Environment Bill 2019-21 and 2021-22: Report on committee and remaining stages in the Commons

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Summary

1.1 The aims of the Bill

The Government says the main purposes of the Bill are to:

- Transform our environmental governance once we leave the EU by putting environmental principles into law; introducing legally binding targets; and establishing a new Office for Environmental Protection.

- Increase local powers to tackle sources of air pollution.

- Protect nature and improve biodiversity by working with developers.

- Extend producer responsibility, ensure a consistent approach to recycling, introduce deposit return schemes, and introduce charges for specified single use plastic items.

- Secure long-term, resilient water and wastewater services, including through powers to direct water companies to work together to meet current and future demand.

The Environment Bill 2019-21 was considered during 22 sittings of the Public Bill Committee between 10 March and 26 November 2020. There was a pause in the Committee’s sittings during this period due to Coronavirus pandemic related restrictions.

Day one of the Bill’s Report Stage took place on 26 January 2021 in the 2019-21 parliamentary session. The Bill had a carry over motion and day two of Report Stage and Third Reading took place on 26 May 2021 in the 2021-22 session. The Bill had its second reading in the House of Lords on 7 June 2021, which it passed without division. It has now been committed to a Committee of the Whole House (Lords) for its next stage.

Full background on the Bill, and its provisions as originally presented, can be found in, Commons Library Analysis of the Environment Bill, 6 March 2020.

Committee stage: Government amendments and new clauses

Several Government amendments and new clauses were accepted during the Committee Stage. Some of them related to the establishment and functions of the Office for Environmental Protection (OEP). The Government
argued that these amendments would bring greater clarity about the OEP’s role and consistency with other legal mechanisms. These included:

- Clarifying of the remit between the OEP and the Committee on Climate Change, aiming of ensuring no duplication of work, through the production of a memorandum of understanding;
- Clarification of the threshold for when an environmental review can be initiated by the OEP;
- Changing the new environmental review process from being held in the upper tribunal to the High Court;
- Limiting the OEP’s powers to intervene in judicial review proceedings to “serious” cases;
- Limiting the OEP’s powers to initiate judicial review proceedings to “urgent” cases; and
- A new power for the Secretary of State to issue guidance to the OEP on matters concerning its enforcement policy.

New Government clauses will provide powers for Natural England (the government’s adviser for the natural environment in England), to implement species conservation and protected site conservation strategies, and changes to how wildlife conservation licences are granted.

The Government also introduced a new clause on the use of “forest risk commodities” in commercial activities, aiming to reduce deforestation caused by agriculture. This means, businesses will be prohibited from using such commodities produced on land that was illegally occupied or used. Examples include soya, palm oil, and cocoa. Businesses will be required to create a due diligence system for regulated commodities to ensure their supply chains do not support illegal deforestation, and will have to report annually. If businesses do not comply, they would be subject to fines.

**Committee stage: Opposition amendments and new clauses**

No Opposition amendments or new clauses were added to the Bill. Labour moved several similar amendments to change the Bill’s phrasing where the Bill states that the Secretary of State “may” make secondary legislation, to “must”.

Shadow Minister Dr Alan Whitehead said he wanted to ensure that it was a strong Bill for future generations, and did not want the Government to have a choice about whether it implements or commences the accompanying environmental secondary legislation.¹

Labour also opposed many of the Government amendments in relation to the Office for Environmental Protection, amid concern that they would curtail its freedom to act and its independence. Of particular concern were

¹ PBC Deb, fifth sitting, 17 March 2020, c162
the Government amendments relating to the OEP’s abilities to intervene in and initiate judicial review action.

Many Opposition amendments across the Bill were pushed to division but defeated. These included aims to:

- Enshrine World Health Organization air quality targets on particulate matter on the face of the Bill;
- Remove the exemptions from the need to have due regard to the new policy statement on environmental principles;
- Ensure greater independence for the OEP in its budget setting and appointment of its chair;
- Widen the definition of “natural environment” in the Bill to include the historic environment;
- Require manufacturers, processors, distributors and suppliers of packaging to contribute to the “social costs” (and not just to disposal costs), incurred throughout the lifecycle of the products or materials;
- Require an assessment on water quality and the impact of discharge in drainage and sewerage management plans;
- Set the new requirement for development of a 10% biodiversity gain as a minimum; and
- Ensure that the starting regulatory framework for UK REACH was as close as possible to EU REACH and did not “regress from what there was before”.

The Opposition also moved a number of new clauses which were pushed to division across a range of policy areas, including: non-regression of environmental standards, fracking, a clean air duty, smoking related litter, the waste hierarchy, environmental and human rights due diligence, reservoirs and flood risk, a state of nature target and reduction of lead poisoning from shot. None of these were added to the Bill.

**Report stage**

The Bill had two days for its Report Stage and Third Reading. The Government has said pressures on parliamentary time caused by the Covid-19 pandemic resulted in the delay between the two days. The Government has emphasised its commitment to the Bill and its environmental ambitions and said that it expects to see Royal Assent of the Bill in the autumn. Environmental organisations and campaigners have expressed disappointment and frustration about the delay to the Bill.

At day one of Report Stage, on 26 January 2021, only Government amendments were added to Bill. Most of them were described by the Minister, Rebecca Pow, as being “technical” in nature. They included:
• Clarification that the English inshore and offshore region will be covered by the ‘significant improvement test’. This relates to reviews of the environmental targets that the Bill will establish. The test is met where the Secretary of State considers that meeting the targets will bring about a significant improvement in the natural environment. The first significant improvement test review will be by 31 January 2023.

• A series of amendments intended to align the clauses relating to the Office for Environmental Protection’s Northern Ireland enforcement functions with the equivalent provisions for England (that were amended previously at Committee Stage). In the debate, Rebecca Pow said that these amendments were personally requested by Northern Ireland Ministers.

On day two of Report Stage, on 26 May 2021, two new clauses tabled by the Government were added to the Bill. They relate to a Government announcement that it intends to set a new biodiversity target and provide powers to amend the Habitats Regulations.

On both days of Report Stage, several Opposition amendments and new clauses were pushed to division, where they were defeated (and not added to the Bill).

Queen’s Speech 2021 and further Government plans for amendment

In the background briefing notes of the Queen’s Speech 2021, the Government announced plans to further amend the Bill. This included proposals to introduce new duties requiring the Government to publish a plan to reduce sewage discharges from storm overflows by September 2022 and report to Parliament the progress of implementing the plan. These amendments are expected to be tabled during the Bill’s stages in the House of Lords.

In June 2021 the Government confirmed that it intends to amend the Bill to set requirements for biodiversity net gain for New Nationally Significant Infrastructure Projects in England. Nationally Significant Infrastructure Projects are large scale developments (relating to energy, transport, water, or waste) which require a type of consent known as “development consent”.

2 Background

The Environment Bill 2021-22 carries on the Parliamentary progress of the Environment Bill 2019-21, (originally published on 30 January 2020), which itself was the re-introduction of a Bill from the previous Parliamentary session, the Environment Bill 2019, published on 15 October 2019. The 2019 Bill passed second reading but fell at dissolution for the General Election 2019.

The Bill brings together a set of clauses that had been published in draft form in December 2018, the draft Environment (Principles and Governance) Bill 2018, and which underwent a process of pre-legislative scrutiny in Parliament. It is accompanied by a newer set of clauses which stem from a variety of policy announcements, consultations and strategies in different environmental policy areas, which have not undergone pre-legislative scrutiny.

The Bill was announced in the Queen’s Speech on 19 December 2019 and again on 11 May 2021. The Background Briefing Notes published alongside the Queen’s Speech 2019 set out that the purpose of the Bill was to:

- Transform our environmental governance once we leave the EU by putting environmental principles into law; introducing legally binding targets; and establishing a new Office for Environmental Protection.
- Increase local powers to tackle sources of air pollution.
- Protect nature and improve biodiversity by working with developers.
- Extend producer responsibility, ensure a consistent approach to recycling, introduce deposit return schemes, and introduce charges for specified single use plastic items.
- Secure long-term, resilient water and wastewater services, including through powers to direct water companies to work together to meet current and future demand.²

The Bill had its first reading on 30 January 2020. It passed its second reading without division on 26 February 2020.

² HM Government, Queen’s Speech December 2019: background briefing notes, 19 December 2019, p112
A number of Government documents were published alongside the Bill. These were:

- **Explanatory notes** [Bill 9-EN]
- **Environment Bill 2020 policy statement**
- **Human rights memorandum**
- **Delegated powers memorandum**
- **Press release**

Later in 2020 the Government published further papers in relation to the Bill. These were:

- **Environmental governance factsheet**, 10 March 2020 (updated 21 October 2020)
- **Waste and resource efficiency factsheet**, 10 March 2020 (updated 21 October 2020)
- **Air quality factsheet**, 10 March 2020 (updated 21 October 2020)
- **Water factsheet**, 10 March 2020 (updated 21 October 2020)
- **Policy paper, Environment Bill - environmental targets**, 19 August 2020
- **Policy paper annex 1, Diagram depicting the target setting steps**, 19 August 2020
- **Supplementary delegated powers memorandum**, 21 October 2020
- **Further supplementary delegated powers memorandum**, 10 November 2020

Since its second reading stage, the Government has also published a number of further consultations that are directly relevant to provisions in the Bill:

- **Call for Evidence - Future PM2.5 concentrations in England**, 19 November 2020 (relevant to Part 1 of the Bill). The call for evidence closed on 17 December 2020).
- **Consultation on Introducing a Deposit Return Scheme in England, Wales and Northern Ireland: Second Consultation**, 24 March 2021 (relevant to Part 3 of the Bill). The consultation closes on 4 June 2021;
• **Extended Producer Responsibility for Packaging Consultation Document**, 24 March 2021 (relevant to Part 3 of the Bill). The consultation closes on 4 June 2021; and


Throughout the Committee Stage the Minister, Rebecca Pow, also sent letters to Committee Members providing further information on various aspects of the Bill:

• Written evidence: Letter from Rebecca Pow to Daniel Zeichner re: **Species Conservation Strategies, Protected Site Strategies and Wildlife Conservation: Licences** (NC25-27) (EB85), 27 November 2020

• Written evidence: Letter from Rebecca Pow to Dr Alan Whitehead re: **Resource efficiency requirements** (Schedule 7) (EB82), 20 November 2020

• Written evidence: Letter from Rebecca Pow to Daniel Zeichner re: **new burdens on local authorities** (Clause 54) (EB83), 20 November 2020

• Written evidence: Letter from Rebecca Pow to Dr Alan Whitehead re: **OFGEM** (EB81), 18 November 2020

Full background on the Bill and its provisions as originally presented, along with a summary of the second reading debate, can be found in Library Briefing Paper 8824, **Commons Library analysis of the Environment Bill 2019-20**, 6 March 2020.

### 2.1 Steps to establish the Office for Environmental Protection

Establishing the Office for Environmental Protection in full is a key measure in the Bill.

In November 2020 the Secretary of State, George Eustice, wrote to the Chairs of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee, providing further information on the set up of an interim form of the Office for Environmental Protection, known as the Interim Environmental Governance Secretariat, which would be hosted in Defra and would operate from 1 January 2021.³

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³ **Letter** from the Secretary of State for Environment, Food and Rural Affairs to Chairs of the Environment Committees, November 2020
On 1 March 2021 the Government announced that from July 2021, the new Interim Office for Environmental Protection will be set up in non-statutory form to, “provide independent oversight of the government’s environmental progress and to accelerate the foundation of the full body.”

The interim body will be steered by the Chair, Dame Glenys Stacey, and Interim Chief Executive, Natalie Prosser, together with other non-executive directors, to be appointed. Following Royal Assent of the Environment Bill, this group will formally become the Board of the Office for Environmental Protection as an independent legal entity.

A Government press release set out what the new Interim Office for Environmental Protection will be able to do:

- Produce and publish an independent assessment of progress in relation to the implementation of the government’s 25 Year Environment Plan
- Develop the Office for Environmental Protection’s strategy including its enforcement policy
- Receive complaints from members of the public about failures of public authorities to comply with environmental law
- Take decisions on operational matters such as staff recruitment, accommodation and facilities
- Determine approaches for how the Office for Environmental Protection will form and operate, establishing its character, ways of working and voice.

This is a move from the current interim environmental governance arrangements in place since the start of January and ahead of the Environment Bill creating the Office for Environmental Protection as a legal body.

This press release also set out the Government’s intention that the OEP will be, “formally established shortly after Royal Assent of the Environment Bill which is now expected in the autumn.”

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4 GOV.UK, Interim Office for Environmental Protection to be launched, 1 March 2021
5 GOV.UK, Interim Office for Environmental Protection to be launched, 1 March 2021
6 GOV.UK, Interim Office for Environmental Protection to be launched, 1 March 2021
7 GOV.UK, Interim Office for Environmental Protection to be launched, 1 March 2021
2.2 English votes for English Laws (EVEL)

Standing Orders allow Members from England or England and Wales to give their consent to Government legislation that affects only England, or England and Wales and that is within devolved legislative competence (English votes for English laws – EVEL).

Under the procedures, the Speaker is required to certify provisions in Government Bills that affect either England-only or England and Wales-only and are within devolved legislative competence. In relation to the Environment Bill 2019-21, on 24 February 2020 the Speaker of the House of Commons certified, for the purposes of Standing Order 83J, and on the basis of material put before him, that, in his opinion:

Clauses 1 to 6, 10, 13, 54, 80, 86 and 90 to 124 and Schedules 14.15. 16, 17 and 18 to the Bill relate exclusively to England on matters within devolved legislative competence, as defined in Standing Order No. 83J; and

Clauses 7 to 9, 11, 12, 14 to 18, 20, 25, 57, 63, 65, 67, 75 to 77, 79 and 88 of and Schedule 10 to the Bill relate exclusively to England and Wales on matters within devolved legislative competence, as defined in Standing Order No. 83J.8

The Bill was amended in Public Bill Committee and has been reprinted as Bill 220, 2019-21. It proceeds to Report Stage as before but once Report Stage is complete, it is reconsidered for certification by the Speaker. Such certified provisions and changes would require consent by means of agreement to a Consent Motion in a Legislative Grand Committee.9

2.3 Public Bill Committee

The Public Bill Committee stage began on 10 March 2020. This stage was originally programmed to finish on 5 May 2020, but was delayed due to restrictions related to the Coronavirus pandemic. The Committee held 22 sittings and concluded on 26 November 2020.

Until the Committee was suspended in March 2020, the membership of the Committee was as follows:

    Chairs: Mr Nigel Evans, Sir Roger Gale, Sir George Howarth

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8 Speaker’s Signed Certificate, Standing Order 83J, Environment Bill, 24 February 2020
9 For further information see Parliament website, MP’s guide to procedure: legislative grand committee [downloaded on 19 January 2020]
Members:

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

When the proceedings resumed in November 2020, the membership of the Committee was as follows:

Chairs: James Gray, Sir George Howarth

Members:

- Bim Afolami, (Hitchin and Harpenden) (Con)
- Fleur Anderson (Putney) (Lab)
- Caroline Ansell, (Eastbourne) (Con)
- Saqib Bhatti, (Meriden) (Con)
Deidre Brock, (Edinburgh North and Leith) (SNP)

Virginia Crosbie, (Ynys Môn) (Con)

Leo Docherty, (Aldershot) (Con)

Ruth Edwards, (Rushcliffe) (Con)

Gill Furniss, (Sheffield, Brightside and Hillsborough) (Lab)

Richard Graham, (Gloucester) (Con)

Ruth Jones, (Newport West) (Lab)

Marco Longhi, (Dudley North) (Con)

Cherilyn Mackrory, (Truro and Falmouth) (Con)

Robbie Moore, (Keighley) (Con)

Rebecca Pow, (Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)

Richard Thomson, (Gordon) (SNP)

Dr Alan Whitehead, (Southampton, Test) (Lab)

Daniel Zeichner, (Cambridge) (Lab)

Throughout the proceedings Rebecca Pow was the Minister speaking on behalf of the Government, with Leo Docherty (Assistant Whip) stepping in when the Minister was absent during a period of ill health. The Labour shadow team comprised of Dr Alan Whitehead Shadow Minister (Business, Energy and Industrial Strategy), Ruth Jones, Shadow Minister (Environment, Food and Rural Affairs), and Daniel Zeichner, Shadow Minister (Environment, Food and Rural Affairs).

