The Environment Bill [HL Bill 85 1994/95]

Research Paper 95/50

12 April 1995

The *Environment Bill*, which started in the Lords, establishes environmental agencies and also deals with water pollution from abandoned mines, national parks, hedgerows, contaminated land, a national waste plan, packaging waste schemes and statutory nuisances in Scotland. The Government has undertaken to introduce air quality measures and reform of old minerals permissions during the Commons stages. This paper takes into account all the developments during the Lords stages and is based on HL Bill 85 1994/95.

Patsy Hughes **Jeff Vernon**

Science and Environment Section

House of Commons Library

CONTENTS

[1]Jeff Vernon

[3]Jeff Vernon

I. Introduction

The possibility of setting up an umbrella organisation for overseeing the (partly overlapping) pollution control work of the National Rivers Authority (NRA) and Her Majesty's Inspectorate of Pollution (HMIP) in England and Wales was first mentioned in the 1990 Environment White Paper *This Common Inheritance*[1]. Firm Government plans to establish an Environment Agency were announced by the Prime Minister in July 1991[2]:

> "I can announce today that we plan to set up an Environment Agency. This will bring together HMIP, and related functions of the NRA, to create a new agency for environmental protection and enhancement ... It is right the integrity and indivisibility of the environment should be reflected in a unified agency".

The then Secretary of State for the Environment Mr Heseltine said in October 1991 that the Agency should be a "one-stop shop" for environmental policing, and issued a consultation paper on its possible structure, scope and responsibilities[3].

The Environment Agency ("the Agency") in England and Wales will take over all of the NRA's and HMIP's functions and it will also take over responsibility for the waste regulation functions of local authorities.

In Scotland the Scottish Environmental Protection Agency (SEPA) will merge Her Majesty's Industrial Pollution Inspectorate and the River Purification Authorities. The air pollution functions of local authorities under the *1990 Environmental Protection Act* will be incorporated into SEPA, in addition to their waste regulation duties.

The Drinking Water Inspectorate (DWI) will not be affected[4]. Final decisions relating to arrangements in Northern Ireland have yet to be taken[5].

---

[1]*This Common Inheritance* Cm 1200, HMSO 1990
[2]Text of a speech made by the Prime Minister the Rt Hon John Major on the global environment at the Sunday Times Environment Exhibition at Olympia on Monday 8 July 1991
[3]*Improving Environmental Quality The Government's Proposals for a new, independent Environment Agency.* DoE, MAFF, Welsh Office October 1991 and *DoE News Release* 589, 3 October 1991
[4]HCDeb 8 July 1991 c280w
[5]HC Deb 16 February 1995 c779w

Throughout 1992 and 1993 the Government said that legislation to establish agencies would be introduced at the earliest opportunity[6]. Although the initial urgency which had followed Mr Major's announcement "quickly subsided", the DoE conceded that "serious consequences" could follow if the agency was not operating in time for the first phases of local government reorganisation, which would, for instance, disband county waste regulation teams[7].

The Queen's Speech for the 1993-94 session promised a paving bill, to be followed by a main bill providing for the agencies' establishment. The paving bill was cancelled when Mr Gummer announced that since good progress was being made in drafting the main legislation, he had decided that paving powers were no longer needed. An undertaking was given to instead produce the main bill in draft[8].

A draft *Environment Agencies Bill* was produced in October 1994[9]. This dealt purely with the establishment of an Environmental Agency in England and Wales and of a Scottish Environmental Protection Agency. The early reactions from several environmental groups were unfavourable, particularly regarding the extent of the agencies' conservation duties compared to those of the NRA, and a requirement for the agencies to have regard to costs and benefits. In response, some changes were made[10] (see section III B 2). The Department of the Environment was reported to have made "hurt noises", saying that critics of the draft Bill did not recognise Mr Gummer's achievement in getting the Bill published at all in the present deregulatory climate[11].

The Bill increased in size and scope enormously between the first draft and the Bill which entered the Lords. As well as setting up an Agency and thus affecting the functions of HMIP, the NRA and waste regulatory authorities, the Bill addresses:

- contaminated land
- water pollution from abandoned mines
- industry-led producer responsibility waste schemes
- Scottish nuisance controls
- fisheries
- National Parks
- hedgerows
- conservation grants

---

[6]for instance, HCDeb 15 July 1992 c857-8W, and HCDeb 23 February 1993 c527W
[7]"Environment agencies Bill makes it onto legislative agenda" *ENDS Report* 226 November 1993 p.29
[8]"Good progress made in setting up Environment Agency" DoE News Release 440 20 July 1994
[9] DoE 13 October 1994, Deposited Paper 486
[10]"Appointments to environment agency advisory committee announced" DoE News Release 650, 18 November 1994
[11]"A troubled birth for Environmental Agencies Bill" *ENDS Report* 237 October 1994 pp22-3

This follows Government promises made over the past few years to legislate on a number of matters, and the background to these issues is covered in this paper.

One item that is not included in the Bill is a Countryside Commission/English Nature merger since following a consultation exercise last year[12] such action was decided against. There have already been sweeping reorganisational changes in the nature conservation and countryside agencies, partly introduced by the *Environmental Protection Act 1990*, and Mr Gummer has said he wished to avoid disrupting work on the UK's Sustainable Development Strategy and the Biodiversity Action Plan[13]. A White Paper on the Countryside was recently announced by MAFF and the DoE[14] and consultation is taking place on this at the moment.

Despite this exclusion, according to one description[15]:

> "The Environment Bill is a monster. Containing 105 clauses and 20 schedules, it is half as big again as the Environmental Protection Act 1990 was when it entered Parliament".

The *Environment Bill* [HL Bill 10 1994-95] was introduced into the House of Lords and received its second reading on 15 December 1994[16]. After a long committee stage[17] the Bill was considered on Report[18] and finally given its third reading on 20 March[19], ending up as HL Bill 85 1994-5. Of the great number of amendments tabled by the Lords only one was adopted which represented a 'defeat' for the Government (on National Parks; see section V) and all significant changes and failed amendments are described in the relevant sections of this paper.

The Bill will receive its second reading in the Commons on 18 April 1995.

---

[12]*Proposals for the bringing together of English Nature and the Countryside Commission*, DoE, 14 February 1994

[13]"Countryside Commission and English Nature: New working arrangements announced" Department of the Environment News Release 572 7 October 1994

[14]"Government announces rural white paper" MAFF News Release 371/94 12 October 1994

[15]"Environment Bill gets on its way" *ENDS Report* November 1994 pp20-21

[16]HL Deb 15 December 1994 cc1375-1468

[17]HL Deb 17 January 1995 cc537-642; 19 January 1995 cc758-809 and 817-852; 26 January 1995 cc1184-1235; 31 January 1995 cc1337-1486; 2 February 1995 cc1591-1702; 9 February 1995 cc311-368 and 391-430; 14 February 1995 cc595-688

[18]HL Deb 2 March 1995 cc1586-1714; 7 March 1995 cc120-189 and 205-262; 9 March 1995 cc400-464 and 478-550

[19]HL Deb 20 March 1995 cc1016-1120

Following the Bill's passage, it is intended to complete preparations for the transfer of functions to the agencies on 1 April 1996[20]. It is expected that around 430 full-time staff will transfer from HMIP to the Agency, around 7,500 staff from the NRA and around 1,100 staff from local waste regulation authorities. In Scotland, SEPA will probably employ the equivalent of about 600 staff; such staff will transfer from river purification boards, HMIPI and district and islands councils waste regulation and air pollution control teams[21].

---

[20]"A fully integrated approach to environment protection is promised by Lord de Ramsey" Environment Agency Advisory Committee News Release 651 18 November 1994

[21]*Environment Bill* [HL Bill 85] p.xv

II. Framework and structure of the agencies

A. Existing framework and the need for integration

1. HMIP

When the possibility of setting up an umbrella organisation to oversee the pollution control work of the National Rivers Authority (NRA) and Her Majesty's Inspectorate of Pollution (HMIP) in England and Wales was first raised[22], it was envisaged that the NRA and HMIP would keep their separate identities and independence. The problem of overlap between the two was clear and was given in the DoE's consultation paper on the Agency[23] as one of the main reasons for change. Indeed, in its response to the Consultation, the National Society for Clean Air commented[24]:

> "[Overlap] is inevitable given the differing perspectives of the two agencies; HMIP looking down the discharge pipe from the factory, NRA looking up the discharge pipe from the river. HMIP tales an integrated view of the industrial process, NRA takes an integrated view of river basin management".

