anthony (South Cambridgeshire) (Con)
† Crosbie, Virginia (Ynys Môn) (Con)
† Docherty, Leo (Aldershot) (Con)
† Furniss, Gill (Sheffield, Brightside and Hillsborough) (Lab)
† Graham, Richard (Gloucester) (Con)
† Jones, Fay (Brecon and Radnorshire) (Con)
† Jones, Ruth (Newport West) (Lab)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Zeichner, Daniel (Cambridge) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Tuesday 24 November 2020

(Morning)

[James Gray in the Chair]

Environment Bill

9.25 am

The Chair: This may be entirely disorderly, but to give the shadow Minister time to collect his thoughts, I am delighted to be able to advise the Committee that my first grandson, Frederick Evelyn Gray Barker, was born this morning at 6 o’clock. [Hon. Members: “Hear, hear!”]

That is something that can go into Hansard and it can be put on his nursery wall.

Clause 130

Extent

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I beg to move amendment 231, in clause 130, page 116, line 31, at end insert

“except that section (Use of forest risk commodities in commercial activity) and Schedule (Use of forest risk commodities in commercial activity) (use of forest risk commodities in commercial activity) extend to England and Wales, Scotland and Northern Ireland.”

This amendment provides that NC31 and NS1 extend to England and Wales, Scotland and Northern Ireland.

The Chair: With this it will be convenient to discuss the following:

Government new clause 31—Use of forest risk commodities in commercial activity.

Government new schedule 1—Use of forest risk commodities in commercial activity.

Rebecca Pow: May I be the first to congratulate you on becoming a grandfather, Mr Gray, and to welcome Frederick to the world? He has arrived on a really auspicious day for our global footprint. I hope that he will be very proud when he is a bit more grown-up and reads in Hansard what his grandpa said—hopefully he might just read long enough to read this speech as well. I think that he will be rather proud also that his grandpa was part of this Committee.

The Chair: That is enough congratulations, but thank you very much.

Rebecca Pow: I am delighted to discuss amendment 231, new clause 31 and new schedule 1. Consumers in this country are increasingly concerned that they are contributing to environmental destruction overseas, and they are right to be concerned: almost 80% of deforestation is caused by agriculture, including produce that we use here in the UK.

Globally, half of all recent tropical deforestation was the result of illegal clearance for commercial agriculture and timber plantations. Shockingly, the figure increases to 90% in some of the world’s most biodiverse forests, including parts of the Amazon.

We will be the first country in the world to legislate to tackle this illegal deforestation by setting a framework of requirements on business. Businesses will be prohibited from using forest risk commodities produced on land that was illegally occupied or used. They will be required to establish a due diligence system for regulated commodities to ensure that their supply chains do not support illegal deforestation, and will have to report annually on that exercise. If businesses do not comply, they should be subject to fines. The measures will extend across the whole of the UK, so that we can work across our nations to tackle illegal deforestation.

As the first country in the world to legislate on this issue, we want to continue to lead the way internationally. Therefore, the measures also require us to review the law’s effectiveness every two years. The review will set out any steps that we intend to take as a result, ensuring that we will take action if we do not see progress. The enabling powers in the framework allow us to adjust certain aspects as deforestation patterns change and technology advances.

The law before us today is not only a win for the environment. It is a win for UK consumers, who will have confidence that the food they eat and the products they use have been produced responsibly. It is a win for responsible businesses in the UK, which will no longer be undercut by those who do not follow the rules. And it is a win for our international partners in producer countries, because this approach will deliver for trade and economic development as well as for the environment.

We have seen that in Indonesia, where the introduction of a timber licensing scheme meant that confidence in the provenance of its timber grew, leading to an increase in trade. The value of Indonesia’s worldwide exports of timber products doubled from $6 billion in 2013 to nearly $12 billion in 2019.

Richard Graham (Gloucester) (Con): As the Prime Minister’s trade envoy for Indonesia, I had the great pleasure of working closely with colleagues from the Department for International Development and in our embassy in Jakarta on helping the Indonesians to find a solution to what was a significant problem for them. Does the Minister agree with me that this measure shows what the UK can do abroad on our environmental policies, as well as at home?

9.30 am

Rebecca Pow: I thank my hon. Friend so much for his intervention, because he is right to point that out. I must applaud him for the work he did with the UK Government. It was a tricky issue. Timber is an important export for Indonesia, but that must not come at the expense of cutting down its precious rainforests and other forests, with all the knock-on effects that brings for the wider environment. We have the solution for timber, with sustainable timber regulations sorted out, and we are now working on other products. My hon. Friend is right to point out how beneficial that can be all around, with the knock-on effects, and I thank him for that.

As a result of that work in Indonesia, the amount of money made went up, as I said, and deforestation rates were three times lower in areas producing timber covered by the scheme than in other areas, so it worked all
around. That shows how driving demand for sustainable products helps not just the people there but nature and the climate—it is an all-round win.

I assure the Committee that the Government intend to move swiftly to bring legislation forward and will lay the necessary secondary legislation shortly after COP26, which we will hold in Glasgow next November. We will consult again to gather views as we develop secondary legislation, and Parliament will have the opportunity to scrutinise many of the regulations.

Dr Alan Whitehead (Southampton, Test) (Lab): At the risk of incurring your wrath, Mr Gray, I will add my congratulations to those of the Minister on the birth of your grandson. I observe that your grandson shares a name with an esteemed public servant in my city of Southampton, and I trust he will live up to the achievements of that individual even if he does not indeed pursue a great career in environmental conservation and management, which perhaps would be appropriate to today’s proceedings. That is all I am going to say.

The Chair: Order. I am most grateful to everyone, but no more congratulations. Thank you. But he was born in Brighton, just down the road from Southampton, so pretty close by.

Dr Whitehead: There we are: the coincidences are raining on each other now.

The Government new clause and new schedule represent a tremendous step forward in action not only in the UK but, as the hon. Member for Gloucester said, abroad. That demonstrates how we can reach beyond our shores in environmental protection and action, as well as in due diligence for conservation, environmental management and climate change purposes. The Opposition wholly welcome these measures. However, why were they so late in coming?

I think we can claim we nudged the Government a little in that direction, because our due diligence new clause, which we will discuss later, is about the wider subject that the Minister mentioned in her remarks and points the way. We hope that the Government will go beyond forestry products and into other areas. We tabled our new clause, which substantially anticipated the Government’s action, before Parliament went into recess for the lockdown. Can the Minister reflect on why these measures were as late as they were? In her opinion, did the nudging of not only Labour but also a large number of national and international environmental groups, who banded together to develop the due diligence way of doing things, have a substantial hand in making sure—albeit a little late in the day—that these new clauses came into being? It was just in time because the Bill will now have these clauses in it, and I hope they will fully survive the rigours of the Bill’s passage through the House and come to be a substantial part of it. I think it will be a very welcome and progressive part of the Bill.

Rebecca Pow: A great deal of consultation went into this and all of those views were looked at, and then it was considered what would be the best and most positive way forward. Tackling this issue is not straightforward and requires dealing with other governments around the world. One has to tread a careful path, and I believe we have come up with a really workable solution.

To answer the comment by the hon. Member for Southampton, Test about why we did not do this more quickly, the consultation took a long time and we had to take into account a great many views and discussions. We must remember that a lot of this originated from the work done by Sir Ian Cheshire and the Global Resource Initiative. We referenced that way back in March, when I was being asked why the Government were not doing this fast enough. We had the GRI’s summary and we were working up how we could continue to work from its recommendations. That is where we engaged with so many NGOs, particularly the Royal Society for the Protection of Birds and WWF, because they are valued partners with a great deal of experience. They have been helpful in inputting into what we have come up with. I hope that is helpful to the shadow Minister and I think we will have a bit more discussion about this later, but I will leave it there.

Amendment 231 agreed to.

Clause 130, as amended, ordered to stand part of the Bill.

Clause 131

Dr Whitehead: I beg to move amendment 2, in clause 131, page 117, line 21, leave out “on such day as the Secretary of State may by regulations appoint” and insert “at the end of the period of six months beginning with the day on which this Act is passed”.

This amendment seeks to prevent the Secretary of State from choosing not to enact parts of the Bill. Currently multiple provisions including the whole of Part 1 (environmental governance), Part 6 (nature and biodiversity) and Part 7 (Conservation Covenants) could never be enacted, even after the Bill has received Royal Assent.

The Chair: With this it will be convenient to discuss the following:

Amendment 151, in clause 131, page 118, line 2, leave out “on such day as the Welsh Ministers may by regulations appoint” and insert “at the end of a period of six months beginning with the day on which this Act is passed”.

Amendment 152, in clause 131, page 118, line 23, leave out “on such day as the Scottish Ministers may by regulations appoint” and insert “at the end of a period of six months beginning with the day on which this Act is passed”.

Rebecca Pow: The Government new clause and new schedule represent a tremendous step forward in action not only in the UK but, as the hon. Member for Gloucester said, abroad. That demonstrates how we can reach beyond our shores in environmental protection and action, as well as in due diligence for conservation, environmental management and climate change purposes. The Opposition wholly welcome these measures. However, why were they so late in coming?

I think we can claim we nudged the Government a little in that direction, because our due diligence new clause, which we will discuss later, is about the wider subject that the Minister mentioned in her remarks and points the way. We hope that the Government will go beyond forestry products and into other areas. We tabled our new clause, which substantially anticipated the Government’s action, before Parliament went into recess for the lockdown. Can the Minister reflect on why these measures were as late as they were? In her opinion, did the nudging of not only Labour but also a large number of national and international environmental groups, who banded together to develop the due diligence way of doing things, have a substantial hand in making sure—albeit a little late in the day—that these new clauses came into being? It was just in time because the Bill will now have these clauses in it, and I hope they will fully survive the rigours of the Bill’s passage through the House and come to be a substantial part of it. I think it will be a very welcome and progressive part of the Bill.
Amendment 153, in clause 131, page 118, line 29, leave out “on such day as the Department of Agriculture Environment and Rural affairs in Northern Ireland may appoint” and insert “at the end of a period of six months beginning with the day on which this Act is passed”.

Dr Whitehead: The amendments all essentially say the same thing, but face towards different Secretaries of State. They refer to the back of the Bill, which we are now considering. I recommend to those Members who perhaps have not ventured to look at the backs of Bills to any great extent in their time in this House to have a good look at the back of this Bill and any Bill that comes before the House. If hon. Members are on Committees on future Bills, it is always worth having a look at the back of the Bill to see what is intended for all the legislation that has been drafted and discussed assiduously. What I mean by that is that the back of the Bill is where things actually happen or do not.

For this Bill, it is more than important that what we have discussed and made passionate speeches about actually happens, and the provisions come into force in good time, so that our intentions are carried out. The problem with intentions on many occasions is that they are not actually reflected on the back of the Bill. What happens is that the ability to implement a part of the legislation is reserved to the Minister by regulation. For people who want to take their search of the back of the Bill seriously, the statute books apparently include a large amount of legislation which just has not been enacted—a complete education Bill, for example, from a while ago. None of it has been enacted, because what is on the back of the Bill has simply not taken place.

I mentioned earlier the Office of Gas and Electricity Markets regulations and the Energy Act 2013. Why is that important? Well, part 5 of the 2013 Act, as hon. Members will recall, was about the designation of a statement on policy for Ofgem, concerning the environment and climate change. We tabled an amendment suggesting that the Government should press Ofgem to revise its mandate to ensure that it has the environment and climate change at its heart. What hon. Members might be surprised to know, and I do not recall if it was specifically mentioned when we moved that amendment, is that already in legislation is a complete section of a Bill—not just a clause—saying that the Government should introduce a strategy and policy statement requiring Ofgem to have an environmental and climate change brief.

That was agreed by a similar Committee to this one, thinking in 2013 that that was going to happen. It has not happened, simply because, on the back of the Bill is a provision that section 5 of the 2013 Act comes into force when the Secretary of State by regulation decides. Ofgem has never had such a brief in its armoury because Ministers have simply declined to implement that bit of the 2013 Act. They have sat on their hands and not carried out the work necessary to implement it. We are trying to ensure that those important parts of this Bill, which we have laboured mightily over, come into force and do what we think they will do in reasonably good order.

I support the shadow Minister in urging me to look at the back of the Bill. What goes on at the back of a Bill is the powerhouse, and I have become terribly interested in that. One must look at the back of the Bill, as he says. I must say, however, that I think he is being terribly negative. First, these measures will be in legislation. Secondly, the strength of feeling about improving the environment is now so strong, not just among our super keen Committee members, who are stalwarts in this area, but among everybody out there—we only have to look at Twitter. I want these measures as much as he does.

Rebecca Pow: I support the shadow Minister in urging me to look at the back of the Bill. What goes on at the back of a Bill is the powerhouse, and I have become terribly interested in that. One must look at the back of the Bill, as he says. I must say, however, that I think he is being terribly negative. First, these measures will be in legislation. Secondly, the strength of feeling about improving the environment is now so strong, not just among our super keen Committee members, who are stalwarts in this area, but among everybody out there—we only have to look at Twitter. I want these measures as much as he does.

I thank the hon. Member for the raft of amendments on the same point, which would have the effect, six months after the Bill receives Royal Assent, of commencing all the remaining provisions of the Bill that can be commenced by the Secretary of State, Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
That one-size-fits-all approach would cause very serious problems when the Bill is implemented following Royal Assent. For example, if the amendment were to be accepted, it would very likely delay the establishment of the Office for Environmental Protection by nine months. We have already launched and concluded a recruitment campaign for the chair of the OEP. Far from not doing anything, we have already started, and I hope the hon. Member will commend that.

Many parts of the Bill will be at least partially commenced much earlier than six months after Royal Assent, and other provisions will need at least in part to be commenced somewhat later, requiring further evidence gathering and public consultation, for example. That is not to mention the impact on local authorities. We will have to work very carefully and closely with them, because they are absolutely key to implementing quite a number of measures, not least in terms of biodiversity, as well as the waste measures.

I assure the hon. Member that the Government have not brought this vital piece of legislation to this House only for it to languish uncommenced in a cupboard. He gave an example of another piece of legislation. The Bill will not be like that, particularly not after all the time that has been invested in it. It has gone on for the whole year of my life as the Environment Minister. It has come and gone, and it has returned, and it is the stronger for it. It is certainly not going to languish.

We are setting ourselves legally binding targets under part 1 of the Bill, and we will need all the tools later in the Bill to support the delivery of those targets. The targets are legally binding—that is what the Bill says. Work is already going on with many organisations and the Department to work out how we will devise the targets, what the best targets to start with would be, and what later targets would be. An awful lot of work needs to go on—consultations, further detailed guidance and then new regulations—as I am sure the hon. Member will appreciate.

As we have said, we will bring forward at least one target in each of the four priority areas as well as a target for fine particulate matter, PM2.5, by the Bill’s 31 October 2022 deadline. All that work has to take place before that. Every time I speak on air quality—the hon. Member will understand this point—we are being held to account. We need to do this and we will do it. He asked whether we would trigger any of the work and the measures. We published the targets policy paper on 19 August, detailing the roadmap for delivering the targets.

I hope the hon. Gentleman will agree that we are demonstrating that this will not be a Bill that sits in a cupboard getting dusty. Ministers in devolved Administrations need a measure of flexibility in commencing the provisions in many parts of the Bill as well. Other parts of the Bill can safely be commenced on Royal Assent or two months later. Hon. Members will know that that is the customary approach for Bills. Therefore, the commencement of provisions in the Bill already strikes the right balance between automatic commencement and providing the necessary flexibility to Ministers. I hope that clarifies the position, and I ask the hon. Member to withdraw the amendment.

Dr Whitehead: We do not want to divide the Committee on the amendments. I welcome the Minister’s enthusiastic intimation that she has no intention that this Bill should sit on a covered shelf. I am sure she is right on that, given her commitment so far to making this Bill work, and the effort that she has put into ensuring that we move forward. Indeed, I welcome her indication that action has already started on ensuring that these provisions work. However, that does not undermine the fundamental point about the legislation, namely that it is possible for Ministers who are less dedicated than she is simply to sit on their hands. That is the central concern behind our amendments. I strongly take on board her point that she is not a Minister who is going to sit on her hands.

I wonder whether she has considered the green Cabinet Sub-Committee as part of her approach. I am not sure whether she sits on it, but if she or a colleague of hers does, she might take the opportunity gently to remind the Ministers in the Department for Business, Energy and Industrial Strategy that they also have a responsibility to implement legislation, and that the fact that they have not done so has a substantial effect on some of the things that we want to do in this Bill. She might take the opportunity to say, “Get on with it—seven years down the road, you ought to have implemented this.”

Rebecca Pow: The hon. Gentleman makes a very good point. I was not specifically going to comment on that, but I am sure he will agree that as a result of the Bill, other Departments will have to look at what they do on the environment. Many already do, but there will now be much more of a requirement that they do so. Does he agree that one reason why we must bring forward a lot of these measures, particularly on diversity, is that they will dovetail with the new agricultural land management system? It is important that the two schemes work together.

Dr Whitehead: I very much take on board the fact that the Bill is primarily about DEFRA, but it cannot work properly unless all other Departments play their part in ensuring that that happens. That point is very well made, and it underlines my request for the Minister to have a quiet word with another Department to suggest that it does as she intends, as far as this Bill is concerned, with its areas of responsibility in relation to environmental and climate change outcomes. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 131 ordered to stand part of the Bill.

Clause 132

**TRANSITIONAL OR SAVING PROVISION**

Amendments made: 63, in clause 132, page 119, line 38, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.

Amendment 64, in clause 132, page 119, line 39, leave out “Assembly” and insert “Senedd”.—(Rebecca Pow.)

See Amendment 28.

Clause 132, as amended, ordered to stand part of the Bill.

Clause 133 ordered to stand part of the Bill.

**New Clause 4**

**MEMORANDUM OF UNDERSTANDING**

“(1) The OEP and the Committee on Climate Change must prepare a memorandum of understanding.”
(2) The memorandum must set out how the OEP and the Committee intend to co-operate with one another and avoid overlap between the exercise by the OEP of its functions and the exercise by the Committee of its functions.”—(Rebecca Pow.)

This new clause requires the OEP and the Committee on Climate Change to prepare a memorandum of understanding, setting out how they will co-operate with one another and avoid overlap in the exercise of their functions.

Brought up, read the First and Second time, and added to the Bill.

New Clause 24

GUIDANCE ON OEP’S ENFORCEMENT POLICY AND FUNCTIONS

‘(1) The Secretary of State may issue guidance to the OEP on the matters listed in section 22(6) (OEP’s enforcement policy).

(2) The OEP must have regard to the guidance in—

(a) preparing its enforcement policy, and

(b) exercising its enforcement functions.

(3) The Secretary of State may revise the guidance at any time.

(4) The Secretary of State must lay before Parliament, and publish, the guidance (and any revised guidance).

(5) The OEP’s “enforcement functions” are its functions under sections 29 to 38.’—(Rebecca Pow.)

This new clause provides that the Secretary of State may issue guidance to the OEP on the matters listed in clause 22(6) (OEP’s enforcement policy). The OEP must have regard to the guidance in preparing its enforcement policy and exercising its enforcement functions.

Brought up, read the First and Second time, and added to the Bill.

New Clause 25

SPECIES CONSERVATION STRATEGIES

‘(1) Natural England may prepare and publish a strategy for improving the conservation status of any species of fauna or flora.

(2) A strategy under subsection (1) is called a “species conservation strategy”.

(3) A species conservation strategy must relate to an area (the “strategy area”) consisting of—

(a) England, or

(b) any part of England.

(4) A species conservation strategy for a species may in particular—

(a) identify areas or features in the strategy area which are of importance to the conservation of the species,

(b) identify priorities in relation to the creation or enhancement of habitat for the purpose of improving the conservation status of the species in the strategy area,

(c) set out how Natural England proposes to exercise its functions in relation to the species across the whole of the strategy area or in any part of it for the purpose of improving the conservation status of the species in the strategy area,

(d) include Natural England’s opinion on the giving by any other public authority of consents or approvals which might affect the conservation status of the species in the strategy area, and

(e) include Natural England’s opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation status of the species in the strategy area that may arise from a plan, project or other activity.

(5) Natural England may, from time to time, amend a species conservation strategy.

(6) A local planning authority in England and any prescribed authority must co-operate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the authority’s functions.

(7) The Secretary of State may give guidance to local planning authorities in England and to prescribed authorities as to how to discharge the duty in subsection (6).

(8) A local planning authority in England and any prescribed authority must in the exercise of its functions have regard to a species conservation strategy so far as relevant to its functions.

(9) In this section—

“England” includes the territorial sea adjacent to England, which for this purpose does not include—

(a) any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or

(b) any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);

“local planning authority” means a person who is a local planning authority for the purposes of any provision of Part 3 of the Town and Country Planning Act 1990;

“prescribed authority” means an authority exercising functions of a public nature in England which is specified for the purposes of this section by regulations made by the Secretary of State.

(10) Regulations under subsection (9) are subject to the negative procedure.’—(Rebecca Pow.)

This new clause gives Natural England the function of producing species conservation strategies and makes related provision.

Brought up, read the First and Second time, and added to the Bill.

New Clause 26

PROTECTED SITE STRATEGIES

‘(1) Natural England may prepare and publish a strategy for—

(a) improving the conservation and management of a protected site, and

(b) managing the impact of plans, projects or other activities (wherever undertaken) on the conservation and management of the protected site.

(2) A strategy under subsection (1) is called a “protected site strategy”.

(3) A “protected site” means—

(a) a European site,

(b) a site of special scientific interest, or

(c) a marine conservation zone,

to the extent the site or zone is within England.

(4) A protected site strategy for a protected site may in particular—

(a) include an assessment of the impact that any plan, project or other activity may have on the conservation or management of the protected site (whether assessed individually or cumulatively with other activities),

(b) include Natural England’s opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation or management of the protected site that may arise from a plan, project or other activity,
(c) identify any plan, project or other activity that Natural England considers is necessary for the purposes of the conservation or management of the protected site, and

(d) cover any other matter which Natural England considers is relevant to the conservation or management of the protected site.

(5) In preparing a protected site strategy for a protected site, Natural England must consult—

(a) any local planning authority in England which exercises functions in respect of an area—

(i) within which any part of the protected site is located, or

(ii) within which a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site, or

(iii) that Natural England considers may otherwise be affected by the strategy,

(b) any public authority in England—

(i) that is undertaking, or proposing to undertake, a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site, or

(ii) the consent or approval of which is required in respect of a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site, or

(c) any IFC authority in England which exercises functions in respect of an area—

(i) the conservation or management of which Natural England considers may be affected by the strategy, or

(ii) the sea fisheries resources of which Natural England considers may be affected by the strategy,

(d) the Marine Management Organisation, where—

(i) any part of the protected site is within the MMO’s area, or

(ii) Natural England considers any part of the MMO’s area may otherwise be affected by the strategy,

(e) the Environment Agency,

(f) the Secretary of State, and

(g) any other person that Natural England considers should be consulted in respect of the strategy, including the general public or any section of it.

(6) In subsections (4) and (5), a reference to an adverse impact on the conservation or management of a protected site includes—

(a) in relation to a European site, anything which adversely affects the integrity of the site,

(b) in relation to a site of special scientific interest, anything which is likely to adversely affect the flora, fauna or geological or physiographical features by reason of which the site is of special interest,

(c) in relation to a marine conservation zone, anything which hinders the conservation objectives stated for the zone pursuant to section 117(2) of the Marine and Coastal Access Act 2009, and

(d) any other thing which causes deterioration of natural habitats and the habitats of species as well as disturbance of the species in the protected site, in so far as such disturbance could be significant in relation to the conservation or management of the protected site.

(7) A person whom Natural England consults under subsection (5)(a) to (e) must co-operate with Natural England in the preparation of a protected site strategy so far as relevant to the person’s functions.

(8) The Secretary of State may give guidance as to how to discharge the duty in subsection (7).

(9) A person must have regard to a protected site strategy so far as relevant to any duty which the person has under—

(a) the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012),

(b) sections 28G to 28I of the Wildlife and Countryside Act 1981, or

(c) sections 125 to 128 of the Marine and Coastal Access Act 2009.

(10) Natural England may, from time to time, amend a protected site strategy.

(11) The duty to consult a person under subsection (5) also applies when Natural England amends a protected site strategy under subsection (10) so far as the amendment is relevant to the person’s functions.

(12) In this section—

“England” has the meaning given in section (Species conservation strategies);  
“European site” has the meaning given in regulation 8 of the Conservation of Habitats and Species Regulations 2017;

“IFA authority” means an inshore fisheries and conservation authority created under section 150 of the Marine and Coastal Access Act 2009;

“local planning authority” has the meaning given in section (Species conservation strategies);

“marine conservation zone” means an area designated as a marine conservation zone under section 116(1) of the Marine and Coastal Access Act 2009;

“MMO’s area” has the meaning given in section 2(12) of the Marine and Coastal Access Act 2009;

“public authority” has the meaning given in section 40(4) of the Natural Environment and Rural Communities Act 2006;

“sea fisheries resources” has the meaning given in section 153(10) of the Marine and Coastal Access Act 2009;

“site of special scientific interest” means an area notified under section 28(1) of the Wildlife and Countryside Act 1981.” —[Rebecca Pow.]
“(3B) In England, the appropriate authority shall not grant a licence under subsection (3) unless it is satisfied—

(a) that there is no other satisfactory solution, and

(b) that the grant of the licence is not detrimental to the survival of any population of the species of animal or plant to which the licence relates.”

(4) In that section, in subsections (5A)(c) and (6)(b), after “two years,” insert “or in the case of a licence granted by Natural England five years,”.

(5) In that section, in subsection (9)(c), after “to (e)” insert “or (f)”.

(6) In the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), in regulation 55(10), for “two years” substitute—

“(a) five years, in the case of a licence granted by Natural England, or

(b) two years, in any other case.” — (Rebecca Pow.)

This new clause makes provision relating to licences granted under regulation 55 of the Conservation of Habitats and Species Regulations 2017 and section 16 of the Wildlife and Countryside Act 1981.

Brought up, read the First and Second time, and added to the Bill.

New Clause 31

USE OF FOREST RISK COMMODITIES IN COMMERCIAL ACTIVITY

‘(1) In Schedule (Use of forest risk commodities in commercial activity)—

(a) Part 1 makes provision about the use of forest risk commodities in commercial activity,

(b) Part 2 makes provision about enforcement, and

(c) Part 3 contains general provisions.

(2) Regulations under the following provisions of Schedule (Use of forest risk commodities in commercial activity) are subject to the affirmative procedure—

(a) paragraph 1;

(b) paragraph 2(4)(c); 

(c) paragraph 5 (except for paragraph 5(2)(b) and (5));

(d) paragraph 7;

(e) Part 2.

(3) Regulations under the following provisions of Schedule (Use of forest risk commodities in commercial activity) are subject to the negative procedure—

(a) paragraph 3;

(b) paragraph 4;

(c) paragraph 5(2)(b) and (5).” — (Rebecca Pow.)

This new clause inserts NS1 and specifies the Parliamentary procedure for making regulations under that Schedule.

Brought up, read the First and Second time, and added to the Bill.

New Clause 1

THE ENVIRONMENTAL OBJECTIVE

‘(1) The environmental objective is to achieve and maintain a healthy natural environment.

(2) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures arising from this Act must be enforced, allowed and followed for the purpose of contributing to achievement of the environmental objective.” — (Dr Whitehead.)

This new clause is intended to aid coherence in the Bill by tying together separate parts under a unifying aim. It strengthens links between the target setting framework and the delivery mechanisms to focus delivery on targets.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 47

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo
Graham, Richard
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

New Clause 2

ENVIRONMENTAL STANDARDS: NON-REGRESSION

‘(1) The Secretary of State has a duty to ensure that there is no diminution in any protection afforded by any environmental standard which was effective in UK domestic law on IP completion day.

(2) In this section, “IP completion day” has the same meaning as in section 39 of the European Union (Withdrawal Agreement) Act 2020.” — (Daniel Zeichner.)

This new clause looks to set a floor of environmental standards by taking a snapshot of EU standards at the end of the implementation period and giving the Minister a duty to uphold those standards as a minimum.

Brought up, and read the First time.

Daniel Zeichner (Cambridge) (Lab): I beg to move, That the clause be read a Second time.

10 am

I echo the earlier congratulations. It is a pleasure to pick up the baton from my hon. Friend the Member for Southampton, Test, and to continue the dialogue with the Minister on a really important point. I remember the 2005 election. My party had a particularly incisive slogan, “Forward, not back”. It got us through the election, but I remember wondering at the time whether it was the most incisive view of the world. It represented an assumption that we do all look forward rather than going back. There is a risk in thinking that, which we can see in global politics at the moment—in America. Many of us feel that, hopefully, we are going forward, but when the previous President took the US out of the Paris agreement, in many people’s point of view we went backwards. There can be no presumption that the gains made in the past are necessarily guaranteed for the future.

Much as I admire the Minister’s enthusiasm and optimism, readings of history show that gains are not always maintained. As my hon. Friend the Member for Southampton, Test has pointed out, even when legislation looks as if we have done stuff, we can find that not much has happened when we go into the fine detail. There can sometimes be a deliberate attempt to pull the wool over the eyes of the public, or there can be other reasons.

The non-regression issue is really significant, because environmental law was an area on which we made progress when we were members of the European Union;
people might take different views on our relationship with the EU, but we would still be able to agree that we made progress on environmental law. Much of the business of the Bill has been about how we move that into our domestic legislation.

The headline that the Government want from our discussions is that our aspirations are to be world-leading, as the Minister has said. But without tackling the regression issue, it is harder to make the case that we will be at the forefront. I strongly suggest that the Minister looks at the new clause, because it provides clarity and certainty. It sends a signal to the wider world that we are absolutely serious about our ambition to ensure that we are at the forefront of environmental protection.