The Public Bill Committee (PBC) received a number of written submissions and took evidence at its first four sittings before going on to conduct its clause by clause examination of the Bill. The written evidence and transcripts of the Committee’s sittings are available on the Environment Bill 2019-21 pages of the Parliament website.

The clauses of the Bill not mentioned in this paper were those that were generally accepted and supported by all Parties and which did not generate a large amount of discussion or debate. The clause numbers in section 2 of this paper refer to those from the Bill as first introduced in the House of Commons, Bill 9 of 2019-21.
3 Committee Stage: detailed consideration of the Bill

3.1 Environmental targets, improvement plans and principles

This section covers the clauses of the Bill, (clauses 1-20), that: establish a new framework for setting long-term environmental targets; put an Environmental Improvement Plan (EIP) on a statutory footing; provide for a set of environmental principles and an accompanying policy statement; and put a requirement on the Secretary of State to report every two years on developments in international environmental protection legislation which appear to the Secretary of State to be “significant”.

Apart from Government minor technical amendments these clauses were unamended in Committee. Although a large number of Opposition amendments were moved and pushed to division, none of them were added to the Bill. Some key Opposition amendments included:

- Expanding on the environmental target setting requirements to put more content on the face of the Bill;
- Setting a specific target for particulate matter linked to World Health Organization guidelines on the face of the Bill;
- Linking more explicitly the environmental targets with provisions in the Environmental Improvement Plan; and
- Removing armed forces and taxation and spending exemptions from the requirement for a Minister to have due regard to the policy statement on environmental principles.

Environmental targets

Clauses 1-6 of the Bill would establish a new framework for setting long-term, environmental targets. There must be a target for reducing concentrations of particulate matter in ambient air. In addition, targets must also be set in four “priority areas” of air quality, water, biodiversity and resource efficiency and waste reduction.

All of these Clauses were passed in Committee unamended, except for a Government minor technical amendment.
Setting the targets

Alex Sobel (Lab) moved amendment 103 to clause 1, with the aim of making the environmental targets more holistic and to ensure the continuous improvement of the environment as whole.\(^\text{10}\) It was tabled in his name and under the names of the Environment, Food and Rural Affairs Committee Chair and the Environmental Audit Committee Chair.

In response the Minister, Rebecca Pow, set out the Government’s intended approach to target setting. She confirmed that a target would set in each priority area by 31 October 2022 following a process of “robust evidence-gathering, consultation and engagement with experts, advisers and the public”. The Bill specifies that the first environmental improvement plan (EIP) must be reviewed by the end of January 2023. Subsequent reviews of an EIP must be completed before the end of the 5-year period beginning with the day on which the previous review was completed. The Minister also confirmed that when the first statutory environment improvement plan review takes place, the Government would review whether any other targets might be required, with an outcome reported by 31 January 2023.\(^\text{11}\) The amendment was withdrawn.\(^\text{12}\)

The Labour Shadow Minister, for Business, Energy and Industrial Strategy, Dr Alan Whitehead, moved an amendment (no. 178), which aimed to introduce more detailed content into the priority target areas and to ensure that more than one target in each area was provided. He explained that it was “not sufficient” to set out single-word priority areas in the Bill and said, “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.”\(^\text{13}\)

The Minister responded that a process will be put in place to make the targets, which she did not want to prejudge. She confirmed that the new Office for Environmental Protection (OEP) would be able to recommend additional targets in its annual report.\(^\text{14}\) Dr Whitehead pushed the amendment to a division, where it was defeated by 9 votes to 5.\(^\text{15}\)

The particulate matter target

Dr Whitehead moved amendment 23 to clause 2, in order to set specific parameters for the particulate matter (PM2.5) air quality target, as follows:

\[ (2) \text{The PM2.5 air quality target must—} \]

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\(^{10}\) PBC Deb, fifth sitting, 17 March 2020, c165
\(^{11}\) PBC Deb, fifth sitting, 17 March 2020, c171
\(^{12}\) PBC Deb, fifth sitting, 17 March 2020, c174
\(^{13}\) PBC Deb, sixth sitting, 17 March 2020, c191
\(^{14}\) PBC Deb, sixth sitting, 17 March 2020, c191-2
\(^{15}\) PBC Deb, sixth sitting, 17 March 2020, c194
(a) be less than or equal to 10µg/m³;
(b) have an attainment deadline on or before 1 January 2030.

He argued that the clause as it stood did not provide for a sufficient fall in emissions and said, “We need to align ourselves with the WHO [World Health Organization] guidelines, so that we can ensure that we are targeting a regular and continuing reduction in emissions.”

The Minister replied that before committing to a specific target she wanted to first complete a “thorough and science-based consideration of our options.” She explained further that in developing the detail of the target, the Government 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.”

Dr Whitehead said he did not accept the Minister’s arguments and wanted to see a target based on WHO guidelines. He therefore pushed the amendment to a division, where it was defeated by 9 votes to 5.

Target accountability

Amendment 82 to clause 4 was moved by Dr Whitehead to require the Government to meet any interim targets set. He wanted to see legal accountability, lamenting that voluntary environmental targets were often missed. In her response, the Minister set out a “triple lock” mechanism of how progress on the targets would be kept under review:

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 [Office for Environmental Protection] 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.

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16 PBC Deb, sixth sitting, 17 March 2020, c198
17 PBC Deb, sixth sitting, 17 March 2020, c201
18 PBC Deb, sixth sitting, 17 March 2020, c201
19 PBC Deb, sixth sitting, 17 March 2020, c204
20 Clause 10 of the Bill provides a mechanism for adding the long-term targets provided for by clauses 1 and 2 into it. This would be done by setting interim targets in the environmental improvement plan when it is reviewed. Interim targets must consist of an objectively measurable standard to be achieved across a specified time period.
21 PBC Deb, sixth sitting, 17 March 2020, c209
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.  

Dr Whitehead said that he retained reservations about whether the provisions described would work, but he withdrew the amendment.  

**Environmental Improvement Plans**

Clauses 7-14 of the Bill would place a statutory requirement on the Secretary of State to prepare and maintain an Environmental Improvement Plan (EIP) for England; the first being the [25 Year Environment Plan](#) published in January 2018. The clauses create a new statutory cycle of monitoring, planning and reporting aimed at ensuring continuing improvement to the environment. These clauses were passed in Committee unamended.

Amendment 88 to clause 7 was moved by Dr Whitehead (Lab) to connect the Environmental Improvement Plan with the target setting powers provided for in the Bill. Dr Whitehead said that the EIP was already “quite an old document”, and that “it does not address itself to the structure of the Environment Bill”. He argued that it was “vital that the connection is properly made in the Bill itself and that the EIP, essentially, is instructed to organise itself along lines that do relate to those targets in the first place.”

The Minister replied that linking the EIP to the targets would single out aspects of the environment ahead of others. She said that the EIP would allow the Government to take a more holistic approach to the environment. Dr Whitehead disagreed and pushed the amendment to a division where it was defeated by 5 votes to 9.

**Policy statement on environmental principles**

Clauses 16-18 of the Bill provide for a set of environmental principles and require the Government to publish a policy statement on these principles. Under clause 18 it a shall be a duty of a Minister of the Crown to “have due regard” to the policy statement, subject to certain exemptions:

(a) the armed forces, defence or national security,

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22 PBC Deb, sixth sitting, 17 March 2020, c211
23 PBC Deb, sixth sitting, 17 March 2020, c213
24 PBC Deb, eighth sitting, 3 Nov 2020, c256
25 PBC Deb, eighth sitting, 3 Nov 2020, c233
26 PBC Deb, eighth sitting, 3 Nov 2020, c234
27 PBC Deb, eighth sitting, 3 Nov 2020, c239
28 PBC Deb, eighth sitting, 3 Nov 2020, c239
(b) taxation, spending or the allocation of resources within government, or

(c) Wales.

There clauses were passed in Committee unamended. Opposition amendments attempted to remove the exemptions, but were defeated on division.

**Armed forces exemption**

Shadow SNP Spokesperson (Environment, Food and Rural Affairs), Deidre Brock, moved amendment 114 to clause 18, which would remove the exceptions for armed forces, defence and national security policy from the requirement to have due regard to the policy statement on environmental principles. She stated that “no area of Government should be exempted from its responsibilities to the environment.”

The Shadow Minister, Dr Whitehead, also supported this amendment, saying, “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.”

In reply the Minister said that the exemptions that would be removed by the amendment related 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.” She argued that 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.”

Deidre Brock responded that it was “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.” She pushed the amendment to a division where it was defeated by 6 votes to 10.

**Taxation and spending exemption**

Dr Whitehead (Lab) also moved amendment 94 to clause 18, which would remove the exceptions for tax, spending and resources from the requirement to have due regard to the policy statement on environmental principles. He stated that he could not understand the justification for exempting them and looked forward to the Minister’s explanation.

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29 PBC Deb, ninth sitting, 3 Nov 2020, c264
30 PBC Deb, ninth sitting, 3 Nov 2020, c268
31 PBC Deb, ninth sitting, 3 Nov 2020, c269
32 PBC Deb, ninth sitting, 3 Nov 2020, c271
33 PBC Deb, ninth sitting, 3 Nov 2020, c272
In her response, the Minister said it was beneficial for the Treasury to be able to make economic and financial decisions based on a wide range of considerations. She clarified when the exemption could be used, making clear that it only applied to central spending decisions, such as budget allocations, while individual policy decisions would need to consider the statement:

It is important to be clear that this exemption only refers to central spending decisions, because at fiscal events and spending reviews such decisions must be taken with consideration to a wide range of public priorities. These include public spending on individual areas such as health, defence, education and the environment, as well as sustainable economic growth and development, financial stability and sustainable levels of debt.

There is no exemption for individual policy interventions simply because they require spending. Ministers should still have due regard to the policy statement when developing and implementing all policies to which the statement is applicable. This means that while the policy statement will not need to be used when the Treasury is allocating budgets to Departments, it will be used when Departments develop policies that draw upon that budget. This is the best place for the use of the policy statement to effectively deliver environmental protection.34

Dr Whitehead pushed the amendment to a division, where it was defeated by 6 votes to 10.35

**Environmental protection: statements and reports**

Clause 20 would introduce a requirement on the Secretary of State to report every two years on developments in international environmental protection legislation which appear to the Secretary of State to be “significant”.

Shadow Minister Dr Whitehead tabled amendment 195, which would require the Government to consult on what counts as “significant” for the purposes of this clause. He was concerned that the Secretary of State would be given a free hand to decide which developments were significant, without any accompanying definition of the word in the Bill.36

The Minister replied that it would be “counterproductive” for the Government to try to anticipate in advance the kinds of significant developments that might be identified. She said the amendment would reduce the flexibility, “potentially limiting the scope and use of the report.”37

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34 PBC Deb, ninth sitting, 3 Nov 2020, c273
35 PBC Deb, ninth sitting, 3 Nov 2020, c275
36 PBC Deb, ninth sitting, 3 Nov 2020, c276
37 PBC Deb, ninth sitting, 3 Nov 2020, c278
Dr Whitehead pushed the amendment to a division, where it was defeated by 5 votes to 10.38

3.2 The Office for Environmental Protection

Clauses 21-40 and Schedule 1 of the Environment Bill relate to the establishment of a new body, the Office for Environmental Protection (OEP) and its scrutiny, advice and enforcement functions. The OEP will have a range of monitoring and governance duties and hold enforcement powers in respect of environmental law. These are functions that were held by European institutions until the end of the EU withdrawal transition period.

Only Government amendments were agreed in Committee to these clauses of the Bill. The Government argued that these amendments would bring greater clarity about the OEP’s role and consistency with other legal mechanisms. They included:

- Clarification of the remit between the OEP and the Committee on Climate Change, with the aim of ensuring no duplication of work, through the production of a memorandum of understanding;
- Clarification of the threshold for when an environmental review can be initiated by the OEP;
- To change the new environmental review process from being held in the upper tribunal to the High Court;
- To limit the OEP’s powers to intervene in judicial review proceedings to “serious” cases;
- To limit the OEP’s powers to initiate judicial review proceedings to “urgent” cases; and
- A new power for the Secretary of State to issue guidance to the OEP on matters concerning its enforcement policy.

The Opposition expressed concern about a number of these amendments; that they would curtail the OEP’s freedom to act and its independence.

Although a large number of Opposition amendments were moved to these clauses and were pushed to division, none of them were added to the Bill. Opposition amendments aimed to:

- Give Parliament a greater role in scrutiny of the appointment of the Chair and other non-executive members of the OEP;
- Allow the OEP to request in-budget increases from the Government;
- Widen access to the ability to initiate an environmental review; and

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38 PBC Deb, ninth sitting, 3 Nov 2020, c280
- Give the courts the power to require a public authority to make amends for environmental harm resulting from a breach of the law.

**Opposition amendments on the OEP**

**Scrutiny of appointment of Chair and non-executive members**

Amendment 179 was moved by Dr Whitehead (Lab) to require the appointment of the Chair and other non-executive members of the OEP to be made with the consent of the relevant select committees. He stated that a key part of the OEP’s independence lies with who its Chair is and noted that “a lot of the appointments effectively flow from the appointment of the chair.” He wanted to see more scrutiny and accountability in the process for appointments.39

The Minister agreed Parliament should have a role in the process and said that that the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee will jointly carry out a pre-appointment hearing with the Secretary of State’s preferred candidate for the OEP chair. She did not believe though that it was “necessary or desirable for Parliament to scrutinise all those individual appointments in the way that has been suggested.”40

Dr Whitehead said he wanted to see more of the Parliamentary process on the face of the Bill. He pushed the amendment to a division where it was defeated by 5 votes to 10.41

**Power to direct the OEP’s interim Chair**

Paragraph 4 of Schedule 1 of the Bill allows for the appointment of an interim chief executive, until the appointment of the first permanent chief executive by the Chair. It also allows the Secretary of State to give directions to the interim chief executive.

Dr Whitehead moved amendment 154 to prevent the Government from giving directions to the interim chief executive. He expressed concern that the independence of the OEP could be compromised.42

In reply, the Minister set why the Government wanted to have the power to direct an interim chief executive:

...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.

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39 PBC Deb, ninth sitting, 3 Nov 2020, c284  
40 PBC Deb, ninth sitting, 3 Nov 2020, c286  
41 PBC Deb, ninth sitting, 3 Nov 2020, c290  
42 PBC Deb, ninth sitting, 3 Nov 2020, c293
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. 43

Dr Whitehead pushed his amendment to a division where it was defeated by 4 votes to 10. 44

The OEP’s budget

Dr Whitehead moved amendment 157 to schedule 1 to require that the OEP be given a five-year indicative budget and to allow it to request in-budget increases from the Government. He explained that he wanted to underpin the independence of the OEP, “as far as its financing is concerned.” 45 He also wanted to ensure that the OEP had certainty and clear sight of what its budget would be so that it could spend accordingly, without risk of it being decreased over a five year period.

The Minister (Rebecca Pow) was absent during this sitting due to ill health and so Leo Docherty (Assistant Whip) responded on behalf of the Government. He said it would be “unnecessary” and “unhelpful” to include this commitment in the Bill because there will be 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 and Parliament would have “ample opportunity to scrutinise the funding of the OEP further”. 46

43 PBC Deb, ninth sitting, 3 Nov 2020, c293
44 PBC Deb, ninth sitting, 3 Nov 2020, c296
45 PBC Deb, tenth sitting, 5 Nov 2020, c307-8
46 PBC Deb, tenth sitting, 5 Nov 2020, c309
Dr Whitehead pushed the amendment to a division where it was defeated by 5 votes to 9.47

Standing to bring an environmental review

The Bill provides the OEP with powers to bring legal proceedings against a public authority through a new mechanism in the Upper Tribunal called “environmental review.”