HMIP's Director Dr David Slater acknowledged 'fundamental' differences in emphasis between the NRA and HMIP when giving evidence to the Environment Committee[25]:

> "The NRA is a media-guardian, if you like, whereas we in fact are pro-actively interacting with industry and with polluters."

HMIP has traditionally regulated airborne and land pollution and it also has responsibilities relating to nuclear waste disposal and radioactive material storage and use. It is currently part of the DoE, with about 430 staff and an annual budget of £30 million[26]. The announcement of the Agency was welcomed by HMIP as a "logical progression" which could see the establishment of the agency within 5 years[27].

---

[22]*This Common Inheritance* Cm 1200, HMSO 1990
[23]*Improving Environmental Quality The Government's Proposals for a new, independent Environment Agency.* DoE, MAFF, Welsh Office October 1991 and *DOE News Release* 589, 3 October 1991
[24]*Clean Air* Volume 22, No. 1 Spring 1992 pp4-18
[25]*Environment Bill: Hearings on the Draft Environment Agencies Bill* Environment Select Committee 23 and 30 November 1994 HC 40-i, ii and iii 1994-5 p.8
[26]"John Gummer publishes draft legislation for new Environment Agency" DoE News Release 576 13 October 1994
[27]*The Engineer,* 11 July 1991

HMIP has overseen the development of the UK's integrated pollution control (IPC) system, a key feature of the *Environmental Protection Act 1990.* The UK's IPC system is generally acknowledged to be leading EU policy in this area[28]. Traditionally, each sector of the environment (air, land and water) has been treated separately by pollution controls. The two basic concepts of IPC lie in recognising that pollution in one sector will have implications for the others (toxic substances released into the air can find their way into food chains in the sea or on the land, for instance), and that reducing pollution in one sector may mean increasing it in another.

The operators of a polluting activity or 'process' have to apply to either HMIP or to their local authority environmental health department for an "authorisation" to pollute. Authorisations are only granted on condition that the process is carried out according to standards set out in very detailed guidance notes ('process guidance notes'). These specify how each particular process must be carried out to minimise environmental effects (BPEO-Best Practicable Environmental Option) using BATNEEC (Best Available Technology Not Entailing Excessive Cost) for that process.

HMIP is responsible for regulating 5000 or so large or most polluting "processes" or activities under IPC, whereas around 27000 smaller or less harmful processes are governed by local authority air pollution control (LAAPC).

2. The NRA

The NRA, created by the *Water Act 1989* and seen as Europe's most powerful environmental agency, regulates the water environment, and deals with flood defence and fisheries, coastal defences, water supply and water resources, pollution of water courses and regulation of abstraction in England and Wales[29]. The NRA also deals with the conservation and recreational use of inland and coastal waters. It is a non-departmental public body with a staff of 7,500 and an annual budget of £455 million. Its organisation can be roughly split as follows[30]:

- around 20% of staff and budget devoted to pollution control
- around half of staff (including virtually all the NRA's manual workers) and budget on flood defence

---

[28]*Manual of Environmental Policy: The EC and Britain* Nigel Haigh 1992 and updated pp6.1-1 - 6.1-3
[29]*New Scientist*, 13 July 1991
[30]*Improving Environmental Quality The Government's Proposals for a new, independent Environment Agency.* DoE, MAFF, Welsh Office October 1991 and *DOE News Release* 589, 3 October 1991

- the rest on water resource management, fisheries, recreation, navigation.

In England and Wales, the NRA regulates discharges to seas and rivers under the *Water Resources Act 1991* (although discharges to sewers are regulated by the water companies under the *Water Industry Act 1991*). All businesses wishing to dispose of any effluent must first obtain a "discharge consent" from the NRA or from their water company, as appropriate. Discharge consents contain details about the chemicals being discharged, and the maximum quantity and maximum rate of discharge that is permitted. The NRA, in deciding on consents for the discharge of dangerous effluent to surface waters, takes into account: the *environmental quality standards* (EQSs) for the substances contained in the effluent; the quantity of the effluent and its rate of discharge; and the properties of the surface waters to which the effluent is discharged.

The IPC regime of Part I of the *Environmental Protection Act 1991* is gradually being applied to more sectors of industry. Companies that would previously have applied to the NRA for a consent to discharge under the *Water Resources Act 1991* are in many cases now applying to HMIP, for a single written authorisation to discharge to the air and to water, and to generate waste. This ensures that a plant does not reduce emissions into, for instance the air, but release pollutants in nearby watercourses instead. Clearly an Agency should be able to streamline such procedures and aim to reach a wholly integrated approach.

3. Waste regulation

Part II of the *1990 Environmental Protection Act*, dealing with waste on land, strengthened and largely superseded the waste management licensing system which had been operating under the *Control of Pollution Act 1974* (CoPA). It altered and re-cast the institutional local framework for waste regulation and disposal. The 1990 Act established Waste Regulation Authorities (WRAs) and Waste Disposal Authorities (WDAs), which are generally local authorities. The 1990 Act requires a WDA, or other persons, to form "waste disposal contractors" (WDCs) to collect, keep, treat or dispose of waste. (If a local authority sets up its own WDC this has to be done at arm's length.) WRAs can amalgamate to form regional authorities, if two or more WRAs "could with advantage make joint arrangements for the discharge of any or all of their functions as WRAs".

Under the Act, anyone wishing to operate disposal, storage or treatment facilities for controlled waste needs a waste management licence from a WRA or WDA (with exemptions). Anyone who contravenes any condition of a waste management licence commits an offence. The licence system also provides a way of recovering costs for the treatment of waste, by

charging fees for the issue, surrender and transfer of licences, according to the amount and type of waste to be dealt with[31].

The 1990 Act also introduced the concept of "duty of care" of waste, prohibiting its unauthorised or harmful deposit, treatment or disposal. Anyone in control of waste must prevent the escape of the waste from his control, and must pass the waste on only to an authorised person.

As with the NRA and HMIP, there is scope for overlap between the NRA (which sets licence conditions to prevent leaching of contaminants from waste sites) and local authority waste regulation authorities (WRAs). There is also scope for overlap between the authorisations granted by HMIP, consents to discharge from the NRA, and waste management licences issued by WRAs. According to the DoE[32]:

> "As the standards and techniques of waste management become increasingly sophisticated, it is becoming more difficult for individual waste regulation authorities either to provide the necessary expertise, or to coordinate policies and standards over a wide enough area. Although the establishment of voluntary regional groupings of waste regulation authorities would have gone some way towards overcoming these difficulties, it could never provide a truly integrated approach to waste regulation whilst water and air pollution were in the hands of separate regulatory bodies".

Simplified enormously, at present:

- HMIP grants **authorisations** to pollute to land, air and water under the integrated pollution control system of Part I of the *Environmental Protection Act 1990*
- NRA grants **consents to discharge** to water under the *Water Resources Act 1991*
- WRAs issue **waste management licences** under Part II of the *Environmental Protection Act 1990*

---

[31]*Environmental Protection Act 1990: Section 41 Fees and Charges for Waste Management Licensing, A Draft for Consultation* DoE, Scottish Office Environment Department and Welsh Office December 1992

[32]*Improving Environmental Quality The Government's Proposals for a new, independent Environment Agency* DoE, MAFF, Welsh Office October 1991

In essence, the *Environment Bill* proposes to call these different systems, and others, **environmental licenses** (see section III C 2 below). A system of charging for such licences, similar to that already in operation, will be introduced.

Section II D below gives more detail about how the NRA, HMIP and waste regulatory authorities may mesh together to form the Agency, and about the views of the organisations concerned.

B. The Consultation

The consultation exercise *Improving Environmental Quality The Government's Proposals for a new, independent Environment Agency* was issued in October 1991. Mr Heseltine said the EA should be a "one-stop shop" for environmental policing[33] although it was stressed that the work of the Health and Safety Executive would remain untouched. At the time of the consultation the Government was minded, *inter alia*, to[34]:

- transfer all of HMIP's functions to the Agency
- transfer perhaps just part of the NRA's (pollution) functions to the Agency
- transfer the DWI to the Agency
- allow local authorities to retain their air pollution functions
- transfer all local authority waste regulation functions to the Agency, while allowing them to retain power over land-use planning for waste (*ie* the siting of waste disposal facilities through the planning system)

The consultation thus considered particularly the position of the Drinking Water Inspectorate, and the extent of the NRA's role, bearing in mind that the NRA can, on paper at least, be conveniently spilt according to function (see section II A 2 above).

Opinions as to the role of the NRA in the Agency were mixed. The Environment Select Committee thought that the NRA should be split up, with the NRA retaining control over abstraction and river flow, and pollution control passing to a "lean, mean" Agency[35].