There is a danger in thinking that this is just re-running the Brexit debate again; people tried to raise that on a number of occasions. In my reading ahead of discussion of the new clause, it struck me that environmental law is not simple. Environmental lawyers are a slightly niche species, but they explain that this is a question not of slavishly following whatever the EU chooses to do in the future, but of establishing that we do not go back. Some people in the field think that non-regression is an exciting new norm for our environmental law that we should be associated with. They point us to international instruments, such as the 2015 International Union for Conservation of Nature draft international covenants on environment and development, the 2017 draft Global Pact for the Environment, and the 2018 Escázu agreement for the Americas, which mirrors the Aarhus convention.

The point is that how we make progress globally is not always linear. It is complicated and in some cases involves difficult trade-offs and difficult historical understandings of the advantages that we have as a developed nation, as we try to balance the pressures that we put on other nations as they try, rightly, to improve their standard of living. It is a complicated ratcheting process that requires difficult trade-offs.

As my hon. Friend the Member for Southampton, Test suggested, trade-offs have to be made within our own Government, but there are also complicated negotiations with others. Other countries, such as France, have recently incorporated non-regression into their environmental codes, which has allowed the courts to make a number of judgments on the application of that principle. Mr Gray, I think this issue is sufficiently important for a Division, but first I want to make one or two more comments.

In my reading, I looked at a paper by Professor Andrew Jordan and Dr Brendan Moore, who have been looking closely at what we do in this place. They have analysed the statutory instruments that so many of us enjoy sitting and discussing. Sadly, they have come to some rather worrying conclusions. I suspect that all of us who read such instruments do not necessarily get into the small print, but they have discovered that many of the EU provisions had review and revision clauses in them, which allow legislation to be considered again to see whether it is doing what we thought it was going to do. It is one of the shortcomings of the work we do in this place: we pass many laws but do not necessarily come back to them in a timely way to check whether the outcomes were as we hoped and whether they need updating. Apparently, a development in EU law has meant that this has become more and more the case.

When Ministers make those SIs—I frequently moan about this—we are told that they are just technical changes bringing the legislation into UK law. It appears that there may be a little bit more to it than that. The paper analysed some 24 SIs; the authors found that 88%–21 of the 24—of EU laws “contained review clauses and 79%.. contained revision clauses.” Unfortunately, in many cases we have not moved those review and revision clause across.

“The Government removed the clauses across a number of topic areas, spanning climate change, waste, agriculture, and heavy metals.”

To my dismay, I discovered that some of those were the very SIs that I have been working on recently, including the Timber and Timber Products and FLEGT (EU Exit) Regulations 2018, which apparently did have a review and revision clause when they were part of EU law, but no longer have them under our law. There was a similar case in the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019.

My point is that, when one looks at the fine detail, not all was as it seemed. Sadly, our protections are not as strong as they were. That is the theme of most of my contributions. We will be less well protected next month than we are today. That is why the non-regression principle is so very important. I commend it to the Minister and ask her to take the advantage that we are yet again offering her and which would strengthen her Bill.

**Fleur Anderson** (Putney) (Lab): The clock is ticking: we are only five weeks away from the end of the famous implementation period. This amendment seeks to freeze that in time and say that in five weeks’ time there will be no regression or diminution in any protection afforded by any environmental standard effective in UK domestic law. Surely that is the most important part of the Bill. At least we could say that the Environment Bill is being brought forward to replace, renew and look beyond all the environmental protections that we will not have when we are not an EU member: that we will do better than that—or at least, not regress. If the amendment is not agreed to, we are worried that we will not have that safeguard.

The Government have frequently stated their desire to improve the quality of our environment and protect our existing environmental standards. Why, then, do they stop short of enacting an unambiguous and binding requirement not to regress on existing rules, as would be enacted through the amendment? This is not about staying tied to EU rules. As the shadow Minister says, we are not re-enacting Brexit at all; rather, we are ensuring that the UK rules get better and better over time and are protected from deregulatory pressure.

Non-regression is an exciting and emerging norm of environmental law, and we need to harness its potential. That requires a positive trajectory for environmental standards, with the ultimate goal of progressively improving the health of people and the planet. There is a precedent, as was mentioned, in other international laws and instruments. Non-regression can be found explicitly in international instruments, such as the 2015 International Union for Conservation of Nature draft international covenant on environment and development, the 2017 draft global pact for the environment and the 2018 Escázu agreement, which mirrors the Aarhus convention for the Americas. It is important to mention those because
there is precedent. We cannot say that such a provision is unnecessary and does not need to be done. It should be added to the Bill.

To underscore why we, as the Opposition, feel so strongly about the issue, one need only look at how much the UK’s environment has benefited from the EU framework that the Bill is replacing. In the 1970s, we pumped untreated sewage straight into the sea, but EU laws and the threat of fines, as well as good enforcement, forced us to clean up our act. Now, more than 90% of our beaches are considered clean enough to bathe off. I have yet to hear a meaningful reason why the Government would not at least commit to the new clause. To say that it is not necessary is just bluster and evades the issue, and it is just not good enough.

If we are to put our money with our mouth is, the new clause should be added to the Bill, especially because it would match our ambition as we host COP26 next year. It would be a meaningful legal commitment to non-regression, and in turn a powerful endorsement of the Government’s stated ambitions to be world leaders on environmental matters. It would create an authoritative platform from which the UK could seek to improve global green governance. There is nothing to lose by adopting the new clause and everything to gain.

10.15 am

Rebecca Pow: I thank the hon. Members for Cambridge and for Putney for their input. The hon. Member for Cambridge seemed to suggest that my optimism and enthusiasm are negative assets, but I would never even have started my journey to this place if I had not had such optimism and enthusiasm; I am sure the same could be said of every Member here.

I vowed all that time ago that I would engage with environmental issues should I ever make it to Parliament. Lo and behold, here we are discussing the Environment Bill. I know that the hon. Gentleman is very passionate about the environment, and I like to think that he is just teasing me, because he knows that while I and my colleagues are in office, we will stand up for everything in the Bill. We hope that future Governments will do the same, because that is the purpose of the legislation.

The new clause, which aims to tie the UK to EU law at the end of the transition period, is unnecessary. To put it simply, we have left the EU and we should not bind ourselves to the legislative systems of the past. The Government made it very clear that the UK will continue to be a global leader, championing the most effective policies and legislation to achieve our environmental ambitions. I believe that we have demonstrated that even today with the due diligence clause. We will continue to improve on our environmental standards, building on existing legislation as we do so.

Ruth Jones: The Minister is making some interesting points, but does she agree that this is not about staying tied to the EU’s apron strings but about UK rules getting better and better? The new clause provides us with a baseline to improve on.

Rebecca Pow: The hon. Lady leads me neatly on to say that the UK does not need the EU to improve the environment; our high regulatory standards on environmental protection are not dependent on EU membership. Rightly, one could say that over the years we have taken on board standards, such as those governing sewage in water, but we have actually influenced a lot of European policy. Now we are going further. We often led the way, as members of the EU will acknowledge.

To continue with the same approach as the EU is not good enough. I know that many members of the Committee are well aware of the damaging effects of some EU policies, in particular the common agricultural policy. The thought behind it was good, but the environmental consequences are not necessarily to be lauded. That is why we now have this great opportunity to change it, as we must. We will do better.

Lest everyone always thinks that the EU offers some gold-plated system, let me give some examples of where we have already gone ahead of it. For a start, we were the first major economy to legislate for net-zero emissions by 2050. Another good example is the UK’s landfill tax, which is one of the highest in Europe and has been effective in reducing waste disposal and increasing recycling. The UK has also introduced one of the world’s strictest ivory bans to protect elephants from poaching, whereas the EU has yet to legislate on that. Similarly, our clean air strategy has been applauded by the World Health Organisation as an example for the rest of the world to follow.

I must also mention the UK’s microbeads ban, which shows the power of the Back Bencher who worked on it; just the other day, my involvement and that of many others was cited in the Chamber. That ban came into effect in 2018, but the EU did not move to introduce an equivalent ban until a year later. Those are just a few examples, not to mention our recent ban on single-use plastics, plastic straws, drink stirrers and cotton buds—coming into force in October 2022. We are ahead in many cases.

There are concerns about non-regression, but surely, after we have sat here for weeks going through the Bill with a fine-toothed comb, it is obvious that we have a real, detailed framework of targets, monitoring and reporting. We are then to be held to account on whether the improvement is actually occurring; Parliament will be able to scrutinise. There will be a closer watch on these things than ever before, which is a good thing. The Secretary of State is required to report to Parliament every two years on what is happening on the environmental front internationally—to look at the new environmental laws being introduced, sift through them and work out which ones would benefit us.

Dr Whitehead: Would the Minister at least agree that nothing in the new clause suggests that we should be pegged to EU law, as we were in the past? It simply says that a snapshot should be taken at the point of departure, but surely, that is something to stand on when it comes to things that we wish to carry out in the future. Far from pegging us back, it actually supports the sort of thing the Minister is suggesting.

Rebecca Pow: We have reached that point already. We have been in the EU, so we have had all the same laws. We are not going to sweep them all away, but we will build on them. When that review of international law is done, the EU laws will also be looked at.

I think we have covered what the hon. Member for Cambridge is asking for. On the SI points—I am very interested that the hon. Gentleman has looked at that
report about the SIs—I should say that, three to five years after Royal Assent, the responsible Department must submit a memorandum to the relevant Commons departmental Select Committee, published as a Command Paper. The memorandum will include a preliminary assessment of how the Act has worked in practice, relative to objectives and benchmarks identified during the passage of the Bill and in supporting documentation.

The Select Committee, or potentially another Committee, will then decide whether it wishes to conduct a further post-legislative inquiry into the Act. Perhaps we should send that to the authors of that report, because perhaps they were not aware of it. I think it is really helpful, and I hope that it helps.

I have not yet mentioned the OEP, which will help to uphold our standards as well. It will be absolutely essential, ensuring Governments are held to account for the environmental performance I mentioned before. All that goes further than the EU’s environmental governance framework, with stronger binding remedies available to the courts and a wider scope to hold all public authorities to account on the environment. It is much wider.

Our sovereign Parliament must be able to fully realise the benefits of regulatory autonomy in order to take action on improving environmental protections in the future. To support parliamentary scrutiny of our ambitions, the Bill contains provisions in clause 19 that allow Parliament to hold the Government to account on delivering their commitments to improving environmental protections, and where a new Bill contains environmental provisions, the Ministers in charge of that Bill—who will potentially be Ministers in other Departments—will be required to make a statement confirming whether it maintains the level of environmental protection in place at the time of the Bill’s introduction. I hope that has been helpful, and I ask the Opposition if they now might withdraw the new clause.

Daniel Zeichner: I do not think the Minister will be surprised to hear that I am not convinced and will not be withdrawing the amendment. The reason we are not convinced is that there is nothing wrong with optimism, but it has to be tempered by realism, and frankly, as we have seen at the very top of this Government over the past few months, optimism does not always produce results. Looking at the state of our economy, I suspect that we are facing a hard winter and the pressures that will be put on environmental protections will be intense. It is not unreasonable for us on the Opposition Benches to once again remind Government Members about comments made by the current Prime Minister and previous Conservative leaders. The green crap is still the green crap, as far as some are concerned—[ Interruption. ]

That was said by a Conservative Prime Minister.

Rebecca Pow: I ask the hon. Gentleman to withdraw that remark and stop referring to that. We have moved echelons from there, and it is really unfair that this keeps being dredged up by the Opposition, who themselves do not have a great record on the environment. Does he agree?

Daniel Zeichner: The Minister might well wish it had not been said, and I wish it had not been said, but it was.

Richard Graham: You heard it, did you?

Daniel Zeichner: It was widely reported and not denied.

The Chair: Order.

Richard Graham: On a point of order, Sir George. Is it appropriate in this Environment Bill Committee, where we are discussing serious issues, for a Member, however well intentioned, to raise a supposed quote by a former Prime Minister from several years ago, which he certainly never heard—none of us heard it—in language that is arguably not particularly parliamentary?

The Chair: That, of course, is not a matter of order; it is a matter of content.

Daniel Zeichner: The point I am making is that all Governments will face a dilemma and a pressure when it comes to economic imperatives and environmental protection. We have seen as much in the response to questions I raised about the impact of the planning White Paper, which have not been addressed by the Government. I understand why they have not been addressed—because they are not addressable. There is a tension, and the question we are asking is: when those pressures come—as they will—is this legislation strong enough to protect our environment? The Minister says it is; I say it is not, and that is the difference. I am sure the hon. Member for Gloucester appreciates the point I am making, because it can hardly be denied that there is a tension. If he thinks there is not a tension, that is great, but that is a different world from the one I am living in.

The non-regression issues go beyond the EU question. The point we are making is that a worldwide set of negotiations will continue, hopefully in a more positive way with the new American Administration, and non-regression will be part of those wider discussions. Exactly as my hon. Friend the Member for Southampton, Test has said, this new clause does no more than establish a baseline from which we believe we should be moving, and we see no reason to not put it in the Bill.

I hear what the Minister says about the review and revision clauses that were in the transposed legislation, but I gently say that when that comes up, it will be a very big piece of work, given the number of statutory instruments we have been discussing. In fact, as I think most of us appreciate, once we start digging into them, it often opens up a cornucopia of riches in terms of issues to look at, and we see that what looked like a very simple transposition is actually extremely complicated. We think non-regression is really important, and that is why we intend to press this new clause to a Division.

Question put. That the clause be read a Second time.


Division No. 48

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Thomson, Richard
Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

Graham, Richard
Mackrony, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.
New Clause 3

WELL CONSENTS FOR HYDRAULIC FRACTURING: CESSATION OF ISSUE AND TERMINATION

“(1) No well consent which permits associated hydraulic fracturing may be issued by the Oil and Gas Authority (‘OGA’).

(2) Sections 4A and 4B of the Petroleum Act 1998 (as inserted by section 50 of the Infrastructure Act 2015), are repealed.

(3) Any well consent which has been issued by the OGA which—

(a) permits associated hydraulic fracturing and

(b) is effective on the day on which this Act receives Royal Assent shall cease to be valid three months after this Act receives Royal Assent.

(4) In this section—

‘associated hydraulic fracturing’ means hydraulic fracturing of shale or strata encased in shale which—

(a) is carried out in connection with the use of the relevant well to search or bore for or get petroleum, and

(b) involves, or is expected to involve, the injection of—

‘well consent’ means a consent in writing of the OGA to the commencement of drilling of a well.”—(Dr Whitehead.)

This new clause, as a response to recent hydraulic fracturing exploration activity including in Rother Valley, would prevent the Oil and Gas Authority from being able to provide licences for hydraulic fracturing, exploration or acidification, and would revoke current licences after a brief period to wind down activity.

Brought up, and read the First time.

10.30 am

Dr Whitehead: I beg to move, That the clause be read a Second time.

This new clause concerns well consents for hydraulic fracturing: cessation of issue and termination. Hon. Members may ask themselves, “What has fracking got to do with this Bill? Why is there a new clause about fracking when we are talking about other issues entirely?” I would contend that fracking, or potential fracking, is central to many of the issues that we have discussed. The current fracking regime and whether or not wells are being fracking cut across, potentially considerably so, the Bill’s protections and provisions relating to the natural environment, biodiversity and various other issues. There are a number of worrying issues relating to how fracking is carried out, how its consequences are dealt with, and how its by-products come about and are or are not disposed of.

I am sure that hon. Members will have access to a fair amount of information about the fracking process and that they will be aware that, as far as this country is concerned, it has not got very far. The Cuadrilla well in Preston was paused on the grounds that it caused earthquakes when the fracking process began. Although the then BEIS Secretary, the right hon. Member for South Northamptonshire (Andrea Leadsom), used a provision to direct that that particular drilling company should not proceeded, that provision also allowed for corners to be cut around, so that it could get going with the fracking process. The standard relating to seismic disturbance was only a small part of the substantial environmental consequences to which the widespread introduction of fracking would give rise.

Mercifully, fracking is not used substantially in this country, but it is in other countries. When I visited Texas some time ago, I went to Austin, which is right in the middle of the fracking industry, in the large, relatively easy-to-access basin that covers a lot of Texas and in which a lot of fracking wells have been drilled. As we came into the airport, we could see ahead of us what looked like a moonscape. There was a large number of circular pads with extraction equipment covering the landscape as far as the eye could see. It also glinted in the sun, inasmuch as attached to those fracking pads were a number of what looked like ponds or small lakes. It looked like a landscape of lakes, but it was not. It was a landscape of tailing ponds associated with the fracking pads, and in which were placed the results of the fracking process—the fracking fluid that had been used to blast the rocks apart, which contained substantial chemicals to assist in that process. If they were to be produced in this country in the quantities suggested—at least 10,000 or so cubic metres of fluid per fracking pad—they would be classed as hazardous waste and would need to be disposed of very carefully. There are actually very few hazardous waste sites in this country that can take that kind of waste. The solution in the United States was that, on some occasions, they injected the waste back down into deep basins, which is not ideal. Alternatively, they just kept it on the surface in tailing ponds on the landscape. That could be the future for us, if we were to develop fracking to any great extent.

As I say, we have had only two goes at fracking in this country so far. They happened to be in two areas of the UK that contain the seams from which gas can be extracted through the fracking process. One is the Bowland shale in the north-west of the country, which happens to encompass the Lake District national park. The other is across the Weald and into South Downs national park, an area of outstanding natural beauty that goes across Sussex and into Hampshire. If we had a substantial fracking industry in the UK, wells would be drilled in those two concentrated areas. There would be a concentration of wells in that precious landscape, possibly like the concentration that I saw in Austin, Texas.

The Infrastructure Act 2015 placed restrictions on where fracking can take place, but it did not have a great deal of traction in this country. Modern fracking can proceed by diagonal drilling; it does not have to involve drilling down. An interesting discussion emerged about the extent to which parts of the country could be declared to be surfaces on which fracking should not take place. The Government of the day identified some areas of outstanding beauty and national parks as areas where fracking should not take place, but all people need to do is set up a fracking plant right on the boundaries of a national park and drill diagonally.

Fleur Anderson: Does my hon. Friend agree that if the new clause is not agreed to and fracking is not stopped, that will undermine a lot of the biodiversity and ecosystem protection elsewhere in the Bill? It is bad for the climate, the environment and pollution, and local people do not want it either.

Dr Whitehead: I thoroughly agree with my hon. Friend. Friend about a regime of substantial fracking. All that has happened at the moment is that fracking has been paused. All the infrastructure requirements and legislation allowing fracking on a reasonably unrestrained basis are still in place, so it is more than possible that a future Government, or indeed this Government, might decide that they no longer wish to pause fracking. Everything
is ready to go. As she said, this raises the question not only of what happens to the fracking fluid but of the escape of fugitive emissions between the well being produced and the gas being conveyed. Indeed, it is the practice, when fracking has been completed, to have a so-called flare-off to clean the well’s tubes, as it were. Enormous amounts of gas mixed with elements of the fracking fluid are released into the atmosphere and simply flared.

We understand that fracking sites will have multiple wells drilled with a very large amount of transport involved, with traffic coming to remote countryside areas, the levelling of an area several football pitches wide to make the pad, and a host of other things that result in environmental despoliation in pursuit of fracking. There are also the long-term consequences when the well is depleted: will it be re-fracked? If it is depleted, will it be properly capped off? One of the problems in Texas now is that the fracking wells have not proved to be as bountiful as had been thought—what a surprise—and several have simply been abandoned with little done to cap them off. There can be a regime for doing that properly, but in the countryside where the fracking has taken place, there is continuing danger and concern in respect of surface water and water in seams underground.

Ruth Jones: My hon. Friend is making a powerful point. Does he agree that it is the unforeseen consequences that are so dangerous with fracking? We do not know what we do not yet know. In the mining industry near my constituency, we have mountain-top villages that are at risk of subsidence because of the extensive mine workings underneath. We need to be very careful about what we wish on future generations.

Dr Whitehead: That is an important point. These things do not appear and simply go away. An example of something that does appear and then go away is onshore wind. When the turbine’s life is up, it can simply be taken away. That is an advantage of that form of power, but this form of power leaves in its wake enormous environmental scars and a substantial legacy of worry for the communities in which it has taken place, even after it has finished its life. If the well is to be properly exploited, there is the potential legacy of re-fracking on several occasions when all that stuff starts again to keep the well producing. It is a grubby, dirty, environmentally unfriendly, legacy-rich business that we surely should not be inflicting upon ourselves in pursuit of something that we should leave in the ground anyway.

In an era when we say that our dependence on fossil fuel will greatly decrease—indeed, companies such as British Petroleum have said that they will cut down substantially the amount of oil that they get out of the ground, and that they will move into different areas—it does seem strange for us to be encouraging an activity that involves trying to locate the most securely fastened bits of climate-damaging hydrocarbons from the soil, blast them out of solid rock and bring them to the surface to use for fossil fuel activities. As far as this is concerned, I think the watchword is, “Just leave it in the ground.”

That is why we have given the Bill an opportunity to include protection against that happening—and, indeed, protection against the conflict that I believe exists between the Infrastructure Act 2015 and this Bill, in terms of which permissions override which protections, particularly as far as fracking is concerned. We have an opportunity to set out in the Bill that no well consents will be given, and that fracking will not take place in this country. The new clause essentially says that the Oil and Gas Authority will not issue well consents, with all the consequences that I have set out; and that permits that have been given should lapse over a period of time and the work should not be undertaken.

This is a serious issue for the future of our environment and for environmental protection, and we have the ability, literally at the stroke of a pen, to put it right in this Bill. We can put it beyond doubt that—no matter whether there is a pause, whether there are concerns about earthquakes, or whether there are concerns about the environmental consequences of wells drilled in particular places—we will grasp the issue firmly by the scruff of the neck and say, “No more. We are not doing this. It is not good for our environment, and we won’t have it anymore.”

I hope that hon. Members across the Committee will join us in making sure that that is part of the clean, safe and enjoyable environmental future that we all want to strive for, by agreeing to add the new clause to the Bill.

10.45 am

Rebecca Pow: In the last 25 minutes, we have been all the way to Texas and back, we have been up north and we have been all over the place. I thank the hon. Member for Southampton, Test for his proposed amendment. The Government continue to recognise the importance of natural gas as a source of secure and affordable energy as we aim to reach net zero emissions by 2050. Natural gas still makes up around a third of our current energy usage, and we will need it for many years to come, even as we decarbonise. I know that the shadow Minister has a great deal of knowledge and interest in the energy sector, but I am sure he understands that.

The Government have always been clear that the development of domestic energy sources, including shale gas, must be safe for local communities and for the environment. With regard to fracking and shale gas development, the Government have taken a science-led approach to exploring the potential of the industry, underpinned by world-leading environmental and safety regulations. In addition to a traffic light system to monitor real-time seismic activity during operations—with a clear framework of stopping operations in the event of specified levels of seismic activity—the Government also introduced tighter controls over the shale gas industry through the Infrastructure Act 2015.

A well consent is essentially permission to drill an oil or gas well, and it is required from the Oil and Gas Authority before an operator can explore for oil and gas onshore in the UK. All well consents issued by the OGA on or after 6 April 2016 contain a further requirement for operators to obtain hydraulic fracturing consent from the Secretary of State for Business, Energy and Industrial Strategy before carrying out any associated hydraulic fracturing. That consent ensures that all necessary environmental and health and safety permits have been obtained before activities can commence.

The current definition of “associated hydraulic fracturing” is based on the approach taken by the European Commission, which I am sure the shadow
Minister welcomes. Using that definition sets the right balance between capturing hydraulic fracturing operations and not capturing techniques used by conventional oil and gas operations, or more widely in the water industry, where processes such as acidisation are commonly used to clean wells after drilling.

The Environment Agency reviews any proposal involving the use of acid on a site-specific basis before deciding whether the activity is acceptable. The agency’s regulatory controls are in place to protect people and the environment, quite clearly. If the proposed activity poses an unacceptable risk, a permit will not be granted.

We have had such an eloquent description of what goes on in the US. The hon. Member for Southampton, Test paints a very clear picture of that lovely trip—although, it was probably not all that lovely, seeing that moonscape. Comparisons are not necessarily helpful because, of course, in the UK we have an entirely different regulatory system. Construction standards in the UK are robust and regulators have the tools to ensure that the risk of pollutants entering groundwater is minimised.

The EA also assesses the hazards presented by fracturing fluid additives on a case-by-case basis and will not allow hazardous substances to be used where they may enter the groundwater and cause pollution. The EA has the power to restrict or prohibit the use of any substances where they pose an environmental risk. The shadow Minister touched on hazardous waste and flow-back fluids, which include fracturing fluids. They are deemed to be mining waste and require an environmental permit for management onsite. Disposal of flow-back fluids must be at a regulated waste treatment works, which are also regulated by the EA. Shale gas operators must demonstrate that where any chemicals are left in the waste frack fluid, it will not lead to pollution in groundwater. I think it is quite clear that we have a very tight system already in place, which will address many of the issues raised by the shadow Minister.

Let us move on to what has happened recently, when I was involved as a Back Benchers, as were many colleagues. The Government announced in November 2019 that, although any application would be considered on its merits, in the absence of compelling new evidence, they will take a presumption against issuing any further consents for hydraulic fracturing for shale gas extraction, creating a moratorium.

The Government set out their position in full via a written statement to the House on 4 November 2019, and we are satisfied that the current regulations ensure that appropriate safeguards are in place. We therefore have no plans to repeal sections 4A and 4B of the Petroleum Act 1998, as inserted by section 50 of the Infrastructure Act 2015, and nor will we direct the OGA to withhold well consents that include provisions for associated hydraulic fracturing.

There are no plans to turn the moratorium on shale gas extraction into a ban. The moratorium will be maintained unless—this is absolutely crucial—compelling new evidence is provided to address the concerns about the prediction and management of induced seismicity. Such evidence is, it must be said, yet to be presented. I therefore respectfully ask the hon. Gentleman to withdraw his amendment.

Dr Whitehead: The Minister has kindly and gently made quite a good case on our behalf. She has confirmed what we have said: in the UK, we are not talking about an end to or a ban on fracking, or indeed resiling from the circumstances under which fracking was set up as an activity in the UK. The word “moratorium” means a pause; it does not mean the end of anything. It can be a more or less lengthy pause, as the Minister suggested, but it is still a pause, so the way is open for fracking to come back to this country if, as the Minister said, the circumstances permit that.

I agree with the Minister that the regimes in this country and in the US are not the same. The moonscape near Austin that I mentioned is a worse-case scenario— that is true—but even in the early applications for fracking in this country, there was pressure on the Government to cut corners. There were applications for tailing ponds, however briefly they would have been in place. A number of the environmental issues around fracking that I have mentioned would come to this country—not to the same extent as in the US, but they certainly would be part of the fracking process were it to recommence.

There are other differences between the US and the UK in terms of who owns the surface of the land. In this country, the Queen effectively has a hand in the ownership of the surface of the land, while in America, people can buy the rights to what is underneath someone’s land, drive a truck on to it and start drilling, because they have the right of access through the land to what is underneath it. That is not the case in this country. Indeed, as the Minister set out, the Infrastructure Act 2015 introduced a number of constraints on what can and cannot be done, and what cannot be done is along the lines of exactly what is done in America. The Government have nevertheless put forward, in a number of papers that they have published, a prospectus on how much fracking there would be in this country and where it would be undertaken. That would have a substantial impact on the environment in a country that is nothing like Texas.

Texas is enormous and, as everyone knows, this country is not. Not only is this country not enormous, but the shale to frack is specified as being concentrated in particular parts of it. Those areas, as I have emphasised, cover some of the most precious and beautiful parts of our country, and we should really go out of our way to preserve them and ensure that they continue, as much as possible, in their present state.

11 am

I was disappointed by what the Minister had to say about the fracking regime generally, but I accept her point that the intention in this country is to try to ensure that there are much higher standards for fracking permissions than in other parts of the world. I therefore do not think that I can withdraw the amendment. We need to make the point that we think this is important and should be part of the Bill, and to express our concern that the Minister does not agree with us and countenances—I would not say she is happy about it—the continuation of a regime that will allow this to happen in the future if circumstances permit it.

Question put, That the clause be read a Second time.
The Committee divided: Ayes 5, Noes 9.
Division No. 49]

AYES
Anderson, Fleur
Furness, Gill
Jones, Ruth
Zeichner, Daniel

NOES
Afolami, Bim
Bhatti, Saqib
Brown, Anthony
Crosbie, Virginia
Docherty, Leo
Graham, Richard
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

New Clause 5

ENVIRONMENTAL AND HUMAN RIGHTS DUE DILIGENCE: DUTY TO PUBLISH DRAFT LEGISLATION

“(1) The Secretary of State must, within the period of six months beginning with the day on which this Act is passed, publish a draft Bill on mandatory environmental and human rights due diligence which imposes a duty on specified commercial, financial and public sector persons to—

(a) carry out due diligence in relation to all environmental and human rights risks and impacts associated with the exercise of their functions, and
(b) identify, assess, prevent, or mitigate (where prevention is not possible) the risks so that the impacts are negligible.

(2) The objective of the due diligence provided for pursuant to subsection (1) is to ensure that the target set pursuant to sub-paragraph (e) of section 1(3) is met.

(3) The due diligence must be undertaken by specified persons in relation to—

(a) risks and impacts wherever they arise, and
(b) the entire supply chain and investment chain of the person specified.

(4) In order to address, in particular, ecosystem conversion and degradation and deforestation and forest degradation (“deforestation and conversion”) the draft Bill must seek to ensure that all goods placed on the UK market are—

(a) sustainable;
(b) traceable back to source through fully transparent supply chains; and
(c) do not cause adverse environmental and human rights impacts including deforestation and conversion.

(5) The due diligence required to be carried out in accordance with subsection (1) by providers of financial services must include (but not be limited to) the risk of deforestation and conversion which may arise from or be enabled by the provision of the financial services.

(6) The provisions of the draft Bill relating to due diligence must require compliance with international standards and obligations relating to human rights, including the rights of indigenous peoples and local communities.