Labour amendments 123 and 124, to clause 35, would allow any persons with sufficient interest to apply for an environmental review, where the OEP had decided not to initiate one itself. Dr Whitehead explained his concern that if the OEP decided it did not want to take any action, there was “very little recourse for those people who have been involved in a particular process to do anything further.”48

Speaking for the Government Leo Docherty said he agreed it was important for the general public and interested parties to be able to challenge alleged breaches of environmental law. This was why the process would ensure that anybody could make a complaint to the OEP, free of charge, which was in addition to existing rights to bring judicial review. He said however, that while established rules currently governed who could intervene in legal proceedings, the Government would examine them to “see where changes may be necessary.”49

Dr Whitehead pushed amendment 123 to a division, saying the ability of the public to intervene was an important right. It was defeated by 3 votes to 6.50

Environmental review: financial penalties and compliance

Dr Whitehead discussed amendment 180 to clause 35, which aimed to clarify that the tribunal had the power to issue fines in instances of non-compliance with a ruling.51 In response, Leo Docherty, for the Government, set out what could happen in the event of non-compliance with a ruling, setting out how it compared with the EU infraction framework:

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

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47 PBC Deb, tenth sitting, 5 Nov 2020, c311
48 PBC Deb, eleventh sitting, 5 Nov 2020, c350
49 PBC Deb, eleventh sitting, 5 Nov 2020, c351
50 PBC Deb, eleventh sitting, 5 Nov 2020, c351
51 PBC Deb, eleventh sitting, 5 Nov 2020, c354
Union is unable to compel the member state into a specific course of action through a court order.\(^{52}\)

Dr Whitehead did not move the amendment further. He proposed amendment 184, in clause 35, which would give the Tribunal the power to require a public authority to make amends for environmental harm resulting from a breach of the law. He explained that he wanted to ensure there were remediation requirements, so that the net environmental position would be returned to where it was before the breach had taken place.\(^{53}\) Speaking for the Government, Leo Docherty replied that such provision would blur the separation of powers between the courts and the Government:

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 their failure to comply with 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.\(^{54}\)

The amendment was pushed to a division where it was defeated by 3 votes to 7.\(^{55}\)

**Government amendments on the OEP added to the Bill**

**Remits of the OEP and the Committee on Climate Change**

Government amendments 30 and 66 (in Clause 22) and Government new clause 4—*Memorandum of understanding*, aim to ensure that the OEP does not duplicate the work of the Committee on Climate Change, and requires the two bodies prepare a memorandum of understanding:

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.

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\(^{52}\) PBC Deb, eleventh sitting, 5 Nov 2020, <c356>
\(^{53}\) PBC Deb, eleventh sitting, 5 Nov 2020, <c355>
\(^{54}\) PBC Deb, eleventh sitting, 5 Nov 2020, <c356>
\(^{55}\) PBC Deb, eleventh sitting, 5 Nov 2020, <c357>
(...)

The Committee on Climate Change is also supportive of both the existing measures and the Government amendments.56

Dr Whitehead said that he welcomed these amendments and called them a positive step forward.57 The amendments and new clause were added to the Bill without division.58

OEP: Information notices and decision notices

Clauses 32 and 33 provide that the OEP can take enforcement action in the form of “information notices” and “decision notices” respectively. The notices describe the alleged failure of compliance with environmental law. An information notice is a mechanism whereby the OEP can seek formally further information in relation to the alleged breach. A decision notice is the next step following an information notice and it sets out the steps the OEP considers should be taken in relation to the failure.

Government amendments 205 and 206 were tabled to clarify that these notices must explain why the OEP considers that the alleged failure is serious. Speaking on behalf of the Government Leo Docherty (assistant Whip), said that it would “ensure that all the OEP’s notices are clear and transparent, and it will provide clarity for all parties in the process.”59

The amendments were added to the Bill without division.60

OEP: thresholds for bringing an environmental review

The Bill provides the OEP with powers to bring legal proceedings against a public authority through a new mechanism in the Upper Tribunal called “environmental review.”

Government amendments 203 (to clause 22) and 208 (to clause 35) were tabled with the aim of clarifying the circumstances in which the OEP may bring an environmental review, in order to “ensure there is no doubt about its thresholds for action.” Together they will require the OEP’s enforcement policy to set out how the OEP will determine whether a failure to comply with environmental law is “serious”.61

56 PBC Deb, tenth sitting, 5 Nov 2020, c317
57 PBC Deb, tenth sitting, 5 Nov 2020, c318
58 For amendment 30 see PBC Deb, eleventh sitting, 5 Nov 2020 c332, for amendment 66 see PBC Deb, twelfth sitting, 10 Nov 2020 c388, for new clause 4 see PBC Deb, twentieth sitting, 24 Nov 2020 c627
59 PBC Deb, eleventh sitting, 5 Nov 2020, c344
60 PBC Deb, eleventh sitting, 5 Nov 2020, c345
61 PBC Deb, tenth sitting, 5 Nov 2020, c321
Amendment 203 and 28 were agreed without division.62

Amendment 209, to clause 35, would remove the OEP’s power to bring an environmental review in relation to conduct occurring after a decision notice had been given, which was similar or related to the conduct described in the decision notice. Leo Docherty (Assistant Government Whip) explained that the Government wanted to incentivise public authorities to work with the OEP:

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.63

Shadow Minister, Dr Whitehead, expressed concern that the OEP’s freedoms to act were being curtailed:

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.64

This amendment was pushed to a division where is was agreed by 7 votes to 3.65

Environmental review: move from upper tribunal to high court

Government amendments 207 and 210 to 216 were tabled to move the environmental review process from the upper tribunal to the High Court. Speaking for the Government Leo Docherty set out the rationale for this

62 PBC Deb, tenth sitting, 5 Nov 2020, c324 (for amendment 203), PBC Deb, eleventh sitting, 5 Nov 2020, c349 (for amendment 208) and c
63 PBC Deb, eleventh sitting, 5 Nov 2020, c351
64 PBC Deb, tenth sitting, 5 Nov 2020, c321-2
65 PBC Deb, eleventh sitting, 5 Nov 2020, c352
move, saying it would bring more coherence and consistency with judicial review:

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 as such.66

Ruth Jones (Lab), highlighted concerns raised by NGOs that without an upper tribunal, “the lack of expertise in the High Court could be a problem when determining such scientific, delicate and detailed matters.”67 Labour Shadow Minister Dr Whitehead agreed and questioned why the Government had changed its mind on where the legal proceedings should be held. He declined to push the amendments to a division, but asked the Government to consider further consultation and reflection before making such changes.68

The amendments were added to the Bill.69

**OEP: power to intervene in judicial review proceedings**

Clause 36 of the Bill gives the OEP the power to both initiate and intervene in judicial review proceedings relating to an alleged failure to comply with environmental law. The explanatory notes set out that this power is provided as it allows more timely action to be taken in the case that serious

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66 PBC Deb, eleventh sitting, 5 Nov 2020, c347
67 PBC Deb, eleventh sitting, 5 Nov 2020, c349
68 PBC Deb, eleventh sitting, 5 Nov 2020, c349
69 PBC Deb, eleventh sitting, 5 Nov 2020, c349 (for amendment 207) c354 (for amendments 210-213, and c357 (for amendments 214-216)
damage would have already happened by the time the normal enforcement procedure would have reached the Upper Tribunal.\textsuperscript{70}

Judicial review can only happen if “the OEP considers that the conduct constitutes a serious failure to comply with environmental law.”\textsuperscript{71} This is further qualified by the restrictions in clause 36(2) that the OEP “considers that it is necessary to make such an application (rather than proceeding under sections 32 to 35) to prevent, or mitigate, serious damage to the natural environment or to human health.”

Government amendments 204 (to clause 22) and 220 (to clause 36) were moved to focus the OEP’s intervention on “serious” cases when initiating its own enforcement action. The aim is to improve consistency across the OEP’s application of its enforcement function.\textsuperscript{72}

Shadow Minister Dr Whitehead was concerned that there was no definition in the Bill or the amendments of the word “serious”. For that reason, he pushed Government amendment 204 to a division where the amendment was accepted by 9 votes to 5.\textsuperscript{73}

**OEP: power to initiate judicial review proceedings**

Leo Docherty spoke to Government amendments 217, 218 and 219 to Clause 36. Together they provide that the OEP may only bring a judicial review in “urgent” cases. Urgent is defined in the amendments as being necessary to “prevent or mitigate serious damage to the natural environment or to human health.”\textsuperscript{74} Leo Docherty said the aim was to 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...

\textsuperscript{70} HM Government, *Environment Bill: Explanatory notes*, para 325
\textsuperscript{71} Clause 36(1), Environment Bill, Bill 9 2019-21
\textsuperscript{72} PBC Deb, tenth sitting, 5 Nov 2020, c324
\textsuperscript{73} PBC Deb, tenth sitting, 5 Nov 2020, c326 (for amendment 204) and PBC Deb, eleventh sitting, 5 Nov 2020, c359
\textsuperscript{74} PBC Deb, eleventh sitting, 5 Nov 2020, c359
therefore improve clause 36 by clarifying the process for the OEP to apply for judicial review as intended.\textsuperscript{75}

Shadow Minister Dr Whitehead called these amendments a “serious undermining of the powers of the OEP and its ability to judge for itself what it wants to do”. He explained this position further:

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.\textsuperscript{76}

Amendment 217 was pushed to a division where it was agreed by 7 votes to 3. The other amendments in this group, being consequential were also added to the Bill.\textsuperscript{77}

New Clause 24—Guidance on OEP’s enforcement policy and functions

Clause 22 of the Bill provides that the OEP must prepare a strategy setting out how it intends to exercise its enforcement functions. Government New Clause 24 (NC24) would provide a power for the Secretary of State to issue guidance to the OEP on the matters 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.\textsuperscript{78}

The Minister, Rebecca Pow, said this provision would allow the Secretary of State to “seek to address any ambiguities or issues relating to the OEP’s enforcement functions where necessary.” She expanded further on why the new Clause was required:

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

\textsuperscript{75} PBC Deb, eleventh sitting, 5 Nov 2020, c357-8
\textsuperscript{76} PBC Deb, eleventh sitting, 5 Nov 2020, c358
\textsuperscript{77} PBC Deb, eleventh sitting, 5 Nov 2020, c358
\textsuperscript{78} PBC Deb, twelfth sitting, 10 Nov 2020, c389
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.

(...)

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.\(^79\)

Alongside this, Government amendment 221 (in schedule 3) sought to ensure that guidance issued by the Secretary of State under NC24 would not apply to enforcement functions in Northern Ireland.

Dr Whitehead said that he did not have objections. The amendment was made and the NC24 added to the Bill.\(^80\)

\(^79\) PBC Deb, twelfth sitting, 10 Nov 2020, c389
\(^80\) PBC Deb, twelfth sitting, 10 Nov 2020, c390 and PBC Deb, twentieth sitting, 24 Nov 2020 c627
3.3 Definition of “natural environment” and “environmental protection”

Part 1 of the Bill (Clauses 41-43) introduces three key terms on which the scope of the new monitoring and governance provisions rest: “natural environment”, “environmental protection” and “environmental law”. Many clauses in this part of the Bill refer specifically to these definitions.

While the scope of these definitions was tested in Committee, these clauses were unamended, except for a number of Government technical amendments.

“Natural environment”

Shadow Minister (Business, Energy and Industrial Strategy) Dr Whitehead moved amendment 126 in Clause 41 which sought to widen the definition of “natural environment” to include the historic environment. It would except buildings and other structures from this definition, but include sites of archaeological, architectural, artistic, cultural or historic interest insofar as they form part of the landscape.81

Dr Whitehead said that the natural environment is “clearly constantly changing through human intervention” and that there are many things have changed the landscape and become part of it.82 Other Labour members shared this concern. For example, Fleur Anderson highlighted that the National Trust was also concerned about the Clause, saying that heritage and the natural environment “go hand in hand”.83

The Minister, Rebecca Pow, said that while she realised the natural environment does not exist in a vacuum, she wanted to focus the functions of the OEP on “its principal objective of environmental protection and the improvement of the natural environment.” She said that it was not its place to investigate complaints against breaches concerned with cultural heritage such as listed buildings or protection for ancient monuments, for which already has other legislation to protect it.84 She explained that 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 therefore the OEP’s enforcement policy.85

The amendment was pushed to a division where it was defeated by 4 votes to 10.86

81 PBC Deb, twelfth sitting, 10 Nov 2020, c368
82 PBC Deb, twelfth sitting, 10 Nov 2020, c368
83 PBC Deb, twelfth sitting, 10 Nov 2020, c368-370
84 PBC Deb, twelfth sitting, 10 Nov 2020, c370
85 PBC Deb, twelfth sitting, 10 Nov 2020, c371
86 PBC Deb, twelfth sitting, 10 Nov 2020, c372
Dr Whitehead also moved amendment 125 to Clause 41 which aimed to clarify that the natural environment included a reference to the marine environment and was not confined only to inland waters. He expressed concern that the Bill did not explicitly mention the marine environment and said that the marine environment “must be seen as an integral part of the process of environmental conservation.”

In response the Minister clarified that the marine environment would be covered by the definition of natural environment, as follows:

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.

Dr Whitehead was concerned that a definition which existed only in explanatory notes might not bind future Ministers to it. He wanted to see the definition on the face of the Bill and so pushed the amendment to a division where it was defeated by 6 votes to 10.

3.4 Waste and resource efficiency

Part 3 of the Bill covers waste and resource efficiency. These provisions originate from a variety of different consultation documents and policy announcements. They stem, in the most part, from the previous Conservative Government under Prime Minister May. The May Government’s December 2018 Resources and Waste Strategy for England, brought many of these ambitions together in a single document. Those which require legislation to enact have been introduced in this Bill.

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87  PBC Deb, twelfth sitting, 10 Nov 2020, c373
88  PBC Deb, twelfth sitting, 10 Nov 2020, c373-4
89  PBC Deb, twelfth sitting, 10 Nov 2020, c377
90  PBC Deb, twelfth sitting, 10 Nov 2020, c378
This part of the Bill and its accompanying schedules were unamended in Committee, apart from some Government minor technical amendments. Some Labour amendments in this part aimed to require manufacturers, processors, distributors and suppliers of packaging to contribute to the “social costs” (and not just to disposal costs), incurred throughout the lifecycle of the products or materials.

Packaging producer responsibility scheme

Clauses 47-48 and schedules 4 and 5 make provisions for a revised extended packaging producer responsibility scheme. This revised scheme seeks to make producers responsible for the full net costs (as opposed to just some of the costs as under the present scheme) of managing their products at end of life. The idea is to prevent materials from becoming waste and aid the redistribution of surplus products or materials. The Bill provides a framework for powers to design a system using modulated fees that incentivise producers to design their products with re-use and recycling in mind, so those that make their products easier to recycle will pay less.

Targets for preventing and reducing waste

Speaking for the Opposition, Shadow Minister Ruth Jones moved amendment 159, in schedule 4, page 151, line 32. This part of the schedule states that regulations may make provision about targets to be achieved in relation to the proportion of products or materials (by weight, volume or otherwise) to be re-used, redistributed, recovered or recycled (either generally or in a specified way). The amendment would insert the words “prevented, reduced”, before the word “re-used”. Ruth Jones said that she wanted to see the “strongest language in the Bill” and she implored the Minister to be “ambitious and bold in the text that is used.

The Shadow Minister (Business, Energy and Industrial Strategy), Dr Whitehead (Lab), linked the words in the amendment back to the waste hierarchy. He stated that 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.”

The Minister, Rebecca Pow, replied that the amendment was unnecessary because the Bill “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.” She set this out further:

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

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91 For further information about the existing scheme see GOV.UK guidance, Packaging waste: producer responsibilities, updated 15 December 2020
92 HM Government, Environment Bill policy statement, 21 October 2020 update version
93 PBC Deb, thirteenth sitting, 10 Nov 2020, c401
94 PBC Deb, thirteenth sitting, 10 Nov 2020, c402
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.

Ruth Jones said the ability to set targets to help assess progress was important and so pushed the amendment to a division. It was defeated by 4 votes to 9.

Producer responsibility for disposal costs

Shadow Minister Ruth Jones moved amendment 161, in schedule 5, page 157, line 13 to allow regulations to require manufacturers, processors, distributors and suppliers of packaging to contribute to the “social costs” (and not just to disposal costs), incurred throughout the lifecycle of the products or materials. Her aim was 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.”

Fleur Anderson (Lab) supported the shadow Minister and set out concern from the Local Government Association that the schedule would not fully reflect the full range of costs associated with packaging waste:

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.

The Minister disagreed that the amendment was necessary, setting out that social issues were accounted for through other pieces of legislation, such as the Health and Safety at Work etc. Act 1974 and the Human Rights Act 1998 and that the Bill as drafted would achieve the aim of encouraging producers to protect the environment and pay the costs of managing their products at the end of their life.