---

[33] *The Independent*, 4 October 1991

[34] *Improving Environmental Quality The Government's Proposals for a new, independent Environment Agency* DoE, MAFF, Welsh Office October 1991

[35] "The Government's Proposals for an Environmental Agency" Environment Committee first report, session 1991/92, and *Independent*, 26 February 1992

However, the Water Services Association felt that the NRA should stay intact, but that the NRA's other functions should not be allowed to weaken the clear focus of the Agency on pollution control[36].

Groups such as Friends of the Earth and the Council for the Protection of Rural England feared the dismemberment of the NRA, and the loss of NRA functions other than pollution to MAFF[37]. Alleged departmental "in-fighting" about this issue between MAFF and the DOE was seen as delaying the establishment of the Agency[38]. Environmental groups voiced further general fears that the NRA's considerable success as a watchdog would be lost[39]. NALGO called for all of the NRA's functions to be retained in the new Agency, saying that staff morale was already low following changes in the organisation[40].

The NRA was positive in its support for the creation of a new Agency, welcomed a wide consultation, and said it was in favour of full integration[41]. For this reason Lord Crickhowell, the chairman of the NRA, gave the proposals only a cautious welcome, saying that he would strongly recommend to the Government that the entire NRA should come under the new agency's jurisdiction[42].

Following consideration of the responses, the Government decided that the Agency in England and Wales should incorporate all of the functions of the NRA; MAFF and the Welsh Office would not take on any of its roles. The DWI would remain an independent body, and not transfer to the Agency[43].

The Agency would also take over responsibility for the waste regulation functions of local authorities. The Agency in England and Wales would *not* take over responsibility for air pollution control from local authorities, but in Scotland SEPA, which will comprise also HMIPI and the River Purification Boards, would become responsible for both large and small scale pollution control (see below).

---

[36] *Water Bulletin*, 14 February 1992
[37] *Times*, 25 July 1991 and 5 August 1991, *Water Bulletin,* 9 August 1991, *Observer*, 22 September 1991
[38] *Observer,* 22 September 1991, *Guardian,* 23 September 1991, *Independent*, 23 September 1991
[39] *Times*, 29 July 1991
[40] *Water Bulletin,* 16 August 1991
[41] "Government's proposals for an Environmental Agency Response by the [NRA]" NRA 11 December 1991
[42] *Financial Times*, 9 July 1991
[43] HCDeb 8 July 1991 c280w

Following the passage of the present legislation in 1995, it is intended to complete preparations for the transfer of functions on 1 April 1996[44,45].

C. National Structure

1. Scottish Environmental Protection Agency

Plans for a Scottish Environmental Protection Agency (SEPA) were announced at the same time as the Agency for England and Wales. In Scotland there is no NRA equivalent. SEPA will incorporate the Industrial Pollution Inspectorate (HMIPI), seven River Purification Authorities, and District and Islands Councils in respect of waste regulation and some air pollution controls[46,47]. The Agency in England and Wales will *not* take over responsibility for air pollution control from local authorities, but in Scotland SEPA will become responsible for both large and small scale pollution control, removing this function from local authorities.

The National Society for Clean Air (NSCA), after the Bill's entry into the Lords, wrote that[48]

> "With respect to proposals for ... SEPA, the Scottish Office has failed to provide any convincing argument for the removal of responsibility for air pollution control from Scottish local authorities. Local authorities throughout Britain have shown themselves equally capable of regulating Part B industrial processes: we question the need for upheaval and centralisation north of the border when a perfectly good local-accountable system is already in place."

A report in the *Scotsman*[49] has said that the river purification boards are opposed to the setting up of the Agency in its proposed form, but that they will co-operate with its establishment. The director of the Forth River Purification Board is reported to have said, at the River Purification Boards Association annual meeting in October 1994, that the Boards are presently independent, accountable, and funded by local authorities; SEPA, appointed and funded centrally, could expect the same 'cuts experienced by other official quangos'. However, the NSCA's Scottish Division considered that SEPA would be welcomed in principle by the River Purification Authorities[50].

---

[44]"A fully integrated approach to environment protection is promised by Lord de Ramsey" Environment Agency Advisory Committee News Release 651 18 November 1994
[45]Scottish Office Press Notice 93/95 26 January 1995
[46]Scottish Office News Release 0256/93 25 February 1993
[47] HCDeb., 21 October 1991 c. 406W
[48]*Clean Air* vol.**24** (4) p.146
[49]14 October 1994 "proposal for green quango under attack"
[50] *Clean Air* **22** (11) p.11

Presenting the Bill for its second reading in the Lords, The Minister of State, Department of the Environment Viscount Ullswater said that[51]

> "...Local authorities in Scotland deserve credit for the way that they have striven to overcome the inherent difficulties of their joint responsibilities for waste regulation and waste disposal, and for the way that they have embraced the new systems of control for waste management and local air pollution.
>
> "HMIP and the river purification authorities are to be commended for the effective way that they have risen to meet the challenge of implementing IPC. But that joint arrangement does not represent an optimal solution, and the creation of SEPA will remove the present dual responsibility".

Lord Carmichael of Kelvingrove said that his side of the House "[got] a little annoyed when large and important parts of Scottish legislation are pushed into a Bill which is basically an English and Welsh Bill. I agree with my noble friend Lord Williams of Elvel that it would have been far better had there been a Welsh Bill also..."[52].

The clauses relating specifically to SEPA rather than to the Agency in England and Wales were discussed in Committee on 26 January 1995[53]. Speaking for the Government, the Earl of Lindsay said that the Government believed in a more integrated approach for Scotland and so local authority air pollution control (LAAPC) was being transferred to SEPA[54]. However, because of the concerns expressed regarding the transfer of local authority powers to SEPA, particularly concerning LAAPC, the Government had decided to make local authorities statutory consultees for the processes they were currently regulating[55];

> "...Lord Lindsay said the Government intends that local authorities will have to be consulted both on industrial processes with the greatest potential to cause pollution and also on processes with lower but still significant potential.
>
> Authorities will then be in a position to review an industrial operator's application to continue or significantly alter activities, and to recommend conditions to the regulatory authority...".

---

[51]HL Deb 15 December 1994 c1376
[52]ibid c1390
[53]HL Deb 26 January 1995 cc1184-1235
[54]HL Deb 26 January 1995 c1193
[55]Scottish Office press release 93/95 'Councils to get statutory consultation role on pollution' 26 January 1995

Mrs Margaret Ewing had earlier called for separate legislation to establish SEPA, given the different legislative systems, and also called for a [river] catchment management policy (see section D below for an explanation of this), but in reply Mr Gummer said that " ... we all seek to ensure that environmental protection in Scotland and in the rest of the United Kingdom should complement one another. There is no reason why we cannot deal with the matter in the same Bill"[56].

A management consulting exercise was carried out on the regional structure of SEPA by KPMG[57]. Four options were considered and KPMG's preferred option involved three or four regional boards with delegated executive authority. Authorisations and ultimate authority would rest with the main SEPA board. Regional boards should have at most 12 members; one third drawn from local authorities and chaired by a member of the SEPA main board. Regarding the Islands, KPMG felt that if SEPA did not contract for the local delivery of services, it should consider setting up local offices in some of the more remote rural areas.

2. Wales and Northern Ireland

Welsh Members have called for Wales, like Scotland, to have its own agency[58]. During Committee stage in the Lords, Lord Prys-Davis moved but later withdrew an amendment (No.12) altering Clause 1 to establish a separate Welsh Agency[59]. Lord Prys-Davis said that a separate Welsh Agency was supported by all the Welsh opposition parties, and by the Welsh Councils.

According to an earlier statement by the Parliamentary Under Secretary of State for Wales[60]:

> "The Government propose that the Environment Agency should be established as an England and Wales organisation. The precise regional, and supporting committee, structure has yet to be determined; but the interests of local government in Wales will be taken fully into account when appointments [to the Agency] come to be made ... Minister will expect [the Agency] to develop a close and responsive relationship with those whom it will regulate, the public and local communities ... The precise regional structure of the Environment Agency will be a matter for its board to determine. However, Welsh Office

---

[56]HC Deb 30 November 1994 cc1195-6
[57]*Scottish Environment Protection Agency Consultancy Report* KPMG Management Consulting for the Scottish Office Environment Department. 25 March 1993 Deposited paper 373 (3s)
[58] *Western Mail*, 26 January 1993
[59]HL Deb 17 January 1995 cc585-605
[60]HC Deb 4 May 1994 cc538-9w

> Ministers regard it of importance that it should have a strong regional presence in Wales."