(7) The draft Bill must—

(a) establish or designate a body to oversee implementation of and compliance with the provisions of the Bill;
(b) provide proportionate, effective and deterrent sanctions for entities failing to comply fully and promptly with their duties under the Bill;
(c) provide for an independent, transparent and public complaints mechanism;
(d) establish a system which ensures effective and appropriate redress for any person affected by environmental impacts and human rights violations;
(e) require persons to report publicly on—

(i) their plans for due diligence,
(ii) the implementation of their plans, and
(iii) the action taken to comply with their plans including the effectiveness of the action;
(f) require the regulatory body or other appropriate institution to undertake periodic and public audits of the effectiveness of the due diligence requirements, focusing on specified persons, sectors or supply chains; and
(g) require the Secretary of State to include in the annual report on environmental improvement plans an assessment of the application of the duties imposed in accordance with subsection (1), and to review the effectiveness of those duties after 3 years (including by commissioning an independent assessment).”.

(Daniel Zeichner.)

This new clause would require the Secretary of State to publish a draft Bill on mandatory environmental and human rights due diligence within six months of the Act passing.

Brought up, and read the First time.

Daniel Zeichner: I beg to move, That the clause be read a Second time.

To some extent, this is part 2 of a discussion that we had a little earlier. The new clause was tabled by my hon. Friends the Members for Bristol East (Kerry McCarthy) and for Leeds North West (Alex Sobel), former Committee members who have now gone on to other, greater things—perhaps not greater, but different. I am delighted to move it on their behalf. Opposition Members give it our full support.

My hon. Friends were very far-sighted, in the sense that they tabled the new clause before the Government came up with their own proposals. However, the new clause goes further, which is why we believe it is worth pursuing. I will go back to why this matters. Greener UK tells us that about 28% of the UK’s overseas land footprint—nearly 6 million hectares—is in countries at high or very high risk of deforestation and which often have weak governance and poor labour standards. At the same time, about 1.6 billion people depend directly on forests to secure their livelihoods. The food and everyday products that we buy could be destroying habitats for endangered wildlife and impacting livelihoods overseas. This is a big issue, which I think we all agree on, on the basis not only of the discussion this morning but of those facts.

The new clause would create a duty on the Government to publish draft due diligence legislation within six months of this Bill receiving Royal Assent, consistent with our earlier discussion, covering all environmental and human rights risks and addressing the impacts associated with the activities of specified bodies, including within business, finance and public authorities. It is the human rights risks and finance issues that we particularly add to the earlier discussion. The new clause would require any goods placed on the UK market to have fully traceable and transparent supply chains and to not cause adverse environmental and human rights impacts, including deforestation, forest degradation and ecosystem conversion and degradation.

Since the new clause was first tabled, as the Minister mentioned earlier and as my hon. Friends have also referenced, there has been a consultation on whether the UK Government should introduce a new law designed
to prevent forests and other important natural areas from being converted illegally to agricultural land. As the Minister reported, there is strong support for action, with 99% of respondents agreeing that there should be legislation to make forest risk commodities more sustainable. The Government were good to their word and have introduced new schedule 1 and the associated clauses, which we discussed and agreed to earlier. However, we think this new clause would go further. Its scope is wider, which means it would have a greater impact and would do more to tackle what we sadly see as our complicity in deforestation.

The evidence base is there. The Global Resource Initiative taskforce recommended back in March that:

“The government urgently introduces a mandatory due diligence obligation on companies that place commodities and derived products that contribute to deforestation”—

whether that is legal or just illegal under local laws, which is an important distinction—

“on the UK market and to take action to ensure similar principles are applied to the finance industry.”

The financial industry can be supportive in those markets. That, again, goes further than new schedule 1.

We think that a mandatory due diligence framework would formalise and obligate responsible practices throughout the UK market-related supply chains and could ensure comprehensive accountability and help prevent deforestation and other global environmental damage. The Government are right to set their sights high. We had discussions earlier about how ambitious—or not—the legislation is. We think we should be world leaders; the problem is that we are not entirely convinced that this does enough.

Greener UK says of what we have already agreed in the Bill:

“This does not accord with the urgency needed to tackle deforestation and falls short of the government’s ambition for a world leading approach.”

That is the view of the major environmental organisations. They also think—and we reflect this point—that there should be more dialogue, both with themselves and others who understand how the processes emerge. They are also concerned that, because this was a late addition to the Bill that came in through a Government amendment, it would have been helpful to have produced more detailed explanatory notes as to how it should work. They have a range of detailed questions, which I will not trouble the Committee with this morning. However, it suggests to me that there is more work to be done and that our new clause would help with much of that.

We hope the Government will go further in future, but it is striking that, Greener UK draws a comparison between the due diligence system and the approach taken to the EU timber regulation, which we have brought across through secondary legislation. It thinks that our approach is weaker by comparison.

That feeds into my overall sense of what is happening with the Bill: sadly, the rhetoric is good but the delivery and actuality is weaker. We wish to make the Bill stronger. Again, this is an important point for us so we want to divide on it, but I want to hear why the Minister thinks we should not be strengthening in that kind of way.

Rebecca Pow: I assure the hon. Gentleman that we are already one step ahead and, in fact, voted to include the world-leading legislation in the Environment Bill this very morning. We are making more progress than any other country. I understand his sentiments but, yet again, he is being negative about the enormous step we are taking.

Our amendments will help us protect the world’s most precious forests. They will allow us to set mandatory requirements on businesses that use agricultural commodities associated with deforestation. As we have said before, there are other regulations that deal with timber; our amendments will deal with other products where trees are cut down to grow crops such as palm oil, soya, rubber, beef and the associated leather, and cocoa. The hon. Gentleman will agree that those are crucial crops to be looking at as we proceed, and that that will make a genuinely big difference. We have heard the great example of what happened in Indonesia when timber was tackled. The same thing could happen with other crops in reducing the cutting down of forests. I have seen some of those on my travels.

Our framework is designed to work with Governments around the world, who are the custodians of the world’s precious forests, by requiring businesses to ensure that commodities they use have been produced on land that is legally occupied and used. I have pointed out previously how so many countries are not even adhering to their own legislation, so that is the crux of where we are placing our intentions. Our amendments will become part of the Bill now, allowing us to act quickly on this important issue, as opposed to within six months of Royal Assent, as in the new clause.

The hon. Member for Cambridge mentioned the consultation, which had a fantastic response. It highlighted that we need to act urgently, which is why we are taking action. That is in line with the recommendation of the Global Resource Initiative to introduce due diligence legislation. That is what we are doing urgently, as was called for. We are listening to feedback and I reassure the Committee that we intend to move swiftly to take forward this legislation, laying the necessary secondary legislation shortly after COP26. We hope that our setting this path will be a big talking point at COP26, potentially encouraging others to follow.

The hon. Gentleman made a sound point on human rights. We agree that, in some circumstances, there is a relationship between commodity production and human rights. It does not necessarily follow that the best solution is to tackle those two issues at the same time. Tackling human rights abuses requires an approach that is tailored for that purpose, rather than through the narrow lens of the subset of commodities, examples of which I have just listed, chosen for their impact on forests.

The Government support the United Nations guiding principles on business and human rights—an internationally agreed framework for addressing human rights risks in all kinds of business activities. Those principles encourage businesses to adopt due diligence approaches and to address any negative impacts, where appropriate. The UK was the first state to produce a national action plan for the guiding principles, and we have already announced measures to strengthen the approach of the UK’s Modern Slavery Act 2015, as part of that plan. I am sure the hon. Gentleman is fully aware of that really important step.
Daniel Zeichner: Frankly, I do not think that the Government are one step ahead, given that our proposal was tabled long in advance and is far more extensive and far reaching. I heard what the Minister said, and I know she is very proud of what is being done. We just need to go further.

I gently point out that I am not the one saying that what is being done is not achieving what was hoped for. It is many environmental organisations, some of which the Minister cited earlier. I suspect she will find that the debate will continue. No one is saying the matter is easy; it is complicated and difficult, and this has to be done in some cases through international negotiation. We understand and appreciate that, but we believe it is better to be more optimistic and ambitious.

Again, I heard what the Minister said on the linkage to human rights, but the evidence is pretty clear that environmental degradation and disrespect for human rights go hand in hand. That is why we believe the new clause would give a sensible way forward. On that basis, Mr Gray, we will divide the Committee.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 50]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

Graham, Richard
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

New Clause 7

Waste Recycling: Duty to Maintain an End Use Register

“(1) The Secretary of State must, within 12 months of this Act coming into force, by regulations make provision for a register of the end use of all recycled waste created, collected or disposed of in England.

(2) These regulations must apply to—

(a) public authorities; and

(b) private businesses.

(3) The register must be made available for public inspection.

(4) Regulations under this section are subject to the affirmative procedure.”—[Ruth Jones.]

Brought up, and read the First time.

11.15 am

Ruth Jones: I beg to move, That the clause be read a Second time.

As we approach the end of Committee stage of this important Bill, I rise to speak to new clause 7, which appears in my name and those of my hon. Friends. Here in the Committee Room, but also, more importantly, those of colleagues from right across the House. This is a cross-party new clause and an important addition to the Bill. I hope Ministers will recognise that it will simply enhance the scope and reach of the Bill and take it closer to being fit for purpose.

The new clause calls on the Secretary of State for action and leadership, introducing a requirement for them to maintain, “a register of the end use of all recycled waste created, collected or disposed of in England.”

As things stand, only voluntary policies exist for monitoring the end use of recycled material, and that approach fails to provide sufficient data to understand recycling rates and end markets.

Like many Opposition colleagues, I commend the Environment, Food and Rural Affairs Committee on its recent inquiry into food and drink packaging. It was a thorough and comprehensive review and I hope it will influence what we do and how we do it. As part of that review, the EFRA Committee highlighted the lack of data, stating:

“...In order to make evidence-based policies and assess their impact, the Government needs access to reliable data. It is shocking that it does not know how much plastic packaging is placed on market in the UK, nor how much is really recycled.”

A new end use register for recycled waste would improve existing data. That is important, because it would mean that the Government—whichever Government, of whichever party—were able to deliver evidence-based policies and to better understand the end use of recycled material. The information gathered from and by the register that this new clause provides for could help to improve transparency, reduce waste and, in turn, increase public confidence in the recycling system.

That confidence is a key point, and I want the Minister and her colleagues to think about it. We will not get the buy-in we need from residents across England if we do not ensure that we can point to crude, hard facts. As Greener UK pointed out in a typically helpful and comprehensive briefing, that public confidence has been “...damaged by growing awareness of waste exports”—I have spoken about those previously, for instance in the Sri Lankan debacle—“...and confusion caused by inconsistent recycling schemes across England.”

In other words, the new clause would help any Minister with responsibility for recycling to get the job done, and it would help to ensure that our country takes all the steps necessary to tackle the climate emergency and preserve our planet.
Rebecca Pow: I thank the hon. Lady for the new clause and join her in thanking the EFRA Committee: the Committee does a lot of really helpful inquiries, and the waste and packaging one helps to add to the weight of knowledge and information. As hon. Members will know, I was on that Committee for a long time, and one does feel that the recommendations that come out of those inquiries are often useful and can help in that whole mix of listening, consulting and reporting.

The Government are absolutely committed to monitoring waste throughout its journey by improving the data captured on the generation, treatment and end use of waste. As I have said numerous times, I am keen to see improved transparency in where waste is ending up and to make that information more accessible to and usable for businesses, regulators and Government as well as the public. As the hon. Member said, people do want information and to understand, and that is why our labelling requirements—another measure introduced through the Bill—will be so helpful.

Waste tracking is reliant on largely paper-based record keeping, making it difficult to track waste effectively and providing organised criminals with the opportunity to hide evidence of the systematic mishandling of waste. That is why clauses 55 and 56 provide the regulation-making powers needed to introduce mandatory electronic waste tracking across the UK. The powers, which I know the green NGOs will welcome, will enable us to monitor waste through its entire journey from production to end use. The hon. Member was slightly critical about some of the NGOs’ comments, but actually those measures met with a great deal of positivity. The clauses will enable us to track all controlled waste and waste from mines and quarries, and that will include information on waste that is being recycled as well as on products and materials produced from waste.

I am pleased to confirm that we will consult on the design of a waste tracking system next year and that the consultation will address both access to and use of waste tracking data as suggested by the new clause. I therefore do not consider it necessary to introduce a separate clause placing a duty on the Government to launch a specific register for the end use of-recycled waste, as that would duplicate effort for both public authorities and businesses.

The new clause would place a further duty on the Secretary of State to introduce the measures in England only, but clauses 55 and 56 give us the necessary powers to establish a system that covers the whole of the UK. We are working closely with the devolved Administrations—that includes the Scottish Government—to develop that. While I support the intention behind the new clause, I consider it unnecessary and ask the hon. Member kindly not to press it.

Ruth Jones: I am glad that the Minister agrees with the comments of the EFRA Committee about the lack of hard data. That is why we need a register, and that is why we tabled the new clause. I am also glad that she acknowledged the importance of ensuring we bring the public with us. Public confidence is so important; otherwise, they will not buy into any new recycling schemes.

The Minister mentioned mandatory electronic waste tracking, which is to be welcomed. However, the new clause is not about having an either/or system; it would enhance the system. The register would be a useful addition to that electronic waste tracking system.

Rebecca Pow: Is the hon. Member aware—I touched on it in my speech—that local authorities already collect and report data on their waste and many publish information about recycling performance? Information reported to local authorities is published, including on the destination of recyclable material where available. Does she agree that one does not want to put extra burdens on local authorities when they are already dealing with a lot of what she is arguing for?

Ruth Jones: I thank the Minister for her comments. The problem is that we have a voluntary code with some taking part and others not. That is the issue. No one wants duplication of anything, but we do want to reinforce and enhance the current system so that we have a coherent and comprehensive system across England and—she mentioned the devolved nations—for all areas.

The Minister mentioned the public consultation, and I take that on board. My only worry is that such consultations have been known to be a cause for people to drag their feet. We urge her to ensure that the consultation is speedy, with suitable results at the end of it. I will not press the new clause, so I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

The Chair: I suspect that no one wishes to move new clause 8, unless I hear to the contrary.

Rebecca Pow: On a point of order, Mr Gray. New clause 8 is the weeds one, tabled by my hon. Friend the Member for Chatham and Aylesford (Tracey Crouch). I know she has a great interest in these things, and we acknowledge that. As a gardener, I am a great weeds person—a weed is just a plant in the wrong place—and I thank her for her continued work on pollinators.

The Chair: The Committee has already sent the hon. Member for Chatham and Aylesford our warmest and best wishes in the current circumstances, and we can add the Minister’s words to that.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
New clauses considered.
Adjourned till Thursday 26 November at half-past Eleven o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 28 November 2020

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The Committee consisted of the following Members:

**Chairs:** † JAMES GRAY, SIR GEORGE HOWARTH

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
† Anderson, Fleur (*Putney*) (Lab)
† Bhatti, Saqib (*Meriden*) (Con)
Brock, Deidre (*Edinburgh North and Leith*) (SNP)
† Browne, Anthony (*South Cambridgeshire*) (Con)
† Crosbie, Virginia (*Ynys Môn*) (Con)
† Docherty, Leo (*Aldershot*) (Con)
† Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)
† Graham, Richard (*Gloucester*) (Con)
Jones, Fay (*Brecon and Radnorshire*) (Con)

† Jones, Ruth (*Newport West*) (Lab)
† Mackrory, Cherilyn (*Truro and Falmouth*) (Con)
† Moore, Robbie (*Keighley*) (Con)
† Pow, Rebecca (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
† Thomson, Richard (*Gordon*) (SNP)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Zeichner, Daniel (*Cambridge*) (Lab)

Anwen Rees, Sarah Ioannou, *Committee Clerks*

† attended the Committee
New Clause 9

ANIMAL TESTING: REACH REGULATION

“(1) The Secretary of State must by regulations set targets for the replacement of types of tests on animals conducted to protect human health and the environment within the scope of the REACH Regulation, and for the reduction pending replacement of the numbers of animals used and the suffering they endure.

(2) A target under this section to reduce the suffering of animals must specify—

(a) a standard to be achieved, which must be capable of being objectively measured, and

(b) a date by which it is to be achieved.

(3) Regulations under this section must make provision about how a set target is to be measured.

(4) A target under this section is initially set when the regulations setting it come into force.”—(Fleur Anderson.)

This new clause would require the Secretary of State to set targets to reduce animal testing.

Brought up, and read the First time.

2 pm

Fleur Anderson (Putney) (Lab): I beg to move, That the clause be read a Second time.

I am honoured to be called to speak about this important new clause. Indeed, it is so reasonable that at this stage of this iteration of the Environment Bill Committee, the seventh day, this might be the new clause that is agreed by all its members. We are not setting specific targets; we only ask that targets be set. We are not saying how they should be measured; we are just saying that measurements should be done. It is a new clause, surely, that must be agreed by all.

The issue is not only of concern to constituents across the country and to members of the Committee, it is a huge concern to my constituents. More than 200 people have taken the additional time and effort to write to their MP about animal welfare issues, from testing to warfare experiments and sentencing. I have long believed that the UK should lead the world with high animal welfare standards. I am proud that the UK banned cosmetic testing on animals back in 1997 and extended that to cosmetic ingredients in 1998. I was one of those who had been campaigning since the 1980s for that. We have made some good progress and agreeing on the new clause and putting it into the legislation would entrench those gains and make sure we go further.

It is welcome that animal testing practices have improved and advanced greatly over recent years, and non-animal methods for research have also developed and improved over time. However, I remain concerned at the lack of transparency around animal testing project licence applications, as well as the continued permissibility of severe suffering as defined in UK law. Again, the new clause does not aim to be entirely prescriptive about the conclusions of that—it leaves that for secondary legislation—but it asks for it to be included and considered.

Animal testing is not the answer to protecting people and the planet from potentially harmful chemicals. Tests on animals are unreliable and their value is increasingly being questioned in scientific literature. It is a matter of corporate pride for many businesses to say that they have animal cruelty-free products, because that is increasingly what the public wants.

There are better ways to ensure chemical safety and better assess risks to environmental and human health while also reducing and eliminating the cruel suffering of animals in laboratories. Cruelty Free International estimates that since 2006 more than 2.6 million animals have been used in chemical tests across the EU, including the UK, with many more tests planned. The UK reports conducting more animal tests than any other country in Europe. EU chemical legislation—the REACH legislation—already discussed in Committee, has resulted in a huge increase in the use of animals in European and UK laboratories. Now is our chance to be better and to provide that world-leading legislation. We need a proactive plan to reduce and replace chemical tests on animals. If the UK is serious about its commitment to animal protection, the Government must adopt a forward-looking Environment Bill that moves away from cruel and ineffective animal testing and write into law a target-based, science-led strategy for reduction and replacement.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I agree with what the hon. Member for Putney wants to achieve in new clause 9. Just like her, I am an animal lover. As a former chair of the all-party parliamentary group for animal welfare, I think I speak for everyone on the Committee in terms of being animal lovers. The UK was consistently one of the strongest voices in the EU, applying downward pressure on animal testing—I am sure the hon. Lady is well aware of that—including changes to REACH to ensure the use of alternatives. The UK’s presidency of the European Council in the late 1990s was one of the driving forces behind the reform of the chemicals regulations and we referred to that in a previous session. We are continuing with that clear aim now that we have left the EU, and we are already enshrining the last resort principle as one of the protective provisions in the Bill. Under article 138(9) of REACH, the Secretary of State will also be under a duty to review the testing requirements on reproductive toxicity within 18 months of the end of the transition period. That review must be carried out in the light of the objective of reducing the use of animal testing.

In addition, the powers in schedule 19 of the Bill to amend REACH would enable us to build such targets into REACH, if that were felt to be appropriate. Any amendment would have to be consulted on and to be consistent with the aims and the principles of REACH as set out in article 1, including that we must maintain a high level of protection for human health and the environment, seek alternatives to animal testing, and that REACH is underpinned by the precautionary principle. I believe that would be the better route, if we conclude that targets are desirable. For those reasons, I hope that the hon. Lady will withdraw new clause 9.

Fleur Anderson: I thank the Minister for looking into the issue and for some assurances that targets could be included in future, and that we will be seeking alternatives. I note the concerns and considerations that we all want
the same thing, which is stronger animal welfare. I am disappointed that we will not agree on this matter this afternoon, but I will not press it to a Division. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 10

OEP: Penalty notices

'(1) If the OEP is satisfied that a public authority has failed to comply with a decision notice, the OEP may, by written notice (a “penalty notice”) require the public authority to pay to the OEP an amount in sterling specified in the notice.

(2) When deciding whether to give a penalty notice to a public authority and determining the amount of the penalty, the OEP must have regard to the matters listed in subsection (3).

(3) Those matters are—

(a) the nature, gravity and duration of the failure;
(b) the intentional or negligent character of the failure;
(c) any relevant previous failures by the public authority;
(d) the degree of co-operation with the Commissioner, in order to remedy the failure and mitigate the possible adverse effects of the failure;
(e) the manner in which the infringement became known to the OEP, including whether, and if so to what extent, the public authority notified the OEP of the failure;
(f) the extent to which the public authority has complied with previous enforcement notices or penalty notices;
(g) whether the penalty would be effective, proportionate and dissuasive.

(4) Once collected, penalties must be distributed to the NHS and local authorities to be used for pollution reduction measures.

(5) The Secretary of State must, by regulations, set the minimum and maximum amount of penalty.

(6) Regulations under this section are subject to the affirmative procedure.”—(Dr Whitehead.)

This new clause would allow the OEP to impose fines.

Brought up, and read the First time.

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move, That the clause be read a Second time. This proposed new clause was originally put forward in the names of my hon. Friends the Member for Swansea West (Geraint Davies) and for Leeds North West (Alex Sobel), who no longer sit on the Committee. With our names added, we certainly support the sentiment.

The proposed new clause contains a simple proposition relating to the Office for Environmental Protection and its functions. Hon. Members will recall that we have had substantial discussions about the extent to which the OEP has powers to make its functions work well. It is a question of giving it not just general authority but enforcement powers, notices and so on, which we have debated. As the Bill stands, although the OEP would have a number of powers concerning notices and the ability to bring court proceedings, it would not have the power to levy fines.

That argument is sometimes raised where a no-fine outcome is concerned, when the question arises regarding the bodies on which the OEP would levy fines. That would, by and large, be public authorities. The argument then runs about what it would mean to levy a fine on public authorities. I remind hon. Members that that was not the case before we took powers over from the EU, in running our own environmental importance. Nor is it something that other agencies do not have as shots in their locker.

The clean air regime, for example, allowed the EU Commission the power to levy fines on infracting countries. In the case of clean air regulations, there was a suggestion that the fines that the EU authorities had the power to levy could be applied to infracting local authorities that were not adhering to clean air regulations. Indeed, there was quite a to-ing and fro-ing between the Department for Environment, Food and Rural Affairs and local authorities, because it was suggested that authorities that had been identified as infracting, and therefore needed to draw up clean air plans, would bear the brunt of the fines, rather than the UK Government. The UK Government were the public authority that was infracting, but they had passed on their infraction responsibilities to other public authorities, so those public authorities would be fined. That was a real issue with regards to clean air just a little while ago, but it has not been passed on to the Office for Environmental Protection, which would be the agency in that instance with UK powers.

Similarly, Ofgem has considerable powers to fine companies that do not undertake proper management of their customer bills or their responsibilities for energy supply. Indeed, a considerable number of fines have been levied, running to millions of pounds, on energy companies. Ofgem has that clear and workable power to levy fines, but the OEP does not.

We are saying that the OEP should have the power to fine. Indeed, the new clause would give it that power. The other part of the problem is what the agency would do with the fines once they have been collected—is it not just a circular process? The new clause states that, once collected, penalties must be distributed to the NHS and local authorities to be used for pollution reduction measures. The fines would be recycled, but in a positive way for environmental management and improvement.

Having that power to fine, and being able to publicly state that authorities had been fined, are potentially strong weapons in the OEP’s locker, not necessarily because the fines would be punitive in their own right, but because they would be a mark against that public authority and because, through the transfer of the fine payments, the sins of that public authority would be effectively transferred into positive action on environmental improvement in other areas.

We think the new clause is a sensible, straightforward measure that would generally improve the efficacy of the OEP. The fact that nothing like it was thought about emphasises the general theme that we have been talking about in Committee of the power, independence and force of the OEP being downgraded through a number of Government amendments that have been made as we have gone through the Bill. This would be one back for the OEP, so I hope the Committee will view it in a favourable light.

Rebecca Pow: I thank the hon. Member for the intention behind tabling the new clause. The Government completely agree that effective enforcement of public authorities’ compliance with environmental law is vital. That is why we are establishing the OEP to hold public authorities to account, as we have clearly talked about many times.
in Committee. However, in our domestic legal system it is unnecessary to make specific provisions for fines to achieve that.

Fines play an important role in the EU infraction process, as the hon. Member points out, but only because the Court of Justice of the European Union is unable to compel member states to take a specific course of action through a court order. It is the only penalty that it has in its armoury. It is therefore reliant on the significantly less effective approach of penalising the member state until they take some form of remedial action, although the UK has never been fined for an environmental infraction.

2.15 pm

The enforcement framework provided for in this Bill will be more effective at bringing about compliance than the EU infraction process, due to the more targeted and timely remedies that will be available. On an environmental review, if the court finds that a public authority has failed to comply with environmental law, it will have access to judicial review remedies. This includes court orders, subject to appropriate safeguards. These remedies can ensure compliance is achieved. For instance, a mandatory order can require a public authority to take a particular action.

The stronger remedies available in our domestic court system therefore dispense with the need to make any additional provision for fines, and will resolve cases more quickly than the EU. The whole process that has been set up—that framework—is to work through problems and issues through remediation, discussion and advice, long before we get to the point of a court issuing a fine, which, I put to the shadow Minister, will be far more constructive than any massive stick of a fine would be.

Richard Graham (Gloucester) (Con): My hon. Friend is making a strong case as to why it is much more effective that the OEP works with public authorities to try to make the sort of environmental improvements that everybody here wants to see, rather than acting as a fines mechanism. Does she agree with me that on this occasion unfortunately the Opposition have confused trying to replicate a European measure with a much better way of doing things here in the UK?

Rebecca Pow: I thank my hon. Friend for making my case for me. A great deal of thought has gone into it, which I was going to come to at the end. The shadow Minister suggests that this has not been thought about; I think those were his exact words. To reiterate what my hon. Friend said, this has been thought about in great detail, to come up with a system that will be better at solving problems and improving the environment than the one the EU has on offer.

Furthermore, the Committee might wish to note that this new clause would give the OEP powers that even the European Commission does not have, so it cannot claim to be ensuring equivalence between the OEP and the European Commission. The European Commission cannot fine a member state government, only the Court of Justice of the European Union can do so, a point that really needs clarifying with the shadow Minister. As I have already mentioned, we have stronger remedies than the CJEU. It would be wholly inappropriate for the OEP to directly impose fines. Effectively that would mean the OEP could prematurely sanction public authorities, without reference to the courts, and with no appeals mechanism for the public authority to challenge the decision.

Ruth Jones (Newport West) (Lab): Does the Minister agree that enabling the OEP to issue penalty notices would help to give its investigatory work a degree of clout, and serve as a meaningful contribution to efforts to improve public authorities’ compliance with environmental law?

Rebecca Pow: I do not think the OEP is going to have any problem at all operating its clout. We will have a new chairman and a supporting board, and that will be their raison d’être. They do not need fines. In fact, I wrote an exclamation mark as I thought it was a bit of a joke when I saw that the shadow Minister had suggested that the OEP should become a funding body. That would be a significant expansion in its scope, and not consistent with its role as a watchdog to hold Government to account.

In summary, the OEP’s enforcement framework has been designed to resolve cases as robustly, quickly and effectively as possible. The powers already available to the courts to grant and enforce remedies make a system of fines unnecessary. I therefore ask the hon. Member to withdraw the new clause.

Dr Whitehead: I thank the Minister for that response. There are arguable cases. What we want to see as an emphasis on enforcement is a matter of opinion as to what is most effective, rather than a fundamental discussion about having a power or not. I remind the Minister that we had a debate about the fact that OEP appears to be pushed further away from its ability to go through the courts by the debate on who should decide whether something was a serious breach, and the role of the OEP and the Minister in that. At the very least, this idea, that the OEP could introduce penalties in its own right, would be a step to rectify that particular problem.

I take what the Minister has to say about the extent to which there are, at least in principle, reasonable methods of enforcement as far as the OEP is concerned. It is not a wholly unreasonable point to make that that should not necessarily include fines. However, this is a route worth considering, and it may be that, as the OEP develops and we see how it manages to enforce things, the idea of fines might be revisited. I do not intend to press the clause to a vote this afternoon, so I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 12

DUTY TO FOLLOW RECOMMENDATIONS

(1) A “public authority” must follow the course of action set out in a recommendation made by the OEP in a report issued under sections 25 or 26 unless the public authority has determined that there are reasons of public interest demonstrating that it is not necessary for it to do so in order to comply with the law.

(2) If the authority does not follow a recommendation, it must publish a report setting out the reasons for not doing so and set out what alternative course of action it proposes to take.

(3) In this section public authority carries the same definition as in section 28(5). (Dr Whitehead.)

This new clause requires a public authority to whom the OEP has issued a recommendation to normally follow that recommendation.

Brought up, and read the First time.
Dr Whitehead: I beg to move, That the clause be read a Second time.

Interestingly, this new clause comes at the same point from a slightly different direction. On the basis of what the Minister had to say just a moment ago, she might consider how this clause might work in enhancing the ability of the OEP to secure importance in an appropriate and robust manner.

The new clause—and I shall not dwell on it great length—requires a public authority to whom the OEP has issued a recommendation to normally follow that recommendation. That is an onus in law, on the public authority, to follow the course of action set out in the recommendation made by the OEP. There can, of course, be exceptions to that, and there may be circumstances in which an authority considers it does not have to follow a recommendation. However, if that is the case, the new clause provides that it should publish a report setting out the reasons for not doing so and, positively, what alternative course of action it proposes to take.