95 PBC Deb, thirteenth sitting, 10 Nov 2020, c403
96 PBC Deb, thirteenth sitting, 10 Nov 2020, c405
97 PBC Deb, thirteenth sitting, 10 Nov 2020, c408
98 PBC Deb, thirteenth sitting, 10 Nov 2020, c409
99 PBC Deb, thirteenth sitting, 10 Nov 2020, c410
Amendment 161 was pushed to a division, where it was defeated by 4 votes to 9.\(^{100}\)

**Resource efficiency information**

Clauses 49 and 50 and schedules 6 and 7 enable the Government to set minimum eco-design requirements for products and require provision of information to buyers of products and materials to, “support a shift towards durable, repairable and recyclable products, and banning those products or packaging which cannot be reused or recycled (where appropriate).”\(^{101}\)

Under schedule 7, regulations can prohibit products being distributed, sold or supplied if listed requirements are not met. Shadow Minister Ruth Jones moved amendment 163, in schedule 7, page 166, line 13, so that the meaning of resource efficiency requirements would include “taking into account social dimensions such as human rights, public health and fair working conditions.”

Further Labour amendments to this schedule (amendments 164-166) sought to add working conditions and pollutants released to the list of requirements. Shadow Minister Ruth Jones said that the amendments look 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.”\(^{102}\)

The Minister, Rebecca Pow, replied that while she agreed that human rights, working conditions, public health and the impact of product manufacture, use and disposal on workers and wider communities were “of the utmost importance”, going beyond matters of the environment to incorporate social factors, would be going beyond the scope of this legislative instrument. She also stated that it would be “complicated, if not impossible”, to lay down requirements on a product basis that cover these considerations for all exporting countries. She argued that such matters are better dealt with by other legal mechanisms, such as the International Labour Organisation’s conventions.\(^{103}\)

Ruth Jones replied that there was no harm in our having integrated objectives across a number of pieces of legislation, because “it shows that the Government are joined up and thinking across the piece.” She pushed amendments 163-166 to divisions, where they were all defeated by 4 votes to 7.\(^{104}\)

\(^{100}\) PBC Deb, thirteenth sitting, 10 Nov 2020, c412

\(^{101}\) HM Government, Environment Bill policy statement, 21 October 2020 update version

\(^{102}\) PBC Deb, fourteenth sitting, 12 Nov 2020, c422-3

\(^{103}\) PBC Deb, fourteenth sitting, 12 Nov 2020, c423-4

\(^{104}\) PBC Deb, fourteenth sitting, 12 Nov 2020, c422-3
Deposit return scheme

Clause 51 of the Bill and schedule 8 enable the relevant national authority – namely, the Secretary of State (in relation to England), Welsh Ministers, and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland – to make regulations establishing deposit schemes.

Box 1: What is a deposit return scheme?

In a deposit return scheme, consumers are charged a sum of money as deposit up-front when they buy a product (commonly this is used for drinks in a single-use container). This can be redeemed when the empty container is returned. In existing schemes in other countries consumers can either return containers through a reverse vending machine or manually to a retailer to redeem the deposit value.\(^\text{105}\)

The Bill defines a deposit return scheme as follows:

A deposit scheme is a scheme under which—

(a) a person supplied with a deposit item by a scheme supplier pays the supplier an amount (a “deposit”), and

(b) a person who provides a deposit item to a scheme collector is entitled to be paid an amount (a “refund”) in respect of that item by the collector.\(^\text{106}\)

As part of a debate on schedule 8, the Minister, Rebecca Pow, was asked to provide more information about what items would be included within the deposit return scheme and how it would work. The Minister said that many details were not yet confirmed and would be part of a further consultation process:

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

\(^{105}\) HM Government, Our waste, our resources: a strategy for England, Dec 2018, p61

\(^{106}\) Schedule 8, paragraph 1(2), Environment Bill, Bill 9 2019-20
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.107

The Minister also envisaged that the deposit return scheme could, in the future, be expanded in scope to include items other than drinks containers, such as batteries, electrical and electronic equipment and bulky items including mattresses.108

Single use plastic items

Clause 52 and schedule 9 allow regulations to be made for charging for single use plastic items.

Shadow Minister Ruth Jones moved amendment 182 in schedule 9, page 174, line 32, to ensure that the regulations could apply to items made of “plastic or any other single use material”, instead of items made “wholly or partly of plastic”. She explained her concern that unamended, 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.” She wanted charges to be possible for all single-use materials, not just plastic.109

The Minister, Rebecca Pow, emphasised that this part of the Bill was designed to focus on reducing single use plastic items. She said that other provisions in the Bill would deal with other types of materials and that “the Bill already provides a robust approach towards achieving a more circular economy.”110

The amendment was pushed to a division where it was defeated by 4 votes to 8.111

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107 PBC Deb, fourteenth sitting, 12 Nov 2020, c436
108 PBC Deb, fourteenth sitting, 12 Nov 2020, c436
109 PBC Deb, fourteenth sitting, 12 Nov 2020, c438
110 PBC Deb, fourteenth sitting, 12 Nov 2020, c440
111 PBC Deb, fourteenth sitting, 12 Nov 2020, c442
Transfrontier shipments of waste

Clause 59 amends the *Environmental Protection Act 1990* (the EPA 1990) to allow regulations to be made to regulate imports and exports of waste.

Shadow Minister Ruth Jones (Lab) moved amendment 177 to clause 59, to inset an extra provision that, “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.” She set out her intention behind the amendment as follows:

Ministers need to review the approach to consumption and resources use to reduce current and future reliance on landfill and incineration. This should address the underlying drivers of the waste problem. For ease of reference, those drivers include unsustainable growth and consumption of single-use packaging and other items, a lack of domestic recycling and reprocessing infrastructure, and limited end markets for secondary materials. We have had some useful debates on those things already during the passage of the Bill through this Committee. The amendment is specific and allows us to show the leadership that people and nations across the world expect from the United Kingdom.\(^{112}\)

The Minister, Rebecca Pow, replied that she intended to use powers in this clause to implement the manifesto commitment to ban the export of plastic waste to non-OECD countries. The Government will consult industry, NGOs and local authorities on the date by which the ban will be achieved. She also said the Government was committed to dealing with more of our waste here in the UK through other measures in the Bill.\(^{113}\)

The amendment was pushed to a division where it was defeated by 5 votes to 7.\(^{114}\)

### 3.5 Air quality and recall of motor vehicles

Clauses 69 and 70 and Schedules 11 and 12 would implement changes foreshadowed in the Government’s *Clean Air Strategy* (January 2019) regarding updating the local air quality management regime and modifying local council powers in relation to smoke control areas. They were passed unamended by the Committee.

Shadow Minister (Business, Energy and Industrial Strategy), Dr Whitehead (Lab) emphasised the need for local authority funding to carry out air quality duties and asked the Minister for assurances that the local government air

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\(^{112}\) PBC Deb, fifteenth sitting, 12 Nov 2020, c454

\(^{113}\) PBC Deb, fifteenth sitting, 12 Nov 2020, c457

\(^{114}\) PBC Deb, fifteenth sitting, 12 Nov 2020, c459
quality framework was considered to be a cross-department issue within Government.115

The Minister, Rebecca Pow, provided assurances that this was a cross-governmental issue. She also set out that the Government had a £3.8 billion plan to reduce pollution from road vehicles and, as set out in clause 2 of the Bill, and a commitment to set a legally binding national target to reduce fine particulate matter. She agreed that the current local air quality management framework was “not sufficient for delivering the progress we want to see” but went on the set out how the Bill would rectify this. She also estimated that the revised local air quality management framework would cost an extra £13,000 per year per local authority.116

Clauses 71-74 of the Bill empower the Secretary of State to introduce a mandatory recall of any motor vehicles which fail to meet certain “environmental standards” through regulations. These clauses also passed unamended by the Committee.117

3.6 Water

Part 5 of the Bill (clauses 75 to 89), cover provisions relating to water resources management, including: the development of joint regional plans for long-term water resource management; a statutory duty for water companies to develop long-term drainage and sewerage management plans; amendments to Ofwat’s water company licensing process; amendments to when abstraction licences can be varied or revoked without compensation; powers to amend requirements relating to the chemical status of water bodies; and powers to amend the land valuation process for internal drainage board (IDB) charges. The clauses were passed unamended by the Committee, except for Government minor technical amendments.

Amendments that were debated on but not added to the Bill include:

- changes to the requirements of water companies for developing their water resource management plans and drought plans;
- bringing forward the date for water abstraction reforms;
- changes to the procedure by which the Secretary of State may amend or modify the standards or substances for water quality assessment; and
- changes to drainage and sewerage management plans aimed at addressing raw sewage discharges.

115 PBC Deb, fifteenth sitting, 12 Nov 2020, c461
116 PBC Deb, fifteenth sitting, 12 Nov 2020, c461-2
117 PBC Deb, fifteenth sitting, 12 Nov 2020, c464
The amendment to drainage and sewerage plans covered aspects outlined in the Sewage (Inland Waters) Bill, a Private Member’s Bill due for Second Reading.

Water Resources Management Plans, Drought Plans and Joint Proposals

Clause 75 of the Bill covers Water Resources Management Plans, Drought Plans and Joint Proposals, which are published by water companies every five years as a statutory requirement. This clause would introduce amendments to the Water Industry Act 1991 sections 39A to 39H.

Procedure for Developing Plans

Clause 75 of the Bill relates to regulations for the procedure for developing and consulting on Water Resource Management Plans (WRMPs), drought plans and joint proposals. It states that regulations may make provision about consultation to be carried out by water undertakers. Dr Whitehead (Lab) moved amendment 130, which added to the list of what the regulations could make provision about to include:

“...persons or bodies representing the interests of those likely to be affected.”

Shadow Minister (Business, Energy and Industrial Strategy), Dr Whitehead called this a probing amendment and asked the Minister, Rebecca Pow, if she thought the bodies representing those likely to be affected by any plans should be included in the process for preparing and publishing regulations.

Fleur Anderson (Lab) also highlighted the importance of consultation for water resource planning and environmental protection.

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.

In response, the Minister stated that the Government intended for stakeholders to be involved in the preparation of these plans in England, further stating that Clause 75 enables Ministers to set out in the regulations which bodies should be consulted. The Minister than set out how existing regulations and frameworks enable stakeholder consultation in the preparation of plans:

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118 PBC Deb, sixteenth sitting, 17 Nov 2020, c472
119 PBC Deb, sixteenth sitting, 17 Nov 2020, c473
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.120

The Minister clarified the wording in Clause 75 by explaining that:

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.121

Dr Whitehead also sought further clarification from the Minister on whether the Government intended to use its powers to ensure bodies such as the Environment Agency would be included in consultation on future plans. Dr Whitehead noted that this had previously been the case in the Water Industry Act 1991.

In a final response the Minister stated:

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.122

The amendment was subsequently withdrawn by Dr Whitehead.

**Drainage and Sewerage Management Plans**

Clause 76 would put on a statutory footing a requirement for each sewerage company in England and Wales to prepare and publish a drainage and sewerage management plan, by inserting a new section 94A into the Water Industry Act 1991.
Richard Graham (Conservative), moved amendment 200, in clause 76, which was tabled by Environmental Audit Committee Chair, Phillip Dunne. The Bill specifies particular aspects that must be addressed in a drainage and sewerage management plan. The amendment calls for the following aspect to be added:

“(ca) the water quality and impact of the discharges of the undertaker’s drainage system and sewerage system.”. 123

Richard Graham stated that Clause 76 of the Bill was a positive step forward, but it lacked an obligation on water companies to consider the impact of their waste water facilities on water quality:

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. 124

Shadow Minister Dr Whitehead (Lab) added his support to the amendment and stated that entire opposition also backed the proposal. 125

Richard Graham also highlighted that raw sewage had been discharged into inland and coastal waterways on over 200,000 occasions during 2019.

He also highlighted that 40,000 people had signed a petition calling for an end to sewage pollution and that a Private Members Bill 126, the Sewage (Inland Waters) Bill had also been initiated in response to the issue of raw sewage discharges. 127

He went on to explain how the amendment would help tackle other water quality issues:

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

123 PBC Deb, sixteenth sitting, 17 Nov 2020, c476
124 PBC Deb, sixteenth sitting, 17 Nov 2020, c477
125 PBC Deb, sixteenth sitting, 17 Nov 2020, c480
126 Commons Library Briefing Paper, Sewage (Inland Waters) Bill 2019-20 CBP8820, 22 December 2020
127 PBC Deb, sixteenth sitting, 17 Nov 2020, c476
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.\textsuperscript{128}

In response, the Minister, Rebecca Pow, reminded the Committee of the current regulatory responsibilities of the Environment Agency with regards to raw sewage discharges. She then went on to describe how Clause 76 would adequately address the concerns previously raised by some Committee members.

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. [Interruption.] 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.\textsuperscript{129}

Further discussion was held about the role of the Environment Agency in controlling sewage discharges. Richard Graham pointed to the comments from the Chair of the Environment Agency, Emma Howard Boyd, who had recently stated water company performance on environmental standards had deteriorated in 2018 with little sign of improvement in 2019\textsuperscript{130}. Dr Whitehead also highlighted the water companies were expected to self-monitor incidences of raw sewage discharges and the system wasn’t working\textsuperscript{131}.

Responding to the comments the Minister outlined ongoing work that that the Environment Agency was undertaking to address the issues:

They [the Environment Agency] are actually part-way through a programme to improve the management of storm overflows. Event

\textsuperscript{128} PBC Deb, sixteenth sitting, 17 Nov 2020, c477
\textsuperscript{129} PBC Deb, sixteenth sitting, 17 Nov 2020, c480 & c481
\textsuperscript{130} PBC Deb, sixteenth sitting, 17 Nov 2020, c478
\textsuperscript{131} PBC Deb, sixteenth sitting, 17 Nov 2020, c482
duration monitoring gadgets are being installed on the vast majority of combined inland and coastal sewer overflows, and will provide data for the duration and frequency of storm spills by 2025. Approximately 13,000 of the 15,000 overflows will receive this event duration monitoring, so it will make a difference—I am convinced of that. We do, however, accept that there is a great deal more to do.\footnote{PBC Deb, sixteenth sitting, 17 Nov 2020, c482}

The Minister then went on to set out actions the Government has taken recently and will take further, in response to storm overflows and sewage discharge issues:

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.\footnote{PBC Deb, sixteenth sitting, 17 Nov 2020, c482}

Richard Graham moved to withdraw the amendment, but this was objected to by other Committee Members. It was therefore taken to a division where it was defeated by 5 votes to 9.\footnote{PBC Deb, sixteenth sitting, 17 Nov 2020, c485}

Use and clarification of term “sewerage”

A final consideration of clause 76 was the use of the word sewerage over wastewater in the title of the drainage and sewerage plans. The minister clarified that sewerage as defined in the Water Industry Act 1991 covers all aspects of wastewater:

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

\footnote{PBC Deb, sixteenth sitting, 17 Nov 2020, c482}
the water sector. Placing plans on a statutory basis will ensure a more robust planning and investment process to meet future needs, including housing.\(^{135}\)

### Water Abstraction

Clause 80 would make changes to the abstraction licensing regime to allow the Secretary of State to revoke or make changes to permanent abstraction licences in England (from 1 January 2028) without paying compensation where the change is necessary to protect the environment or to remove excess headroom.

Shadow Minister (Business, Energy and Industrial Strategy), Dr Alan Whitehead, move amendment 132, in clause 80, page 78 which would change the year 2028 to 2021.

Dr Whitehead sought clarification about the current arrangements for abstraction licensing and when and to whom compensation is paid for changes to license agreements. He was concerned that water companies might use the period prior to the introduction of Clause 80 to gain compensatory payments for making changes to their abstraction licenses. However, the Minister explained that under the Water Act 2014, water companies were not eligible for compensation:

> 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.\(^{136}\)

Fleur Anderson (Lab) suggested that, with compensation remaining payable until 2028, the Environment Agency would find it difficult to impose any abstraction license changes as this would impose a financial burden on them in a time of already constrained budgets. She also argued that action needed to be taken now to help meet the Water Framework Directive target of bringing the UK’s waters to good status by 2027. Furthermore, bringing the date forward to 2021 would allow action to be taken within the final cycle of River Basin Management Plans for 2021 – 2017. This she suggested, would also allow the damage from abstraction to be reduced in line with targets set out by the Government under The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

As a final point, Fleur Anderson, highlighted the findings of the Public Accounts Committee report, Water Supply and Demand Management, published in July 2020. This recommended that:

> The Environment Agency should write to us within three months setting out clear objectives, and its planned mitigation actions and

\(^{135}\) PBC Deb, sixteenth sitting, 17 Nov 2020, c489 & c490

\(^{136}\) PBC Deb, sixteenth sitting, 17 Nov 2020, c493
associated timescales for eliminating environmental damage from over-abstraction and sewage outflow.\textsuperscript{137}

The Minister, Rebecca Pow, responded to the concerns raised by Dr Whitehead and Fleur Anderson by highlighting the work that was currently ongoing to tackle over-abstraction. The Minister expanded further by explaining the need for a catchment-based approach and that the implementation of new schemes would help enable this change:

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.\textsuperscript{138}

The amendment was pushed to a division where it was defeated by 5 votes to 10.\textsuperscript{139}

**Water quality**

Clause 81 would give the Secretary of State the power to make Regulations to amend or modify the substances and/or standards by which the chemical status of water bodies in England are assessed.