A committee will be established under Clause 11 of the Bill to advise the Secretary of State on the carrying out of the Agency's functions in Wales (see section III B 4 below), and Professor Ron Edwards was the Secretary of State for Wales' nomination to the Agency's Advisory Committee (see section III A below).

The Secretary of State for the Environment has been asked by Mr O'Brien what plans he had to introduce an environmental protection agency for Northern Ireland[61]:

> "In Northern Ireland, most of the intended functions of the proposed agency in England and Wales already lie within central Government, in the environment service of the Department of the Environment. When final details of the agency are available, I will decide whether any proposals for change in Northern Ireland should be made".

Mr McGrady has since asserted that people on the eastern coast of Northern Ireland are concerned that the Department acts as both poacher and gamekeeper on environmental protection; citing discharges to the Irish Sea from the thermal oxide reprocessing plant at Sellafield Mr McGrady said that an agency was needed urgently as an independent assessor[62]. The most recent statement on this issue was made by Mr Moss when asked by Mr Beggs what consideration was being given to the formation of an environmental protection agency for Northern Ireland[63]:

> "The Environment Service of the Department of Environment for Northern Ireland has responsibility for the control of pollution, the conservation of the natural environment and the protection of man-made heritage. The service is currently the subject of a prior options study. The Government will decide whether or not any proposals for change in the implementation of environmental policy in Northern Ireland should be made when the results of this study are known shortly".

---

[61]HC Deb 14 December 1993 c565-6w
[62]HC Deb 18 May 1994 c807w
[63]HC Deb 16 February 1995 c779w

D. Structure of the Agency in England and Wales

The Agency will definitely have some kind of a regional structure and Touche Ross have produced a consultation paper on this although detailed decisions have not yet been taken. HMIP and the NRA have been, according to one report, "in a state of open warfare" on these issues[64]. The evidence given by the two organisations to the Environment Committee has certainly been conflicting (see below). The main points to be decided include;

- whether to use river catchment areas or political local authority (LA) boundaries for regions
- whether to separate operational and regulatory functions
- the degree of integration to be aimed at

At present, HMIP, the NRA and waste regulation groupings operate using slightly different regional boundaries.

There are presently nine voluntary regional waste regulation committees in England set up when the present waste regulation scheme was introduced at the time of the making of the *1990 Environmental Protection Act.* These VRWRCs have an advisory role; the executive functions of waste regulation are with the appropriate waste regulation county committees, metropolitan and London authorities and Welsh districts. As early as 1985 the Royal Commission on Environmental Pollution had stated that a national policy for waste was needed, with strategic waste management decisions being taken on a national and regional scale.

HMIP has field teams which implement integrated pollution control, operating within seven regions. The NRA has eight (formerly ten) regions, whose boundaries were based on those of the original water authorities, drawn up in line with river basins and catchment areas. (Each NRA region has a Regional Flood Defence Committee, a Regional Rivers Advisory Committee and a Regional Fisheries Advisory Committee.) The NRA regions hence do not correspond exactly geographically to the VRWRC waste regulation regions of England and Wales, which tend to follow local authority (LA) boundaries[65].

---

[64]"Environment Bill gets on its way" *ENDS Report* 238 November 1994 pp20-21
[65]*Wastes Management Proceedings*, July 1993 pp 6-10

Touche Ross were commissioned to produce the report *Options for the Geographical and Managerial Structure of the proposed Environment Agency*[66] last year. Comments were invited by 31 October. The options were[67,68,69]:

- **Model A** Initially proposed by the WRAs. The NRA, HMIP and waste organisations would continue to run in parallel but there would be a new regional and national structure for waste. Integration would be achieved through joint input in planning and policy at national level and regional and sub-regional co-operation.

- **Model B** Initially proposed by HMIP. Operation and regulation would be separated. One large HQ would have three "field" directorates (Regulation, Flood Defence and River Basin Management) and an Environmental Quality Directorate for policy and planning. Multi-media regulatory teams would work to regional managers with support centres of excellence. Seven regions would be based on LA boundaries, even for water management.

- **Model C** The "NRA" model; based on river catchment boundaries. A small head office would have one policy making directorate and a single field/operations directorate. Co-located staff at regional level would work in multi-media teams and multi-disciplinary managers, with shared support services.

- **Model D** Separation of regulation and operations; regulation based on LA boundaries and operation on river catchment areas. HMIP, NRA and waste staff would be co-located at regional level but would work in separate teams, with a more integrated approach being aimed at long-term.

- **Model E** Separate operation and regulation but brought together at Head Office level. Multi-skilled industry-facing (not media-facing) teams supported by technical specialists. River catchment boundaries.

---

[66]Touche Ross for the DoE, June 1994 deposited paper ns 348
[67]ibid
[68]"The five model agency" *Local Government Chronicle* 23 September 1994 p.16
[69]*Clean Air* Autumn 1994 vol 24 no.3 pp130-1

Giving evidence to the Environment Committee, the Chief Executive of the NRA Ed Gallagher said that the NRA wanted river catchment boundaries (having thought "very, very seriously" about its response because it knew it would be expected to want river boundaries since it already had them); it thought that to manage rivers otherwise would bring[70]:

> "a degree of complexity into the organisation which would make it very, very much more costly and ineffective. We believe that issues of land management and air management can be handled much more easily with river catchments than rivers can be handled by different boundaries".

The NRA also wants operational and regulatory functions to be keep together. It feels that its regulatory role (pollution control, abstraction licences and land drainage consents) is underestimated and that its pollution control officers who issue licences and who are 'on the ground' can best advise licence holders, understand and regulate situations, and remedy and prosecute after incidents. According to an exercise carried out in NRA Welsh region, splitting its operational and regulatory functions would, according to the NRA, add an extra 20% to its running costs; an extra £2 million a week if applied across all the NRA's activities[71]. Such points are made in the NRA's response to the Touche Ross report[72].

On the other hand, HMIP's Director Dr David Slater told the Committee he thought it "essential" to split operation and regulation to avoid the Agency's credibility being undermined by allegations of self-policing. In addition, a separate regulatory directorate would have an improved business focus, and finally it would make it easier to recover costs through industrial regulation, with no 'hint of cross-fertilisation of activity being funded from one source to another'[73].

HMIP wants local authority boundaries, so as to give, in its view, local accountability, liaison and communication, and to let regulators operate on their own patch;

> "We believe that there are two points of view, but when you come right down to it, when you actually look at the differences, and we have done this in

---

[70]*Environment Bill: Hearings on the Draft Environment Agencies Bill* Environment Select Committee 23 and 30 November 1994 HC 40-i, ii and iii 1994-5 p.6
[71]ibid, p.3
[72]Reply by the NRA to *Options for the Geographical and Managerial Structure of the proposed Environment Agency*, June 1994
[73]*Environment Bill: Hearings on the Draft Environment Agencies Bill* Environment Select Committee 23 and 30 November 1994 HC 40-i, ii and iii 1994-5 p.9

> practice, our assessment is that river catchments can quite easily be accommodated in a regional structure based on local authority areas"[74].

The Local Authority Associations (ACA, ADC and AMA), while strongly supporting an agency in principle, are firmly against the creation of another QUANGO. They have stated (also to the Environment Committee) [75]

> "waste regulation is presently undertaken by democratically accountable local authorities, but the Agency envisaged in the Bill will take this function away, further undermining Britain's local democracy...
>
> "The Government should be pressed to abandon the removal of waste regulation from local democratic control and further asked to clarify how the Agency will relate its activities to other local government functions, for example planning and environmental health".

Giving evidence, the LAA spokesmen said that they wanted to keep waste regulation boundaries and could not see why rivers could not be managed on [geographically different] river catchment boundaries at the same time, since the separate functions of the agency would be handled from separate offices in any case, if practical waste regulation was left with local authorities. The LAA support HMIP's view that the regulatory and operational arms of the agency should be kept separate[76].

The Institute of Wastes Management supports local authority, not river catchment boundaries. It is concerned that waste management will be inadequately represented at a national level, in the light of the membership of the Advisory Committee (see section III A below)[77].

Touche Ross summarised the strengths and weaknesses of each above option[78] but did not come down in favour of any one model. According to an article in *Local Government Chronicle*[79], Model A now seems unlikely to be adopted (the chances of LAs being able to keep control of waste regulation appear now to be almost non-existent and indeed have been

---

[74]ibid
[75]ibid, pp12-14
[76]ibid, p.98
[77]ibid, p.96
[78] *Options for the Geographical and Managerial Structure of the proposed Environment Agency* Touche Ross for the DoE, June 1994 deposited paper ns 348 p.23
[79]"The five model agency" *Local Government Chronicle* 23 September 1994 p.16

described elsewhere as 'vanishingly small'[80]), and Model B will be "vigorously resisted" by the NRA. Model E, the "purest" approach, is likely to be too radical and to require too much restructuring. Model D seems to be the frontrunner particularly since it would require minimal disruption at first, and because Model C is too obviously an NRA model (even though, as the largest partner in the enterprise, the NRA's opinion is clearly important).