The new clause would considerably enhance the power of the recommendations of the OEP as the default position would be that an authority should follow its recommendation; it could not get away with saying “Well, we don’t particularly want to do that. There are reasons for this; trust us—don’t worry. We don’t have to do it”. Instead, it would have to go public on why it could not do it, and it would have to publicly say what alternative course of action it would take, rather than taking no action.

This does not go down the fine route, but it does go down the enforcement route in a different way—a potentially equally important way—and I would be interested to hear the Minister’s thoughts on this particular way of further enhancing the enforcement credibility and robustness of the OEP.

Richard Graham: I am slightly concerned about the trend of the hon. Gentleman’s line of thinking, which is very authoritarian and along the lines of “Let’s have the courts say as a default that the police are normally always right; that the county council are normally always right on issues of child welfare and so on.” That is not the way that this country operates; we believe fundamentally in freedom and an objective decision by the courts on the rights and wrongs of a particular case. Surely there is no reason why the OEP should be some sort of magical exception to that overriding rule.

Dr Whitehead: If the hon. Member for Gloucester were pursuing a principled position on that, he would have to undo the whole structure of regulation in this country to ensure the freedoms and the way of life that he suggests that we should follow, because that is what regulators by and large do—they quite often produce regulatory decisions and regulatory outcomes that apply to those who are being regulated. I gave the hon. Gentleman the example of Ofgem, which levies fines on bodies that appear to transgress what Ofgem has decided as a regulator. That is not a court action but relates to how the regulator works and how those who are supervised by that regulator are expected to behave. There is a direct relationship between those two, and that is the case with a range of other regulators in all sorts of other areas. For example, the hon. Gentleman will be aware of Ofcom’s regulatory activities on a number of occasions, and those of Ofwat.

I am not suggesting an exceptionally authoritarian proposal that comes out of thin air in a desire to regulate people beyond what they can bear. It is based on the relationship between the regulator and the regulated and their respective actions. Normally, those who are regulated should do what the regulator suggests should happen. To me, that is not akin to the Stasi going in to everyone’s life and regulating their private thoughts out of existence. What is proposed is a reasonably standard regulatory process, as carried out on a agreed basis in this country.

Daniel Zeichner (Cambridge) (Lab): As ever, my hon. Friend is developing an interesting argument. I suspect that in some ways it goes back to where our regulatory frameworks first emerged. He and I are probably of an age to remember those discussions, which originally arose around some of the privatisations of public authorities. A regulatory framework grew up and it was a regulatory framework that is quite different from how it was originally envisaged?

The Chair: Dr Whitehead, strictly on this new clause.

Dr Whitehead: Indeed, Mr Gray; I will not be too far tempted on to the history of regulation and privatised industries and how that has worked out, other than to say that the checks and balances of the regulator are an important part of the process. What the new clause proposes does not depart from that practice, and I really do not agree with the suggestion that it is somehow following an authoritarian course.

I have been tempted to make a lengthier speech on the new clause than I intended by the interventions from the hon. Member for Gloucester, so I will not say any more at this stage, but I hope that the Minister will react favourably to the new clause.

Rebecca Pow: I thank the hon. Member for Southampton, Test for tabling the new clause because it allows me to provide some detail on the OEP’s scrutiny function as well as its interactions with Government and public bodies.

The new clause refers to recommendations made under clauses 25 and 26, which cover the OEP’s scrutiny of the Government’s environmental improvement plans and targets, as well as the implementation of environmental law. Many of the OEP’s recommendations, if implemented, are likely to require changes to law and policy, and those changes need to be carefully assessed alongside many other considerations. The responsibility for making changes to policy as well as introducing changes to legislation lies firmly with the elected Government, not an independent body. That was highlighted in the interventions by my hon. Friend the Member for Gloucester.

I also want to use this opportunity to explain how the OEP will interact with Government and public authorities with regard to its scrutiny function. In terms of the
OEP’s report issued under clause 25, it will be addressed to the Government, as the Government are ultimately responsible for delivery of the environmental improvement plan and targets. Clearly, public authorities will help Government meet their objective of improving the natural environment, but, when the OEP makes recommendations as to how progress could be improved, Government are best placed to determine how, and by whom, those recommendations should be implemented. That is particularly important because it is the Government, obviously, who have the statutory duty to respond to the OEP’s recommendations, and are therefore held accountable. The Government must respond to the OEP’s reports; they must publish the reports and lay their responses before Parliament. That means that the Government will be held to account for their actions by the OEP, Parliament and the public.

2.30 pm

Ruth Jones: The Minister has talked about the OEP holding the Government to account. How will it do that, as it will be part of the Department for Environment, Food and Rural Affairs? It will be appointed by the Government, and will, surely, be hand in glove with the Department. It is very difficult to say that it will actually be able to hold the Government to account.

Rebecca Pow: I will not go into a huge amount of detail in my answer, as it was all covered in the early stages, but I could send the hon. Lady a page on how and why the OEP will remain independent. It will be an utterly independent body, and the Secretary of State has to be mindful of the independence of the OEP; that is a crucial part of some of the detail written into the Bill, and, if she wants to be referred to those sections, I am sure that we could clarify those with her.

Clause 26 enables the OEP to assess how environmental law is implemented; it is not simply about compliance with—or deviation from—the law, but will be more about whether the law is effective and delivering its intention. The OEP will seek information from public authorities to undertake this duty but, again, its findings will be addressed to Government, and only Government are required to respond.

This will work as one big machine, and local authorities will clearly play an important part; that is not to say that public authorities cannot implement any of the OEP’s recommendations which are applicable to them, if appropriate. However, this is very different from the suggestion that public authorities must comply with the OEP’s recommendations unless they publish a report justifying an alternative approach.

For those reasons, I ask the hon. Member for Southampton, Test to withdraw the new clause.

Dr Whitehead: I thank the Minister for her reply. She will not be surprised to know that we do not entirely go along with all of it, but I appreciate what she has said. Indeed, it may be that her remarks are taken into account when we discuss the next new clause. On that basis, I have no intention of pressing this to a vote, and I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

Rebecca Pow: I thank the hon. Member for the new clause. I share his interest in ensuring that the OEP acts transparently in the exercise of its functions. That is why we have created, in clause 22, a duty on the OEP to have regard to the need to act transparently. We have also required the OEP, in clause 38, to make public statements when it carries out various public activities. In carrying out the duty in clause 22, the OEP would normally make information about its work publicly available—perhaps the shadow Minister has missed that element.

However, there may be certain situations where it is inappropriate and unhelpful for it to do so. There is a difference between what is in the public interest and what might be of interest to the public or to some...
members of the public. In particular, the OEP will need to communicate with public authorities, including Departments, in the exercise of its scrutiny and enforcement functions. Those communications will require a degree of confidentiality if the OEP is to engage effectively and productively on sensitive issues with public authorities, and avoid prejudicing possible enforcement action. The effect of the new clause might be to remove that necessary confidentiality from the OEP’s interactions.

The new clause would require the OEP to maintain a continuous running commentary on its communications with Ministers and their Departments, which would be administratively burdensome and a poor use of resources, given the other provisions we have included in the Bill on transparency, reporting and public statements. The hon. Member asked whether ringing up to order a sandwich should be recorded. That is a good point, because it is not at all clear in the new clause what exactly the register would have to contain. Is it the full text of the communication? Potentially, if one was having to record everything, one would have to record those things as well. It is just a small point.

Richard Graham: The Minister is making a very good case for the new clause being entirely redundant. I am surprised that the hon. Member for Southampton, Test, whose judgment is often very sensible, really considers that creating a register of communications, with all the arguments about what might be considered trivial or not trivial, is a good idea when setting up the very important Office for Environmental Protection. Does the Minister agree that this is another new clause that we should move on from swiftly?

Rebecca Pow: I could not agree more. I thank my hon. Friend for clarifying that point, because he is absolutely on the money—not that the OEP is a fundraising body, of course.

There is nothing in the Bill, of course, to prevent the OEP from setting up a register of significant communications should it choose to do so, but we do not believe that it should be required to do so as a legal obligation. It is, after all, an independent body. To clarify how independent it is, I should say that it will obviously be operationally independent from the Government and governed by the non-executive members appointed through the regulatory public appointments process.

On the question of the OEP potentially deciding it wants to set up a register, I should mention that the Office for Budget Responsibility has a register similar to that proposed by the hon. Member. That is not a statutory requirement; rather, the OBR produces it of its own accord, and we believe it must remain for the OEP to decide how to fulfil its duty to have regard to the need for transparency. The new clause is somewhat inappropriate and unnecessary, and I ask the shadow Minister to consider withdrawing it.

Dr Whitehead: I am not sure whether the Minister is saying that, if the OEP thinks it would like to set up a register—sandwiches notwithstanding—of its communications with Ministers and to publish those communications, Ministers would be happy to go along with that and would not in any way seek to impede it. Alternatively, is the Minister saying that because she thinks the correspondence and communications between Ministers and the OEP must take place in an air of confidentiality, she would discourage the OEP from doing that if it wanted to?

The new clause would clear that up; it says there should be a register. Its subsection (2) states that the OEP does have discretion, and the word “may” creeps in:

“The OEP may omit from the register communications which it considers trivial or otherwise unlikely to be of interest to the public.”

That is what you might call a sandwich clause. It does not need to put that stuff in; it merely needs to maintain a register to indicate the general degree of communication that is going on and how that communication is working.

Rebecca Pow: To clarify, there is nothing in the Bill that prevents the OEP from setting up a register. I cannot reiterate any more than I already have that it is an independent body: if it decides it wants to set up a register, that is purely up to the OEP. I reiterate again that we do not believe that that should be a legal obligation on the OEP—after all, it is an independent body and it will think through these things for itself.

Dr Whitehead: That was not quite the question that I asked the Minister. What I asked was: if the OEP did decide to set up its own independent register, what would Ministers have to say about its being a transactional register—not a register of independent actors, but a register of things happening between people, including Ministers?

Would the OEP be encouraged to do that by Ministers? Would Ministers be happy to go along with that if the OEP did it? Alternatively—we would probably never find this out because we would not know what the communications were—would Ministers say, for the reasons the Minister has outlined, “That is a pretty bad idea, OEP. You don’t really want to be doing that. We might say, in theory, that you are able to set up your own register, but we as Ministers seriously discourage you from doing it.”

We would be considerably comforted if the Minister said this afternoon that not only could the OEP set up its own register, but she would positively encourage it to do so, in the interests of transparency and of ministerial communications being as public as possible.

2.45 pm

Cherilyn Mackrory (Truro and Falmouth) (Con): I am just trying to clarify something. We have had various debates on the independence of the OEP and now the hon. Gentleman is asking Ministers to give their pre-emptive influence as to whether the OEP should do one thing or another. It might just be me, but I find that the Opposition amendments and new clauses are trying to pre-empt the OEP’s own terms of reference, which it will decide for itself.

Dr Whitehead: What I was doing was engaging in a bit of what-iffery. The Minister came back to me and said that the OEP could set up its own register, if it
wanted to do. That is not what we want to do in the new clause; we just want a register to be set up—that is quite clear and straightforward. The OEP would have some discretion over what it consisted of, but the register would be there on the table for public record. That system operates in a lot of other legislatures and jurisdictions, to a greater or lesser extent. It does not bring the world tumbling down; it brings transparency.

Rebecca Pow: To back up the strong point made by my hon. Friend the Member for Truro and Falmouth, would the hon. Gentleman agree that the whole point about the OEP is that it is an independent body and Ministers cannot encourage it? That is the whole point of its independence.

Dr Whitehead: That is indeed absolutely what we hope will happen and what the new clause is intended to underpin. The Minister, I think, has just made a further point in favour of the new clause—the effect of her words often goes considerably beyond what she thinks. That is very good and positive.

I do not wish to say too much more about the new clause. I have been tempted by interventions to go down particular routes, but I emphasise the simple, central point. This is about fresh air, light and transparency, and actions taken by public bodies, for the public good, being available to the public. It is as simple as that. The fact that there would be a requirement does not put any constraints on anybody’s actions; it simply makes sure that the light of transparency is properly shone, and is guaranteed to be shone. That is what the public would expect to happen in the case of an independent body that nevertheless appears to have close relations with the Government, in terms of its independence.

The Chair: I am unclear as to whether the hon. Gentleman is seeking to divide the Committee.

Dr Whitehead: Sorry, Mr Gray. I have been goaded beyond endurance in this particular debate, so I ask for a Division.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 51]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

Graham, Richard
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

New Clause 14

PRIMARY DUTY TO SECURE RESILIENCE

“(1) Section 2 of the Water Industry Act 1991 (general duties with respect to water industry) is amended as follows.

(2) In subsection (2A), at the end insert—

“(c) to contribute to achievement of any relevant environmental targets set under the Environment Act 2020.”

This new clause places duties upon the Secretary of State and the Director General of Water Services in the Water Industry Act to contribute to targets in the Environment Bill.—(Dr Whitehead.)

Brought up, and read the First time.

Dr Whitehead: I beg to move, That the clause be read a Second time.

Let us see how we get on with this one, Mr Gray. Again, this is a very simple new clause; I thought the last one was simple, but there we go. It places an environmental responsibility on Ofwat—in the same way, I talked a while ago about what does not happen at the moment, but I sincerely wish would happen, with Ofgem.

The new clause sets out that the director general of water services, who is mentioned in the Water Industry Act 1991, which was put in place before modern Ofwat came into being—the director general of water services now works closely with Ofwat on regulation of the water industry—and the Minister, which is effectively Ofwat, “contribute to achievement of any relevant environmental targets set under the Environment Act 2020.”

It would mean that any targets for water companies would have an obligation attached to them: that Ofwat must work towards those targets.

This is an important point for water regulation and, indeed, any other form of industry regulation. What regulators do is based on a brief from the Government about their overall activities. Even though it is independent, the regulator will, to a considerable extent, ensure that what it does is guided by that overall requirement.

If, for example, the general direction is simply to go for value for money for customers, important though that is, and if that is the guiding light for that particular regulator, it will stick by that at the expense of other considerations that could balance it out in the interests of, for example, environmental targets.

The new clause seeks to balance what the regulator is doing on those targets. It is quite proper that it should have an interest in the targets. Surely that is one of the aims of the targets in the Bill—to ensure that we are working together to get them achieved. If important parts of the water industry are not bound into seeking to achieve those targets, that weakens the overall push forward.

The new clause is not authoritarian. It is not trying to get anything done that should not be done. It simply tries to make sure that everyone is bound together in making sure that the targets work well in the water industry.

Rebecca Pow: The Government recognise the hon. Member’s intention that the water industry should play its role in achieving targets set under the Bill, particularly in the priority area of water, but I do not believe that the new clause is necessary, given the legislative requirement to achieve long-term environmental targets.

Clause 4 will place the Secretary of State under a duty to ensure that the targets set under clause 1 are met. At least every five years, the Government must
review their environmental improvement plan and, as part of that, must consider whether further measures are needed to achieve its targets. The Government must also periodically review its long-term targets set under the Bill, alongside other statutory environmental targets, to consider whether meeting them collectively would deliver significant environmental improvement in England.

In addition, both the Secretary of State and Ofwat are already placed under environmental duties by section 3 of the Water Industry Act 1991, which was referred to by the hon. Member. Section 2A of the Water Industry Act 1991 enables the Secretary of State to set out strategic priorities and objectives for Ofwat, which we have already heard about, as it relates to water companies, wholly or mainly in England, through a strategic policy statement. In preparing that statement, the Secretary of State must already have regard to environmental matters. In future statements, those matters could include targets set under the Environment Bill.

The existing legislative framework, together with provisions in the Bill, are therefore sufficient to ensure that targets, including water targets, will be achieved. While the duty to achieve targets rests with central Government, of course public authorities, including regulators, will have their role to play. As I have pointed out, the legislative framework already in place, plus the provisions in the Bill, should drive us towards ensuring that targets will be achieved. Therefore, I ask the hon. Member for Southampton, Test to withdraw the new clause.

**Dr Whitehead:** The new clause specifically talks about targets, and in the 1991 Act targets did not exist. While it is true that there are general environmental obligations in that Act, they do not relate to the Bill’s aims in terms of its targets. We have already discussed that. The Minister implies that it is more than conceivable that the general framework relating to environmental considerations could be nudged towards targets, when those are in. To some extent, it is a question of looking at whether Ofwat is doing the right thing, as those targets come in.

**Rebecca Pow:** There are other areas that will help towards this. We need a whole range of levers to meet the targets, but the targets will be set through the Environment Bill. Thinking is already ongoing about the relevant targets for water and they are priorities for me, so we are moving on that.

A river-based management planning process, which the Environment Agency is currently revising, will also be a key measure and stage in identifying some of the other levers that will be needed to complement the powers over the regulatory stuff, as well as the targets in the Bill. Does the hon. Gentleman agree?

**Dr Whitehead:** Since I have only just heard that, I am not sure I can completely agree with it. The Minister is suggesting that there is a mesh of things there already, which could lead towards moves unpinning the targets. I hope the Minister is right about that process. I am not absolutely sure that they are as strong as we might like them to be in terms of what the new clause suggests, but I am sure that the Minister would be able to review that position, if it turns out that, once those targets are set, the mesh is not strong enough to impel those regulators in the direction that should be taken.

On that basis, and with confidence in the Minister’s powers of persuasion for future arrangements, I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

### New Clause 15

**Reservoirs: flood risk**

“(1) The Secretary of State must make regulations to grant the Environment Agency additional powers to require water companies and other connected agencies to manage reservoirs to mitigate flood risk.

(2) Regulations under this section are subject to the affirmative procedure.”—(Fleur Anderson.)

Brought up, and read the First time.

**Fleur Anderson:** I beg to move, That the clause be read a Second time.

I speak as a representative of a constituency that is no stranger to flooding. In Putney, we regularly have very high tides along the river. There is even a “high tide club” of car drivers who had not realised that the water was going to come, and found themselves water logged and stranded. People love to go and take photos of them, but it is not very good for the drivers.

I rise to speak in favour of the new clause, which has an unusual range of support—perhaps it will be the first that attracts the support of the whole Committee. I hope that all Committee members have noticed that it has the support of the Conservative hon. Members for Colne Valley (Jason McCartney), for Shipley (Philip Davies) and for Calder Valley (Craig Whittaker) and the SNP hon. Member for Falkirk (John McNally), alongside my hon. Friends the Members for Bristol East (Kerry McCarthy), for Leeds North West and for Halifax (Holly Lynch). I pay tribute to my hon. Friend the Member for Halifax for all the work she has done championing the use of reservoirs and reservoirs management in mitigating flood risk for communities.

This Environment Bill will mean more collaboration between water companies to deliver the infrastructure we need and ensure that we have clean and plentiful water, now and for decades to come. That is in the bag. This new clause takes the Bill further in strengthening the powers of the Environment Agency to manage reservoirs to mitigate flood risks.

My hon. Friend the Member for Halifax introduced a private Member’s Bill on this issue last year, as a result of many years of conversations and learning between agencies, including the Environment Agency, water companies and local authorities for the area of Calderdale, about what will really help to stop communities being at risk from flooding.

Currently, the legislation that underpins water companies and their regulation has a focus on mitigating drought risk rather than flood risk.

The new clause seeks to redress the balance, as is only appropriate. Reservoir management is vital to mitigation of the damage and havoc that floods can wreak on communities such as those in Calderdale, and trials of flood management are already under way in such areas as Thirlmere in Cumbria and the reservoirs in the upper Don valley. We know that it will affect reservoirs across Wales and Scotland, as well as Wessex in England.
3 pm

The new clause would place into legislation the important function of reservoir management for flood risk mitigation. That is what is deemed to be working in best practice. We should therefore listen to that and learn from it, and put it into the legislation. We know that extreme weather will increase the frequency of flooding in the years to come, and reservoirs are key to ensuring resilience within our water infrastructure if we are to manage both drought and flood risk. The difference is that reservoirs need to be relatively low to manage flood risk but high to manage drought risk, so we need the ability to move water between reservoirs, and that requires a lot of infrastructure.

We have infrastructure here on the Thames, so I know how important it is. The Thames barrier was put up for the 194th time last week. It has stopped flooding all the way down the Thames, and a similar amount of large-scale infrastructure needs to be put in to enable our reservoirs to work effectively to stop flooding. The new clause would enable the Environment Agency to do that.

The new clause would enhance current flood mitigation measures by ensuring that there are agreements in place, long in advance of any actual floods, between the Environment Agency, water companies and “connected agencies”—those may be bodies such as local authorities, though the new clause provides for that to be locally understood and decided. They could identify what capacity level is appropriate at which reservoirs, when the reduction would take place and what evidence base is needed to support those decisions.

Water companies are currently regulated by Ofwat, and inevitably there is a strong focus on preventing the over-obstruction of water sources, particularly in the context of fears that climate change will bring about prolonged periods of hot, dry weather. However, the Environment Agency warned in May last year that entire communities may need to be moved away from rivers if we are properly to prepare for a predicted terrifying average global temperature rise of 4°C. Again, regulation must find the appropriate balance between the two threats of drought and flooding.

The water industry in England and Wales is diverse, and pressures in one area are not the same as those in others. This is not a one-size-fits-all new clause; it fully understands local needs. The new clause will strengthen the Bill by leaving the space to allow for water companies, locally relevant connected agencies and the Environment Agency—with the Environment Agency, importantly, taking the lead—to respond to local risks and react accordingly.

The new clause recognises the need to strengthen flood risk mitigation with regard to reservoirs specifically. There may be many other advances that the Minister could, and should, talk about, but the new clause specifically refers to reservoirs, where it has been identified in best practice that there needs to be this additional provision. The new clause will allow us to respond in real time to changes in our climate that mean that we can face, at the moment, both drought risk and flood risk within months of each other. Any plans will be based on current trials that are already happening.

In an ideal world, the ability to transfer water between reservoirs and even across the country would enable the mitigation of flood risk by the release of excess water, which could be sent elsewhere without wasting a single drop. Yorkshire Water, for example, has recently been exploring the possibility of directing the water released from its trial reservoirs into its nearby treatment works. That is exactly the kind of approach that we would like to see, and it would be enabled by the new clause.

With that in mind, I hope it is clear to all Committee members why the new clause is needed and has attracted so much support from across the House. It will rebalance the risks of drought and flood. It will transfer powers to the Environment Agency and result in investment in infrastructure and localised plans, with flexibility to move water with ease as needed to protect both the environment and communities from flooding.

Ruth Jones: It is a pleasure to speak in support of new clause 15 and to follow my hon. Friend for Putney, who made so many powerful points in her speech.

I want to start by paying tribute to my hon. Friend the Member for Halifax, who has long campaigned for action to protect communities vulnerable to flooding and for the Government to act to mitigate the risk of flooding in her constituency and across England.

She has been joined by a number of Members, including my hon. Friend the Member for Bamborough, who I know supports the action to which the new clause would give effect.

On 1 May 2019, the Opposition forced the Government to agree to the UK Parliament becoming the first in the world to declare an environment and climate emergency. It was the right thing to do, and that declaration and the necessary action to tackle the emergency have underlined every word uttered by the Opposition in Committee and, importantly, influenced every single amendment and new clause. Earlier this year, we saw storms Cara, Dennis and Jorge demonstrate the reality of the climate crisis and showed that more extreme weather will happen more often and with devastating consequences for jobs, lives and communities. I saw the impact water damage can have on communities. Newport West itself had minimal damage, but we saw considerable flooding in our parks and green spaces. Sadly, other parts of south Wales were severely impacted—the Rhondda Cynon Taf area in south Wales was the scene of 25% of the UK total of homes damaged by the floods in early 2020—and there was also significant damage in places such as Shrewsbury and other small towns on the banks of the River Severn. So this is real. It is important that we get to grips with the dangers the water poses and look to adopt a policy of prevention, because that is better than cure.

I am deeply concerned by the deep, long-term cuts to Natural England and the Environment Agency that have seriously undermined their ability to tackle the environment crisis and deal with the impact of the climate emergency. That is important to note, because new clause 15 seeks to enhance the powers and reach of the Environment Agency, and we cannot do that without acknowledging the huge hit to its finances, abilities and reputation inflicted by the Government. The new clause is a focused, clear and coherent attempt at mitigating risk, but would also show that the House is determined to respond to the climate crisis, as well as to lead our way out of the many problems caused by water damage and flooding.
The amount of homes at risk of flooding has more than doubled since 2013, reaching an approximate total of 85,000 homes, so we need a joined-up approach across regional water authorities, local government and regulators to provide a single flood plan for an area to manage flood risk and better co-ordinate the response to flooding. That is why the new clause is important. It is about more than just preventing flooding from reservoirs: it should look to identify opportunities where existing and proposed reservoirs could be used to provide flood storage capacity and other benefits.

The damage caused by water has destroyed lives and, in some devastating situations, has taken lives too. This afternoon, we need to make sure that the new clause passes, because I am sure the Government share our ambition to ensure that this is enshrined in law.

Richard Graham: I rise very briefly, to my Whip’s dismay, to comment because the points raised by the hon. Member for Newport West have a lot of merit to them, as the Minister will agree. In particular, the hon. Member is not far away from the same river that has frequently flooded my own city of Gloucester, most notably in 2007. It is worth noting that we do have something called the Severn Partnership, which brings together the MPs the whole way along the river—around 40 of us—to work very closely with, for example, Shropshire County Council, the Environment Agency and other important stakeholders. Indeed, it is very important that it is a cross-border partnership, talking closely with colleagues in Wales and the authorities there.

The key point, which I am sure the Minister will touch on, is that I am not convinced the Secretary of State needs to make regulations granting the Environment Agency these additional powers. However, I do think that it is incredibly important for the Secretary of State, and his or her Ministers—the Minister in her place has already done this—to show huge commitment to encouraging and working with all those partners in order to resolve a fundamental problem in this country, which is that half of it has too much water and has floods, and the other half has too little water and has droughts. If we could store water high up, in the Welsh or Shropshire hills, and avoid flooding in places such as Gloucester, we could then transfer it by pipe all the way down to Thames Water, and make a turn at the same time, which would be good news for all concerned. I am sure that the Minister will explain why she agrees with the principle but does not necessarily see the point of the amendment.

Rebecca Pow: I thank all hon. Members who have contributed to the debate, and particularly the hon. Member for Putney for sharing her experiences of flooding. Clearly, my sympathies lie with anyone who has experienced flooding. I saw it for myself at first hand when the Somerset levels flooded.

I want to reassure the Committee that flood risk management is a top priority for this Government. I fully recognise the desire to look at all the options, but this Bill is not the place for new flood management legislation. There are currently over 200 reservoirs operated by the Environment Agency that are used for flood risk management, and that are deliberately kept low in order to maximise the amount of rainwater they can store.

Water company reservoirs have a different purpose and play a significant role in ensuring that we have ready access to water whenever we want and need it. Indeed, water companies have statutory duties, enforceable by Ofwat and the Secretary of State, to maintain secure water supplies, under the Water Industry Act 1991. That is a key point to highlight, because the security of water is so essential. This primary purpose of water companies must be considered first, before any additional duties are placed on them, even if those duties would help with flood risk management.

However, there is nothing to stop a water company using its reservoirs for flood risk management purposes and as a risk management authority. Under the Flood and Water Management Act 2010, water companies have a duty to co-operate with all other risk management authorities, including the Environment Agency. I am aware that some water companies across the north of England have undertaken trials to explore how and where this approach might offer the most benefits. Those trials have shown some positive results, but they have also identified some risks, such as prolonged dry weather, which need to be fully understood.

We should not forget that not many months ago we were facing a potential drought in the north-west, and everyone was on the phone to the water Minister. That was exacerbated by unusually high demands for water, because of the hot weather and changes in people’s behaviour and routines during the pandemic, with more people using hosepipes to fill paddling pools, wash their cars and water their gardens. Similarly, in the summer of 2018 the country dealt with very dry and warm weather, with water companies experiencing high demand. We must pay as much attention to the problem of too little water as we do to too much. Indeed, as the hon. Member for Newport West highlighted, we should expect more frequent extremes of weather as a result of climate change, so that all impacts on this situation.

There is a formal agreement between the Environment Agency and Yorkshire Water in relation to Gorpley reservoir, which demonstrates that, through effective partnership working, such agreements between the different water bodies and organisations can be secured locally. I therefore believe that local agreements and partnership working form the most appropriate approach. My hon. Friend the Member for Gloucester highlighted the Severn Partnership, which involves a whole range of bodies working together, including local authorities and all the MPs representing constituencies up and down the valley. That is proving to be something of a model in driving forward the whole issue of water infrastructure, how to get water from A to B, and how to deal with the demand. That has been a voluntary arrangement.

As I have said, flood risk is a top priority for the Government. We have published our flood and coastal erosion risk management policy statement, which sets out our long-term ambition to create a nation that is more resilient to flood and coastal erosion risk.

The hon. Member for Newport West touched on funding. From 2021, the Government will double investment in flooding to £5.2 billion in the next six-year capital investment programme for flood defences. That investment will better protect 336,000 properties from flooding. Additional funding of £200 million over six years will help 25 local areas to take forward some much wider innovative approaches to improve flood resilience and coastal erosion. That touches on the whole issue of water supply.
3.15 pm
The Government are bringing forward a range of really exciting initiatives in this space. We have already brought forward £170 million-worth of shovel-ready defence schemes across the nation, which will create jobs along the way and help economic growth. Those projects were announced in the summer.

The more resilient approach is reflected in clause 75. The improved consultation requirements provide for there to be earlier and better consultations and therefore a more integrated approach to water planning, requiring water companies who share borders to talk to each other and think about how their plans dovetail together.

However, there is currently no legislation that stops water companies using their assets for flood risk management. In fact, water companies are risk management authorities under the Flood and Water Management Act 2010 and they have a duty to co-operate with all other risk management authorities, including the Environment Agency, local authorities, internal drainage boards and others, as is being put into practice by the Severn Partnership. I therefore ask the hon. Member for Putney to withdraw the new clause.