Shadow Minister (Business, Energy and Industrial Strategy), Dr Alan Whitehead, moved amendment 135, in clause 81, which would change the regulations from being subject to the negative procedure to the super-affirmative resolution procedure. The super-affirmative procedure involves an additional stage of scrutiny where Parliament considers a proposal for a

\textsuperscript{137} Public Accounts Committee, *Water Supply and Demand Management*, July 2020
\textsuperscript{138} PBC Deb, sixteenth sitting, 17 Nov 2020, \textsuperscript{c493}
\textsuperscript{139} PBC Deb, sixteenth sitting, 17 Nov 2020, \textsuperscript{c494}
Dr Whitehead said that he would prefer the super affirmative procedure because, unlike the negative procedure, it would guarantee a debate in Parliament.

The Minister, Rebecca Pow, responded to the support for the amendment by explaining the clause contained only a very narrow power for the Secretary of State to maintain a list of the most harmful substances that might enter watercourses. This would enable measures to be set out to help monitor and tackle them. The Minister further explained that exercising the power in this clause was also subject to consultation with experts within the Environment Agency:

> 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.

Dr Whitehead said that he would not push the amendment to a division this time but wanted to leave it in the Minister’s “to think about box”. The amendment was withdrawn.

### 3.7 Nature and biodiversity

Clauses 90-92 (now 92-94) and Schedule 14 of the Bill create a new requirement in planning legislation for a 10% biodiversity gain for new developments. Clauses 93 and 94 (now 95 and 96) provide a duty for public bodies to enhance biodiversity in addition to conserving it. Clauses 95 to 99 (now 97 to 101) provide for the creation of Local Nature Recovery Strategies.

Three new Government clauses were added to the Bill. New Clause 25 on species conservation strategies; New Clause 26 on protected site strategies and New Clause 27 on wildlife conservation: licences. These are now Clauses 102 to 104 in the Bill and are covered in further detail below.

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140 UK Parliament website, Super affirmative procedure [downloaded on 1 December 2020]
141 PBC Deb, sixteenth sitting, 17 Nov 2020, c495
142 PBC Deb, seventeenth sitting, 17 Nov 2020, c500
143 PBC Deb, seventeenth sitting, 17 Nov 2020, c502
Labour tabled a number of amendments, none of which were successful, covering a range of issues. The amendments included a number which would have changed the Bill by providing a duty for Secretary of State to act in a number of areas, rather than providing powers to do so. Others were aimed at strengthening the requirements for public authorities with regards to biodiversity gain. A number of them focused on strengthening the biodiversity gain requirement are discussed further below. The Opposition signalled its intention of returning to some the issues in the future.

Government New Clauses

In proposing three new clauses to the nature and biodiversity section of the Bill the Minister, Rebecca Pow, stated that the taken together they “help to protect and restore species and habitats at risk, while also enabling much-needed development.” Following the debate the Minister wrote a letter to the Opposition explaining the Government position further.

Species Conservation Strategies and Protected Site Strategies.

New clauses 25 and 26 provides powers for Natural England to prepare strategies that local planning authorities will have to take into account when making decisions. The Minister explained this as follows:

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.

The Minister stated that Species Conservations Strategies will avoid the need for reactive site-based assessments and mitigations when carrying out 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.

144 PBC Deb, seventeenth sitting, 17 Nov 2020 c545
145 Defra, Letter from Rebecca Pow to Daniel Zeichner, 25 November 2020
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.\textsuperscript{146}

Shadow Minister (Environment, Food and Rural Affairs), Daniel Zeichner, raised the Opposition’s concerns that this new approach could be detrimental to habitat and species protection:

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.\textsuperscript{147}

He also raised concerns about how the clause was worded;\textsuperscript{148} and was of the view that if implemented well it could be “a positive way to contribute to the conservation of certain species” but if not it could “become a shortcut to getting round some of the protected species obligations”, resulting in “perverse outcomes”.\textsuperscript{149} Labour called for a duty rather than a power for Natural England to publish any strategies and for the “overriding presumption and priority being for on-site or local, rather than off-site mitigations.”\textsuperscript{150}

Greener UK raised concerns in its briefing on the proposals that “the primary outcome of species conservation strategies will not be species recovery, but faster development with lower standards.” It also suggested a number of amendments to strengthen the proposals.\textsuperscript{151}

The aim of Protected Site Strategies is to allow “bespoke solutions for sites affected by a range of impacts” and were set out by Minister as follows:

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

\textsuperscript{146} PBC Deb, seventeenth sitting, 17 Nov 2020 c543
\textsuperscript{147} PBC Deb, eighteenth sitting, 19 Nov 2020, c553
\textsuperscript{148} PBC Deb, eighteenth sitting, 19 Nov 2020, c554
\textsuperscript{149} PBC Deb, eighteenth sitting, 19 Nov 2020, c554
\textsuperscript{150} PBC Deb, eighteenth sitting, 19 Nov 2020, c555
\textsuperscript{151} Greener UK, Response to proposed government amendments on Species Conservation Strategies, Protected Sites Strategies and Wildlife Licensing (Amendment 222 and New Clauses 25 to 27), 16 November 2020
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.\textsuperscript{152}

Labour welcomed the principle of the proposal but raised questions about Natural England’s funding and resources for delivering the strategies. It also called for a duty rather than a power for Natural England to publish protected site strategies.\textsuperscript{153}

Natural England \textit{welcomed} the new proposals in an article, citing examples of where this approach is already being used and being found to be successful:

> We recognise that addressing impacts on our most precious habitats and species often requires broader scale activity than site-by-site measures can achieve, often at planning authority or catchment scale. While there are schemes in place, these are ad-hoc and not yet considered as a normal way of working. We want the new amendments to resolve this to create great opportunities to extend conservation measures, streamline regulation and contribute to local plans for Nature Recovery. We have good experience that this is achievable.\textsuperscript{154}

According to Natural England, in the case of great crested newts this approach has “massively increased the provision of habitat for this species and early monitoring results show that this is having a positive effect” and in the Solent where issues relating to nitrate pollution are being resolved as “water quality is maintained or improved by targeting developer funding to secure low input management of large tracts of land”.\textsuperscript{155}

\textbf{Wildlife Conservation Licences}

New Clause 27 introduces changes to how licences are granted to carry out a wide range of activities related to wild animals protected through legislation. It amends Sections 10 and 16 of the Wildlife and Countryside Act 1981 and Regulation 55 of The Conservation of Habitats and Species Regulations 2017. The new clause introduces a number of changes including introducing an overriding public interest criterion; requiring that there is no other solution than granting a licence; and extending the maximum length of a licence which allows wildlife to be killed from two to five years.

\textsuperscript{152} PBC Deb, seventeenth sitting, 17 Nov 2020 c544
\textsuperscript{153} PBC Deb, eighteenth sitting, 19 Nov 2020, c556
\textsuperscript{154} Natural England, \textit{Environment Bill amendments are welcome news for habitat and species conservation}, 22 October 2020
\textsuperscript{155} Natural England, \textit{Environment Bill amendments are welcome news for habitat and species conservation}, 22 October 2020
The Minister set out when introducing New Clause 27 the Government’s aim of unlocking “the full potential of strategic licencing for protected species”:

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.\[156\]

The Minister explained further in her letter to Daniel Zeichner:

These amendments are in fact intended to simplify the current situation. They will provide greater legal clarity and certainty and support strategic licensing approaches. They will not weaken the strict protections that are in place for our most vulnerable species.\[157\]

During the debate, the Opposition raised concerns about the complexity of the proposal and called for assurances from the Minister that there would be consultation before any measures are implemented.\[158\] Greener UK, while proposing some amendments, was generally supportive of the proposal stating that the existing “parallel systems are complex and involve lots of overlap. There is some merit in aligning them”. The case for simplifying the system was also made by the Law Commission in its Review of Wildlife Law published in 2015.

Further Government amendments

Clause 93, referring to Section 41(1) of the Natural Environment and Rural Communities Act 2006, was amended by the Government to require 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 and enhancing” biodiversity, rather than just conserving.\[159\] This reflects a similar change for public authorities already included in the Bill.

\[156\] PBC Deb, seventeenth sitting, 17 Nov 2020 c544
\[157\] Defra, Letter from Rebecca Pow to Daniel Zeichner, 25 November 2020
\[158\] PBC Deb, eighteenth sitting, 19 Nov 2020, c557
\[159\] PBC Deb, seventeenth sitting, 17 Nov 2020 c546
Opposition Amendments

10% net gain target as a minimum

Clauses 91-93 and Schedule 14 of the Bill create a new requirement in planning legislation for a 10% biodiversity gain for new developments. Daniel Zeichner (Lab) tabled an amendment to Schedule 14 that would result in the 10% level being a minimum, allowing only for upward revisions:

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.\textsuperscript{160}

The Minister, Rebecca Pow, set out the Government’s opposition to setting a minimum target:

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.\textsuperscript{161}

Shadow Minister Daniel Zeichner (Lab) expressed concerns about the Government’s position and pressed the amendment to a division:

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 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.\textsuperscript{162}

The amendment failed on division.\textsuperscript{163}

During an evidence session with Environmental Audit Committee, on its Biodiversity and Ecosystems enquiry on 16 January 2021, Christopher Pincher the Minister for Housing explained how Defra and MHCLG working closely together on biodiversity gain.\textsuperscript{164} At the same session the George Eustace, Secretary of State for Environment Food and Rural Affairs set out why nationally significant infrastructure projects were excluded from the legislation. He stated that “it is because they are often large projects that

\textsuperscript{160} PBC Deb, seventeenth sitting, 17 Nov 2020, c505
\textsuperscript{161} PBC Deb, seventeenth sitting, 17 Nov 2020, c506
\textsuperscript{162} PBC Deb, seventeenth sitting, 17 Nov 2020, c508
\textsuperscript{163} PBC Deb, seventeenth sitting, 17 Nov 2020, c508
\textsuperscript{164} Environmental Audit Committee, Oral evidence: Biodiversity and Ecosystems, HC 636, 13 January 2021, Q208
can span multiple local authority boundaries” but the Government was considering how they could be included in the future:

For now, because the biodiversity net gain approach is very much linked to the local planning system, local authorities and their own local nature recovery plan, we decided to exclude it at this point. We are exploring how the concept could be embedded in some of those nationally significant infrastructure projects in future.165

**Securing net gain in perpetuity**

Labour tabled a number of amendments to Schedule 14 that would require “post-development habitat enhancements for the purposes of biodiversity gains to be maintained in perpetuity rather than for 30 years” and for them to be maintained in their target condition.166 The Schedule currently states that any net gain must be maintained for at least 30 years after the development is completed. Daniel Zeichner, for Labour, explained the reason for the amendments:

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.167

In responding, the Minister, Rebecca Pow explained the Governments reasoning for the 30-year timeframe:

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

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165 Environmental Audit Committee, Oral evidence: Biodiversity and Ecosystems, HC 636, 13 January 2021, Q202
166 PBC Deb, seventeenth sitting, 17 Nov 2020, c508
167 PBC Deb, seventeenth sitting, 17 Nov 2020, c509
deciding whether or how to modify or discharge a conservation covenant.168

The Minister also explained that landowners could enter into longer contracts if they so wished, and that any habitat created would fall under any applicable habitat protection legislation after any contract ended.169 The amendment failed on division.170

In addition, Labour tabled an amendment aimed at ensuring any benefits to sites resulting from biodiversity credits “are held to a high and lasting standard” which failed on division.171 During the debate Daniel Zeichner referred to concerns expressed about the level of benefits for local communities from biodiversity credits:

> 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.172

**Powers to make exceptions to net gain**

Labour tabled an amendment to remove the Secretary of State powers included in the legislation that would allow exclusion from the requirement of “development of such other description as the Secretary of State may by regulations specify”.173 Labour also proposed removing the exception from the net gain requirement for permitted development. Shadow Minister Daniel Zeichner expressed Labour’s concern that the result would be “that significant swathes of development could be taken out of the system of net gain”.174

Rebecca Pow explained the Government’s intent and the reasoning behind the provision as follows:

> The Government will not introduce broad exemptions from delivering biodiversity net gains, which was something the hon. Member specifically asked about. The power will be used to make narrow practical exemptions in order to keep net gain requirements proportionate. Exemptions will ensure that the mandatory

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168 PBC Deb, seventeenth sitting, 17 Nov 2020, c512
169 PBC Deb, seventeenth sitting, 17 Nov 2020, c513
170 PBC Deb, seventeenth sitting, 17 Nov 2020, c513
171 PBC Deb, seventeenth sitting, 17 Nov 2020, c532
172 PBC Deb, seventeenth sitting, 17 Nov 2020 c530
173 Environment Bill 2019-21, Schedule 14, Paragraph 17 (b)
174 PBC Deb, seventeenth sitting, 17 Nov 2020 c518
requirement is not applied to development on such a small scale that it could be negligible.175

The amendments were withdrawn but Labour expressed its intention to return to the issue.176

### 3.8 Conservation covenants

#### What does Part 7 of the Bill propose?

Part 7 of the Bill (clauses 102-124 and schedules 16, 17 & 18) would apply a new statutory scheme of conservation covenants in England only.

There is currently no simple legal tool that landowners can use to ensure that conservation benefits are maintained when land is sold and passed on; conservation obligations are only personal agreements and do not bind successors in title. Restrictive covenants can bind successors, but often conservation obligations require the landowner to carry out works rather than just be prevented from doing certain activities. Current workarounds are costly, complex and have limitations. In some cases, this has resulted in conservation bodies having to acquire the freehold of sites solely to secure the long-term conservation or preservation of the land or buildings. In other cases, opportunities to secure long-term conservation outcomes are lost.

Part 7 of the Bill provides the statutory framework for conservation covenants, which can include positive as well as restrictive land management obligations. For example, a landowner may agree to do or not to do something on their land in order to achieve a conservation purpose for the public benefit. Since conservation covenant would be legally binding on the landowner and any successors in title (i.e. subsequent owners of the land), they have the potential to deliver long-lasting conservation benefits for the public good. According to the Government, there is broad support across a range of stakeholders for the introduction of conservation covenants.

Detailed consideration of the legal characteristics of conservation covenants and their operation is provided in the Library’s briefing (CBP 8824) prepared for Second reading of the Bill. A summary is provided below.

A conservation covenant would be a voluntary, legally binding, private agreement for conservation purposes between a landowner (freeholder or lessee with a leasehold interest of at least 7 years) and a “responsible” body designated by the Secretary of State (such as a local authority, conservation charity, or a for-profit body). An application by a local authority would need to satisfy the Secretary of State that it is suitable to be a responsible body. A public body or charity would also have to show that at least some of its main

175 PBC Deb, seventeenth sitting, 17 Nov 2020 c520
176 PBC Deb, seventeenth sitting, 17 Nov 2020 c523
purposes or functions relate to conservation; in any other case, at least some of the body’s main activities must relate to conservation.

The Bill defines “conserving” as including protecting, restoring and enhancing. It defines “conservation purpose” as also including conserving land as a place of archaeological, architectural, artistic, cultural or historic interest and conserving the setting of land with such interests. For example, a “conservation purpose” might mean maintaining a wetland, protecting a habitat or farming land in a certain way (i.e. refraining from using pesticides on native vegetation), or preserving an historic building. The covenant must be for the public good, but this will not always mean that public access is required.