Several sources have suggested the structure of the Health and Safety Executive and Commission as a model for the Agency, with an Executive enforcing, monitoring, researching and providing environmental information and a Commission formulating policy, advising Ministers and regularly assessing the state of the environment[81].

The Director of Conservation of the Wildlife Trusts has called for the Agency to be given a remit to carry out integrated [river] catchment management planning, citing the recent flooding in northwest Europe, and the dangers of the loss of buffers such as natural bogs and flood plains[82].

During Lords Committee stage, Lord Moran moved an Amendment (No.77) designed to probe the Government's inclination to encourage the Agency to move towards adopting integrated catchment management planning (ICMP). Viscount Mills and Baroness Nicol supported the concept of ICMP, and for the Government Viscount Ullswater said there was 'no doubt that [ICMP] is valuable', noted that the NRA already used such a system 'which we would wish to see continue', but also stated that the Government wanted management plans to be non-statutory. Thanking Viscount Ullswater for that assurance, Lord Moran withdrew his amendment[83].

Regional advisory committees (on environment protection, flood defence and fisheries) will be set up and are described in Annex A to the *Environment Agency: Draft Management Statement* produced last year.

---

[80]*ENDS Report* 238, November 1994 p.20
[81]eg NSCA, in *Clean Air* vol **22**, (1) p.9
[82]'Flood prevention depends on restoration of the wetlands' letter to *Independent*, 8 February 1995 p.18
[83]HL Deb 19 January 1995 cc833-837

III. Part I of the Bill: The Agencies

A. Establishment

Clause 1 and Schedule 1 establish the Agency. The Agency will have between 8 and 15 members; three will be designated by Ministers and the rest by the Secretary of State. The Secretary of State will also designate the Agency's chairman and deputy chairman. **Clause 20** and Schedule 6 do the same for SEPA, which will have only up to twelve members, appointed by the Secretary of State.

On 18 November Mr Gummer announced the chairman and the members of the Environment Agency Advisory Committee, which will form the nucleus of the Agency's Board in due course[84].

The chairman is Lord de Ramsey, a farmer from Cambridgeshire, whose biographical notes also include; President of the Country Landowners Association 1991-3; Director of the Cambridgeshire Water Company since 1974; appointed a Crown Estate Commissioner in 1994 and President of the Association of Drainage Authorities since 1992. On appointment Lord de Ramsey said:

> "As a farmer and landowner I cannot help but be interested in conservation. Care for the countryside is in my blood, and I want the Agency to be a strong conservation body. At the same time, I recognise the need for the Agency to play an important part in promoting sustainable development, reconciling the need [sic] of environmental protection, conservation and development"[85].

The Committee's other members are:

> **Peter Burnham** (former senior partner, Coopers and Lybrand; member of the recently established HMIP Advisory Committee; founder commission member, English Heritage)
>
> **Imtiaz Farookhi** (Chief Executive, Leicester City Council; Leicester was Britain's first Environment City

---

[84]"Appointments to Environment Agency Advisory Committee announced" DoE News Release 650 18 November 1994

[85]Environment Agency Advisory Committee News Release 651 18 November 1994

Nigel Haigh OBE (Director, Institute of European Environment Policy and Chairman of Green Alliance)

Christopher Hampson CBE (ex-Board member, ICI; Chairman, HMIP Advisory Committee and ex-Chairman of CBI Environment Committee; Chairman, Yorkshire Electricity)

Cllr John Harman (Leader, Kirklees Council; Vice-Chairman, Association of Metropolitan Authorities)

Mrs Shirley Jackson (Fellow of the Society of Practitioners of Insolvency)

John Norris (NRA Board Member, nominated by the Minister for Agriculture, Fisheries and Food).

Professor Ron Edwards, currently a member of the NRA's board, and of course the chairman of the 1991 National Parks Review Panel (see section V A) is the additional member nominated by the Secretary of State for Wales, whom Sir Paul Beresford announced in December had been invited to complete the Committee[86].

Clause 2 transfers all of the functions of the NRA, the functions of waste regulation authorities and also the functions of HMIP (including its duties under the *Radioactive Substances Act 1993*) to the Agency. It also abolishes the NRA and the London Waste Regulation Authority. **Clause 21** transfers the functions of the water purification authorities, waste regulation authorities, HMIPI and the air pollution control functions of local authorities (under the *1990 Environmental Protection Act*) to SEPA. It also dissolves the water purification authorities.

Clause 3 and Schedule 2 transfer the property, rights and liabilities of the NRA and the London Waste Regulation Authority to the Agency, and require waste regulation authorities to make schemes providing for similar transfers. They also let the Secretary of State do the same with his own or with HMIP's property, rights and liabilities. **Clause 22** and Schedule 2 achieve the equivalent for SEPA.

SEPA is given certain extra functions, partly because the NRA has not existed in Scotland. **Clause 24** for instance requires any person planning to carry out drainage works to consult

---

[86]HC Deb 20 December 1994 c1115w

with SEPA. **Clause 25** allows SEPA to purchase land compulsorily. **Clause 26** allows SEPA to oppose private legislation in Parliament.

B. General powers and duties of the Agencies

1. Sustainable development

Clause 4 deals with sustainable development. **Clause 29** does the same with regard to SEPA. Ministers are given a duty to provide guidance to the Agencies, particularly relating to their roles towards achieving sustainable development.

On the day on which the general sustainable development duties of the Agencies were first discussed by the Lords in Committee[87], the Government produced its draft guidance, or at least a 'draft outline showing the scope of guidance Ministers intend to give' to the Agencies regarding sustainable development[88]. Lord Crickhowell lamented the non-availability of this document during the first part of the debate[89]. As well as defining functions and purposes regarding pollution control and water management, the draft guidance issued includes a definition of the Agency's overall aim and main objectives as follows:

> OVERALL AIM
>
> To help to promote sustainable development [a footnote adds "as defined in this guidance"] through high quality, integrated environmental protection, management and enhancement.
>
> MAIN OBJECTIVES
>
> (a) to provide effective environmental protection, management and enhancement, particularly in ways which take account of impacts on all aspects of the environment
>
> (b) to impose the minimum burden on industry and others consistent with the above, including by developing single points of contact through which industry and others can deal with the Agency
>
> (c) to operate to high professional standards, based on the best possible information and analysis of the environment and of processes which affect it
>
> (d) to organize its activities in ways which reflect good environmental practice and provide value for money for those who pay its charges and taxpayers as a whole

---

[87]HL Deb 17 January 1995 cc537-578
[88]Scottish Office Press Release 35/95 'Draft guidance on sustainable development for SEPA', and DoE News Release 10, 'Draft guidance issued to Environment Agency on sustainable development', both 17 January 1995
[89]HL Deb 17 January 1995 c552

(e) to provide clear and readily available advice and information on its work

(f) to develop a close and responsive relationship with the public, local communities and regulated organizations.

Even after the draft was made available to Peers, several speakers sought definition of the term 'sustainable development'[90]. As Baroness Hamwee noted[91], sustainable development is not so much defined in the guidance as commented on:

5. Principles of sustainable development

5.1 Chapter 3 of the Sustainable Development Strategy (Cm 2426, published on 25 January 1994) set out the principles of sustainable development, which essentially covered the following points.

Preamble
5.2 Human wealth includes both man-made capital and natural environmental capital. It is the net increase in (or totality of) all these assets that matters.

5.3 Sustainable development reconciles our aspiration for these two kinds of wealth which are to a large extent interdependent. It therefore embraces the pursuit of both economic development and environmental protection, or improvement. Often these go hand in hand, but many forms of economic development make demands upon the environment and these have to be assessed. Such an assessment ought to take account of all the costs and benefits involved - economic and environmental equally.

5.4 Often however it is difficult to establish what the environmental costs and benefits are. To assist, a number of supporting principles have been developed.

Main points which will be covered

5.5 These supporting principles recognise -

* both renewable and non-renewable natural resources;
* actions that may:
* involve risk of irreversible damage; and/or
* affect future generations; and/or
* affect the global environment.