Fleur Anderson: I thank the Minister for all those points and for her impassioned argument in favour of the new clause. The change in water use under covid has been recognised. It has been seen in London, where fewer people are working in the city and more are working at home. Better powers granted under the Bill, and local management plans, would make it possible to respond to those changes.

The Gorpley reservoir partnership is a great model of how to work together, as is the one in Calderdale that led to a private Member’s Bill last year and to this new clause. The new clause seeks only to put into legislation what is seen to be good practice. This is a top priority of the Government, so it should be in the Bill. Why would it not be? I absolutely agree that the security of water is very important, but we are asking for balance with flood mitigation.

The new clause would give specific powers to the Environment Agency and would provide joined-up legislation across the Government. The Minister has talked about the top priority of flood mitigation; the new clause balances that with the top priority of a world-leading Environment Bill. This is the right place for the new clause, so I seek to divide the Committee on the motion.

The Committee divided: Ayes 5, Noes 9.

Division No. 52]

AYES
Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES
Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crobbie, Virginia

Docherty, Leo
Graham, Richard
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

New Clause 16
WASTE HIERARCHY
“(1) In interpreting responsibilities under Part 3 of this Act and in all matters relating to waste and resource efficiency the Secretary of State must take account of the requirements of the waste hierarchy.

(2) In this section, "waste hierarchy" has the same meaning as in the Waste (England and Wales) Regulations 2011 (S.I. 2011/988).”

Ruth Jones: Brought up, and read the First time.

Ruth Jones: I beg to move, That the clause be read a Second time.

I rise to speak to new clause 16 in my name and those of my hon. Friends. Members for Southampton, Test, for Cambridge, for Erith and Thamesmead (Abena Oppong-Asare), for Bristol West (Thangam Debbonaire) and for Brighton, Kemptown (Lloyd Russell-Moyle). The new clause is a specific and targeted addition to the Bill, and I do not intend to speak on it for long.

As colleagues will know from our recent discussions on waste and recycling, it is important that we act as comprehensively as possible and that we show real leadership on these important issues. For us to take these matters seriously—actually and theoretically—we need the Bill, when it leaves Committee, to be made up of a comprehensive plan backed by a coherent agenda that will deliver real results now and into the future. I hope the Minister recognises that the new clause will do nothing other than enhance the scope and reach of the Bill, taking it a great deal closer to being fit for purpose.

The Minister and Government Back Benchers will know that we have not sought to divide the Committee for the sake of it in recent weeks. Truth be told, all our amendments are worthy of a vote and of being added to the Bill. Alas, the Minister and her loyal colleagues have put paid to any chance of those additions. I wish to press new clause 16 to a vote, however, for a number of reasons, the most important being that people out there need to know that although efforts to make recycling fit for purpose, to tackle waste and to fight the climate emergency head on in England were on the table, they were all rejected. I would be delighted if the Minister rose to inform the Committee that she will accept the new clause and, even at this late stage, I urge her to scrap her notes and do just that.

Rebecca Pow: The hon. Lady will be pleased to know that I will not be recycling my notes just yet. I thank her for tabling new clause 16, which seeks to ensure that the Secretary of State must take account of the requirements of the waste hierarchy when considering all matters relating to waste and resource efficiency. Organisations that produce or manage waste in England and Wales are already legally obliged to comply with the waste hierarchy duty, as set out in the Waste (England and Wales) Regulations 2011—the hon. Lady is perhaps not aware of that.

The Environment Agency is responsible for enforcing that in England. Government policy in this area has, for a long time, been developed with the principles of the waste hierarchy in mind, and that commitment was affirmed in our resources and waste strategy in 2018—an excellent strategy that I urge the hon. Lady to read—which sets out our plans to move away from an inefficient “take, make, use, throw away” model, to a more circular
economy that keeps products and materials in use for as long as possible. We discussed that at length in many of the earlier waste clauses.

We intend to ensure that waste is prevented in the first place and that we recycle as much as possible once waste is created. Measures in the Bill have been developed with the waste hierarchy as our guiding light. At the top of the hierarchy, clause 50 and schedule 7 allow for regulations to be made about resource efficiency requirements, to drive a shift in the market towards products that last longer and can be reused and repaired more easily, as well as towards those that can be recycled. Those regulations would be used, for example, to require fitted furniture to be easy to disassemble and reassemble, or for parts to be easily repaired or replaced. The hon. Lady is absolutely right: the public are really welcoming of such measures.

Our producer responsibility powers in clause 47 and schedule 4 can be used to help to prevent products or materials from becoming waste. By imposing obligations on food producers, for example, we can hold them responsible for surplus food and food waste. That is a huge step forward: collecting food waste but also urging people not to create so much waste in the first place.

Our other producer responsibility powers in clause 48 and schedule 5 will also help prevent waste by making producers accountable for the full cost of managing their products at the end of life. I honestly believe that that will be a game-changer in terms of the amount of waste created. As I have mentioned before, that will be a huge step forward: collecting food waste but also urging people not to create so much waste in the first place.

Clause 54 will ensure that we make recycling simpler for households, by stipulating a consistent set of materials that must be collected from all households and businesses in England, which, as I have just mentioned, will include food waste. I can therefore reassure the hon. Lady that we do not need the new clause, having touched on that product through its life and where it ends up, so that will reduce waste. Maybe she missed that.

Ruth Jones: I did not miss it, and I am perfectly clear about the producer responsibility. However, I am also clear on the need for public co-operation, because all recycling and waste management begins at home. We must ensure that we have the public on board. Although we are talking about the waste hierarchy, we need to ensure that the public out there in the real world understand fully what is expected of them. We need to make it easy for them, which means that they must have clear instructions—hopefully universal instructions rather than different authorities doing different things, confusing people. On that basis, I am sorry to disappoint the Minister, but I am going to press this new clause to a vote.

Question put. That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 53]

AYES
Anderson, Fleur [Southampton, Test]
Furniss, Gill [Northampton North]
Jones, Ruth [Stoke-on-Trent North]

NOES
Afolami, Bim [Thurrock]
Bhatti, Saqib [Leeds West]
Browne, Anthony [Oxford West and Abingdon]
Crosbie, Virginia [Mid Suffolk]
Docherty, Leo [Midlothian]

Question accordingly negatived.

New Clause 17

TREE FELLING AND PLANTING

“(1) The Secretary of State must by regulations establish and execute in conjunction with the devolved administrations a target for the percentage of land in the UK under forest or woodland cover by 2050.

(2) The target shall be at least 19% of UK land under forest or woodland cover by 2050.

(3) The Secretary of State must by regulations establish and execute a target for the percentage of land in England under forest and woodland cover by 2050.

(4) The target shall be at least 14.5% of land in England under woodland or forest cover.

(5) The Secretary of State must by regulations establish interim targets for the increase in hectares of land in England under forest or woodland cover for each five year period up to 2050.

(6) The interim targets shall be not less than an additional 80,000 hectares of land under forest or woodland cover for each five year interim target period up to 2030, and not less than an additional 10,000 hectares of land for each five year interim target period thereafter.”—(Dr Whitehead.)

Brought up, and read the First time.

Dr Whitehead: I beg to move, That the clause be read a Second time.
The Chair: With this it will be convenient to discuss new clause 19—Duty to prepare a Tree Strategy for England

(1) The Government must prepare a Tree Strategy for England as set out in subsection (2) and (3).

(2) The strategy must set out the Government’s vision, objectives, priorities and policies for trees in England including individual trees, woodland and forestry, and may set out other matters with respect to the promotion of sustainable management of trees in these contexts.

(3) The Tree Strategy for England must include the Government’s targets and interim targets with respect to—

(a) the percentage of England under tree cover;
(b) hectares of new native woodland creation achieved by tree planting;
(c) hectares of new native woodland creation achieved by natural regeneration;
(d) the percentage of native woodland in favourable ecological condition; and
(e) hectares of Plantation on Ancient Woodland (PAWS) undergoing restoration.

(4) The Government must keep the Tree Strategy for England under review, and may, if they consider it appropriate to do so, revise the strategy.

(5) If the Government has not revised the Tree Strategy for England within the period of 10 years beginning with the day on which the strategy was last published, they must revise the strategy.

The aim of this new clause is to ensure that the Government prepares a tree strategy for England. It will ensure that the Government has to produce targets for the protection, restoration and expansion of trees and woodland in England.

Dr Whitehead: Hon. Members will recall that we heralded the arrival of this debate on new clauses 17 and 19 a little while ago in our debates, when we drew attention to clause 100, which comes under the strange heading of “Tree felling and planting” because “planting” does not appear in the text of the clause. New clauses 17 and 19 are similar—new clause 17 has more detail in the heading of “Tree felling and planting” because there will inevitably be substantial carbon overhangs in all sorts of other areas of activity, which we will have to account for in getting to the overall net zero target.

The net negative effect of sequestration by a large planting of trees could go a long way to account for the carbon overhang in other areas of our economy.

It is probably a good idea to try to get a handle on the numbers that we are talking about by consulting our old friend the Committee on Climate Change. Its publication “Land use: Reducing emissions and preparing for climate change” of about two years ago looked at the number of new trees that we will need to plant, in the context of the present forest cover in the UK. Hon. Members will not be surprised to hear that we are one of the worst countries in Europe in terms of forest cover. We inherited a land that was richly forested across almost its length and breadth, and we have reduced it to a land that in England has no more than 10% forest cover overall. It is considerably higher in Scotland, but altogether in the UK there is only about 13% of forest cover. That compares very badly with France, which has 35% and Scandinavia, which has 50% to 60%.

We are a tree-bare country as far as carbon sequestration is concerned. It seems to me not only a good idea to get our skates on to plant a lot more trees, but an imperative to restore the forest cover substantially, not just for climate reasons but to enhance biodiversity, and to join up the various isolated pockets of species’ existence in the country to create continuous corridors of species runs. We could immensely enhance, particularly in rural areas, the forest industries, which are very remunerative for the country, and make the country a much better place overall as a result of our efforts.

The Committee on Climate Change estimated that in order to produce the sort of sequestration that would make a real net negative contribution and save between eight and 18 megatons of carbon dioxide we would need to plant something like 1.5 million hectares of land, which would take the forest cover of the UK up from the present 13% to 19% by 2050. Looking at creating forest cover lets us understand the extent of the task ahead of us and what we need to do. By reasonable extrapolation, it gives us a handle on the numbers that have been bandied around recently about who is planting what trees, how many they are planting and what good incentives there are to do so.

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We all agreed that we were to move towards a net zero target for emissions by 2050, and trees play an incredibly important part in that net zero target, because they are nature’s almost perfect method of carbon sequestration. Particularly as trees grow from their sapling stage to their mature stage, they have a burst of sequestration. Fortunately for us, that burst of carbon sequestration as the new trees grow exactly coincides with the period ahead of us up to 2050, when we have to get to our net zero target.

3.30 pm

Our tree strategy therefore ought to be aligned with that net zero target, and informed by an understanding of not just what we have to do to get to net zero but what happens in terms of sequestration by these trees. That is the biggest net negative weapon in our arsenal, because there will inevitably be substantial carbon overhangs in all sorts of other areas of activity, which we will have to account for in getting to the overall net zero target.

Robbie Moore (Keighley) (Con): Across the whole UK, there are about 17.6 million hectares of productive agricultural land. Does the hon. Gentleman therefore
agree that it is about striking the correct balance? With the Prime Minister announcing 30,000 hectares for tree planting annually, does he agree that that will contribute towards reaching the target? It is about striking a balance.

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**Dr Whitehead:** The hon. Gentleman is absolutely right and may well have anticipated my next comments. He referred to his miniature oracle—the mobile phone—that looked up the number of hectares in productive use in the UK. In a tree strategy, it is important not to substitute productive land for tree cover if that can be avoided. We must ensure that marginal land, or land that is not in particular productive use, can be afforested, and that land that is in productive use or has a high yield can continue to operate on that basis. We should not try to sequester land that could be used for other purposes to put trees on.

On the overall target, we must ask ourselves—indeed, the Committee on Climate Change has asked itself—whether it is possible to get that number of trees on the land in the UK, bearing in mind the constraints that the hon. Gentleman mentioned. The answer is yes, absolutely, it is possible. The Forestry Commission and Forest Research have done a lot of research on the amount of marginal land in the UK that could have forest cover without impinging on grade 1 agricultural land, national parks, areas of outstanding natural beauty and so on. The answer is that roughly 5 million hectares are available in England for that sort of activity. There is land available.

A tree strategy would have to take account of the point that the hon. Member for Keighley made about what land was available and how it might be afforested, as well as the incentives that might be needed to do that because a lot of that land is in private ownership and some might be purchased for forestation and made available to the public. Other land could be made available through covenants, which the Minister mentioned. But overall, the purpose would be to ensure forestation that increases overall forest cover while making room for the various things that need to be done on the land up to 2050.

I want to come to the 30,000 hectares, which the hon. Gentleman mentioned and which we have recently heard about in the press. One is not entirely clear what that figure means. A blog from the DEFRA press office on 12 June was headed—I am not sure about the grammar here—“Tree planting on the up in England”. Actually, it talked about tree planting not being particularly on the up in England, because not only have present targets been missed by up to 70% in recent years, but although total new planting in 2019-20 was indeed up, it was only up to 2,330 hectares, which is a tiny proportion of what is required annually to get anywhere near that figure by 2050.

Indeed, the figure very much squeezes the definition of what has been planted by taking into account the total number planted with Government support over the last three financial years and those hectares that the Department thinks have been planted without support—because people like planting trees. It suggests that total new planting, taking into account everything in the UK, in England and as well—it comes to about 13,000 hectares altogether. Therefore, even by squeezing the statistics as hard as we can, we still get a pretty low version of that tree planting figure.

Nor is it clear from that press release whether the 30,000 hectares of trees that we hear mentioned is an annual tree planting target or a target up to 2025. It states that “tree planting in England increased last year but was below the rate needed to reach the manifesto commitment to plant 30,000 hectares of trees across the UK by 2025.” That is very different from 30,000 a year. If the target is indeed 30,000 a year, that goes some way towards beginning to meet what the Committee on Climate Change has said is the imperative for planting up to 2050, but only halfway. We would probably need to plant about 50,000 to 60,000 hectares a year if we are to reach Committee on Climate Change target.

That is why the new clause sets out targets with particular percentages, because that is the key point: the percentage of land in the UK under woodland or forest cover, now and up to 2050. That is what the target effectively works around. We also need to understand clearly that the target has to be met between Governments, because half of the UK’s new trees were planted in Scotland last year and a substantial amount of the overall UK forest cover target would have to be met there. Therefore, not only would the target have to relate to English planting; it would have to relate to mutual action and discussions between the UK Government and the Scottish Government—and indeed the Welsh Government and the Northern Ireland Assembly—about what is to be done on tree planting in the UK as a whole. As a matter of interest, Wales comes somewhere between Scotland and England in terms of its percentage of forest cover. Northern Ireland is very bad in its forest cover, so there are further areas to be made up in that context.

3.45 pm

I hope the Minister, when she replies, can provide some information about the thinking in Government about a tree strategy that actually addresses the issues I have raised this afternoon and is not about digging trees in here and there by boy scout groups—I am sure it will be about that, but as a small part of the process. We are talking very large numbers here, and the tree strategy will need to genuinely address those large numbers. Not only that, a tree strategy will need to address all the processes of how to get there and how to make sure that getting there is a sustainable process, because that is the other really important point in any tree strategy. As I have said previously in Committee, it is not just about going around with a bunch of saplings in a truck and putting 1,600 in per hectare: it is about making sure that a few years hence there are still 1,600 trees per hectare, not a couple of hundred, because the rest of them have been chewed up by deer and squirrels, or have died because the wrong species have been planted in the wrong place, or the land was not suitable for planting the trees in the first place. The strategy needs to be quite intricate, to get right where the trees are planted; to ensure the balance between marginal land and productive land, as the hon. Member for Keighley mentioned; and to make sure that the trees are maintained properly.

Indeed, the Forest Stewardship grants and the Woodland Trust grants for planting trees are not just for planting trees, but for the stewardship of those trees over a period of time once they have been planted, and that is a necessary condition to get the grants in the first place.
All those considerations have to go into a proper tree strategy and what I hope to hear from the Minister—so that we do not have to divide the Committee—is that that is the Government’s thinking. I hope they have a tree strategy on its way that will do all those things to get us to 1.5 million hectares of additional forest cover by 2050 and so that England and Wales will rejoice in about 13% or so forest cover, and the UK as a whole will rejoice in about 19% forest cover, with the active collaboration of all the Governments and nations in the UK. That is what I would regard as a real tree strategy, putting in place something that plants trees as well as felling them, and that is why we have tabled the new clause. I hope the Minister will find it very much to her liking. I know she is a very strong tree person, and I hope her strong tree inclinations will shine out this afternoon through her commitment to making the tree strategy work as well as we think it should.

Fleur Anderson: I feel as though this is the tree strategy support group part two. As my hon. Friend the shadow Minister said, we talked about it in our discussion of clause 100, which was very disappointing. For anyone reading this debate in Hansard, I recommend that they go back and discover the length and breadth of clause 100, which is headed “Tree felling and planting”, but talks only about tree felling.

New clause 19 is specifically about a tree strategy, tree planting and tree conservation. As I said last week, putting an English tree strategy on a statutory footing is key to delivering the commitments in the 25-year environment plan alongside which the Bill sits. My hon. Friend has been through the many reasons why we need this strategy. It is therefore hugely disappointing to those who have a stake in our woodlands—and knowing how much the Minister is a tree person—that the Bill fails to deliver one. There have been no new clauses from the Government to set right this gap in the Bill. In the previous sitting, I heard several Conservative Members rightly praising and waxing lyrical about the Woodland Trust’s work, about which they were very appreciative. Despite their admiration, however, they have seemingly ignored exactly what the Woodland Trust has called for, which is contained in new clause 19; the new clause has the Woodland Trust’s full support.

I note and appreciate what the Minister said last week, namely that the long-awaited and much talked-about tree strategy is under production and will be launched in the spring of 2021. Given how long this Bill Committee seems to be going on, that feels very close. The tree strategy contains what the Government believe are ambitious commitments, and we all look forward to it. I welcome that, and I hope that the Government will listen carefully to the submissions made to their consultation. However, by refusing to give an England tree strategy a statutory footing, the Government risk seriously undermining their progress.

We know that there is a long way to go. Without a provision such as new clause 19, there is no formal way in England to set targets for a tree strategy. The new clause offers the opportunity to correct this, and it will ensure that the England tree strategy has the status it needs to protect, restore and expand trees and woodland in England. It is amazing; there were almost 3,000 submissions to the Government’s consultation from Woodland Trust supporters, and many wanted an England tree strategy to be put on a statutory footing. Supporting the new clause would ensure that their voices were heard and make the strategy’s targets meaningful, binding and much more likely to achieve their effect. The Woodland Trust has said:

“The amendment is strongly consistent with the Environment Bill’s aims of restoring and enhancing green spaces. It also complements the existing tree clauses, and reflects recent legislation in Scotland, important given the UK wide focus on increasing tree cover as part of the UK’s global climate and biodiversity commitments.”

As my hon. Friend the Member for Southampton, Test has outlined, this really is a no-brainer.

We can learn from other countries that have put tree strategies into legislation and reaped the rewards. I have been careful, in looking at the Bill, to find out which other countries have brought in similar Bills. Have they introduced environmental legislation, and what have they learned from it? What good practice do we want to take from countries that have gone before us, with similar legislative and regulatory bodies, and what has not worked out very well for the environment? We do not have time for second chances when it comes to the environment.

I will take one example from Norway. We might think of Norway as a massively tree-covered country that does not need any help, but its 2005 Forestry Act was brought up to date to promote sustainable forest management, taking into consideration important environmental values, wildlife habitat, the storage of carbon and other essential functions of forests. Norway’s 2009 Nature Diversity Act ensured that forestry regulation complied with the legislation contained in that Act. Norway put forestry regulation on a statutory footing. It was probably littered with “musts”, and had hardly any “mays”—I can picture it now.

The success of Norway’s model and accompanying legislation speaks for itself. In 1920, Norwegian forests consisted of approximately 300 million cubic metres of standing timber. Today, the volume of standing timber is soon expected to exceed 1 billion cubic metres. It was on a downward trajectory, but it has tripled since the second world war, enhanced by the legislation that Norway has put in on a statutory footing.

New clause 19 is a “no regrets” commitment. I urge colleagues to reconsider their opposition to it, to stand up for trees and to stand up for the ambitious scale of tree planting and conservation that we need to meet our carbon targets, that we need for biodiversity and our own mental health, and that the public overwhelmingly want.

Rebecca Pow: I would like to think that the shadow Minister was going to branch out and not press this new clause to a Division.

I share everybody’s desire to deliver on a tree-planting commitment. The Government are mindful of that and are not wasting time. We are working to increase planting across the UK to 30,000 hectares per year by 2025—the figure which has been quoted and which is in line with the CCC recommendations. We are taking those recommendations extremely seriously. Forestry is devolved, so we are working closely with the devolved Administrations to meet that commitment. To increase planting in England, we have announced a £640 million nature for climate fund. In our England tree strategy, which will be published...
in early 2021, we will set out further plans for how a lot of the money will be used to fuel all the tree planting we need.

New clause 17 would set a UK-wide target, but as I just said, forestry is devolved, so the Bill is not the place to establish targets for the UK overall. The shadow Minister quoted some statistics—from a blog, I think—about 2,300 hectares of planting. That was an England-only figure for 2019; it was part of UK-wide planting of 13,400 hectares. Our manifesto commitment is to a UK goal, but the Bill is not the place to establish UK targets.

The new clause also proposes a specific England-only target, but significant woodland cover targets in legislation would have a major impact on land. Ours is a small island and therefore we have a limited resource for planting. It is not helpful to make comparisons with a country such as France, which is five times the size of the UK and has a much smaller population. I applaud what the Norwegians have done, but they have terrain that is much more suited to growing trees and, to take up the point made by my hon. Friend the Member for Keighley, they have fewer choices to make about prime agricultural land. We must and will strike a careful balance on where we put the trees.

Extending our 2025 commitment to 2050 would result in 17% tree cover, which is an enormous increase, but the new clause proposes 19%, which would require us to think seriously about the possible extent of woodland cover and how it would affect our prime agricultural land and land for housing and so on. I am sure the shadow Minister is completely aware of that. In a policy paper this summer, we set out our intention to explore whether legislative tree-planting targets would be appropriate under the target-setting procedure in the Bill. Before that process is complete, we should not set specific targets in legislation. Setting potentially unachievable targets, as proposed in the new clause, could lead to trees being planted in the wrong places for the wrong reasons, which could harm food production and sensitive habitats, or even increase carbon emissions. There are lots of things to consider.

New clause 19 proposes a duty to prepare a tree strategy for England and sub-sectoral targets. We know that a major increase in planting is needed—nobody denies that, and it is a manifesto commitment. That is why we have launched the consultation on a new England tree strategy. The strategy will be published in 2021; it will set out a clear vision, objectives and policies for trees in England, covering trees, woodlands and forests. There was great involvement in the consultation and some interesting ideas and proposals were advanced.

**Daniel Zeichner:** I appreciate the Minister’s great enthusiasm for trees. Will she join me in supporting and celebrating tree charter day, which is this Saturday, and congratulate the young plantscapers of Mayfield Primary School in Cambridge, who created a tree hanging especially for me to celebrate it?

**Rebecca Pow:** Of course I would like to celebrate that. I commend the school for its work. It is a brilliant thing to engage young people in nature and everything about trees, including ancient trees. That can only bring benefits to people’s lives. Well done to them for engaging.

**4 pm**

Going back to the strategy, it will be really important in not just delivering new woodlands, but protecting the woodlands that we already have. I take slight issue with the shadow Minister, because the forestry enforcement measures in the Bill will ensure the replanting of trees that are illegally felled by, for example, developers trying to realise the value of their land. We discussed that at length yesterday, and I think he welcomed those measures. It will deter illegal felling, keeping trees where they are, so it is incorrect to say that the Bill does not cover planting. It is a really important measure that many of those involved in forestry have called for, and it is in the Bill, so we do not need to put a strategy on to a legislative footing.

On top of the measures I have already mentioned, we have heard reports of action from members of this Committee. My hon. Friend the Member for Meriden commended his own Solihull Council for planting thousands of trees and having plans to plant thousands more. That came without any statutory requirement, because the council realises just how important trees are to life. Similarly, we have heard about the Queen’s Commonwealth Canopy, which is spreading across the nation.

To conclude, while I, of course, share the desire to see many more trees planted, we must set credible policies to deliver that with public support. As I have explained, the Bill is not the place to set legislative targets for forestry, first, due to it being a devolved matter and, secondly, because we must ensure that legislative targets are based on a thorough review of what is desirable, achievable and grounded in evidence. I ask the shadow Minister to, as I said, branch out and withdraw the new clause.

**Dr Whitehead:** The Minister, as she has managed to do on several occasions, presents a powerful speech in favour of a proposition from the Opposition, and then says, “Well, it is not necessary and should not be supported.”

We can all agree that the Minister is a powerful advocate of trees; she has been for a long time and I do not doubt for a minute that she will continue to be so. I hope she appreciates that that is how I characterise myself. However, she also said—we are to take this on trust—that the Government are undertaking a review of trees. I hope they are, and that they will in due course produce something that will, among other things, lead to a considerable increase in tree planting in the way that I have described and the way in which she would advocate. However, as my hon. Friend the Member for Putney said, none of that is statutory. Now is absolutely the right time to make sure that there is a statutory provision to frame the way forward.

I urge the Government to accept the provisions of new clause 17, which sets out the sort of targets we should adopt. They could be incorporated into a statutory strategy that the Government might produce. I think we are creeping towards agreement not only on how this should be done, but on the imperative to achieve or get close to those sorts of targets—the sort of thing the CCC was talking about—to ensure that we really make a difference as far as trees in the UK are concerned, subject to all the considerations that the Minister mentioned.

We want to ensure that any target is achieved in a sustainable way, without prejudice to other forms of land use in the UK, and in this case in England. Indeed, the Committee on Climate Change discussed in its
[Dr Whitehead]

report what sort of land uses should be maintained in the UK. It was very clear that we should not do something that undermines something else, but should try to move forward with a unified strategy that gives room for crop land, grassland, rough grazing and forestry, and that takes into account the fact that we are an densely populated country—one that, I would add, has succeeded in chopping down pretty much every tree in sight over the past 500 years. We have reflected on the change in land use that has come about as a result.

I recall mentioning a little while ago that the New Forest, which is near me, is a changed landscape. It is called the New Forest, but it is actually a substantially non-tree landscape that has been changed by humans over time, and the habitat has changed as a result. In and around the Minister’s constituency, there was a broad swathe of lowland forest and hilltops without trees on them. That is why a number of the dolmens, menhirs and standing stones are in their positions: they were ways of guiding people across forest areas to get to different places because the country was so heavily forested. We have wiped all that out over successive generations. I do not think it is a case of trying to fit in a few trees to make enough progress on the margins while the rest of the country remains treeless. We need a wholesale project of restoring the tree heritage that Britain once had, while ensuring that that tree heritage can live alongside the other uses that we have brought about. That is a complicated thing to achieve.

Rebecca Pow: Given that the hon. Gentleman wants all this tree planting, does he welcome the great Northumberland forest, which is expanding forestry right across the landscape in the north-east, and the fact that we are kickstarting the planting of the new northern forest with a £5.7 million investment? I think he is agreeing with everything that I have said. We have said that we are ramping up tree planting to meet the advice of the Committee on Climate Change.

The Chair: Perhaps you can answer briefly, Dr Whitehead. It has been quite a long debate so far.

Dr Whitehead: Indeed. Yes, not only do I welcome those forests but I positively embrace the fact that they are being established. When we look at the older midlands forests that have arisen around Sherwood, we can see how more tree plantation can sit in the landscape alongside other uses. That is exactly what is being tried in the northern forest at the moment, so I understand and welcome that.

New clause 19, however, just says, “Get on with a tree strategy. You can put all these targets in it, but it has to be statutory so that we make sure it works properly.” I do not wish to press new clause 17 to a Division, because I accept that it includes targets that, although I think they are very important, the Minister may think might be mediated by other factors. However, it is important that we put on record that there should be a statutory tree target in the Bill and that we should get on with that strategy now. I will therefore put new clause 19 to a Division, to test whether the Committee agrees with that notion. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 18

POLICY STATEMENT ON ENVIRONMENTAL PRINCIPLES: EFFECT

“When exercising any function of a public nature that could affect the achievement of—
(a) any targets set under sections 1 or 2;
(b) interim targets set under section 10; or
(c) any other targets that meet the conditions in section 6(8)
public authorities must act compatibly with and, where appropriate, contribute to the achievement of those targets and the implementation of the environmental improvement plan.”—(Daniel Zeichner.)

Brought up, and read the First time.

Daniel Zeichner: I beg to move, That the clause be read a Second time.

After the drama and passion of the trees debate, I am happy to inform you, Mr Gray, that the next few new clauses are a touch drier and return to issues of environmental law and the philosophical underpinnings of the Bill. They are important none the less.

New clause 18 would introduce a new duty on all public authorities to ensure that all levels and arms of government play their part in achieving the environmental targets. The new clause would give the air quality, water, waste and biodiversity targets we established at the outset real relevance and meaningful drive from day one, and it would bolster the effects of clause 4. Our concern is that, as it stands, the Bill does not require or sufficiently clarify the need for action across all levels of government and other public bodies.

I will give one example, on air quality. Although part 4 of the Bill provides welcome new powers for local authorities and some useful clarification of their existing responsibilities, it does not do enough to ensure that a comprehensive approach is taken across all levels of public decision making: in fact, it rather risks putting the burden of responsibility solely on local authorities. As we know, air pollution does not respect boundaries, and action by local authorities alone will not be enough to tackle all the sources of air pollution. The new clause would help to spread that burden across central and local government and other significant public bodies in this space, requiring them to contribute to providing solutions on a national and regional scale. We fear that, without something like this, progress will be too slow. The same would be true of the other priority areas as well.