In terms of their operation, conservation covenants would be registered as local land charges and would bind successors in title and those deriving an interest from the covenantee. Since conservation covenants are intended to be a flexible tool, with parties free to design them to suit their own circumstances, the duration of a covenant would be whatever the landowner and responsible body specify and agree. If no time period is specified, the covenant will default to an indefinite period for freeholders and to the remainder of the lease for leaseholders. There are provisions to vary and discharge the obligations and to stipulate what should happen if a responsible body ceases to be designated as such or wants to appoint a replacement body. Responsible bodies are required to monitor delivery of the covenants and to take enforcement action if necessary. The Bill sets out the remedies for breaches of conservation covenants including specific performance, injunctions and damages.

If Part 7 of the Bill is enacted, the Government intends to publish the criteria for determining if a body is suitable to be designated as a responsible body and separate guidance on the operation of conservation covenants.

Issues raised in Committee

Conservation covenants (Part 7 of the Bill and schedules 16, 17 and 18) were considered during the nineteenth sitting of the Committee on 19 November 2020. There were several government amendments, all of which were agreed. There were no divisions in respect of Part 7.

The Opposition supported the establishment of conservation covenants. Dr Alan Whitehead, Shadow Minister, said they were “a good idea”, provided they operate as outlined in the Bill.177 Alan Whitehead did move amendment 14 in clause 121, but this was really a probing amendment.178 In brief, under clause 121 responsible bodies must make an annual return to the Secretary of State and in that return they must state whether they hold any conservation covenants during the relevant period, the number of covenants and the area of land each one covers. Under subsection (4) the

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177 PBC Deb, nineteenth sitting, 19 November 2020, c.592
178 Ibid
Secretary of State may by regulations demand more information than that already required by the Bill. The Shadow Minister questioned the use of this approach, the balance between duties which are “musts”, and powers, which are “mays”.179

In response, the Minister, Rebecca Pow, said that since conservation covenants are intended to be used over the long term, it is important that the Secretary of State should be able to ask for additional information in annual returns if that proves necessary in the future.180 Consequently, clause 121(4) provides the Secretary of State with the power to make regulations about the annual returns, with the “flexibility” to decide “when and how the regulation-making provision is given effect.”181

Agreed government amendments were largely of a technical nature. Specifically, amendments 224 and 225 to clauses 107 and 117 respectively, makes it clear 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.

Government amendment 71 concerned the application of Part 7 to Crown land. The Bill as introduced has the effect that conservation covenants survive when land passes to the Crown as “bona vacantia” (ownerless property).182 Amendment 71 in Schedule 17 ensures that conservation covenants are not extinguished when freehold land passes to the Crown through a process known as “escheat”.183 Specifically, amendment 71 replaces paragraph 3 and 4 of Schedule 17 with three new technical paragraphs: new paragraphs 3A, 3 and 3B.184

179 Ibid
180 Ibid
181 PBC Deb, nineteenth sitting, 19 November 2020, c.592
182 Bona vacantia means vacant goods and is the name given to ownerless property, which by law passes to the Crown. The Treasury Solicitor acts for the Crown to administer the estates of people who die intestate (without a will) and without known kin (entitled blood relatives) and collect the assets of dissolved companies and other various ownerless goods in England and Wales.
183 Escheat is the common law doctrine by which freehold property may be returned to the Crown. There are several different ways that this might happen. For example, the property of a dissolved company may pass to the Treasury Solicitor as bona vacantia (i.e. ownerless property), who may then disclaim the property. The freehold property may then become subject to escheat. Another example is where the liquidator of a company is being wound up in England and Wales disclaims any onerous property (with the permission of the court), the property may then become subject to escheat to the Crown. Other examples include a trustee in bankruptcy or Official Receiver disclaiming property vested in the bankrupt, and freehold property in England and Wales of a dissolved foreign company.
184 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. Paragraphs 3 and 3B are derived from the original paragraph 3, subject to some minor changes arising from consideration of paragraph 3A.
3.9 REACH and chemicals

Clause 125 and Schedule 19 of the Bill on regulation of chemicals extend and apply to the whole of the UK.

Background

The REACH Regulation or REACH refers to the EU regulation on chemicals: the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (No 1907/2006). Briefly, REACH requires chemical substances that are manufactured or imported into the EU to be registered with the European Chemicals Agency along with safety data about the chemical, before being placed on the market. It then provides a mechanism to place restrictions on the manufacture or use of certain hazardous chemicals.

REACH has been retained in domestic legislation following the end of the transition period and a UK REACH regime has been established in secondary legislation. Under the Northern Ireland Protocol, however, the EU REACH Regulation will continue to apply to Northern Ireland after the end of the transition period, while ‘UK REACH’ will regulate the access of substances to the market in Great Britain, as set out in the REACH etc. (Amendment etc.) (EU Exit) Regulations 2020.

Overview

Of the motions moved relating to the Environment Bill itself (rather than programming motions), 18 related to Schedule 19 of the Bill which concerns powers to amend the REACH Regulation and the REACH Enforcement Regulations 2008:

- eight were defeated on division;
- one was rejected without a vote;
- two technical amendments were agreed (these related to changing references from the ‘National Assembly for Wales’ to ‘Senedd Cymru’ or ‘Senedd’);
- one was withdrawn after debate;
- one was not moved and;
- five were not called.

Protected provisions

Paragraph 1 of Schedule 19 provides the Secretary of State with a power to make regulations to amend the REACH Regulation, provided that they consider the regulations are consistent with Article 1 of REACH (on the aim and purpose of the REACH). Paragraph 6 of the Schedule lists certain “protected provisions” that may not be amended under paragraph 1 powers (as set out in the table found at Schedule 19(6)).
Amendments 176, 108, 109, 110 and 111 all related to parts of the REACH Articles that the Opposition was seeking “to be protected in the translation into UK jurisdiction” and which, it stated, had been “left out” of the protected provisions list. The articles stipulated in the amendments included:

- Article 13 (General requirements for generation of information on intrinsic properties of substances)
- 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)
- Articles 32, 33 and 34 (Communication in the supply chain & a right to know for consumers)
- Article 40(2) (Third party information)\(^{185}\)

Fleur Anderson (Lab) explained that the Articles represented important safeguards and questioned the Minister as to why they were not included in the protected provisions list.

The Minister (Rebecca Pow) responded that the intention of the protected provisions list was not to “freeze detailed processes” but rather to ensure that the “fundamental principles of REACH cannot be changed”. She added that any proposed amendments made by the Secretary of State were “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”.\(^{186}\)

### Parity with EU REACH regulations

The Opposition unsuccessfully moved four amendments (187, 3, 198 and 174) and New Clause 11 each of which broadly aimed to ensure that the starting regulatory framework for UK REACH was as close as possible to EU REACH and did not “regress from what there was before”.\(^{187}\)

New Clause 11, for example, stated that “the Secretary of State must not use regulations under Schedule 19 to diminish protections provided by REACH legislation” and that “regulatory parity with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals” should be maintained.\(^{188}\)

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\(^{185}\) PBC Deb, Nineteenth sitting, 19 November 2020, c610

\(^{186}\) PBC Deb, Nineteenth sitting, 19 November 2020, c611

\(^{187}\) PBC Deb, Nineteenth sitting, 19 November 2020, c597

\(^{188}\) Public Bill Committee Proceedings, Environment Bill, 26 November 2020, p69
Minister, was concerned that “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”.\(^\text{189}\)

In response, the Minister emphasised that while she understood what the Opposition was aiming for in amendments 187, 3, 198 and 174 and New Clause 11, she did not believe they were necessary. This was on the grounds that there were 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.\(^\text{190}\)

The Minister added that she particularly disagreed with amendment 3 and New Clause 11(2) since they “seeked to impose dynamic alignment with the EU going forward” and could limit the UK’s ability to “look to other countries for the best ideas” on chemicals regulation.\(^\text{191}\)

Amendments 187, 198 and 174 were defeated on division (Ayes 5, Noes 9 in each instance) while Amendment 3 was rejected without a vote. New Clause 11 was not moved.

### Scientific advice mechanisms

The Opposition moved two amendments to Schedule 19 (227 and 228) that required the Secretary of State, before making regulations that amend the REACH regulations, “to take account of all relevant scientific evidence and advice through the Agency’s [the Health and Safety Executive’s] science advice mechanisms”.\(^\text{192}\)

The Minister noted that any proposals to amend REACH in the future must, under schedule 19(5), be subject to consultation, and that under schedule 19(5)(1)(a) the “agency in particular must always be consulted”. She went on to explain that the responsibility rests with “the agency to decide how to mobilise its various scientific advice mechanisms and then reflect the opinions that emerge in its consultation response”.\(^\text{193}\)

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\(^{189}\) PBC Deb, Nineteenth sitting, 19 November 2020, c597  
\(^{190}\) PBC Deb, Nineteenth sitting, 19 November 2020, c598  
\(^{191}\) ibid  
\(^{192}\) PBC Deb, Nineteenth sitting, 19 November 2020, c605  
\(^{193}\) PBC Deb, Nineteenth sitting, 19 November 2020, c606
Both amendments were defeated on division (Ayes 5, Noes 9 in both instances).

**Animal testing**

Fleur Anderson (Lab) tabled New Clause 9 which sought to “set targets” to reduce and/or replace chemical tests on animals conducted within the scope of the REACH Regulation. She highlighted that the UK reported “conducting more animal tests than any other country in Europe, adding that the EU REACH legislation had “resulted in a huge increase in the use of animals in European and UK laboratories”. The Minister stated that she agreed with what Ms Anderson was setting out to achieve but that there were other routes through which targets on animal testing could be pursued:

*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.*

The Minister also emphasised that Article 25(1) of EU REACH (animal testing as a last resort) was included in Schedule 19(6) of the Bill as a ‘protected provision’. Ms Anderson subsequently withdrew New Clause 9.

3.10 **New clauses**

A number of new clauses not directly linked to other provisions in the Bill were also moved during the Committee stage. Those linked to the Bill’s existing provisions are discussed under the relevant section headings in this briefing paper. No Opposition new clauses were added to the Bill.

**Government new clause**

**Use of forest risk commodities in commercial activity**

Government new clause 31 and new schedule 1 aim to reduce deforestation caused by agriculture, by setting a framework of requirements on business. Businesses will be prohibited from using “forest risk commodities” produced where forest is being or may be illegally converted to agricultural use for the purposes of producing the commodity. Forest risk commodities

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194 PBC Deb, Twenty First sitting, 24 November 2020, c656
195 PBC Deb, Twenty First sitting, 24 November 2020, c656
are defined in new schedule 1 as being “a commodity specified in regulations made by the Secretary of State.” The regulations may specify only a commodity that has been produced from a plant, animal or other living organism. Examples of the commodities include soya, palm oil and cocoa.

The Minister set out that businesses 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 would be subject to fines. She set out that the necessary secondary legislation would be laid shortly after COP26 in November 2021 and that the Government will consult again as it develops the secondary legislation, with Parliament having the opportunity to scrutinise, “many of the regulations.”

The Government had consulted previously on measures to prevent forests and other important natural areas from being converted illegally in to agricultural land earlier in August 2020. Before this, the Government had asked an independent taskforce – the Global Resource Initiative (GRI) – to provide it with advice on how efforts to tread more lightly on the environment could be strengthened. The GRI’s final recommendations report, published in March 2020 set out why further action was necessary:

The UK is highly dependent on imported commodities. Although 52% of the unprocessed products eaten in the UK in 2016 were produced nationally, estimates of the total area required to grow crops to meet the demands of the UK food system suggest that over two thirds of the UK’s land footprint is overseas. A 2017 report identified that seven key commodities – beef and leather, cocoa, palm oil, pulp and paper, rubber, soya and timber – were responsible for the largest proportion of the UK’s imported commodity driven overseas land footprint, an area equivalent to over half the size of the UK, over six times the size of Wales. While this is on average less than 3% of total global production for most of these commodities, it is not an insignificant amount, particularly considering the potential to align the UK’s actions with efforts in other major producing and consuming economies to create a new global framework for collective action.

The report concluded that “Commodity-driven forest loss and land conversion must be an urgent global priority.” Among other things it called for the UK to:

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196 PBC Deb, twentieth sitting, 24 Nov 2020 c620
198 PBC Deb, twentieth sitting, 24 Nov 2020 c620
199 HM Government, Due diligence on forest risk commodities, 25 August 2020
Introduce a legally binding target to end deforestation within UK agricultural and forestry commodity supply chains, as soon as practicable, by no later than 2030, beginning with commodities and derived products that contribute most significantly to deforestation before extending to other supply chains\(^{200}\).

The Government’s response to the GRI’s report confirmed that it would introduce measures in the Environment Bill.\(^{201}\) Further information about the new clause 31 and new schedule 1 and the Government’s justification for new regulation making powers is set out in its **Supplementary delegated power memorandum**, 10 November 2020.

Shadow Minister Dr Whitehead called the new clause and schedule a “tremendous step forward in action” and said that the Opposition “wholly welcome” the measures. He questioned however, why they were so late in being added to the Bill. He also hoped that the Government would go beyond forestry products and into other areas.\(^{202}\) Discussion about these other areas was raised in relation to Opposition new clause 5 (set out below in this paper).

Amendment 231, new clause 31 and new schedule 1 were added to the Bill without division.\(^{203}\)

**Opposition new clauses**

The Opposition also moved a number of new clauses. None of them were added to the Bill. Some of the main debates are outlined below.

**Environmental standards: non-regression**

Shadow Defra Minister Daniel Zeichner moved new clause 2 which aimed to provide that the Secretary of State must not diminish any environmental standards in place which were effective in UK law on the EU exit transition period (31 December 2020). He stated that “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.” He also set out that it was not a question of “slavishly following whatever the EU chooses to do in the future, but of establishing that we do not go back.” He also voiced concern that many statutory instruments which copy across EU environmental laws contain review provisions in the them, which were not there in their original EU form.\(^{204}\)

\(^{200}\) Global Resource Initiative, *Final recommendations report*, March 2020, p7


\(^{202}\) PBC Deb, twentieth sitting, 24 Nov 2020 \(^{c621}\)

\(^{203}\) PBC Deb, twentieth sitting, 24 Nov 2020 \(^{c622\ and\ 631}\) For schedule 1 see PBC Deb twenty-second sitting, 26 Nov \(^{c731}\)

\(^{204}\) PBC Deb, twentieth sitting, 24 Nov 2020 \(^{c632\-633}\)
The Minister replied that the new clause was not necessary and committed to improving environmental standards, as follows:

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.

(…)

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.²⁰⁵

Daniel Zeichner said he was not convinced by the Minister’s arguments and pushed the new clause to a division, where it was defeated by 6 votes to 9.²⁰⁶

Well consents for hydraulic fracturing: cessation of issue and termination

Shadow Minister (Business, Energy and Industrial Strategy), Dr Whitehead, moved new clause 3 which aimed to prevent the Oil and Gas Authority from being able to provide licences for hydraulic fracturing (fracking), exploration or acidification, and would revoke current licences after a brief period to wind down activity. He explained that he wanted to use the Bill to ensure that no fracking could take place in this country, calling it a “form of power [that] 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.”²⁰⁷

²⁰⁵ PBC Deb, twentieth sitting, 24 Nov 2020 c633
²⁰⁶ PBC Deb, twentieth sitting, 24 Nov 2020 c638
²⁰⁷ PBC Deb, twentieth sitting, 24 Nov 2020 c639-641
The Minister replied setting out the current moratorium on shale gas extraction, which she said was based on current scientific evidence. She highlighted that there were 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.”

New clause 3 was pushed to a division where it was defeated by 5 votes to 9.

**Environmental and human rights due diligence: duty to publish draft legislation**

Shadow Defra Minister Daniel Zeichner moved new clause 5 which would require the Secretary of State to publish a draft Bill on mandatory environmental and human rights due diligence within six months of the Bill becoming an Act. 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. He explained 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. He wanted the UK to be a world leader in this and he was not convinced the Government’s new clause 31 (set out above) would achieve this.

The Minister replied that by passing Government new clause 31, (set out above), the UK had made more progress on this issue than any other country. She disagreed that commodity production and human rights should be tackled at the same time and she set out a little more about how the Government’s approach would work:

> 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.

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208 PBC Deb, twentieth sitting, 24 Nov 2020 c643
209 PBC Deb, twentieth sitting, 24 Nov 2020 c645
210 PBC Deb, twentieth sitting, 24 Nov 2020 c647
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.