5.6 There is therefore a need for:

* the best available scientific information;
* consideration of all relevant costs and benefits;
* risk analysis where there are uncertainties; and

---

[90]ibid, see for instance cc556, 557
[91]HL Deb 17 January 1995 c557

> * where risks are both uncertain and significant, and the likely costs and benefits justify it, action under the precautionary principle.
>
> 5.7 To ensure that decision-takers translate these principles into practice requires suitable mechanisms, both in:
>
> * the private sector (to arrange that the polluter pays); this includes market instruments and voluntary agreements but also compliance with regulation where this is provided for in law; and
>
> * the public sector; this includes regulatory agencies such as the Environment Agency.
>
> 5.8 The guidance will explain how the principles above can be related to the practical applications required by the Agency under the functions and purposes listed at 3 above. Where appropriate it will refer to subordinate guidance notes (see 6 below).

In fact, 'sustainable development' has been defined by the Brundtland report, which first coined the term, as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs[92]". The Lords Select Committee on Sustainable Development has, of course, been taking evidence on the sustainability debate[93].

During Committee stage, after having received a copy of the draft guidance with the Agency's overall aim ('To help to promote sustainable development...' see above), Baroness Hilton of Eggardon had withdrawn an amendment (No.6) requiring the Agency to develop the strategy for national sustainable development. Baroness Hilton said she hoped that the Government would consider adding something similar to the Bill[94]. Also during Committee, Lord Williams of Elvel moved an amendment (No.38) requiring the Agency to follow principles which would be outlined in a Schedule on sustainable development to the Act, but this amendment was defeated on division and Clause 4 agreed to[95].

At Report however, Viscount Ullswater successfully moved Government Amendment No.28 introducing a new **clause 4**[96]

> "It shall be the principle aim of the Agency (subject to and in accordance with the provisions of this Act or any other enactment and taking into account any likely costs) in discharging its functions so as to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development mentioned in subsection (3) below ..."

---

[92]Cm 2426 *Sustainable development; the UK strategy* 1994 p. 27
[93]Select Committee on Sustainable Development Minutes of Evidence HL Papers 31 i-viii 1994-95
[94]HL Deb 17 January 1995 c578
[95]HL Deb 19 January 1995 cc758-778
[96]HL Deb 2 March 1995 cc-1620-1632

Baroness Hamwee welcomed the new clause and noted that the Minister had listened to the points raised in Committee, although, supported by Baroness Hilton, she unsuccessfully attempted to amend the amendment to remove the need to have regard to costs[97].

The RSPB has written that "it is easy to see how future managers of the UK water environment could consider that only financial costs matter ... Clause 4, introduced by the Government at report in the Lords, reinforces the RSPB's concern that the success of the Environment Agency's Management Team in achieving the 'principle aim' to 'protect or enhance the environment' is to be judged 'by taking into account likely costs'". The RSPB also believes that a major omission from the Bill is the lack of any duty to achieve environmental quality objectives, to guide the work of the agencies. The RSPB and WWF fear that the inability of the agencies to set Environmental Quality Objectives (EQOs) for all media may lead to environmental neglect, and feel that this is made more serious by the statutory emphasis on financial implications[98].

Clause 37 (see section III C 1 below) is the Bill's major 'cost-benefit' provision.

Clauses 4 and 29 were further lengthened by Government Amendments at Third Reading[99] adding sub-clauses requiring any draft guidance to be subject to the negative resolution procedure in both Houses. Any guidance has also to be produced in consultation with the Agency and other bodies as appropriate, and the Agencies must have regard to the guidance when carrying out their functions.

A more detailed draft guidance has been promised before consideration of the Bill takes place in the Commons. The draft Management Statement for the Agency[100] will be refined in the light of the guidance agreed upon.

2. Pollution control and extent of conservation duty

Clause 5 states that the Agency's pollution control powers 'shall be exercisable for the purpose' of preventing or minimising, remedying or mitigating the effects of pollution on the environment. To do this it shall, *inter alia*, compile information (gathered by itself or obtained otherwise), carry out assessments if required by Ministers and follow developments

---

[97]ibid c1621 onwards
[98]RSPB Briefing *The Environment Bill HoC Second Reading*
[99]HL Deb 20 March 1995 cc1022-3
[100]*Environment Agency: Draft Management Statement*

in pollution abatement technology and techniques. The clause also requires the Agency to report to Ministers on options for dealing with pollution and of the costs and benefits of such options. **Clause 31** requires the same from SEPA.

The possible nuances of the phrase 'the Agency's pollution control powers shall be exercisable for the purpose' were explored by Baroness Hamwee in Committee and Lord Williams agreed that using 'exercisable' rather than 'exercised' went to the heart of the question of whether the Agency had[101]

> 'a duty in pollution control rather than a power in pollution control'.

Clause 6 defines general duties with respect to water. To such an extent as the Agency considers desirable, it shall generally promote the conservation and enhancement of the natural beauty and amenity of inland and coastal waters; conserve aquatic fauna and flora and promote the use of waters for recreational purposes. This will be without prejudice to its duties under Clause 7 (see below).

The Agency shall also conserve, redistribute and augment water resources (although the water undertakers' duties are not relieved at all), supervise all matters relating to flood defence (through committees), and maintain and improve salmon, trout, freshwater and eel fisheries. Its fisheries responsibilities extend into the territorial sea for six miles. **Clause 32** deals with SEPA's equivalent duties with respect to water.

A group of Amendments was tabled to Clause 6 in Committee stage, and these largely related to the way in which Clauses 6 and 7 (see below) interact[102]. Lord Moran wanted the qualification contained in Clause 6 ('This subsection is without prejudice to the duties of the Agency under section 7 below') removed, saying that "The way in which Clauses 6 and 7 are read together appears to subordinate almost all of the agency's conservation duties to ministerial guidance". Lord Norrie spoke of his concern that the Environment Bill would weaken the environmental duty to further conservation under which the NRA operated[103]:

> "During the passage of the Water Act in 1989 [my noble friend Lord Renton] and I persuaded the Government to strengthen the NRA's environmental duties. I am disappointed that only a few years later this important duty is under review, in particular as it has proved so helpful to the NRA.

---

[101]HL Deb 19 January 1995 cc778-781
[102]HL Deb 19 January 1995 cc799-809
[103]c801

> "The Committee will be aware of the attention that Clause 7 attracted before the Bill received its First Reading. I was delighted by the Government's moves to strengthen the clause before the Bill was published. However, they do not go far enough. The duty to further conservation does not apply to pollution control functions..."

Lord Crickhowell, who is of course the chairman of the NRA, added that despite Government assurances to the contrary[104]

> "I hope that in the face of the advice given by two statutory bodies [English Nature and the NRA] set up to be expert in their own field, the Government will not take lightly the advice that the present wording appears to represent a weakening ... We believe that our ability will be weakened if the wording remains in the present form ...
>
> "... when I find that there is a great weight of opinion in all quarters concerned with the environment, and particularly in the statutory organisations, which require that a strengthening of the present wording of the Bill is required, then I take it seriously. Nothing has been said to me in recent weeks which has convinced me that the department is right and its critics are wrong".

Viscount Ullswater said the Government had considered carefully the conservation role of the agency, but thought that, for instance, it would constrain the Agency's ability to issue authorisations under Integrated Pollution Control if it had to further conservation in each case. With regard to water discharge consents, then the need to further conservation was in practice driven by European and domestic discharge legislation, not the Water Resources Act.

Clauses 7 and 37 caused most comment when the draft *Environmental Agencies Bill* was produced. Clause 37 is discussed below in section III C 1.

One report spoke of groups being "universal in their condemnation"[105] and another said the plans for the Agency were "roundly attacked by the environmental lobby as ineffective"[106]. Friends of the Earth said "The new Agency will have no overriding legal duty to protect and enhance the environment" and the Council for the Protection of Rural England said that "By having to assess the cost implications of everything it does, the agency may be unable to champion effectively the environmental cause"[107]. The RSPB issued a press release[108] saying

---

[104] c803
[105] "Lobbyists force change" *Financial Times* 19 November 1994 p.6
[106] "Lobbyists attack environment agency plans". *Guardian* 14 October 1994 p.10
[107] ibid

that the Agency had been given constrained and ambiguous powers to ensure that it had the least possible impact on industry. In particular, it was alleged that the two clauses would weaken existing regulatory powers and also require cost-benefit analysis from the Agency before it could act[109].

As **clause 7** stood in the **draft** bill it set out the Agency's general duties:

> 7(1) It shall be the duty of each of the Ministers and of the Agency, in formulating or considering any proposals relating to any functions of the Agency,
>
> > (a) to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiological features of special interest...