We will not push the new clause to a Division, you will be pleased to hear, Mr Gray, but we would like to hear what the Minister has to say about how those targets can be achieved, which we all want, without this kind of wider environmental duty.

Rebecca Pow: The legal obligation to achieve the long-term target set by central Government properly rests with central Government, and it is for central Government to create the right natural policy frameworks in which other public bodies can best contribute to our environmental goals alongside their own priorities and legal obligations. We will report annually on the implementation of the environmental improvement plan, on improvements in the natural environment and on progress towards the targets, which will provide an opportunity to identify how these national
policy frameworks are contributing to environmental improvement. The Office for Environmental Protection will respond to the Government’s annual report with its own independent report. That covers everything that I have been pointing out from the beginning about the whole process of monitoring and reporting.

Where necessary, the Government could change these national policy frameworks, as we are doing through the Bill by making improvements to the local air quality management framework; the hon. Gentleman touched on air, but this measure, already outlined, will do exactly that. Changes would need to be made, following proper consultation with affected bodies, having due regard to the environmental principles policy statement. Local authorities, as I said, have an important role to play in delivering environmental improvement, including through some of the measures in the Bill. Long-term, legally binding targets will set the trajectory for driving long-term improvements in our natural environment.

Public authorities, in particular local authorities, have an important role to play in delivering these improvements, and measures in the Bill will help to drive that action on the ground. For example, the nature section of the Bill strengthens the existing biodiversity duty under the Natural Environment and Rural Communities Act 2006. Public authorities will have to act to conserve and enhance biodiversity, while taking account of local nature recovery strategies. We have covered all that in great detail. There will be a groundswell from the bottom up; local authorities will be hugely involved.

Clear accountability at central Government level provides clarity and avoids additional burdens on hard-working public bodies. Were the new clause to be accepted, the shadow Minister would be placing many more burdens on local authorities. We are at pains to make sure that we do not overburden them, but what they do is an essential part of the whole system, with the Government up there at the top, being held to account and playing their role. I think the hon. Member for Cambridge said he was not going to press the clause. If that is the case, I thank him for it.

4.15 pm

Daniel Zeichner: The Minister is right; we are not going to press the motion, but I would say that I think we are repeating some of the arguments we had on earlier clauses. We are somewhat sceptical that the Minister’s noble hopes will be realised. I entirely agree that the Government are a lot from local authorities, but we think that it is not only local authorities that will have to step up. I hear what the Minister says and we shall see how it plays out. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 19

DUTY TO PREPARE A TREE STRATEGY FOR ENGLAND

“(1) The Government must prepare a Tree Strategy for England as set out in subsection (2) and (3).

(2) The strategy must set out the Government’s vision, objectives, priorities and policies for trees in England including individual trees, woodland and forestry, and may set out other matters with respect to the promotion of sustainable management of trees in these contexts.

(3) The Tree Strategy for England must include the Government’s targets and interim targets with respect to—
(a) the percentage of England under tree cover;
(b) hectares of new native woodland creation achieved by tree planting;
(c) hectares of new native woodland creation achieved by natural regeneration;
(d) the percentage of native woodland in favourable ecological condition; and
(e) hectares of Plantation on Ancient Woodland (PAWS) undergoing restoration.

(4) The Government must keep the Tree Strategy for England under review, and may, if they consider it appropriate to do so, revise the strategy.

(5) If the Government has not revised the Tree Strategy for England within the period of 10 years beginning with the day on which the strategy was last published, they must revise the strategy.”—[Dr Whitehead.]
Daniel Zeichner: I beg to move, That the clause be read a Second time.

After the Government’s majority was slashed at the last vote, I am hugely excited. If only there were a Liberal Democrat bar chart to hand, we could see the swing. I am quite excited about new clause 20 and I am glad the Committee has come back to life. I am so sorry that some hon. Members failed to witness the excitement.

The new clause brings us back to the discussions that the Minister and I had about the state of nature. We think that we need to turn the Government’s rhetoric into reality by setting out a target for reversing the decline of nature, in time to play a leadership role as we head to COP15. COP15 is delayed—it would have been happening about now—and is now set for late spring next year, in Kunming, China. The hope is for a new set of global goals for 2030 to replace the 2020 Aichi biodiversity targets, which, as we all know, the world has sadly not done too well on.

I think we can all agree it is vital that the next decade sees much more success than we have managed collectively to achieve in the recent past. As a driving force of the Leaders’ Pledge for Nature, which commits to reversing biodiversity loss by 2030, the UK is in a really good place to be a key advocate for leading on these matters. The Bill contains a framework for setting long-term legally binding targets, but it seems to us that the timeframe does not sit comfortably with the 2030 goal. New clause 20 would require the setting of a state-of-nature target that takes account of what needs to be done domestically to contribute to improving the global state of nature.

Looking back at the document on environmental targets from late August, we see that, interesting reading though much of it is, it seems almost like at discursive paper. In my city we are familiar with interesting, discursive papers, but this goes back to the may/must argument. There are plenty of fine intentions, such as:

“Natural England is currently working on a programme to improve monitoring of our protected sites”.

That is great, but it is not necessarily mean that it is doing something.

The paper also states:

“A legally binding target for Marine Protected Areas could complement and bolster this on-going work.”

And, sadly:

“Trends show that overall, species populations have declined over the last 40 years. Whilst these losses have slowed down, there is still work to do.”

That simply describes a state of decline.

The document continues:

“Our most comprehensive species data is about the abundance of species. Using this, we could set a target”.

They could set a target, or they might not. It continues:

“It will be difficult to predict how species populations will change over time—including as a result of implementing new policies—as we consider whether to develop a target or targets for species.”

That is all worthy stuff, but it is not the stuff of leadership.

On habitat restoration, the paper states that “the Environment Bill lays the foundation for the Nature Recovery Network that will complement plans for a new Environmental Land Management scheme.”

Again, that is a description of an aspiration. Frankly, we know how difficult it will be to do some of this stuff. The document states:

“We are currently developing an indicator to directly monitor.”

As I say, it is all aspirational stuff and, I am afraid, all too vague.

The section on nature finishes by saying:

“We are currently undertaking the following steps to increase planting in England”—

this goes back to trees—“developing a new England Tree Strategy...developing plans to deploy the £640 million Nature for Climate Fund”. That is all part of a wish list, but it really does not add up to a leadership strategy.

We think the strategy needs to be much stronger and more ambitious. New clause 20 would signal the intention to set a target in domestic legislation. That would allow us, in advance of next year’s very important international summit, to set a lead such that we would truly be able to say that we were world leading. Frankly, that section of the paper seems a bit fluffy to me.

Rebecca Pow: As the hon. Gentleman knows, the UK is committed to playing a leading role in developing an ambitious and transformative post-2020 framework for global biodiversity under the convention on biological diversity. The UK Government already support a global target to protect at least 30% of the global ocean by 2030, and 32 countries have joined our global ocean alliance in support of the target. We really are forging ahead on this issue. At the end of September, the Prime Minister committed to extend that commitment to land—indeed, the hon. Gentleman referred to that.

Together with the European Commission and Costa Rica, the UK was instrumental in crafting the leaders’ pledge for nature, a leader-level voluntary declaration that was launched at the United Nations General Assembly on 28 October. The pledge sets out 10 urgent actions to put biodiversity on a path to recovery by 2030. If that is not ambitious, I do not know what is.

Our international aims on biodiversity must be underpinned by credible action at home—the hon. Gentleman is absolutely right about that. Indeed, it is something that I keep saying as the Minister. Following agreement of the post-2020 framework, we will publish a new strategy for nature in England that will outline how we will implement the CBD’s new global targets domestically and meet our 25-year environmental goals for nature at the same time. We recognise the importance of setting legally binding targets to support our ambitions. As the hon. Gentleman knows, the Bill includes a requirement to set at least one long-term, legally binding target in relation to biodiversity, as well as targets for air quality, water and resource efficiency, and waste reduction. Our recently published policy paper on environmental
targets sets out the areas under consideration for targets, including on species and habitats. So there could and will undoubtedly be myriad targets in future years that will affect the space of biodiversity to which he refers.

The Government will determine the specific areas in which targets will be set via the robust and transparent target-setting, monitoring and reporting process that the Bill sets in train. Advice from independent experts will be sought during the target-setting process, and stakeholders and the public will also have an opportunity to provide input as to what they think is the right level. Targets will be based on scientifically credible evidence, as well as economic analysis. We do not want to prejudge the specific targets that will emerge from this process. Indeed, scientists and academics very much support this thinking and way of operating. I have made it clear that there is enough in the Bill without the proposed new clause, so I ask the hon. Gentleman—who, as ever, makes an eloquent point—to withdraw it.

Daniel Zeichner: On this occasion, I am afraid I will have to disappoint. The Minister has wheeled out a veritable forest of aspirational opportunities, but we think that the Bill needs to be clearer in its ambition. If that were the case, we would be in a stronger position going into COP26 next year. I suspect this debate will continue over the coming months, but in the meantime we would like to put our position on the record by forcing a Division and—who knows?—perhaps a great victory.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 8.

Division No. 55]

AYES

Andersen, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Croesbie, Virginia
Docherty, Leo

Graham, Richard
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

New Clause 21

CO-OPERATION WITH DEVOLVED ENVIRONMENTAL GOVERNANCE BODIES

“(1) The OEP must, for the purposes in subsection (2), co-operate with any devolved environmental governance body in Scotland or Wales.

(2) Those purposes are the consideration of matters that—

(a) are common to all, or more than one, part of the UK;
(b) are cross-border issues; or
(c) affect both reserved and devolved matters.

(3) Co-operation under subsection (1) may include—

(a) the exchange of information;
(b) the carrying out or commissioning of research, jointly;
(c) arrangements regarding consultation under section 24(4); and
(d) arrangements for one body to provide support for the work of another.

(4) In particular, co-operation may also provide for—

(a) joint research;
(b) joint investigations; and
(c) joint enforcement measures.”—(Dr Whitehead.)

This new clause would specify and permit co-ordination and co-operation in the operations of the OEP and equivalent bodies (if/when established) in Scotland/Wales.

Brought up, and read the First time.

Dr Whitehead: I beg to move, That the clause be read a Second time.

The proposed new clause concerns collaboration with the various devolved authorities and Governments of the UK. It sets out a number of things that need to be done, but I suspect the Minister will say that they are already in the Bill. I hope she will give us good reasons for why what is in the Bill allows for that co-operation to take place. If she can do that, I am sure this particular proposed new clause will not go to a vote.

Rebecca Pow: I thank the hon. Gentleman for giving me the opportunity to reiterate this Government’s strong commitment to a strong Union and to strong co-operation among the four nations in respect of the devolution settlements. How the OEP and equivalent bodies in the devolved Administrations co-operate will be a prime example of that. Co-operation between the OEP and equivalent devolved bodies is fundamental to ensuring that cross-border issues and matters that concern both devolved and reserved environmental law are dealt with effectively. However, the proposed new clause would not achieve this desirable objective.

First, the proposed new clause would place an absolute, unilateral duty on the OEP to co-operate with equivalent bodies in devolved Administrations. That would be an imbalanced and disproportionate approach, particularly as the specifics of environmental governance arrangements are yet to be confirmed across the Union. Secondly, effective co-operation requires flexibility and agency, something that the proposed new clause’s over-specific definition of co-operation would prevent. The Bill already requires the OEP to consult devolved environmental bodies on environmental governance matters that would be of relevance to them. That is covered and I hope the shadow Minister will welcome that.

4.30 pm

Through clause 40, we have already removed restrictions that would otherwise apply on sharing information with a devolved governance body in an attempt to facilitate dialogue. Taken together, those measures will ensure that the governance bodies can and will co-ordinate their functions where appropriate for and beneficial to them. That includes joined-up research on enforcement efforts, which the OEP and equivalent bodies could collectively decide to undertake under the Bill’s current provisions.

I am sure the hon. Gentleman will agree that co-operation is not a one-way street and cannot be meaningfully achieved through a prescriptive, inflexible and unilateral duty on the OEP alone, as proposed by the new clause. Rather, it will be for the OEP and equivalent devolved bodies to decide among themselves how they can best
co-operate. We have already had very good engagement and involvement with all the devolved nations, and that will continue as we progress. I want to make clear that that is very important. I hope I have convinced the shadow Minister that he does not need to press the proposed new clause.

Dr Whitehead: I am sure the Minister will thank us for giving her the opportunity to read out that pellucid note, which puts on the record the intention to, through the OEP, collaborate fully with the Governments of the UK. I therefore beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

**New Clause 22**

**Application of environmental principles**

“(1) A public authority must apply the environmental principles in section 16 in the exercise of its functions.

(2) In this section ‘public authority’ has the same meaning as in section 28(3).”—(Daniel Zeichner.)

This new clause requires public authorities to apply the environmental principles.

Brought up, and read the First time.

Daniel Zeichner: I beg to move, That the clause be read a Second time.

New clause 22 takes us back almost to the beginning of our deliberations and to environmental principles. The December 2018 policy statement on environmental principles set out five important principles in law: integration, prevention, precaution, rectification and polluter pays. There has been wide discussion in this area, including a lot of work by the Environmental Audit Committee, which came up with about 55 recommendations. Here we are, at the tail end of our discussions about the Bill, going back to some of those points. Concerns have been raised by environmental lawyers through Greener UK. After all this discussion, their view is that the Bill “does not yet provide an adequate route to ensuring that those important legal principles fully function to achieve” the aims set out by the Bill.

This is important because, when matters are tested in court, this is what people will look at. Much more learned people than me have pored over these issues and these are some of the conclusions they have come to. They feel that clauses on environmental principles have not changed much since the December 2018 document. Despite discussions in pre-legislative scrutiny and on Select Committees, the expert conclusion is that the Bill “does not maintain the legal status of environmental principles as they have come to apply through EU law.”

That is, of course, one of the crunch issues of the entire discussion around the Bill.

I will not go through in detail the fine points that they make, but they do say that “environmental principles have been binding on all public authorities including in individual administrative decisions. This legal obligation on all public authorities to apply the principles, whenever relevant, will be undermined through the Bill.”

That is a strong concern, which reflects our continuing worry that, despite the ambitions, rhetoric and optimism displayed by the Minister, when we dig down into the detail of the Bill, we see that it does not provide the same level of protection that we have enjoyed before.

Sadly, that takes us back. I am sure the Minister will disagree, and we will listen to the reasons why, but we will not press this to a Division.

**Rebecca Pow:** The Government are fully committed to ensuring that environmental protection sits at the heart of the policies that we will bring forward. However, the new clause would place significant—I would say huge—burdens on Government and public authorities, without adding any additional environmental benefit. Moreover, the Government already implement these considerations in other ways. Central Government develop strategic environmental policies and set the strategy and approach for any key decisions taken by public bodies. It, therefore, makes sense for the new environmental principles duty to sit with Ministers.

To use the example of a planning application for a shed, it seems wholly unreasonable for a public authority to be obliged to prove the principles have been considered, when the strategic framework, in such case the national planning policy framework, should embed these expectations. To be clear, strategies set by central Government, such as the NPPF, will have been developed in line with the principles policy statement. Placing a legal duty on Ministers to “have due regard to the policy statement”, as we have done in clause 18, enables the provision of clear guidance to Departments to ensure an efficient policy-making process.

The policy statement will set out the details on the application and the interpretation of the principles. This would not be clear if the duty were directly on the principles themselves, as primary legislation cannot go into the necessary detail. In a similar vein, the proposal to alter the environmental principles duty from “have due regard” to “must apply” would be extremely burdensome and would have unintended consequences.

The new clause would also extend the scope of the principles duty from being limited to policy making to covering all functions administered by all public authorities, which would result in a massive, unnecessary burden. The new clause would create a significant additional and excessive burden on public services, while duplicating existing provisions, without any clear environmental benefit or purpose.

I think the hon. Member for Cambridge touched on the lowering of standards relating to the EU. The EU only has principles and it does not have a policy statement to explain how to use them. We have taken a big step further than that and it is much clearer, I would say. I hope that gives this complicated process a bit of clarity. I ask him to withdraw his amendment.

Daniel Zeichner: On this occasion, I am happy to oblige, not least because I suspect we will want to go away and look very carefully at the Minister’s words. I think there is quite an important set of issues here. We are not necessarily convinced that this strengthens our environmental protections. A planning application for a shed was a slightly unfortunate example to give, given that under the proposals in the planning White Paper, there will be whole swathes of the country where no planning application will be needed in future at all.
That is exactly the force of our arguments. While we remain concerned, we will not pursue it any further this evening, because 20 minutes to 5 is not the time for this. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

Ordered, That further consideration be now adjourned.

—(Leo Docherty.)

4.39 pm

Adjourned till Thursday 26 November at half-past Eleven o’clock.
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New clauses considered.
New schedule considered.
Bill, as amended, to be reported.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 30 November 2020

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The Committee consisted of the following Members:

Chairs:†James Gray, Sir George Howarth

† Afolami, Bim (Hitchin and Harpenden) (Con)
† Anderson, Fleur (Putney) (Lab)
† Bhatti, Saqib (Meriden) (Con)
† Brock, Deidre (Edinburgh North and Leith) (SNP)
† Browne, Anthony (South Cambridgeshire) (Con)
† Crosbie, Virginia (Ynys Môn) (Con)
† Docherty, Leo (Aldershot) (Con)
† Furniss, Gill (Sheffield, Brightside and Hillsborough) (Lab)
† Graham, Richard (Gloucester) (Con)
† Jones, Fay (Brecon and Radnorshire) (Con)
† Jones, Ruth (Newport West) (Lab)
† Mackrory, Cherilyn (Truro and Falmouth) (Con)
† Moore, Robbie (Keighley) (Con)
† Pow, Rebecca (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)
† Thomson, Richard (Gordon) (SNP)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Zeichner, Daniel (Cambridge) (Lab)

Anwen Rees, Sarah Ioannou, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 26 November 2020

[James Gray in the Chair]

Environment Bill

11.30 am

The Chair: Welcome to this penultimate, or possibly ultimate—we hope—sitting of the Committee. I think that everybody is observing social distancing today, but the Speaker has made it perfectly clear that we must be very strict about this. For this last—or second last—event, please try to remember that.

New Clause 23

Reduction of Lead Poisoning from Shot

(1) The Wildlife and Countryside Act 1981 is amended in accordance with subsections (2) and (3).

(2) After section 5(c)(viii) insert—

“(ix) any form of lead ammunition used in a shotgun.”

(3) After section 11 (1)(d) insert—

“(e) uses lead ammunition in a shotgun for the purposes of killing or taking any wild animal.”

(4) The provisions in this section come into force on 1 January 2023.

This new clause intends to provide an effective regulation to protect wildlife, the environment and human health by replacing widely-used toxic lead gunshot with alternatives. It intends to ensure a supply of healthy game for the market, whilst meeting societal requirements and those of shooting, food retail and conservation stakeholders. (Fleur Anderson.)

Brought up, and read the First time.

Fleur Anderson (Putney) (Lab): I beg to move, That the clause be read a Second time.

It is an honour to stand in this last sitting of our Environment Bill Committee consideration, which began 261 days ago. I have been disappointed, so far, by the lack of agreement over the amendments proposed by Opposition Members.

I hope today will see a sea change; that this new clause is the one that we can all accept, agreeing that lead shot is highly toxic, should not be in our system, is bad for the environment, bad for wildlife, bad for children, bad for adults—bad for everyone. Its days can now be on the horizon.

It wants to take action within the next five years to see a change. There is clearly appetite in the shooting world—stakeholder groups, compliance studies, risk assessments, but the stars are now aligned. We cannot carry on for too long.

Lead is dangerous for people’s health, as lead shot often fragments and is ingested in game meat. Children and pregnant women are particularly at risk due to the negative impact of lead on the developing brain, which has led to Waitrose labelling its game meat products as not safe for pregnant women and children.

Lead does not need to be used; non-toxic ammunition is widely available, effective, and comparably priced. The hon. Member for Hitchin and Harpenden may be interested to know that Denmark and the Netherlands banned the use of all lead shot in the 1990s; they have proved that changing to safer ammunition is entirely possible.

Why do we need to do this new clause? We know that 8.7% of ducks and geese across Europe die every year from eating lead shot; this includes 23% of pochard, which is a species threatened with global extinction, and 31% of pintail ducks. Lead poisoning from ammunition kills an estimated 75,000 water birds each year, as well as other birds and mammals.

Through ingestion by cattle—which then results in food-safety issues as it enters their system—lead can end up in restaurants and retail outlets; in our food. It also seeps into land, including wetlands, and creates toxic grounds; wetlands have been found to be peppered with lead shot.

Lead is dangerous for people’s health, as lead shot is often fragments and is ingested in game meat. Children and pregnant women are particularly at risk due to the negative impact of lead on the developing brain, which has led to Waitrose labelling its game meat products as not safe for pregnant women and children.

Lead is not something we should allow into our food system. Somewhere in the order of 10,000 children from the UK hunting community are estimated to be at risk of negative impacts on IQ due to household consumption of game meat. If the effects were immediate and something happened to us that caused an immediate breakdown of our health, we would have stopped this years ago, but because lead has a subtle effect on our health—on our brain development and IQ—it has been allowed to carry on for too long.

The new clause has not just been dreamed up in the past few months; it is the result of the Government engaging with this issue since 1991. There have been stakeholder groups, compliance studies, risk assessments and reviews, but the stars are now aligned. We cannot any longer say that the new clause is not needed. I know that the British Association for Shooting and Conservation is moving towards a ban on lead shot, which I welcome. It wants to take action within the next five years to see a change. There is clearly appetite in the shooting world to accomplish what is set out in the new clause by banning lead shot. However, things are not moving fast.
enough. We cannot entirely rely on that compliance, but
the new clause would take us where the shooting community
seems to want us to go.

The stars are aligned, and it is time for the new clause.
There is a limited ban at the moment, focused on
wetland birds, but it is widely flouted and there has been
only one prosecution, which is another reason why we
need to have the new clause in the legislation. The
partial regulation focused on protecting wetland birds,
and similar regulations in other home nations, have
been ineffective in reducing lead poisoning in water
birds because there has been a high level of non-compliance.
Birds feeding in terrestrial habitats, where most of the
lead shot is legally deposited, are also affected. Moreover,
enforcement of the limited regulation has been negligible
so far, and human and livestock health have not been
protected. Two large-scale restriction proposals are currently
being progressed in the EU under REACH, which will
bring about a total ban and additional benefits to law
enforcement. Let us pre-empt that and go one step
further in the UK.

This is the right time for policy change. The coinciding
of the new Environment Bill and proposed policy change
on lead shot is opportune. The nine main UK shooting
organisations recognise the risk from lead ammunition.
There is no debate but it is about that. The imminent impacts of
regulation on lead ammunition in the EU, and the likely
impacts on UK markets for game meat, all need to be
considered. Hence, on 22 February, the move to a
voluntary phase-out of lead shot within five years was
announced. That has already prepared the UK’s shooting
community for change, and I have seen that the media
narratives around shooting have changed to reflect that.

To date, however, voluntary bans on lead shot have
always failed, so to say that the new clause is unnecessary
is just not good enough. Denmark, which has gone
ahead of us on this issue—we can learn from them—banned
all lead shot in 1996. Hunters accept that it was because
a progressive Government took such a step that they
now lead the world in the control of lead poisoning
from shot.

Although there is a desire for change within hunting
organisations, there also remains a tradition of resisting
regulation, which might just roll on and on the next five years.

**Robbie Moore (Keighley) (Con):** I want to pick up on
that point. It is not only BASC but the Moorland
Association, the National Gamekeepers Organisation
and the Country Land and Business Association that
are behind the transition. They are actually going further
than what the hon. Lady is asking for, by asking for a
ban on single-use plastics in the cartridges, but what
they are clearly asking for is a period of smooth transition
over five years. Does the hon. Member not agree that
that is more appropriate?

**Fleur Anderson:** I agree, and I thank the hon. Member
for pointing out the wide support for a move in this
direction, but if we can ensure it is in legislation, the
move will go further, it will be deeper and it will be
guaranteed to happen. Given the high toxicity of lead,
we cannot just leave this issue to voluntary moves by all
those organisations. Let us go with the flow and accept
their willingness to change, but let us underpin that with
legislative change, which moves it on faster. These issues
have already been under negotiation. The smooth transition
is happening. I am not asking for this to happen on 1
January—the proposal is to give another year. There is
time to move forward; the new clause is very reasonable.

If we want to go further and talk more about single-use
plastics, that will happen in time, and this proposal will
enable manufacturers to do that.

Only regulation will provide a guaranteed market
for ammunition manufacturers. Moving all users of
ammunition through these changes, all at once, will
enable ammunition manufacturers to make the change
that we all surely want to see, and will ensure the
provision of game free from lead ammunition for the
retail market. It will enable cost-effective enforcement
and protect wildlife and human health much earlier
than in five years. Why would we want lead shot in our
food for another five years? Why would we want to kill
all those birds for another five years?

Action on this issue was recommended in 1983 in the
report of the Royal Commission on Environmental
Pollution on lead in the environment. It has been long enough.
It is long overdue. Now, at last, is the time to act.

The Parliamentary Under-Secretary of State for Environment,
Food and Rural Affairs (Rebecca Pow): I thank the hon.
Member for Putney for the new clause and for highlighting
her eating of pheasant as a child. I, too, have had many a
pheasant hanging in my garage. Indeed, we had roast
pheasant for lunch this Sunday. It was absolutely delicious,
covered in bacon. It was really nice.

I reassure the hon. Lady that this Government support
the principle of addressing the impacts of lead shot.
Evidence published by the Wildfowl and Wetlands Trust
suggests that, as she pointed out, tens of thousands of
wildfowl die from lead poisoning each year and many
more birds, including scavengers and predators such as
raptors, suffer and die through secondary poisoning.

There is a lot of movement already going on in this
space. In England, the use of lead shot is already
prohibited over all foreshore, on sites of special scientific
interest and for shooting certain waterfowl. I certainly
know people in Somerset who give anyone all of the
chum before they go out to shoot anywhere near wildfowl
and local ponds about not using lead shot.

My hon. Friend the Member for Keighley has pointed
out that the new clause falls short of what shooting
organisations are calling for. Organisations such as
BASC, the Moorland Association and various other
countryside organisations—I engaged with a lot of them
as a Back Bencher—are calling for an end within five
years to both lead and single-use plastics. They are
talking about it seriously. As the hon. Member for Putney
will know, there is a lot of research going on as well.

An EU REACH regulation on the use of lead shot in
or near wetlands is close to being adopted and a wider
measure affecting all terrestrial areas is under consideration.
The fact that the industry itself is calling for an end within five
years demonstrates the work going on in this
space.

The wetlands measure will apply in Northern Ireland
by virtue of the Northern Ireland protocol and will
apply in the rest of the UK and be retained EU law
after the transition period if the legislation providing
for that comes into force before the end of this period.

The amendment seeks to prohibit use of lead shot in
shotguns for the purposes of killing or taking any wild
bird or wild animal. That approach may not be the
most effective means of restricting the use of lead shot. It is also slightly unclear because it does not cover clay pigeon shooting, for example. If one were really going to address this issue, all aspects of the sport, as it might be termed, would need to be considered. The new clause does not address them all.

The police would enforce under the Wildlife and Countryside Act 1981, but as with other wildlife crimes, there are considerable difficulties in detection and taking enforcement action in remote locations. All those things would need ironing out; it is not just a straightforward, “Let’s have a ban tomorrow.”

11.45 am

I thank the hon. Member for Putney for her proposal and for drawing attention to this issue, which we all agree is really significant for the environment, animal welfare and even human health. However, it is critical that the Government take the right level of action through measures that are underpinned by evidence, as always, and informed by further conversations with stakeholders. I am not sure that the hon. Lady’s proposal necessarily does that. I also note that, as drafted, the new clause would require a legislative consent motion, and it is not clear whether she has considered this. It would actually be a matter for the devolved Administrations to proceed with and pursue.

I regard the restriction of lead shot as very important, and I assure the hon. Lady that I will ask my officials to continue exploring options for the most effective way forward that would tackle this whole issue in the round. For those reasons, I ask the hon. Lady to withdraw her amendment.

**Fleur Anderson:** I thank the Minister, but it will not surprise her to hear that I will not be withdrawing the new clause. Assurances do not cut it on this issue; it is too important. I would also absolutely refute any feeling that this is not underpinned by evidence. As I have outlined, so much work by so many different groups has gone into this that it does need to go ahead.

If we need it to, the Office for Environmental Protection has all the powers to go further than my proposal to talk about clay pigeon use and single-use plastics. Let us take this further, absolutely, but accepting the new clause would be a much better assurance and indication of our intentions for what should happen in terms of getting rid of lead ammunition. Assurances and good words will be far less effective than putting this new clause in the Bill. The new clause goes further than voluntary regulations because it puts this firm date, 1 January 2023, in legislation. Those five-year assurances might go on and on; when is the actual end of that five years? The new clause ensures that action will happen, so we will be dividing the Committee.

**Question put.** That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 56]

**AYES**

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**New Clause 28**

**ENVIRONMENTAL OBJECTIVE AND COMMITMENTS**

‘(1) In interpreting and applying this Act, any party with duties, responsibilities, obligations or discretions under or relating to it must comply with—

(a) the environmental objective in subsection (2); and

(b) the commitments in subsection (3).

(2) The environmental objective is to achieve and maintain—

(a) a healthy, resilient and biodiverse natural environment; and

(b) an environment that supports human health and well-being for everyone; and

(c) sustainable use of resources.

(3) The commitments are—

(a) all commitments given by Her Majesty’s Government in the United Nations Leaders’ Pledge for Nature of 28 September 2020, including, but not limited to, the urgent actions committed to be taken by it over the period of ten years from the date of that pledge;

(b) any enhanced commitments given by Her Majesty’s Government pursuant to that pledge, any other pledge, and any international agreement; and

(c) all relevant domestic legislation, including, but not limited to, the Climate Change Act 2008, as amended from time to time.