The hon. Member for Cambridge touched briefly on finances. I want to clarify that the due diligence legislation is designed for a specific purpose, which is to ensure that companies in the UK are not using products that have come from illegally used or occupied land. We anticipate that information included in the reports published by the regulator will provide data, which others, including the finance sector, can use, thus helping inform investors of the extent to which the companies they invest in are involved in illegal deforestation.211

The new clause was pushed to a division where it was defeated by 5 votes to 9.212

**OEP register**

Shadow Minister, Dr Whitehead moved new clause 13 which would require the OEP to keep a public register of correspondence with the Government. He wanted there to be a transparent record of conversations between Ministers and the OEP in order to help assure its independence from Government.213

The Minister responded that there were already elements in the Bill to help ensure transparency, such as clause 22 which provides a duty on the OEP to have regard to the need to act transparently. She noted however, that there would be certain situations when transparency might be “inappropriate and unhelpful”. The exercise of its scrutiny and enforcement functions would require a degree of confidentiality if the OEP was to engage effectively on sensitive issues with public authorities, and avoid prejudicing possible enforcement action. She also argued that the new clause would be administratively burdensome and “a poor use of resources”.

New clause 13 was pushed to a division where it was defeated by 5 votes to 9.214

**Reservoirs: flood risk**

Fleur Anderson (Lab) moved new clause 15 relating to reservoirs and flood risk. The clause would have required the Secretary of State to make regulations giving powers to the Environment Agency, to require “water
companies and other connected agencies” to manage reservoirs to mitigate flood risk. The general purpose of the amendment was to facilitate arrangements that would allow reservoir levels to be managed in a way that would manage the risks of both flooding and drought.

Ms Anderson said that the current legislation underpinning water industry regulation “has a focus on mitigating drought risk rather than flood risk”, and that the new clause “seeks to redress the balance”. She said that the amendment would facilitate the infrastructure needed to transfer water between reservoirs, to manage the twin risks of flooding and drought. She also said that the amendment would ensure that agreements are put in place between the Environment Agency, water companies and other bodies “long in advance of any actual floods”, which could “identify what capacity level is appropriate at which reservoirs”.

Responding to the debate, Environment Minister Rebecca Pow told the Committee that “flood risk management is a top priority for this Government”, highlighting the July 2020 Government policy statement on flood and coastal erosion risk management, but that “this Bill is not the place for new flood management legislation”. The Minister said that the “primary purpose of water companies” to maintain secure water supplies “must be considered first, before any additional duties are placed on them”. However, she also noted that water companies are risk management authorities (RMAs) under the *Flood and Water Management Act 2010*, with a duty to co-operate with other RMAs, including the Environment Agency, and referred to an existing example of an agreement relating to Gorpley Reservoir in West Yorkshire. She also referred to “over 200 reservoirs” currently operated by the Environment Agency and used for flood risk management.

Ms Anderson responded that the new clause would balance “the top priority of flood mitigation [...] with the top priority of a world-leading Environment Bill”. The amendment was defeated on division by 5 votes to 9.

The new clause was supported by Holly Lynch (Lab), who had previously introduced a Ten Minute Rule Private Members’ Bill on the same subject in the 2017-19 Parliament. The *Reservoirs (Flood Risk) Bill 2017-19* would have given the Environment Agency similar powers.

For background information, the Environment Agency published *guidance on the development and use of flood storage reservoirs* (including adaptation of existing reservoirs for flood storage) in November 2016.

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215 PBC Deb, twenty first sitting, 24 Nov 2020 c670-2
216 PBC Deb, twenty first sitting, 24 Nov 2020 c673-5
217 PBC Deb, twenty first sitting, 24 Nov 2020 c675
219 Environment Agency et al., *Design, operation and adaptation of reservoirs for flood storage*, 18 November 2016
Waste hierarchy

Shadow Minister (Environment, Food and Rural Affairs) Ruth Jones moved Opposition new clause 16 which would require the Secretary of State to take into account the waste hierarchy when implementing part 3 of the Bill on waste and resource efficiency. The waste hierarchy stems from the EU Waste Framework Directive (Directive 2008/98/EC). It sets out the order of priority to apply to products and waste and shows that prevention and re-use options should be considered before recycling. Ruth Jones said that the new clause would help the provisions in the Bill to deliver “real results”\(^{220}\).

The Minister confirmed that measures in the Bill had been developed with the waste hierarchy as its “guiding light”. She set out that 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* and she emphasised that the Government had affirmed waste hierarchy principles in its 2018 Resources and Waste Strategy\(^{221}\).

New clause 16 was pushed to a division where it was defeated by 5 votes to 9\(^{222}\).

Duty to prepare a tree strategy for England

Opposition new clause 19 aimed to ensure that the Government prepared a tree strategy for England, including the production of targets for the protection, restoration and expansion of trees and woodland in England. Labour Shadow Minister Dr Whitehead stated that trees play an “incredibly important” part in meeting the net zero target for carbon emissions by 2050 because of their carbon sequestration abilities. He said that the tree strategy should be aligned with the net zero target, calling tree sequestration the “biggest net negative weapon in our arsenal”\(^{223}\).

The Minister, Rebecca Pow, said that she shared the desire to deliver on a tree-planting commitment and agreed that a “major increase” in tree planting was needed. She confirmed that a consultation on a new tree strategy for England had been published\(^{224}\) and stated that the final strategy will be published in 2021\(^{225}\).

Dr Whitehead pushed the new clause to a division, stating that it was “important that we put on record that there should be a statutory tree

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\(^{220}\) PBC Deb, twenty first sitting, 24 Nov 2020 c676
\(^{221}\) PBC Deb, twenty first sitting, 24 Nov 2020 c676
\(^{222}\) PBC Deb, twenty first sitting, 24 Nov 2020 c678
\(^{223}\) PBC Deb, twenty first sitting, 24 Nov 2020 c679
\(^{224}\) For further information see Defra website, [*England Tree Strategy*](#). The consultation closed in September 2020
\(^{225}\) PBC Deb, twenty first sitting, 24 Nov 2020 c685
target in the Bill and that we should get on with that strategy now.”"226 It was defeated by 5 votes to 7.227

State of nature target

Shadow Defra Minister Daniel Zeichner moved Opposition new clause 20 which would have required the Government to set a target to reverse the decline in the state of nature in England; and publish a document setting how it intended to do so at least 30 days in advance of the next Conference of the Parties to the Convention on Biological Diversity. This is currently scheduled for the second quarter of 2021.228 He explained the reason for the amendment as follows:

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.

In rejecting the amendment, Rebecca Pow referred to the requirement in the Bill “to set at least one long-term, legally binding target in relation to biodiversity” and the planned target-setting process, that will be “based on scientifically credible evidence, as well as economic analysis” and concluded “we do not want to prejudge the specific targets that will emerge from this process”.229 The amendment failed at division.

Banning of lead shot for killing birds and wild animals

New clause 23, moved by Fleur Anderson (Lab), would have banned the use of lead shot, by prohibiting its use in a shotgun as a way of killing wild birds and made it an offence to use lead shot to kill or take a wild animal under the Wildlife and Countryside Act 1981.230 On tabling the amendment she set out “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”231; she also referred to existing bans in Denmark and the Netherlands introduced in the 1990s; and recognised moves by the British Association for Shooting and Conservation (BASC) to agree a ban within five years, stating however that “things are not moving fast enough”.232 With regards to existing restrictions in use of led shot in wetlands “enforcement of the limited regulation has

226 PBC Deb, twenty first sitting, 24 Nov 2020 c687
227 PBC Deb, twenty first sitting, 24 Nov 2020 c690
228 PBC Deb, twenty first sitting, 24 Nov 2020 c690
229 PBC Deb, twenty first sitting, 24 Nov 2020 c693
230 PBC Deb, twenty second sitting, 26 Nov 2020 c699
231 PBC Deb, twenty second sitting, 26 Nov 2020 c701
232 PBC Deb, twenty second sitting, 26 Nov 2020 c702
been negligible so far, and human and livestock health have not been protected”.233

The Minister agreed that the issue was “really significant for the environment, animal welfare and even human health” but raised a number of concerns and stated that it was “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”234. She also committed to asking officials “to continue exploring options for the most effective way forward that would tackle this whole issue in the round”235. The clause was pushed to a vote and failed at division.

Environmental objective and commitment

Shadow Minister (Business, Energy and Industrial Strategy), Dr Whitehead, moved Opposition new clause 28 which aimed to tie together obligations and discretions of the various parties under this Act with other pledges, commitments and international agreements made by the Government on the environment. He stated that his aim was to make the environmental objective in the Bill more cohesive and said that it offered a “much better and improved environmental objective clause.”236

The Minister replied that the Bill had been devised as one framework. She set out how the clauses were aligned with each other and with various Government commitments on the environment. She said the new clause was not needed and that, “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.”237

The new clause was pushed to a division where it was defeated by 5 votes to 9.238

Smoking related waste

Shadow Minister (Environment, Food and Rural Affairs), Ruth Jones, moved Opposition new clause 30. It aimed to ensure that the Government created a producer responsibility scheme for smoking related waste. She explained that no such scheme exists at present and the clear up and waste reduction of cigarette butts are not covered by other Directives. She asked the Minister for a clear action plan and timetable when addressing the issues raised by the new clause. 239

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233 PBC Deb, twenty second sitting, 26 Nov 2020 c703
234 PBC Deb, twenty second sitting, 26 Nov 2020 c705
235 PBC Deb, twenty second sitting, 26 Nov 2020 c705
236 PBC Deb, twenty second sitting, 26 Nov 2020, c706-7
237 PBC Deb, twenty second sitting, 26 Nov 2020, c707-8
238 PBC Deb, twenty second sitting, 26 Nov 2020, c709
239 PBC Deb, twenty second sitting, 26 Nov 2020, c713
In reply, the Minister highlighted that Keep Britain Tidy was working with the tobacco industry to develop a non-regulatory producer responsibility scheme. The Government was “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.” She went on to confirm that if smoking-related litter continues to be a significant environmental concern, the Government will reflect on the steps it can take to ensure that the tobacco industry takes more responsibility. She clarified that the Bill would allow Government to legislate for an extended producer responsibility scheme for tobacco products, “if such an intervention is considered necessary.”

Ruth Jones said it was good to hear that the Minister was keen to implement measures in the future, but questioned why it couldn’t be done now in the Bill. For that reason, she sought to divide the Committee. The new clause was defeated by 5 votes to 9.

**Clean air duty**

Fleur Anderson (Lab) moved new clause 35 which would require the Secretary of State to publish an annual report on air quality, to include specifically indoor air quality and the work of public authorities and Government departments working together to improve it. It was tabled by the All-Party Parliamentary Group (APPG) on air pollution. Fleur Anderson said it went further than existing measures in the Bill because it would add 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.”

The Minister replied that there was already cross-Governmental work taking place on these issues, including on indoor air quality which she set out as follows:

> 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.

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240 PBC Deb, twenty second sitting, 26 Nov 2020, c714
241 PBC Deb, twenty second sitting, 26 Nov 2020, c715
242 PBC Deb, twenty second sitting, 26 Nov 2020 c721
243 PBC Deb, twenty second sitting, 26 Nov 2020, c723
The Minister also said that the Bill would introduce additional reporting requirements, including one 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.

Fleur Anderson noted schedule 11, but said that the APPG had “taken advice from scientific experts and feel that there is something missing in the reporting that would actually make a difference”. She pushed the new clause to a division, where it was defeated by 5 votes to 10.244

Reducing water demand

Opposition new clause 34 was moved by Shadow Minister (Environment, Food and Rural Affairs) Ruth Jones. It would amend Part G to the Building Regulations to require all fittings meet specified water efficiency requirements and to introduce minimum standards on water efficiency.245

The Minister, Rebecca Pow, responded by presenting actions that are currently being taken by the Government to address this issue:

....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.246

After some further discussion the amendment was withdrawn.247
4 Report stage

The Bill has been scheduled to have two days for its remaining stages in the Commons (Report and Third Reading). These took place on 26 January 2021 in the 2019-21 Parliamentary session and on 26 May 2021 in the 2021-22 session.

On 26 January 2021 the Government tabled a carry-over motion for the Bill, and announced that its remaining stages would be delayed until the next Parliamentary session. In the debate on day one of the Report stage the Minister, Rebecca Pow, explained that this was because of pressures on Parliamentary time caused by the Covid-19 pandemic:

> As Members of the House are aware, the immense pressure put on the parliamentary timetable by the covid pandemic means that the Bill will sadly need to be carried over to the second Session. As I stated at the start, we will be back. I give an assurance that this carry-over will in no way reduce our commitment on the environment. Intensive work relating to measures in the Bill is already under way and will continue.

In a Defra in the Media blog piece published on the same day, Rebecca Pow reaffirmed the Government’s commitment to the Bill and provided more information on timings:

> “We remain fully committed to the Environment Bill as a key part of delivering the Government’s manifesto commitment to create the most ambitious environmental programme of any country on Earth. “Carrying over the Bill to the next session does not diminish our ambition for our environment in any way - with Report Stage recommencing early in the Second Session and Royal Assent expected in the Autumn.

The clause numbers referred to in this section and the subsections below refer to the clause numbers of the Bill as amended in Committee, Bill 220 2019-21.

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248 UK Parliament, Section 5, Votes and Proceedings, Tuesday 26 January 2021
249 HC Deb 26 January 2021 c325
250 Defra in the Media Blog, Environment Bill – next steps, 26 January 2021
4.1 Day one of Report Stage

At day one of Report Stage, on 26 January 2021, only Government amendments were added to Bill. They were tabled by Secretary of State, George Eustice. Most of them were described by the Minister, Rebecca Pow, as being “technical” in nature.\(^{251}\) None of them were taken to a division. They were:

- **Amendment 6** to provide that in Clause 6, “England”, includes the English inshore region and the English offshore region. The Minister, Rebecca Pow highlighted that it, “clarifies that both the terrestrial and the marine aspects of England’s natural environment will be considered when conducting the significant improvement test in clause 6. That has always been our intention, as I explained in Committee, but the amendment puts it beyond doubt.”\(^{252}\) The significant improvement test relates to reviews of the environmental targets that the Bill will establish. The test is met where the Secretary of State considers that meeting the targets will bring about a significant improvement in the natural environment in England. The first significant improvement test review will be by 31 January 2023.\(^{253}\)

- **Amendment 31**, (to clause 37), to clarify that that section 31(2A) of the Senior Courts Act 1981 does not apply on an environmental review.

- **Amendments 9 to 20**, (to schedule 3), which are intended to align the clauses relating to the Office for Environmental Protection’s Northern Ireland enforcement functions with the equivalent provisions in part 1 of the Bill relating to England (that were amended previously at Committee Stage). In the debate, the Minister, Rebecca Pow said that these amendments were personally requested by Northern Ireland Ministers.\(^{254}\)

- **Amendments 32 to 35**, (to clauses 59 and 62), are intended to correct references to existing legislation that is no longer in force following the end of the Brexit transition period.\(^{255}\)

- **Amendment 7** relates to regulations under clause 73 (covering environmental recall of motor vehicles), specifying relevant environmental standards to avoid the need to amend the regulations each time standards are updated. The Minister clarified that this means, “that references to EU standards do not require updating to ensure that they are enforceable with this tough new vehicle recall power. It is a

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\(^{251}\) HC Deb 26 January 2021 c220
\(^{252}\) HC Deb 26 January 2021 c220
\(^{253}\) Environment Bill 2019-21 Explanatory Notes, p25
\(^{254}\) HC Deb 26 January 2021 c221
\(^{255}\) HC Deb 26 January 2021 c292
technical amendment that ends any risk that we will be unable to issue a recall affecting Northern Ireland.”

- Amendment 8 will update clause 91, as it currently refers to the Criminal Justice Act 2003, which has now been superseded by the Sentencing Act 2020.

Five opposition amendments and new clauses were pushed to division, but all of them were defeated (and not added to the Bill). These were:

- New clause 1, moved by Caroline Lucas (Green Party), which aimed to require public authorities to act in accordance with environmental principles when exercising their functions. It was defeated by 366 votes to 266 votes.

- New Clause 5, tabled by Hilary Benn (Labour), which aimed to place introduce a new state of nature target. It would introduce a duty on the Secretary of State to meet a target to begin to reverse loss of biodiversity in England no later than 2030. It was defeated by 360 votes to 217 votes.

- Amendment 25 (to clause 2), tabled by shadow Minister Ruth Jones (Labour), which aimed to set parameters on the face of the Bill to ensure that the particulate matter (PM2.5) target to be set will be at least as strict as the 2005 World Health Organization guidelines, with an attainment deadline of 2030 at the latest. It was defeated by 354 votes to 227 votes.