This was condemned by Friends of the Earth among others, for weakening the present duties of the NRA, which under the *Water Resources Act 1991,* are to "further nature conservation"[110]. Following the criticism that greeted the Bill's publication, the DoE issued a press release to, *inter alia*, change the wording of clause 7. Mr Gummer said[111];

> "I have listened carefully to the concerns which have been raised over the wording of the Agency's conservation commitments ... I wish there to be no doubt about the conservation and the sustainable development role of the agency. I therefore intend to amend the wording so as to provide a clear duty not simply to consider conservation issues in relation to all the Agency's functions but to further conservation as appropriate".

The amended **clause 7** reads:

> "7 (1) It shall be the duty of each of the Ministers and of the Agency in formulating and considering -
>
> (a) any proposals relating to any functions of the Agency other than its pollution control functions, so far as may be consistent ...

---

[108]"The Environmental Agency is toothless" RSPB 13 October 1994
[109]"A troubled birth for the Environment Agencies Bill". *ENDS Report* 237 October 1994 pp22-3
[110]"Pollution agency wins approval" *Financial Times* 17 November 1994 p.14
[111]"Appointments to environment agency advisory committee announced" DoE News Release 650, 18 November 1994

> ... [specific areas of responsibility of the Agency and Ministers are defined]
>
> ... so to exercise any power conferred upon him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiological features of special interest;
>
> (b) any proposals relating to pollution control functions of the Agency, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna, and geological or physiological features of special interest..."

This has partly satisfied some critics[112] but notably, the Agency's pollution control functions are specifically exempted from this duty.

The NRA, RSPB and English Nature told the Environment Committee that they wanted the duty "to further" conservation extended to the Agency's pollution control functions[113]. The RSPB say that they, WWF, CPRE, FoE, Greenpeace, the NSCA, the Wildlife Trusts and other NGOs support the statutory agencies (English Nature, the Countryside Council for Wales, Scottish Natural Heritage, the NRA, the Countryside Commission, and the National Trust) 'in their call for the duty to further nature conservation to be extended across the range of the Agency's functions'[114].

On the other hand, HMIP has not pressed for this, with Dr David Slater saying to the Environment Committee that the need to 'have regard' to conservation regarding pollution is 'rather stronger than we have at the moment'[115]. According to *The Engineer* which recently interviewed Dr Slater, "A statutory duty to conserve would have been 'a stick to beat a recalcitrant agency' but, he implies, will not be needed."[116]

According to one commentator[117]:

---

[112]"Lobbyists force change" *Financial Times* 19 November 1994 p.6, and "Gummer toughens new green agency" *Guardian* 19 November 1994 p.9

[113]*Environment Bill: Hearings on the Draft Environment Agencies Bill* Environment Select Committee 23 and 30 November 1994 HC 40-i, ii and iii 1994-5

[114]RSPB Briefing *The Environment Bill House of Commons Second Reading*

[115]*Environment Bill: Hearings on the Draft Environment Agencies Bill* Environment Select Committee 23 and 30 November 1994 HC 40-i, ii and iii 1994-5

[116]*The Engineer* 6 April 1995 p.42

[117]"Environment Bill gets on its way" *ENDS Report 238* November 1994 pp20-1

> "Claiming that he wanted the Agency's conservation role to be put beyond doubt, Mr Gummer unveiled a new version of the duty in which the words "to further" have been restored, but which is so hedged with qualifications that the NRA's Chairman, Lord Crickhowell, suggested in the House of Lords that even medieval theologians might have been flummoxed by its complexity. Perhaps the key point is that Minister will now be able to seek to control how the Agency discharges the duty because in doing so it will have to act consistently with their guidance on its aims and objectives".

During the Bill's passage Lord Norrie twice moved Amendments to remove the words "other than its pollution control functions" from clause 7(a). At Report Lord Norrie, who was supported by Lord Crickhowell, Baroness Hilton and the Earl of Cranbrook, moved Amendment No. 36 to this effect and said that the duty had been a "vitally important bolster for the NRA in tackling water pollution issues across the country"[118].

However, Lord Moran referred to the evidence given to the Environment Select Committee by Dr Slater of HMIP (see above), and Viscount Ullswater reiterated the Government's case for retaining the provision, citing for instance the need to reconcile conservation duties with issuing authorisations under IPC, and considering BATNEEC[119]. Lord Norrie withdrew his amendment while he considered the Minister's response in detail.

During Third Reading Lord Norrie mentioned the 'long and thorny debate' during Report on the interpretations of Clause 7 and reintroduced his Amendment (as No. 5)[120]. Lord Williams of Elvel agreed that the issue was 'central to the Bill'. Both Peers acknowledged that HMIP clearly felt the provisions of the Bill as they stood were adequate but Lord Williams said that they wanted to ensure that the pollution control functions of the NRA 'were translated quite directly and specifically into the new Bill'[121]. However, Lord Norrie's Amendment was defeated on division by 150 votes to 91.

---

[118]HL Deb 2 March 1995 cc1654-1661
[119]cc1659-1661
[120]HL Deb 20 March 1995 c1023-1030
[121]c1024

3. Miscellaneous

During the Bill's passage through the Lords there were some efforts to make its general pollution control powers apply to 'day and night', with the intention of allowing the Agency to act to prevent **light pollution** at night, but these attempts were unsuccessful[122].

Clause 8 requires English Nature and the Countryside Council for Wales (CCW) and the Agency to liaise if planned works are likely to interfere with a site of special interest. National Parks authorities or the Broads Authority must do the same in the case of operations in National Parks. Similarly, **Clause 33** requires Scottish Natural Heritage (SNH) and SEPA to liaise regarding operations that might affect a Natural Heritage Area.

Clause 9 allows Ministers to issue codes of practice giving practical guidance to the Agency on matters relating to clauses 6, 7 and 8. **Clause 34** does the same for SEPA. **Clause 10** deals with incidental functions; for instance, the Agency is not allowed to provide supplies of water in bulk.

Clause 30 states that SEPA must have regard to the desirability of conserving and enhancing Scotland's natural heritage, buildings and sites of archaeological, architectural and historic interest. The same clause stipulates that SEPA must have regard to the desirability of preserving for the public any freedom of access, including access for recreational purposes, to forest, woodland, mountains, moor, bog, cliff, foreshore, loch and reservoir and other places of natural beauty.

4. Advisory Committees

Clause 11 of the Bill provides for the Secretary of State to establish a committee to advise him on the carrying out of the Agency's functions in Wales. It will meet at least once a year and members will be appointed by the Secretary of State.

Clause 12 and Schedule 3 give the Agency a duty to establish Environment Protection Advisory Committees for the different regions of England and Wales. These must be consulted before any proposals relating to that area are carried out.

---

[122]see for instance Lord Northbourne's Amendment at Report, HL Deb 2 March 1995 cc1632-1638

Clause 13 sets up regional and local fisheries advisory committees and **clauses 14-19** and Schedule 5 deal with regional flood defence committees.

C. Miscellaneous provisions and further general powers and duties

Clause 35 allows the new Agencies to do anything conducive to carrying out their functions. They may provide training, advice or assistance to any person and charge for this, and they may also make arrangements for the carrying out of research and make the results of this available for a fee.

Clause 36 allows any Minister to authorise the new Agencies to exercise on his behalf any eligible function of his. According to *ENDS Report*[123]:

> "One important addition to the draft published in October is a clause enabling Ministers to delegate any of their functions to either Agency. This provides an explicit basis for expanding their responsibilities ... early candidates for transfer from the DoE are aspects of chemicals control and the provision of technical guidance on waste and contaminated land. [MAFF's] responsibilities for dumping of waste at sea, effluent pipelines and radioactive discharges are also understood to be candidates for transfer".

The possibility has been raised of giving the Agency responsibility for regulating the EC Eco-Management and Audit scheme (EMAS) established by Regulation 1836/93, which comes into force in April 1995. In terms of the environmental management systems required it is similar to the British system BS 7750 but it applies initially only to industrial sites. The Regulation requires every Member State to set up a competent body to run a register of participating sites, charge fees and provide guidance on the scheme's working. In May 1994 the DoE announced the outcome of a consultation exercise[124] as to who should be the competent body for the UK's and for the EMAS scheme. The Agency had been mooted although the UK Ecolabelling Board had been the Government's preferred body. With the problems in getting ecolabelling off the ground it was thought best to leave UKEB to concentrate on its already difficult job however, and for the time being the DoE will be the competent body[125].