(4) Without prejudice to the generality of the requirement in subsection (1), that requirement applies to—

(a) the Secretary of State in setting, amending and ensuring compliance with the environmental targets; preparing, amending and implementing environmental improvement plans; and performing all their obligations and exercising all their discretions under this Act;

(b) the Office for Environmental Protection and the Upper Tribunal in performing their respective obligations and exercising any applicable discretions; and

(c) all other persons and bodies with obligations and discretions under, or in connection with, the subject matter of this Act.’.—[Dr Whitehead.]’

This new clause ties obligations and discretions of the various parties under this Act (subsections 2 and 3), other acts and international agreements together. It seeks to incorporate commitments as they are made in the future. It requires all relevant public bodies to apply the commitments as they are agreed to.

**Brought up, and read the First time.**

**Dr Alan Whitehead** (Southampton, Test) (Lab): I beg to move, That the clause be read a Second time.

Hon. Members with an elephantine memory will recall that at the beginning of this Committee’s deliberations—I have here the exact date and time a clause is debated; it is written on a piece of parchment, it is so old—we tabled new clause 1, which related to the environmental objective. At that time, we said that one reason for tabling this new clause was that the Bill had no cohesion in terms of its overall objectives. While it
has many good things in it, those are essentially disparate elements that do not pull themselves together in terms of what the Bill is or should be about overall. We talked that brief clause to try to pull the Bill together. The clause was not agreed to on that occasion, but as the Bill Committee has progressed and as we have moved into our latter stages in the autumn, nothing has made the Bill more cohesive.

New clause 28 would do exactly that, with environmental objectives and commitments. It would place in the Bill a very clear environmental objective to “achieve and maintain...a healthy, resilient and biodiverse natural environment...an environment that supports human health and well-being for everyone; and...sustainable use of resources.

I think that would absolutely pull together what we all think we are doing in this Bill Committee. If passed, imagine the new clause placed at the head of the Bill, where it would underline those objectives and ensure that everything in the Bill was read within them.

The new clause goes further still by ensuring that the Bill takes account of “all commitments given by Her Majesty’s Government in the United Nations Leaders’ Pledge for Nature of 28 September 2020,” which reflects those environmental objectives. The legislation would include the international commitments that we as a country have made to our environmental objectives, underlining just how important the Bill may be for those objectives.

We are offering a much better and improved environmental objective clause that takes account of all the various issues raised in Committee, and we think it would be a great adornment to the Bill. I know that in this place we are all looking for “the one” when it comes to clauses, and I was grievously disappointed that the last clause did not make it into the Bill, because there was absolutely no reason at all why it should not have been adopted. I have a similar feeling about new clause 28. I hope that the Committee will unanimously agree that we need an environmental objective in the Bill. This clause fits the bill admirably and should be supported.

Rebecca Pow: The shadow Minister said that there is no cohesion to what the Bill is about. He spoke about people with elephantine memories, but surely he has not been listening? Throughout Committee stage, we have talked about what the Bill is about. I thank him for his sentiments, but I honestly think that he has missed the point somewhere along the line.

I reassure the Committee that we have designed each governance mechanism in part 1 of the Bill with guiding objectives. They will ensure that targets, environmental improvement plans, the environmental principles, which are included, and the Office for Environmental Protection work in harmony to protect and enhance our natural environment. That has all been devised as one framework. As is set out on the face of the Bill, the objective of the targets and environmental improvement plans is to deliver significant improvement and to provide certainty on the direction of travel. The first EIP is the 25-year environment plan, which the Opposition have waved at us many times.

The policy statement on the environment principles will be required to contribute to the improvement of environmental protection and sustainable development. Ministers of the Crown must have regard to that statement when making policy. Those aims will therefore be integral to policy making across Government. Furthermore, clause 22 sets a principal objective for the OEP of contributing to environmental protection and the improvement of the natural environment in exercising its functions, so if the OEP does not think that enough is being done towards that objective, it can say why, give some steers and advice, and things will have to change. Those measures are all closely aligned and will work together to deliver the environmental objectives outlined in new clause 28 on the improvement and protection of the natural environment, and the sustainable use of resources—that is all very much a part of the measures.

The new clause would include commitments made under the voluntary leaders’ pledge for nature. I am very glad the hon. Gentleman mentioned that, because it was a big moment when our Prime Minister said that we support that pledge at the recent UN biodiversity summit at the UN General Assembly in September. The UK is now working with other key signatories to drive forward the 10 commitments in the pledge, including through our hosting of COP26 and our involvement in the convention on biological diversity negotiations in 2021. I reiterate that the leaders’ pledge for nature is voluntary and, as such, was drafted between the participating states in deliberately non-treaty language, partly to serve as a public document that could be read by as many constituents as possible. The UK is now working with other key signatory countries to drive forward those commitments.

Many of the areas reflected in the leaders’ pledge are already included in the Bill, which introduces a powerful package of new policies and tools to support nature’s recovery. I know that the shadow Minister wants that just as much as I do, but I assure him that the measures in the Bill already cover that, not least on biodiversity net gain, local nature recovery strategies, conservation covenants, which he did welcome, and a strengthened biodiversity duty on public authorities. All those things will work together to drive from the roots upwards to get overall improvement. As a result, we will be creating or restoring rich habitats to enable wildlife to recover and thrive in future years. Measures on resource efficiency will help to keep products in use for longer, encouraging better repair and recycling of materials by influencing product design at the very beginning.

Clause 2 places a clear, legally binding requirement on the Government to set an air quality target that goes beyond EU requirements and delivers significant health benefits for citizens. The Bill also supports recent legislation on reaching net zero emissions by 2050 and our wider efforts to build resilience to a changing climate. It will do so by improving air and water quality, supporting resource efficiency, and restoring habitats to allow plants and wildlife to thrive, along with other measures in that part of the Bill.

I hope that I have made it clear that I honestly do not believe that new clause 28 is needed. I ask the hon. Gentleman to withdraw it.

Dr Whitehead: Although the Minister has provided a good concordance on where to look in the Bill for things that could conceivably pull it together, nothing in the Bill actually does that. Saying that if one looks at the Bill carefully, one can see things that move it in the right direction, is not really a defence.
Rebecca Pow: The shadow Minister’s new clause refers to a “healthy, resilient” environment—that is such a loose term. What exactly does he mean by that and what does it mean legally? Does he not agree that, were that wording to be used, it would create huge legal risk and could jeopardise the delivery of key policies in the Bill?

Dr Whitehead: I do not think a healthy and resilient environment can be interpreted in any other way than an environment that needs to be as healthy as possible for human development and progress, and one that is able to regenerate itself and keep as close as possible to the most beneficial way of working that it had prior to human intervention. I do not think there is a problem about the definition. Indeed, having it defined in that brief, particular way gives a very good remit for making sure that those are the ways in which that environment can be defined.

12 noon

I did not intend to go down this particular route, so I will not go any further down it. I just say, in closing, that we forcefully put the case for an environmental objective clause at the beginning of the Bill Committee, so it is appropriate that we make our case once again at the end of it. On that basis, we seek to divide the Committee.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 57]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afriandi, Rim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

Jones, Fay
Mackrory, Cherilyn
Moore, Robbie
Pow, Rebecca

Question accordingly negatived.

The Chair: Just to give the batting averages, we have taken half an hour for two new clauses. At this rate, we will be here until 4.30 pm this afternoon. Speed is of the essence.

New Clause 29

REPORT ON CLIMATE AND ECOLOGY

“(1) The Secretary of State must, no later than six months after the day of which this Act is passed, lay before Parliament a report containing an assessment of the adequacy of environmental legislation and policy for meeting the climate and ecology challenges faced by the United Kingdom and the world.

(2) That report must include specific assessments relating to—

(a) water quality, availability and abundance;

(b) biodiversity, including, but not limited to, the restoration and regeneration of biodiverse habitats, natural and human modified ecosystems, and their respective soils;

(c) the expansion and enhancement of natural ecosystems and agroecosystems to safeguard their carbon-sink capacity and resilience to global heating;

(d) resource efficiency, waste reduction and the promotion of the circular economy.”—(Daniel Zeichner.)

This new clause requires the Secretary of State to go beyond setting one target (as in Section 1(2)) to within 6 months, assess, develop plans and outline adequacy of each target. “Circular Economy” is included as the Prime Minister agreed this concept in September 2020 at UN Leaders Pledge for Nature

Brought up, and read the First time.

Daniel Zeichner (Cambridge) (Lab): I beg to move, That the clause be read a Second time.

I am grateful to the Minister for writing to me yet again. We are such regular correspondents that I am half expecting a Christmas card any time soon. She wrote on the debate we had on new clauses 25 and 27. It is a very detailed reply and it does give some reassurance, but I have to say that it shows why we should have had a discussion about those clauses in an evidence session, rather than have them inserted late in the day. I suspect there will be other lawyers who will take a different view on some of these matters, but I am sure that can be pursued as we go through the later stages of the Bill.

On new clause 29, I very much echo the comments of my hon. Friend for Southampton, Test. We believe that new clauses 29 and 28 together would strengthen the Bill. New clause 29 would give additional bite; it can stand on its own, so there is still time for the Minister to redeem herself. Exactly as my hon. Friend said, we take issue with the lack of overall clarity in the Bill. It needs a clearer thread running through.

The new clause, which would require the Secretary of State within six months of the Bill becoming law to report on the adequacy of current environmental law and policy in meeting the climate and ecological challenges the UK faces, would be tremendously helpful, not least because—as we saw yesterday—it seems the Government do one thing one day, and completely different things another day. They fail to face the challenges when they make big policy announcements. The new clause would make it much tougher for the Government to crawl out of their obligations.

We think the report should specifically be required to address issues of water, biodiversity, the capacity of natural and agroecosystems to mitigate global warming, resource efficiency, waste reduction and the promotion of the circular economy. That should be helpful to Government. As my hon. Friend said, we support the Prime Minister’s signing up to the UN leaders’ pledge for nature, and this includes the circular economy in our thinking.

We have taken a number of these ideas from the climate and ecological emergency Bill, which we believe is right to place emphasis on the importance of expanding and enhancing natural ecosystems and agroecosystems to safeguard their capacity as carbon sinks, as well as on the need to restore biodiverse habitats and their soils. Out there in the world, which is sadly not following proceedings on the Bill as closely as some of us would hope, there is an appetite for this more ambitious approach.

After the Secretary of State has made the report, we would then very much hope that he or she would act on it and ensure that the environmental targets and environmental improvement plans were appropriately
ambitious and would set out not just one long-term target in each area as required in clause 1, but set and outline the adequacy of those targets and lay out adequate plans to address each of those major issues within six months.

If it is an emergency, it needs addressing urgently. We do not believe the Bill does that at the moment. New clause 29 would help.

Deidre Brock (Edinburgh North and Leith) (SNP): Much of the Bill is concerned with English-only environmental issues, as I have mentioned in the past, because environment is a devolved area under the Scotland Act 1998 and legislative consent motions have been agreed.

In connection to new clauses 29 and 29, I point out for those who are keen to hear what is happening in Scotland that the Scottish Government are developing their own environmental strategy. “The Environmental Strategy for Scotland: vision and outcomes” was published earlier this year. As the Cabinet Secretary for Environment, Climate Change and Land Reform indicated just yesterday at her appearance in front of the Environment, Climate Change and Land Reform Committee, she will soon be publishing a monitoring framework for the strategy, which will bring together existing statutory targets, elements of the national performance framework and indicators from other strategies. That is after considerable consultation with stakeholders.

The strategy has attracted a broad range of cross-party support. The Cabinet Secretary just yesterday suggested working with Opposition Members to design amendments that will set out an obligation on Ministers to continue the work on an environmental strategy. It is an example of cross-party working that I think this place would do rather well to emulate. The Scottish Government and Parliament are leading the way in many environmental areas. I encourage Members from this place to lift their eyes from here and look to some of the great progress in this area that is being made in the devolved nations of the UK. I think it really would be worth their while.

Rebecca Pow: I thank the hon. Member for Cambridge for moving this new clause. He is always very passionate about what he says. I am pleased that my letter was able to give a bit of clarity on the subjects he raised in the Committee.

I reassure the Committee that the new clause is not needed. It will not surprise anyone to hear me say that. There are already measures in the Bill to help assess the adequacy of environmental legislation. Under clause 26, the OEP will proactively assess how our environmental laws work in practice and advise the Government on the most effective and efficient way of implementing those laws.

The OEP’s reports must be published and laid before Parliament and the Government are required to respond to the OEP and publish that response, which must also be laid before Parliament. Given that climate and ecology challenges are key environmental issues affecting us, we would expect that the OEP would want to address such matters in its clause 26 reports. That is basically its raison d’être and the raison d’être of the Bill. I do not think the hon. Gentleman is seeing what is in there, which covers what he is asking for. We also report annually on our progress in improving the environment through the 25-year environment plan.

The Bill as drafted already introduces a number of reporting requirements in the areas specified. Clause 94, for example, requires designated public authorities, including local planning authorities, to produce five-yearly biodiversity reports. The reports will provide transparency and accountability, and help local authorities to share best practice. Over time, they will become a very valuable source of data to support nature’s recovery. Clause 75 concerns improving water companies’ water resources management plans. This planning occurs every five years, taking into account the next 25-year period. Companies must review their plans annually.

The reporting requirements introduced by the Bill will complement the Government’s existing and proposed reporting and monitoring of the natural environment. There is only so much reporting people can cope with. I honestly think more reporting would cause people to groan under the weight of it all. What we want is action, and that is what this Bill is going to set in motion, which is why we need to get through it.

Last month, the Government published their response to the 2020 recommendations from the Committee on Climate Change. The response sets out the Government’s intention to publish a comprehensive net zero strategy in the lead up to COP26. The strategy will set out the Government’s vision for transitioning to net zero and reducing emissions across the economy. We have already set out our plans for a nationwide natural capital and ecosystem assessment. That is a big data-gathering census and a new large-scale surveying initiative, which will provide us with the all-important data to drive better decision making. That is something I have absolutely wished for as the Minister, as has the whole Department. It will be crucial in our future—we have talked about data before, and it is absolutely essential to know what we have now, what we will have tomorrow and what we would potentially like in the future.

I thank the hon. Member for Edinburgh North and Leith for her comments. We obviously work closely with the devolved Administrations, and we will be sharing a lot of the measures in the Bill. We always like to learn best practice from others—I mentioned that in the main Chamber only this morning, when the hon. Member for Putney and I spoke about air quality.

Although I welcome the intent behind the proposed new clause, I do not believe it is necessary, for the reasons I have outlined. Wide-ranging reporting assessment measures are already in place in the Bill and will be able to drive the sort of action that I think the hon. Member for Cambridge is after. I honestly do not believe we need the new clause, so I ask him to withdraw it.

Daniel Zeichner: I am grateful, as ever, but disappointed by the Minister’s response. I do not think we need to divide the Committee, but I doubt whether even the Office for Environmental Protection will be established in the next months. Let us hope that it will go more quickly. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 30

SMOKING RELATED WASTE

“(1) The Secretary of State will by regulations introduce a producer responsibility scheme in England to tackle smoking related waste.
(2) The scheme will compel those tobacco companies operating in England, as defined in the regulations and subject to annual review, to provide financial support to the scheme based on a market share basis.

(3) The scheme will ensure that those tobacco companies will have no operational or other involvement in the scheme other than to provide financial support in accordance with guidance from the World Health Organisation Framework Convention on Tobacco Control and the Department of Health and Social Care.

(4) The regulations will set a target for a reduction in smoking related waste by 2030.

(5) The regulations will set out an appropriate vehicle to deliver the scheme including governance and criteria for funding related initiatives.

(6) The Secretary of State must prepare and publish an annual report of the scheme and must lay a copy of the report before Parliament.”—(Ruth Jones.)

The aim of this new clause is to ensure that the Government creates a producer responsibility scheme for smoking related waste. No such scheme exists at present and the clear-up and waste reduction of cigarette butts are not covered by other Directives.

Brought up, and read the First time.

Ruth Jones (Newport West) (Lab): I beg to move, That the clause be read a Second time.

The new clause is really quite clear, and I suspect that colleagues on both sides of the Committee know what is coming, but I want to speak to it for a moment. It is designed to ensure that the Government create a producer responsibility scheme for smoking-related waste. No such scheme exists at present, and the clear-up and waste reduction of cigarette butts are not covered by other directives.

I remind colleagues that it was this Government who clarified, back in February 2020, that tobacco packaging is covered by the current producer responsibility regulations, which require companies to recycle a proportion of the packaging waste that they place on the market. In their resources and waste strategy, the Government committed to look into and consult on the extended producer responsibility, or EPR, for five new waste streams by 2025, as well as to consult on two of them by 2022. The five priority waste streams are: textiles, fishing gear, certain products in construction and demolition, bulky waste, and vehicle tyres—the Minister has already alluded to that several times during our debates. They are important areas for the challenges facing us as we look to tackle the climate emergency.

The producer responsibility powers in the Bill enable the Government to set up an EPR scheme for cigarette litter. I urge the Minister to do so, and I look forward to a positive response from her on that specific point. I am concerned that, up until now, Ministers have not identified cigarette litter as a priority area for EPR, so I would like some further clarity on the detail and the likely timescale for any progress. I am sure that the Committee does not have as parliamentary and lawmakers, because it is clear that smoking has a public health impact. Having been an NHS physiotherapist for more than 30 years before being elected to this House, I know a fair bit about the lungs and the danger that smoking causes. New clause 30 will help the wider battle against smoking and help promote a healthier world for all of us. As such, and with the determination needed to tackle the climate emergency, I wish to divide the Committee.

Rebecca Pow: I thank the hon. Member for Newport West for her contribution. It is always good to hear about people's backgrounds, and her medical knowledge is obviously very useful.

Smoking-related litter is a particularly persistent and widespread problem. In the 2017 litter strategy, we explained that the most effective way to tackle smoking-related litter is obviously by reducing the prevalence of smoking in the first place. Given the hon. Member's background in health, I am sure she would agree with that. Smoking rates in England are currently at their lowest recorded level, and our ambition is for a smoke-free Britain by 2030. In the meantime, I have made it clear that the lack of serious investment by the industry to clear up the mess caused by its products cannot continue.

In September, I held a roundtable with the tobacco industry and other stakeholders. I got a key group together, and I was pleased that we were able to get them to come to the table. We understand that Keep Britain Tidy is working with the tobacco industry to develop a non-regulatory producer responsibility scheme, and we are watching very closely, because it could provide a rapid means of securing significant investment from the industry to tackle the litter created by its products, rather than having to take legislative action.

12.15 pm

However, if smoking-related litter continues to be a significant environmental concern—it has been outlined just how much litter comes from this form of waste—we will reflect on the steps the Government can take to ensure that the tobacco industry takes more responsibility, as I outlined in no uncertain terms at the roundtable. The Bill will allow us to legislate for an extended producer responsibility scheme for tobacco products, if such an intervention is considered necessary. Just because they are not listed right now, that does not mean they cannot be listed in future; that is exactly the intent of the extended producer responsibility scheme.

Schedule 5 confers powers to make regulations that require specified persons to pay the disposal costs of products or materials that they place on the market. Furthermore, schedule 4 confers powers to make regulations that impose obligations on specific persons for the purpose of preventing a product or material becoming waste, for reducing how much of those products or materials becomes waste, and to increase the re-use, redistribution, recovery and recycling of a product or material. These are what we mean by extended producer responsibility, so there are already measures in the Bill that could tackle exactly what the hon. Member for Newport West is asking for.

Cigarette and tobacco product packaging will be covered by the reforms to the packaging producer responsibility scheme, so that will be a big element of tackling litter. We also have powers in the Bill to place a target on producers to reduce smoking-related waste, so there is also that target option. I assure the Committee that I will not hesitate to intervene on
this if required, because it is something I take extremely seriously. Perhaps I have convinced the hon. Lady that she does not need to divide the Committee.

**Ruth Jones:** In a cyclical system, if we have less going in at the beginning, we have less waste coming out at the end, which is what we all want. As such, it is good to note that smoking is decreasing. That is a really important public health initiative, and it must continue. I am pleased to hear that the Minister held a roundtable with the tobacco companies and that she found it useful, but we want to put the onus on the manufacturers by introducing this producer responsibility scheme, which is why we think it is important to include it in the Bill. It is good to hear that the Minister is keen to do this in future, and that future options would be open, but why not have it in the Bill now? That is why we will divide the Committee.

*Question put, That the clause be read a Second time.*

**Division No. 58**

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*Question accordingly negatived.*

**New Clause 32**

**Biodiversity Gain**

'(1) Section 114 of the Planning Act 2008 is amended in accordance with subsection (2).

(2) At the end of subsection (2) insert—

“(3) Before approving an application for an order granting development consent relating to nationally significant infrastructure on land, the Secretary of State must be satisfied that a biodiversity gain plan is in place in relation to that development.

(4) The Secretary of State must be satisfied that the biodiversity gain plan will ensure that the biodiversity gain objective is met.

(5) “Biodiversity gain plan” and “biodiversity gain objective” have the same meaning as in Schedule 7A of the Town and Country Planning Act 1990 if that Schedule applied to Development Consent Orders.”.—(Daniel Zeichner.)

This new clause would extend the biodiversity gain provisions to major infrastructure projects as defined in the Planning Act 2008.

*Brought up, and read the First time.*

**Daniel Zeichner:** I beg to move, That the clause be read a Second time.

The new clause seeks to address a glaring problem with the current biodiversity net gain provisions, which we discussed earlier in the proceedings. Currently, the Bill does not extend the requirement for biodiversity net gain to major infrastructure developments delivered through the nationally significant infrastructure projects regime. We fear that that exemption will result in habitat loss on a large scale due to the size of those major infrastructure developments and could potentially lead to the destruction of irreplaceable habitats, increased fragmentation of remaining habitats and the local extinction of endangered species.

We have a very controversial example at the moment in High Speed 2—a major infrastructure project that does not have biodiversity net gain and that has put at risk 108 ancient woodland sites, 33 sites of scientific interest and 693 local wildlife sites. I appreciate that HS2 was not delivered through the NSIP regime, but it is comparable with future major infrastructure projects that would be delivered in that way. It is disappointing that HS2 has not gone with the trend of recent times and moved away and gone beyond no net loss, despite frequent calls for it to do so. Will the Minister comment on why no net gain is necessary in her view?

In their response to the net gain consultation, in which the Government outlined their intention that nationally significant infrastructure would not be subject to the requirement, despite the fact that there was considerable support from many respondents, the Government said that they will “continue to work on exploring potential net gain approaches for these types of developments”.

What alternative net gain approaches have been considered for NSIPs? I understand that the Government have commissioned a study into the costs and benefits of bringing the large infrastructure projects into the scope of mandatory biodiversity net gain. What are the findings from that study, and is the Minister able to share them with the Committee?

I have one final plea for the Minister to find redemption in this whole process. As I have said many times—she has quoted it many times—we started with the 25-year environment plan, but we now find ourselves with the “Planning for the future” planning White Paper. Will she write to me on this issue—another item in our endless list of correspondence—and explain how the planning White Paper proposals will impact on net gain? This is one last chance for redemption. I live in hope.

**Rebecca Pow:** I thank the hon. Member for Cambridge for his tempting words and for the new clause, which would extend the biodiversity net gain objective and the biodiversity gain plan requirement to include nationally significant infrastructure projects.

I recognise the good intentions behind wanting to apply the mandatory biodiversity net gain objective to such projects. The Government are clear in the 25-year environment plan that our commitment to seeking to embed a principle of environmental net gain for development applies to infrastructure as well as housing. In line with that commitment, we are exploring how a biodiversity net gain approach for major infrastructure projects could best be delivered and how policy or legislation could be used to support that.

There are a number of ways in which a form of the biodiversity net gain requirement could be implemented for nationally significant infrastructure projects, but it is very important, as I am sure the hon. Member will appreciate, to take the time to work with stakeholders to develop an appropriate approach. Many stakeholders are really keen to discuss the matter.
Introducing a new legal requirement for such projects now could lead to significant delay and increased costs for projects in the pipeline, hampering our ability to build back better in future generations. I am sure the hon. Member appreciates the need to get lots of the projects going, not least because of the link with jobs and levelling up across the nation. Risks of delays and costs to major infrastructure for a premature and inappropriate mandatory requirement could result in delays to the delivery of environmentally beneficial projects, such as those living renewable energy generation and waste facilities.

The hon. Member is trying to draw me on the planning White Paper. All I will say is that the Department for Environment, Food and Rural Affairs is working very closely with the Ministry of Housing, Communities and Local Government. We are at absolute pains to work with that Department, but also to ensure that the environmental protections remain there. It is going to be a green future, as the Prime Minister himself has said many times—in fact, I heard him say it again yesterday—so I can give assurances on that.

Nationally significant infrastructure projects are often distinct from other types of development in terms of scale and complexity. They have to be planned for over a number of years, as the hon. Gentleman knows, and many are in that design pipeline. We need to be very careful about doing what he is asking for now.

It is therefore important that any strengthening of biodiversity net gain requirements for the nationally significant infrastructure projects regime is done at the right time and in the right way, particularly if any mandatory net gain requirement is introduced. We do not want to be limited to the proposed approach to Town and Country Planning Act 1990 development when considering how to introduce any objective to other classes of development. As I have said, there are a number of ways in which biodiversity net gain for those big projects could be implemented through legislation or policy in future, for example through the national policy statement, sponsor-driven objectives or changes to planning legislation.

As I have said, the Government have set out a clear ambition to deliver infrastructure, but greener and faster. I support the intention behind the proposed new clause, but to ensure that we consider the best way to introduce any requirement for biodiversity net gain for major infrastructure, we need to consult on further details, which we will in due course. It is really important that we take that time to get this right. I would like to think that the hon. Gentleman will agree on that and will withdraw his new clause. I hope that we can continue to engage constructively on this issue when we do formally consult.

Daniel Zeichner: I admire the Minister’s relentless optimism, which she has managed to maintain throughout the Committee’s proceedings, and I congratulate her on that. I almost misheard her at one point: when she said that DEFRA had been “at absolute pains” with MHCLG, I thought she said that they “are absolute pains”. There may be some truth in that.

I am not surprised to hear that, yet again, the Minister is unable to support our new clause, but we will not divide the Committee. I will just say finally that the Minister’s jacket is enough to brighten any dull winter day, and I thank her for her optimism. I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

The Chair: Do the Opposition wish to move new clause 33?

Dr Whitehead: Mr Gray, we consider that the aims of new clause 33 have already been aired in new clause 29—we know the result of that—so we do not wish to move it.

New Clause 34

REDUCING WATER DEMAND

“(1) The Secretary of State shall within 12 months of the commencement of this Act amend the Building Regulations 2010 Part G to—

(a) require all fittings to meet specified water efficiency requirements; and

(b) introduce mandatory minimum standards on water efficiency.

(2) Standards as introduced under subsection (1)(b) shall be reviewed every 5 years to assess their contribution to meeting government objectives for reducing water demand.”—(Ruth Jones.)

Brought up, and read the First time.

Ruth Jones: I beg to move, That the clause be read a Second time.

New clause 34 was tabled in my name and in those of my hon. Friends the Members for Southampton, Test, for Cambridge, for Putney, and for Sheffield, Brightside and Hillsborough. We are seeking to ensure that we build on the Minister’s words and give real effect to the long-term sustainable change that the climate emergency demands.

The new clause is clear in tone and intent. Although we are an island, safe and secure water supplies have eluded us in the past, and with a rising population and increased demand, the existing infrastructure, on which we have relied for many years, needs to be supported. It needs the pressure taken off, which is what the new clause would do.

In preparing to speak to new clause 34, I read Ofwat’s recent report exploring the decisions that can be taken, the options available, and the action required to reduce demand for water in coming years. The report notes that “on average we currently use about 140 litres of water per person per day in England and Wales, up from 85 litres per person in the 1960s.”

The report’s findings also reveal that “tackling household leaks and using innovative technologies could help to decrease water use by two thirds—or over one bath per person per day—over the next 50 years.

The new clause therefore goes some way to giving parliamentary and legal effect to addressing many concerns related to tackling water waste up and down England.

The preservation of our environment is ultimately in our hands and those of the people we represent: working people in all parts of the United Kingdom. We need to ensure that the law in shaped in such a way that we motivate and encourage people to change their behaviour and to adapt to the changing and evolving demands of the climate emergency. The Bill will go some way towards
ensuring that we reach out and give the people of England the necessary direction, whether that is through the introduction of mandatory minimum standards subject to a five-yearly review or a set of fittings requirements. If we do not act now—there is no reason for us not to seize this initiative—we cannot expect people in the country to act.

This is a once-in-a-generation Bill, as the Minister said on Second Reading and previously in Committee. Let us ensure that those words mean something. Let us deliver a Bill that is fit for purpose, and that will stand the test of time and the scrutiny of future generations. With the future of our planet in mind, I move the new clause.

12.30 pm

Rebecca Pow: I thank the hon. Member for tabling the new clause. I have met a range of bodies to talk about water efficiency, including the Bathroom Manufacturers Association, and there is no end of things to learn about loos, flushes and showers—it is genuinely very interesting. I now read the riot act to my kids when they have showers that are far too long.

I understand the hon. Member’s intention of improving water efficiency in our homes. We agree that more needs to be done to improve the management of our water resources, but I can reassure her that, with the Ministry of Housing, Communities and Local Government and the Department for Business, Energy and Industrial Strategy, we are already investigating how the building regulations could best promote water efficiency through the introduction of mandatory water efficiency labelling for water-using products. We consulted on those measures in 2019, and we will be able to use clause 49 of and schedule 6 to the Bill, and existing powers under the Building Act 1984, to make the changes required. We expect to publish a Government response to the consultation in spring 2021, which is fast approaching, and that will set out our policy on water efficiency and, specifically, whether changes to the building regulations are required.

The new clause would introduce mandatory minimum standards for water efficiency in the building regulations. However, I hope that the hon. Member notes that the regulations already set minimum water efficiency standards for new homes. She is right about the amounts: we use 145 litres a day. We actually aim to get that down to 110 litres a day. Improving labelling and consumer information about the amount of water that gadgets use will be part and parcel of the new water efficiency world.