- Amendment 39 (to clause 7), tabled by shadow Secretary of State Luke Pollard (Labour), which aimed to place requirements on Ministers to allow parliamentary scrutiny of exemptions granted to allow plant protection products banned under retained EU law (such as neonicotinoid pesticides), where they are likely to impact bees and other species covered by an environmental improvement plan. It was defeated by 366 votes to 221 votes.

- Amendment 24 (to schedule 20), tabled by shadow Minister Ruth Jones (Labour), which aimed to set some minimum protections under the REACH chemical regime and remove the possibility that a Secretary of State might lower current standards. It was defeated by 357 votes to 227 votes.

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256 HC Deb 26 January 2021 c292
257 UK Parliament, Section 7, Votes and Proceedings, Tuesday 26 January 2021
258 HC Deb 26 January 2021 c216
259 HC Deb 26 January 2021 c227-8
260 HC Deb 26 January 2021 cc221
261 HC Deb 26 January 2021 cc221
262 HC Deb 26 January 2021 c290
4.2 Day two of Report Stage

At day two of Report Stage (26 May 2021), two Government new clauses were added to the Bill, which give powers to amend habitats regulations.

Several Opposition new clauses were debated, all of which were either defeated on division or withdrawn.

Background to the Government’s new clauses

Defra Secretary of State, George Eustice gave a speech on 18 May 2021 on **restoring nature and building back greener**. A press release gave further details and positive reaction from environmental organisations. A short policy paper, **Nature for people, climate and wildlife**, was published at the same time.

In his speech, the Secretary of State said the Government would set a single target for 2030 that “will drive wide-ranging improvements to the state of nature”.

The final target will be set through secondary legislation, “following the agreement of global targets at the UN Nature Conference CBD [Convention on Biological Diversity] COP15 in the autumn”. To deliver this target the Secretary of State said there needed to be an immediate change in approach, highlighting existing “highly restrictive legal processes”:

> We must move the emphasis away from processes that simply moderated the pace of nature’s decline, and instead put in place the governance regime that can deliver nature’s recovery. We need to create space for the creative public policy thinking that can deliver results, rather than relying on change being set principally by litigation and case law.

In Natural England, we have exceptional technical expertise on habitats and our protected sites but this precious expertise is often distracted by highly prescriptive legal processes. I would like to get to a position where our talented staff in Natural England have fewer

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263 HM Government, [Environment Secretary speech at Delamere Forest on restoring nature and building back greener](https://www.gov.uk/government/speeches/environment-secretary-speech-at-delamere-forest-on-restoring-nature-and-building-back-greener), 18 May 2021


266 The UN Biodiversity Conference is scheduled to take place from 11-24 October 2021, in Kunming, Yunnan Province, China
distractions and are able to prioritise the interventions that will make a big difference. I want them to have more freedom to exercise judgement, rather than being stewards for a process.  

To do this, the Government would include powers in the Environment Bill to “re-focus the Habitats Regulations”. The Secretary of State said this would:

...ensure our legislation adequately supports our ambitions for nature, including our new world leading targets. We want to ensure that the targets and governance framework in the Environment Bill becomes our compass in future. The existing habitats regulations predate the Environment Bill and the target we are setting today.

In his speech, George Eustice said the Government would set up a working group to consider appropriate change and take “a cautious approach to reform”:

I recognise, of course, that our existing regulations are established. And of course, there will always be a need for some form of assessment and screening process. I have therefore asked Lord Benyon to chair a small working group together with Tony Juniper, Christopher Katkowski QC and Rebecca Pow to consider changes that might be appropriate.

We will also consult the new Office for Environmental Protection on any proposal before it is brought forward. And of course work with conservation groups before any regulatory changes might be made.

An article in ENDS report on 19 May 2021 summarised the proposals and reactions from various organisations, including Ruth Chambers from Green Alliance, who said:

The government has said that it wants to realign laws to protect habitats with our own domestic priorities and that this will not reduce environmental protection, but as drafted these government amendments fail to secure this commitment.

In the same article, Joan Edwards from the Wildlife Trust highlighted the commitment from the Secretary of State that any changes would not

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267 Defra, Environment Secretary speech at Delamere Forest on restoring nature and building back greener, 18 May 2021
268 Defra, Environment Secretary speech at Delamere Forest on restoring nature and building back greener, 18 May 2021
269 Defra, Environment Secretary speech at Delamere Forest on restoring nature and building back greener, 18 May 2021
270 ENDS report, Eustice reveals plan to ‘refocus’ habitats regulations, 19 May 2021 [subscription required]
weaken or undermine the Habitats Regulations, but also raised some concerns:

Politicians have tried for years to water-down these protections – even though we live in one of the most nature-depleted countries in the world and wildlife is more threatened than ever before. There have been a number of government reviews – and it is deeply concerning to discover that the imperative to protect our most important habitats and species could be weakened. We must all fight this.271

New Clauses 21 and 22: power to amend Habitats Regulations

New Clause 21 (1) provides powers to amend the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) in relation to England. New Clause 21(3) and (4) also provide a general power to set biodiversity targets, as referred to in George Eustice’s speech:

(3) The regulations may impose requirements, or specify objectives or matters, relating to—

(a) targets in respect of biodiversity set by regulations under section 1;

(b) improvements to the natural environment which relate to biodiversity and are set out in an environmental improvement plan.

(4) The regulations may impose any other requirements, or specify any other objectives or matters, relating to the conservation or enhancement of biodiversity that the Secretary of State considers appropriate.272

In the Report Stage debate, the Minister Rebecca Pow, explained that new clause 21 provided for a power to “refocus the Conservation of Habitats and Species Regulations 2017 to ensure that our legislation adequately supports our ambitions for nature, including our new, world-leading 2030 target to halt the decline of species.”273

The new clause 21(1) and (2) provides powers to amend Habitats Regulation 9(1). The amendment will mean that public authorities can be required to comply with requirements or objectives, or have regard to matters, specified in regulations. The Government’s explanatory statement to the new clause gives an example as the requirements, objectives or matters relating to

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271 ENDS report, Eustice reveals plan to ‘refocus’ habitats regulations, 19 May 2021 [subscription required]
272 HOC, Report Stage: Environment Bill (Amendment Paper), 24 May 2021
273 HC Deb 26 May 2021 c382
biodiversity targets under clause 1 of the Bill, or aspects relating to biodiversity in the environmental improvement plan.\textsuperscript{274}

The Minister confirmed that under new clause 21(10), the power to amend regulation 9 can come into force only from 1 February 2023: “once we have set the biodiversity targets and conducted the first review of the environmental improvement plan, as provided for in part 1 of the Bill.”\textsuperscript{275}

As well as highlighting the working group announced previously by the Secretary of State and consultation with the OEP, the Minister also set out the role of the Commons in making any regulatory changes:

> The clause will also require us to explain to this House how the use of the power would maintain the level of environmental protections provided by the Habitats and Species Regulations before any regulatory changes are made, and of course the House will have the opportunity to vote on any reforms.\textsuperscript{276}

New Clause 22 provides general powers for the Secretary of State to amend Part 6 of the Habitats Regulations, by making regulations. Part 6 sets out the requirements to assess plans and projects. Ministry of Housing, Communities and Local Government guidance on the appropriate assessment under the Habitats Regulations, summarises existing requirement as follows:

> All plans and projects (including planning applications) which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the plan or project is likely to have significant effects on that site.

> This consideration – typically referred to as the ‘Habitats Regulations Assessment screening’ – should take into account the potential effects both of the plan/project itself and in combination with other plans or projects.

> Where the potential for likely significant effects cannot be excluded, a competent authority must make an appropriate assessment of the implications of the plan or project for that site, in view the site’s conservation objectives. The competent authority may agree to the plan or project only after having ruled out adverse effects on the integrity of the habitats site.

> Where an adverse effect on the site’s integrity cannot be ruled out, and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of over-riding

\textsuperscript{274} House of Commons Environment Bill Amendment Paper, 24 May 2021, NC21 Members explanatory statement  
\textsuperscript{275} HC Deb 26 May 2021 c383  
\textsuperscript{276} HC Deb 26 May 2021 c383
public interest and if the necessary compensatory measures can be secured.\textsuperscript{277}

Under New Clause 22, when making new regulations, the Secretary of State must have regard to the particular importance of furthering the conservation and enhancement of biodiversity. There is no date set for when this would come into force.

Both new clauses would require the Secretary of State to be “satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations” and make a statement to Parliament to that effect. \textsuperscript{278}

Parliamentary response to the new clauses

Labour Shadow Secretary of State, Luke Pollard, expressed concern that the new clauses could be used to dilute the environmental protections currently in the nature directives. He called for more explicit protection to be included in the Bill.\textsuperscript{279}

Green Party MP, Caroline Lucas, also expressed concern that the new clauses could ultimately be used to reduce protection for habitats and wildlife:

> Although there is undoubtedly a strong case for aligning laws that protect habitats and species with the goal of halting the decline of nature by 2030, I am concerned that the Government proposal is for new regulations that in fact could replace the habitats regulations and risk losing vital protection for wildlife, rather than adding to them. Yet the Bill is not a replacement for the nature directives. They serve two distinct purposes. The first—the Bill—sets an overarching nature’s recovery. The second provides protection for particular species and habitats, including particular local populations and individual specimens.

> In order to fully restore nature, we need both species and site-specific protection, as well as a bold overall goal. As these new clauses are currently drafted, though, they risk removing the much needed protection of species and nature-critical areas, such as great crested newts or special areas of conservation, with significant damage to particular wildlife being masked by hoped-for overall trends of improvement. We know that the scale and health of individual populations are crucial to restoring biodiversity. I am also concerned that there has been no prior consultation or engagement with stakeholders on these amendments and that neither an impact

\textsuperscript{277} MHCLG, \textit{Guidance: Appropriate Assessment}, 22 July 2019
\textsuperscript{278} HC Deb 26 May 2021 c383
\textsuperscript{279} HC Deb 26 May 2021 c387
Both New Clauses 21 and 22 were added to the Bill without division.\textsuperscript{281}

**Opposition amendments**

Four opposition amendments and new clauses were pushed to division, but all of them were defeated (and not added to the Bill). These were:

- **New Clause 25**: duty to prepare a tree strategy for England, tabled by the Labour shadow Defra team. It aimed to ensure that the Government produces a strategy and targets for the protection, restoration and expansion of trees and woodland in England.\textsuperscript{282} It was defeated by 352 to 217 votes.\textsuperscript{283}

- **Amendment 29**: tabled by Sarah Olney MP (Liberal Democrat), which aimed to ensure that decisions that affect the natural environment, such as planning decisions, net gain habitat enhancements and targeted investment in environmental land management, are informed by Local Nature Recovery Strategies.\textsuperscript{284} It was defeated by 359 to 210 votes.\textsuperscript{285}

- **New Clause 12**: Well consents for hydraulic fracturing: cessation of issue and termination, tabled by the Labour shadow Defra team. It aimed to 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.\textsuperscript{287} It was defeated by 357 to 216 votes.\textsuperscript{288}

- **New Clause 24**: Prohibition on burning of peat in upland areas, tabled by the Labour shadow Defra team. It aimed to extend the coverage of the peat burning ban from the 142,000 ha of upland peat currently covered to the full 355,000 ha of upland peat in England.\textsuperscript{289} It was defeated by 360 to 208 votes.\textsuperscript{290}
5 Queen’s Speech 2021 and Government plans to amend the Bill further

The Queen’s Speech on 11 May 2021 confirmed that the Environment Bill would return in the 2021-22 Parliamentary session. The background briefing notes published by the Government to accompany the speech restated the purpose of the Bill and its main elements.

Reducing harm from sewage overflows

The Queen’s Speech set out some amendments that the Government proposes to make to the Bill, as follows:

We will be putting forward amendments to the Environment Bill to reduce the harm from storm overflows to our rivers, waterways and coastlines. New duties will require the Government to publish a plan to reduce sewage discharges from storm overflows by September 2022 and report to Parliament the progress of implementing the plan.

The Government has also published a press release to provide more detail on the proposed amendments. It stated:

During wet weather storm overflows release diluted wastewater into rivers, preventing a combination of sewage and rain from the overloading the sewers. However, their use has increased in recent years as climate change has led to greater rainfall and water infrastructure has not kept pace with population growth.

The legal duties added to the Environment Bill will drive the changes needed to improve our water environment. The three duties are:

- a duty on government to publish a plan by September 2022 to reduce sewage discharges from storm overflows;
- a duty on government to report to Parliament on progress on implementing the plan; and
- a duty on water companies to publish data on storm overflow operation on an annual basis.

291 HL Deb 11 May 2021, c3
292 HM Government, Queen’s Speech 2021 Background Briefing Notes, 11 May 2021, p129
293 HM Government, New Environment Bill provisions to tackle storm overflows, 11 May 2021
Further information about sewage discharge into rivers and waterways is provided in the Library briefing paper on the Sewage (Inland Waters) Bill 2019-2021. This paper related to a Private Member’s introduced by Phillip Dunne MP in the 2019-21 Parliamentary session which did not pass all of its stages after its second reading was postponed. This Bill would have amended the Water Industry Act 1991 and placed a duty on water companies to ensure that untreated sewage was not discharged into rivers or other inland water bodies in England. The Government had said previously that it was “very supportive” of the intentions of this Bill.294

At Report Stage of the Bill the Minister, Rebecca Pow, confirmed that amendments in this area would be tabled in the House of Lords.295

Biodiversity net gain for major infrastructure projects

At the time of the Spring Statement 2019, the Government commissioned Professor Sir Partha Dasgupta to lead an independent, global review on the economics of biodiversity.296 The review aimed to:

- assess the economic benefits of biodiversity globally
- assess the economic costs and risks of biodiversity loss
- identify a range of actions that can simultaneously enhance biodiversity and deliver economic prosperity297

The report, Economics of Biodiversity: The Dasgupta Review was published on 2 February 2021.

In the Government’s June 2021 response to the Dasgupta Review it committed to introducing, via amendments to the Environment Bill, requirements for biodiversity net gain for New Nationally Significant Infrastructure Projects in England.298 Nationally Significant Infrastructure Projects are large scale developments (relating to energy, transport, water, or waste) which require a type of consent known as “development consent”. The Government’s response document provided further information about how this would work and set out plans for further consultation:

2.12 This significant move will embed a nature positive approach to the development of many of our largest new infrastructure projects, whilst delivering better environmental and biodiversity outcomes in line with the 25 Year Environment Plan. Proposals for a biodiversity
net gain requirement for nationally significant infrastructure projects will be tailored to the needs of major infrastructure projects where necessary.

Government will consult fully on the details of the policy design; including an appropriate transition period before biodiversity net gain becomes mandatory and any essential exemptions. Whilst this approach applies only to development in the terrestrial and intertidal zones, an approach for marine net gain is under development for schemes located within the marine environment, with the aim to consult on the principles later this year.

2.13 Natural England and Defra are also working together to develop an updated Biodiversity Metric, which is expected to be published this summer. The metric provides developers, planners, land managers and others with a tool to calculate the baseline biodiversity of a site and how this can be increased by either increasing the size of habitats or improving the quality of habitats. The Environment Bill will mandate the use of Biodiversity Metric 3.0 for all development types covered by the biodiversity net gain component of that Bill, to help developers, planners and land managers to calculate and meet their legal requirement to achieve biodiversity net gain.299

In a press release to accompany the Dasgupta Review response, the Government said that the Crewe-Manchester leg of HS2 will “aim to deliver a net gain in biodiversity.”300

300 HM Government, Government commits to ‘nature-positive’ future in response to Dasgupta review, 14 June 2021
6 Commons Third Reading and progress to House of Lords

Third reading of the Environment Bill 2021-22 took place on 26 May 2021 immediately after its Report Stage. The Bill was not amended at Third Reading stage and passed this stage without division. 301

The Bill proceeded to the House of Lords where it was reprinted as HL Bill 16 2021-22. The Second Reading in the Lords took place on 7 June 2021, which was passed without division. 302 The Bill now proceeds to a Committee of the Whole House (Lords). This stage begins on 21 June 2021. 303

301 HC Deb 26 May 2021 c482
302 HL Deb 7 June 2021 cc1197
303 UK Parliament website, Environment Bill Committee Stage [downloaded on 9 June 2021]
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