Let me add that under section 81 of the Water Act 2003, there is already a duty on the Secretary of State to report every three years on the steps that he has taken to encourage water conservation. That report must be laid before Parliament. The last report was published in December 2018, so I suggest that there is no need for a similar review requirement.

I hope that I have covered all the points that will reassure the hon. Member that she does not need to press the new clause, and that she might kindly withdraw it.

Ruth Jones: It is good to hear about the Minister’s new knowledge of bathroom fittings; I must admit that we have all learned a lot about them. I remember, even as a student, putting a brick in our cistern to save water, which was a great thing—and obviously a good use of household bricks. I think we all agree that more absolutely needs to be done, and while I take her point about new homes being covered by regulations, we need to deal with existing homes. Let us be honest: there are far more existing homes that need encouragement and help to do the right thing. We also need to ensure that people are aware of their water usage, because if they do not know how much water they are using, they cannot do anything to conserve it. It would be good to marry up the various sound water conservation measures in other legislation by incorporating them all in the new clause. It is a shame that she has not accepted—

Rebecca Pow: I just want to make a quick correction. I mentioned a figure of 110 litres. Does the hon. Member agree that, while the efficiency requirement for a new build will be 125 litres per person per day, it could be the 110 litre figure that I mentioned if that is imposed by a local authority when granting planning permission? Does she welcome that?

Ruth Jones: I do welcome it, but I am a bit lukewarm. I would sooner it was down to the original rate in the 1960s of 85 litres per person, which would be far more helpful in moving forward on the climate change emergency. I am disappointed that the Minister has not taken the new clause on board, but I will not seek to divide the Committee on it, so I beg to ask leave to withdraw the clause.

Clause, by leave, withdrawn.

New Clause 35

Clean Air Duty

(1) The Secretary of State must prepare and publish an annual policy statement setting out how the Government is working to improve air quality, and must lay a copy of the report before Parliament.

(2) The annual policy statement in subsection (1) must include—

(a) how public authorities are improving air quality, including indoor air quality; and

(b) how Government departments are working together to improve air quality, including indoor air quality.

(3) A Minister of the Crown must, not later than three months after the report has been laid before Parliament, make a motion in the House of Commons in relation to the report.

This new clause requires the Secretary of State to publish an annual report on air quality which includes indoor air quality and the work of public authorities and Government departments working together to improve it.

Brought up, and read the First time.

Fleur Anderson: I beg to move, That the clause be read a Second time.

This is the final new clause. It is only right and proper that, as we come towards the end of the Committee’s scrutiny of the Bill, after considering more than 230 amendments and 35 new clauses, we end with something that we can all agree on.

This new clause is all about working together. It has been tabled by the all-party parliamentary group on air pollution. It asks Government Departments to work together for reports on how the Government are working with local authorities to achieve something very ambitious—tackling our air quality. It has cross-party support from hon. Members including the chair of the APPG, my hon. Friend the Member for Swansea West (Geraint Davies), and 23 other MPs.
The new clause is intended to help the Minister to get to that holy grail of action—cross-departmental working—and to achieve cross-government support for action to tackle air pollution, specifically indoor air pollution. Given that the public health crisis results in 40,000 deaths a year and costs £20 billion, urgent action is needed by the Department for Transport and many others across Government. The new clause would help with that.

The new clause is an important addition to the parts of the Bill on air quality. In particular schedule 11. The Minister may say that that is sufficient, but I would argue that it is not. Schedule 11 amends the Environment Act 1995 and gives the Secretary of State the duty to report on the “assessment of the progress made in meeting air quality objectives, and air quality standards, in relation to England, and...the steps the Secretary of State has taken in that year in support of the meeting of those objectives and standards.”

Those reports and that action are very welcome, but the new clause takes them further. It would be in the Bill itself, rather than an amendment to another Act, and has additional reporting requirements that would do more to ensure that there was more focus on achieving our air quality targets and more joined-up working in Government.

Hon. Members will have read an email sent to us all in which Professor Sir Stephen Holgate, the Royal College of Physicians’ adviser on air quality and the UK Research and Innovation clean air champion, supports the new clause. I know that it is important to the Minister to be science-led. He said:

“I strongly support the need for placing greater transparent responsibility on public bodies, both central and local, to say what steps they are taking to improve air quality, both outside and inside buildings including houses, workplaces and schools. Since most people spend over 80% of their time indoors, the indoor air is a particular concern especially since all the emphasis is on conserving energy by “sealing” buildings with little regard to ensuring that ventilation is adequate...unless attention is focused on the ever-increasing chemical contaminants that will accumulate, without adequate ventilation, the public will suffer adverse health effects. This is especially so in periods of “lock-down” during the coronavirus pandemic and the attention needed to be given to this is in the building of new homes. Special attention must be given to vulnerable groups such as pregnant women, children, older people and those with chronic disease.”

Many other scientists back up those findings.

We all know that air pollution is a public health crisis, as acknowledged by the joint report of the Environment, Food and Rural Affairs Committee, the Environmental Audit Committee, the Health and Social Care Committee and the Transport Committee last year. There was joint working there, which we can encourage with the joint working on the reports that the new clause would make a legislative commitment.

A report by King’s College Hospital last year showed that cutting air pollution by a fifth would reduce the number of lung cancer cases by 7.6% in London, 6.4% in Birmingham, 5.9% in Bristol, 5.3% in Liverpool, 5.6% in Manchester, 6.7% in Nottingham, 6% in Oxford and 5.9% in Southampton. I read those figures out to show the local impact that air pollution is having on a considerable number of people’s lives; we know that it needs local action. The new clause would ensure that we find out what that local action is and whether it is good enough.

Living near a busy road can trigger bronchitic symptoms among children with asthma. If pollution were to be reduced by one fifth, there would be 3,865 fewer cases of children with bronchitic symptoms every year in London. In my own constituency, I would see the difference that that would make. The Government have made considerable funding available to local authorities, so local authorities should report back on what the funding has achieved.

We now know that there is a more urgent reason for the new clause, which would strengthen the Bill. There is a direct link between coronavirus deaths and air pollution. Harvard says there is an 8% risk, whereas the Max Planck Institute says it is 14%, for each additional microgram per cubic metre of PM2.5, the smaller particulates. There is a direct link between air quality and coronavirus deaths, and the new clause would make taking urgent action compulsory. It is no surprise that there is a link, because air pollution weakens lungs, hearts and brains, which covid also affects. We need a joined-up approach, with cleaner transport and ventilated schools. It is about education, health, better building regulations from MHCLG, better planning and knowing the effects of more home working with digital infrastructure.

The new clause would encourage a fiscal strategy that helps to drive a holistic vision of a cleaner, healthier and more productive future for all. Put simply, we need to have a joined-up approach to have the best effect, and the new clause would help to ensure that is done by asking for joined-up reporting. No matter what is already in the Bill, it just does not go far enough. The new clause is needed.

The new clause does not have specific targets and action plans that can be rejected by the Conservative party. In fact, they are for the Office for Environmental Protection, which was mentioned in many earlier debates, to decide. However, this would be a wonderful model for the UK to showcase at COP26 next year, and for other Governments to adopt. There is no doubt that there might be a silo mentality in DEFRA that says, “We can’t ask other Departments to do things,” but air pollution is an NHS public health issue of massive proportions, and it cannot be left to DEFRA or to the Secretary of State for one Department.

No one Department has the tools to combat air pollution. The Minister will say that she will work with the Department for Transport, the Department of Health and Social Care and many other Departments, but the new clause would ensure that others could learn from best practice—we would be able to see when things were not going well and put them right as quickly as possible. We need such a collective, joined-up approach. The Minister should raise her ambition to embrace other Departments that, in their hearts, want to work together for the common good.

As we have seen again and again with previous debates, the Government have a big majority and can vote against the new clause, but this is the opportunity—this last new clause—for us to come together and agree. The biggest test for the Government is not how many votes there are, but whether they are big enough to accept in good grace an idea from an all-party parliamentary
group that they know is in the best interest and is supported in principle by all parties, and to take it forward for the common good. I think we would have cheered from people outside this place, who would hear that we are working together to tackle a concern that is so important to so many people.

This is an important opportunity to work together across government and public bodies to improve public health by improving air quality outside and inside, which would save lives. All our constituents would want us to do all that we can to protect them and their children, and the new clause would help us deliver on our duty to do so. I ask the Minister and members of the Committee to put their constituents and country first by supporting the new clause.

12.45 pm

**Rebecca Pow:** After 230 amendments, why break the habit of a lifetime? Honestly, the hon. Lady will know that I have great sentiment about much of what she is saying. I also support the work of the APPG, who I have done a lot of close working with and spoken to many times. They have done some really useful work.

We recognise the importance of national leadership on this cross-cutting issue of air quality, including indoor air. It is right to draw attention to the issue. I want to give reassurances that we do not work in a silo. We work very closely with other Departments. We have a ground-breaking clean air strategy that goes across government. Air cannot be dealt with in one place and one silo, it travels everywhere, even to Gloucester. Only yesterday I had a joint meeting with the Under-Secretary of State for Transport, my hon. Friend the Member for Redditch (Rachel Maclean) on an air quality issue. Only last week I had a Zoom call with the Under-Secretary of State for Health and Social Care, my hon. Friend the Member for Bury St Edmunds (Jo Churchill). I hope that demonstrates how closely we are working on these issues.

On indoor air quality specifically, we are working across government. I have regular meetings with, in particular, the chief scientific adviser on this, and we work closely with the chief medical officer. We also work with the Department of Health and Social Care and Public Health England on indoor air quality in particular. They are all part of this big landscape, which she has pointed out. Building on the evidence base is a key step to ensure that interventions are appropriately targeted and introduced in the right way and in the right place. I hope that that gives some assurances on cross-government working.

I want to reassure the hon. Member for Putney that we have a range of reporting requirements relating to air quality, and we are introducing additional requirements through the Bill. We are introducing a requirement for the Secretary of State to make an annual statement to Parliament on progress toward securing local pollution objectives through paragraph 3 of schedule 11 to the Bill. Perhaps she has not noticed that. It will include steps taken in that year to support local authorities to meet objectives. In addition, the Secretary of State will be required to publish a national air quality strategy and review it every five years. That is under paragraph 2 of schedule 11 to the Bill, in case she wants to have a look at it.

Alongside this, through a statutory cycle of monitoring and reporting, which I have talked about constantly, the Bill ensures that the Government will take steps to achieve the targets set under the Bill. This includes the air quality targets. We have a legal duty to set an air quality target, and we are going to set another one in addition. We are going over and above for air quality. We can be held to account by the OEP if Parliament fails to monitor and report the progress toward the targets.

We also already have several annual reporting obligations on ambient air quality. The UK’s national atmospheric emissions inventory is compiled annually to report total emissions by pollutant. That is a very detailed inventory and has won an award, I think, for its detail. All of that information is already there. I think, perhaps, the Opposition are not aware of that. Do take a look. There is an annual requirement to report total emissions by pollutant and source sector in a similar way. We also remain signatory to the UN convention on long-range trans-boundary air pollution, because this is, of course, also a global issue, and we will continue to abide by that international agreement in full, including its reporting requirements.

The global work is really important. Back when we did the early assessment from the air quality expert group of what was happening during lockdown, we found that some of the pollutants did not reduce as we thought they might have done in the south of England. That was because we got some unexpected wind from Europe, and it brought all kinds of pollutants that were not even ours! It is very important that we remain part of that agreement.

Compliance with air pollution concentration limits and targets is reported in our annual air pollution in the UK report, which summarises measurements from the national air quality monitoring networks. I reassure the hon. Lady that we already work very closely with other Government Departments, and that we have robust mechanisms in place to report on progress. I hope that has provided more detail and clarity as to what is going on in air quality, and hope that the hon. Member might keep up with the trend—or maybe break it—and withdraw her new clause.

**Fleur Anderson:** I thank the Minister for the information about all the action being taken, and for the heartfelt—and I agree, sincere—desire to take action on this, and going over and above on air quality. We all welcome that. However, I have also read schedule 11 very thoroughly, as have the members of the all-party parliamentary group on air pollution. They have taken advice from scientific experts and feel that there is something missing in the reporting that would actually make a difference and ensure that we take the action we want to see on our air, and put that into practice. The missing parts are how public authorities are improving our air and how Government Departments are working together. I welcome the fact that the Minister is meeting with other Departments. She should welcome the opportunity to demonstrate what those meetings are resulting in with the annual report, and to demonstrate the appropriate targeting, achievements and progress we have discussed. As has been customary, we will be dividing on this, but we also want to work together to see a dramatic improvement in our air quality.

*Question put.* That the clause be read a Second time.
Question accordingly negatived.

New Schedule 1

“USE OF FOREST RISK COMMODITIES IN COMMERCIAL ACTIVITY

PART 1

REQUIREMENTS

Meaning of “forest risk commodity”

1 (1) In this Schedule “forest risk commodity” means a commodity specified in regulations made by the Secretary of State.

(2) The regulations may specify only a commodity that has been produced from a plant, animal or other living organism.

(3) The regulations may specify a commodity only if the Secretary of State considers that forest is being or may be converted to agricultural use.

(4) “Forest” means an area of land of more than 0.5 hectares with a tree canopy cover of at least 10% (excluding trees planted for the purpose of producing timber or other commodities).

(5) In sub-paragraph (4) the reference to land includes land that is wholly or partly submerged in water (whether temporarily or permanently).

(6) The regulations may not specify timber or timber products, within the meaning of Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

(7) Before making regulations under this paragraph the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(8) The requirement to consult in sub-paragraph (7) may be met by consultation carried out before this paragraph comes into force.

Prohibition on using illegally produced commodities

2 (1) A regulated person in relation to a forest risk commodity must not use that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity.

(2) A regulated person in relation to a forest risk commodity must not use a product derived from that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity.

(3) In this Schedule “local law”, in relation to a forest risk commodity, means any law having effect in the country or territory where the source organism was grown, raised or cultivated.

(4) In this Schedule “relevant local law”, in relation to a forest risk commodity, means local law—

(a) which relates to the ownership of the land on which the source organism was grown, raised or cultivated,

(b) which relates to the use of that land, or

(c) which otherwise relates to that land and is specified in regulations made by the Secretary of State.

(5) The regulations may specify a local law only if it relates to the prevention of forest being converted to agricultural use.

(6) The “source organism” means the plant, animal or other living organism from which the forest risk commodity was produced.

(7) Sub-paragraph (1) does not apply to the use of a forest risk commodity where—

(a) the commodity is waste (within the meaning of article 2(1) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072)), and

(b) the use of the commodity is for the purpose of making renewable transport fuel—

(i) that qualifies for the issue of an RTF certificate under article 17 of that Order, and

(ii) in respect of which an additional RTF certificate may be issued under article 17A(4) of that Order.

(8) Sub-paragraph (2) does not apply to the use of a product derived from a forest risk commodity where—

(a) the commodity is waste (within the meaning of article 2(1) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072)), and

(b) the product is renewable transport fuel—

(i) that qualifies for the issue of an RTF certificate under article 17 of that Order, and

(ii) in respect of which an additional RTF certificate may be or has been issued under article 17A(4) of that Order.

Due diligence system

3 (1) A regulated person in relation to a forest risk commodity who uses that commodity or a product derived from that commodity in their UK commercial activities must establish and implement a due diligence system in relation to that commodity.

(2) In this Schedule a “due diligence system”, in relation to a forest risk commodity, means a system for—

(a) identifying, and obtaining information about, that commodity,

(b) assessing the risk that relevant local laws were not complied with in relation to that commodity, and

(c) mitigating that risk.

(3) The Secretary of State may by regulations make further provision about the matters in sub-paragraph (2)(a) to (c), including in particular—

(a) the information that should be obtained;

(b) the criteria to be used in assessing risk;

(c) the ways in which risk may be mitigated.

Annual report on due diligence system

4 (1) A regulated person in relation to a forest risk commodity who uses that commodity or a product derived from that commodity in their UK commercial activities must, for each reporting period, provide the relevant authority with a report on the actions taken by the person to establish and implement a due diligence system in relation to that commodity as required by paragraph 3.

(2) The report must be provided no later than 6 months after the end of the reporting period to which it relates.

(3) The Secretary of State may by regulations make provision—

(a) about the content and form of reports under this paragraph;

(b) about the manner in which reports under this paragraph are to be provided.

(4) The relevant authority must make reports under this paragraph available to the public in the way, and to the extent, specified in regulations made by the Secretary of State.
(5) In this paragraph “relevant authority” means—
(a) the Secretary of State, or
(b) if regulations made by the Secretary of State specify another person as the relevant authority for the purposes of this paragraph, that other person.

(6) In this Schedule “reporting period” means—
(a) the period beginning with the day on which this paragraph comes fully into force and ending with the following 31 March, and
(b) each successive period of 12 months.

Exemption

5 (1) A regulated person in relation to a forest risk commodity is exempt from the Part 1 requirements in respect of their use of that commodity, or a product derived from that commodity, in their UK commercial activities during a reporting period if they satisfy the following two conditions.

(2) Condition 1 is that before the start of the period, the person gives a notice to the relevant enforcement authority containing—
(a) a declaration that the person is satisfied on reasonable grounds that the amount of the commodity used in their UK commercial activities during the period will not exceed the prescribed threshold, and
(b) the prescribed information.

(3) Condition 2 is that the amount of the commodity used in the person’s UK commercial activities during the period does not exceed the prescribed threshold.

(4) Sub-paragraphs (5) and (6) apply where—
(a) a regulated person gives a notice under sub-paragraph (2), but
(b) the amount of the commodity used in the person’s UK commercial activities during the period exceeds the prescribed threshold.

(5) If, before the relevant date, the regulated person gives a notice to the relevant enforcement authority containing the prescribed information, the person is exempt from the Part 1 requirements in respect of their use of the commodity, or the product derived from the commodity, in their UK commercial activities during the part of the reporting period—
(a) beginning with the start of the period, and
(b) ending with the date the notice is given.

(6) If the regulated person does not give a notice under sub-paragraph (5), the person is not exempt from the Part 1 requirements in respect of their use of the commodity, or the product derived from the commodity, in their UK commercial activities during any part of the reporting period.

(7) In this paragraph—
“prescribed” means prescribed in regulations made by the Secretary of State;
“relevant date” means the date during the reporting period that the amount of the commodity used in the person’s UK commercial activities exceeds the prescribed threshold;
“relevant enforcement authority” means the enforcement authority on which the function of receiving notices under this paragraph has been conferred by Part 2 regulations.

(8) Regulations under this paragraph may in particular—
(a) prescribe thresholds by reference to weight or volume;
(b) make provision about how the amount of a forest risk commodity used in a regulated person’s UK commercial activities (including in relation to a forest risk commodity from which a product is derived) is to be determined,

and regulations under paragraph (b) may include provision for determining the amount by reference to matters determined or published by the Secretary of State or other persons.

(9) Before making regulations under this paragraph (except under sub-paragraph (2)(b) or (5)) the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(10) The requirement to consult in sub-paragraph (9) may be met by consultation carried out before this paragraph comes into force.

Guidance

6 (1) The Secretary of State may issue guidance to an enforcement authority about the Part 1 requirements.

(2) An enforcement authority must have regard to guidance issued under sub-paragraph (1) when exercising its functions under Part 2 of this Schedule.

Meaning of “regulated person”

7 (1) In this Schedule “regulated person”, in relation to a forest risk commodity, means a person (other than an individual) who carries on commercial activities in the United Kingdom, and—
(a) meets such conditions in relation to turnover as may be specified in regulations made by the Secretary of State for the purposes of defining who is a regulated person in relation to that forest risk commodity, or
(b) is an undertaking which is a subsidiary of another undertaking which meets those conditions.

(2) Regulations under sub-paragraph (1) may make provision about how turnover is to be determined.

(3) Before making regulations under sub-paragraph (1) the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(4) The requirement to consult in sub-paragraph (3) may be met by consultation carried out before this paragraph comes into force.

(5) The Secretary of State may by regulations make provision for a group of undertakings to be treated as a regulated person, in such circumstances, for such purposes and to such extent as may be provided (and may modify the application of the Schedule accordingly).

(6) The Secretary of State may by regulations make provision for the Part 1 requirements not to apply, or to apply with modifications, in relation to a person who becomes a regulated person for such transitional period, after they become a regulated person, as may be specified in the regulations.

(7) In this paragraph—
“group” has the meaning given by section 474 of the Companies Act 2006;
“undertaking” has the meaning given by section 1161 of that Act,
and whether an undertaking is a subsidiary of another undertaking is to be determined in accordance with section 1162 of that Act.

PART 2

ENFORCEMENT

General power

8 The Secretary of State may by regulations (“Part 2 regulations”) make provision about the enforcement of requirements imposed by or under Part 1 of this Schedule (“Part 1 requirements”).

Powers to confer functions

9 (1) Part 2 regulations may include provision conferring functions on one or more persons specified in the regulations (each of whom is an “enforcement authority” for the purposes of this Schedule).

(2) Part 2 regulations may include provision—
(a) conferring functions involving the exercise of discretion;
(b) for the functions of an enforcement authority to be exercised on its behalf by persons authorised in accordance with the regulations.
(3) Part 2 regulations may include provision requiring an enforcement authority—
   (a) to issue guidance about the exercise of its functions;
   (b) to consult with specified persons before issuing such guidance.

Monitoring compliance
10 Part 2 regulations may include provision conferring on an enforcement authority the function of monitoring compliance with Part 1 requirements.

Records and information
11 Part 2 regulations may include provision—
   (a) requiring persons on whom Part 1 requirements are imposed to keep records;
   (b) requiring persons on whom Part 1 requirements are imposed to provide records or other information to an enforcement authority;
   (c) requiring an enforcement authority to make reports or provide information to the Secretary of State.

Powers of entry etc
12 (1) Part 2 regulations may include provision conferring on an enforcement authority powers of entry, inspection, examination, search and seizure.

   (2) Part 2 regulations may include provision—
      (a) for powers to be exercisable only under the authority of a warrant issued by a justice of the peace, sheriff, summary sheriff or lay magistrate;
      (b) about applications for, and the execution of, warrants.

(3) Part 2 regulations must secure that the authority of a warrant is required for the exercise of any powers conferred by the regulations to—
   (a) enter premises by force;
   (b) enter a private dwelling without the consent of the occupier;
   (c) search and seize material.

Sanctions
13 (1) Part 2 regulations may include provision—
   (a) for, about or connected with the imposition of civil sanctions in respect of—
      (i) failures to comply with Part 1 requirements or Part 2 regulations, or
      (ii) the obstruction of or failure to assist an enforcement authority;
   (b) for appeals against such sanctions.

   (2) Part 2 regulations must include provision to ensure that in a case where—
      (a) a regulated person fails to comply with a requirement in paragraph 2(1) or (2) in relation to their use of a forest risk commodity or a product derived from a forest risk commodity, but
      (b) an enforcement authority is satisfied that the regulated person took all reasonable steps to implement a due diligence system in relation to the commodity used by the person in that particular case, a civil sanction may not be imposed on the regulated person in respect of the failure to comply.

   (3) Part 2 regulations may include provision—
      (a) creating criminal offences punishable with a fine in respect of—
         (i) failures to comply with civil sanctions imposed under Part 2 regulations, or
         (ii) the obstruction of or failure to assist an enforcement authority;
      (b) about such offences.

   (4) In this paragraph “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).

14 Part 2 regulations may include provision for the imposition of sanctions of that kind whether or not—
   (a) the conduct in respect of which the sanction is imposed constitutes an offence, or
   (b) the enforcement authority is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

Charges
15 Part 2 regulations may include provision—
   (a) requiring persons on whom Part 1 requirements are imposed to pay to an enforcement authority charges, as a means of recovering costs incurred by that enforcement authority in performing its functions;
   (b) authorising a court or tribunal dealing with any matter relating to Part 1 requirements or Part 2 regulations to award to an enforcement authority costs incurred by it in performing its functions in relation to that matter.

Consultation requirement
16 (1) Before making Part 2 regulations the Secretary of State must consult any persons the Secretary of State considers appropriate.

   (2) The requirement to consult in sub-paragraph (1) may be met by consultation carried out before this paragraph comes into force.

PART 3

GENERAL PROVISIONS

Review
17 (1) The Secretary of State must review the effectiveness of the Part 1 requirements and any Part 2 regulations (“relevant provisions”) in accordance with this paragraph.

   (2) A review must consider in particular—
      (a) the amount of forest being converted to agricultural use for the purposes of producing commodities;
      (b) the impact of the relevant provisions on the amount of forest being converted to agricultural use for the purposes of producing forest risk commodities;
      (c) the impact of the relevant provisions on the use of forest risk commodities, or products derived from forest risk commodities, in UK commercial activities where relevant local laws were not complied with in relation to those commodities;
      (d) any changes to relevant local laws in relation to forest risk commodities.

(3) Having carried out a review the Secretary of State must lay before Parliament, and publish, a report stating—
   (a) the conclusions of the review, and
   (b) the steps, if any, the Secretary of State intends to take to improve the effectiveness of the relevant provisions (including whether the Secretary of State intends to make any regulations under this Schedule).

   (4) The first review must be completed during the period—
      (a) beginning with the second anniversary of the first date on which paragraphs 2 to 4 are fully in force, and
      (b) ending with the third anniversary of the first date on which paragraphs 2 to 4 are fully in force.

   (5) Subsequent reviews must be completed before the end of the 2 year period beginning with the day on which the previous review was completed.

   (6) A review is completed when the Secretary of State has laid and published the report.

Interpretation
18 (1) In this Schedule—
   “agricultural use” includes use for horticulture and aquaculture;
   “commercial activity” includes—
      (a) producing, manufacturing and processing;
      (b) distributing, selling, or supplying;
      (c) purchasing for a purpose within paragraph (a) or (b) (but not purchasing as a consumer);
   “due diligence system”, in relation to a forest risk commodity, has the meaning given by paragraph 3;
“enforcement authority” has the meaning given by paragraph 9;
“forest” has the meaning given by paragraph 1;
“forest risk commodity” has the meaning given by paragraph 1;
“local law”, in relation to a forest risk commodity, has the meaning given by paragraph 2;
“Part 1 requirements” has the meaning given by paragraph 8;
“Part 2 regulations” has the meaning given by paragraph 8;
“regulated person”, in relation to a forest risk commodity, has the meaning given by paragraph 7;
“relevant local law”, in relation to a forest risk commodity, has the meaning given by paragraph 2;
“reporting period” has the meaning given by paragraph 4;
“UK commercial activity” means commercial activity carried on in the United Kingdom.

(2) References in this Schedule to a product derived from a forest risk commodity are to a product derived from a forest risk commodity in whole or in part (and include any product of an animal fed on a forest risk commodity or a product derived from a forest risk commodity).” —[Rebecca Pow.] This new schedule contains provisions relating to the use of forest risk commodities by regulated persons in their UK commercial activities. Part 1 of the Schedule contains restrictions on the use of commodities and requirements relating to due diligence and reporting. Part 2 contains enforcement provisions. Part 3 contains a requirement for the Secretary of State to review the effectiveness of the Schedule.

Brought up, read the First and Second time, and added to the Bill.

The Chair: May I congratulate the Committee on the briskness of our discussions this morning. The people of North Wiltshire—and of all our constituencies—are grateful to us for it. I must now report the Bill, as amended, to the House.

Rebecca Pow: On a point of order, Mr Gray, I wanted to do a quick round-up. The hon. Member for Putney has enumerated, with 230 amendments and 35 new clauses. I thank you, Mr Gray, for your purposeful, elegant and impartial chairing of our proceedings, and I hope you will pass on our thanks to Sir George for his part in proceedings. I thank the Minister for her immense optimism and terrific jackets, and for the courteous and good-hearted way she has conducted proceedings throughout. I appreciate that undertaking a Bill of this length is a tremendous burden, and I appreciate her fortitude and perseverance in carrying through that job.

I want to single out the Committee Clerks for thanks. They have been a wonderful source of assistance, help and wise guidance, and they have enabled us to do our part as well as we have been able to. Finally, I thank other Opposition Members. I think it will be agreed that they are not a team of journeymen and women; they are a team of Galácticos in their own right, and I thank them for their contributions to scrutinising this Bill so well.

We are, naturally, very disappointed that we have not been able to strengthen the Bill as we had hoped to do, but we will continue with that task on Report and in the other place. We hope that our doing so will help to make it a Bill that we can all be proud of, when it comes to strengthening our country’s natural environment resources and providing the protections that must flow from that; we all agree that we want the Bill to do those things. I welcome the end of this Committee, for obvious reasons, but we can all be proud of our contribution to getting the Bill to this point, and I thank everybody on the Committee for their part in proceedings.

Deidre Brock: Further to that point of order, Mr Gray. On behalf of my hon. Friend the Member for Gordon and myself, and with a slightly nervous eye on the clock, I thank all Members of the Committee for their good-humoured and thorough approach to the Bill. I have certainly appreciated that. I thank you, Mr Gray, and Sir George for your chairship. I thank the Clerks for their assistance, which has been much appreciated, and I thank the various representatives from Hansard who have sat through lengthy hours of this Committee. Although much of what we have debated has not covered Scotland, it has been instructive to hear from Members from all parts of the Committee about the approaches that are being taken. I wish England very well in all its efforts to create a much healthier and more vibrant, biodiverse and attractive environment for all its citizens.

The Chair: Those are all entirely bogus points of order, but we are grateful for them none the less. Bill, as amended, to be reported.

1 pm
Committee rose.
Written evidence reported to the House

EB83 Letter from Rebecca Pow to Daniel Zeichner re: Species Conservation Strategies, Protected Site Strategies and Wildlife Conservation: Licences (NC25-27)

EB84 UKELA (UK Environmental Law Association) (further submission) (New Clause 24 & amendment 30)

EB85 Letter from Rebecca Pow to Daniel Zeichner re: Species Conservation Strategies, Protected Site Strategies and Wildlife Conservation: Licences (NC25-27)