---

[123]"Environment Bill gets on its way" *ENDS Report 238* November 1994 pp20-1
[124]BS 7750 Consultation Paper July 1993
[125]DoE News Release 293 10 May 1994

1. Costs and benefits

Clause 37, previously clause 9 of the draft bill, relating to both SEPA and the Agency in England and Wales, states that:

> "37 (1) Each new Agency -
>
> [when exercising its powers]... shall ...take into account the costs that are likely to be incurred, and the benefits that are likely to accrue, in consequence of the exercise or non-exercise of the power or its exercise in the manner in question ...
>
> ... (2) The duty imposed ... does not affect its obligation, nevertheless, to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon or given to it otherwise than under this section."

Despite the disclaimer in subsection 2, this was the clause said to have "so alarmed the environmental lobby and the NRA on first publication ... leaving any aggrieved industry open to challenge the agency in the courts if benefits could not be shown to outweigh costs - an almost impossible task[126]". Mr Gummer has "refused to budge" on this clause, according to the *Financial Times*[127], but has said that he will ensure that it is not used by organisations to win more time before having to comply with regulations. Mr Gummer is reported to have the opinion of his legal advisors that the wording will not allow such a challenge, but to have said that if this proved not to be the case then the Government would take action[128] (see Lord Marlesford's remarks, below).

Before the Bill entered the Lords Ian Byatt, the Director-General of Ofwat, urged Peers to retain the clauses forcing the Agency to have regard to costs and benefits[129].

The Clause was considered in Committee on 31 January 1995[130]. Viscount Mills said that[131]

---

[126]"Lobbyists attack environment agency plans". *Guardian* 14 October 1994 p.10
[127]"Lobbyists force change" *Financial Times* 19 November 1994 p.6
[128]"Lobbyists attack environment agency plans". *Guardian* 14 October 1994 p.10
[129]"Water regulator urges retention of cost duty on new Environment Agency" Ofwat Press Release 27/94 12 December 1994
[130]HL Deb cc1368-1386
[131]ibid c1368

> "The costs of taking enforcement action should not be the primary factor used to decide whether to enforce the law and to protect the environment. If costs become paramount we may reach a situation in which many cases are taken against those who cannot afford to challenge the environment regulators but fewer cases are taken against industry and large businesses which are able to afford lengthy and expensive legal cases".

Lord Wade of Chorlton on the other hand said he hoped that any amendments to Clause 37 would be strongly resisted[132]:

> "...environmental measures now affect the lives of us all and they affect business. If that is so, we must remember that the environment is not the only matter which business must take into account. Business is also about wealth creation and achieving what is possible in society to benefit a whole range of people".

Lord Marlesford, chairman of the CPRE, made note of the opinion they had obtained from Mr Jeremy Sullivan QC that "the drafting is in such generalised terms that it will positively invite challenges to almost anything that this agency does, by way of judicial review."

Viscount Ullswater said that sustainable development involved reconciling the needs of economic development and effective environmental protection. He pointed out that the Agency already had a statutory duty under the *Environmental Protection Act 1990* to impose BATNEEC. Regarding costs and benefits, he added[133]

> "...clearly it is important that the agency should not be thwarted from effective action by those who would seek to challenge its decisions on the grounds of cost but then withhold from it the information it would need to take proper account of costs and benefits .... At an earlier stage in the Committee proceedings I undertook to take legal advice on whether costs and benefits should be interpreted as restricting the types of costs and benefits that are relevant. I am advised that there is no doubt that benefits should be construed widely, including environmental benefits. However, it is possible that costs incurred could be construed more narrowly as actual financial costs. We are continuing to examine the matter, but if there is real doubt I will consider introducing an amendment to remove it."

---

[132] c1370
[133] cc1374, 1383

Baroness Hilton of Eggardon pointed out that the CBI, Ofwat and the Institute of Directors were very much in favour of Clause 37, with the environmental groups opposed (see above) and added "industry clearly sees the provision as a means of avoiding the imposition of anti-pollution measures...the environment groups fear that that is what will happen[134]".

2. Miscellaneous

Clause 38 allows Ministers to give the new Agencies directions of a general or specific nature, including any appropriate for the implementation of UK obligations under the Community Treaties or any other international agreements.

Clauses 39 and 40 allow the Agencies to charge for applications, renewals or variations to environmental licenses (see clause 53, below). Different charges may be made according to the type of environmental licence, and the authorised activity in question.

Clauses 41-47 deal with financial provisions.

Clause 49 requires each Agency to provide an annual report.

Clause 50 allows the Secretary of State to require local enquiries or hearings to be held relating to the agencies' functions.

Clause 51 allows persons authorised by the agencies to prosecute on their behalf in the Magistrate's court.

Clause 52 deals with continuity during the transfer of functions to the new agencies.

Clause 53 deals with interpretation. **Environmental licences** are defined, for England and Wales as, *inter alia*:

- registration of a person as a carrier of controlled waste under the *Control of Pollution (Amendment) Act 1989,*

---

[134] c1379

- an authorisation under integrated pollution control system of the *1990 Environmental Protection Act*
- a waste management licence under Part II of that Act,
- a licence or consent under the *1991 Water Resources Ac*t,
- registration or an authorisation under the *Radioactive Substances Act 1993,*
- registration of a person as a broker of controlled waste under the *Waste Management Licensing Regulations 1994,*

and in relation to SEPA,

- a consent under Part II of the *Control of Pollution Act 1974,*
- registration of a person as a carrier of controlled waste under the *Control of Pollution (Amendment) Act 1989,*
- an authorisation under Part 1 of the *1990 Environmental Protection Act*, under IPC *and* local authority air pollution control
- a waste management licence under Part II of that Act,
- a licence under Section 17 of the *Natural Heritage (Scotland) Act 1991,*
- registration or an authorizations under the *Radioactive Substances Act 1993,*
- registration of a person as a broker of controlled waste under the *Waste Management Licensing Regulations 1994*

IV. Part II: Contaminated Land, Old Minerals Permissions and Abandoned Mines

A. Contaminated Land

1. Summary of the provisions

Clause 54 seeks to insert a 16-part section 78A - 78R into the *Environmental Protection Act 1990* (EPA). The proposed section occupies some 17 pages of the present Bill. The Bill introduces a definition of contaminated land based on the definition of 'harm' imported from section 29 of EPA (except that in s.29, "harm to man's senses" is included). It would repeal section 143 of EPA which, if it had been implemented, would have provided for local authority registers of contaminated land.

The section also deals with closed landfills, some of which could be designated 'special sites' if 'serious harm' or 'serious pollution to controlled waters' was, or was likely to be, occasioned. Section 61 of EPA would be repealed. This section, which was never implemented, would have given Waste Regulatory Authorities a power and a responsibility to inspect land and premises not covered by an active waste licence, on which controlled waste or noxious gases or liquids have been deposited. The section 61 power was not confined to landfills, and would have covered, for example, old gasworks. The Bill does not propose to make these 'special sites', though they could be designated as contaminated land. The chief difference is that special sites would be administered by the Agencies, while other contaminated land would be the responsibility of local authorities.

New powers which essentially re-enact statutory nuisance legislation would be introduced to deal with contaminated land and with closed landfills. The statutory nuisance provisions of sections 79(1)(a), (c) and (d) of EPA would no longer apply to contaminated land - but would continue to apply, it seems, in the case of closed landfills or 'special sites' (closed landfills which might cause serious harm or pollution) neither of which is excluded in this context.[135] Sections 79(1)(a), (c) and (d) of EPA concern premises in such a state as to be prejudicial to health or a nuisance; emission of fumes or gases; and dust, steam, smell or other effluvia arising on industrial, trade or business premises.

---

[135] Schedule 18, para. 75 of the Bill.

Proposed section 54 would establish who is liable for contaminated land. This, the Government believes, is more important than creating registers of contaminated land without establishing who has to clear it up. The question of liability, and its transfer from one person to another, exercised the Lords more than any other issue during the passage of the Bill. The Bill insists that enforcement measures against liable persons would have to be reasonable, having regard to the costs and benefits involved. The 'polluter pays' principle would not obtain in all circumstances; the principle of *caveat emptor*, or buyer beware, would still hold. The chief instrument for requiring remediation of contaminated land, closed landfills and special sites is to be the remediation notice. The government intends this to be goal-oriented, rather than a list of things which must be done.

The Bill provides for local authority and Agency registers of enforcement action taken in relation to contaminated land and closed landfills respectively, but not for comprehensive registers of such contaminated land. Local authorities would be required to carry out inspections to identify contaminated land and closed landfill sites, in accordance with advice to be issued by the Secretary of State; it seems that local authorities will not have complete discretion in this. The DoE has issued advice on *Information Systems for land contamination*[136] including the creation of records of land with a history of contamination. These would not be statutory records, and they would not necessarily be made public.

The Agencies would have an enforcement role in the case of closed landfills which cause (or might cause) serious harm. The local authorities would be the enforcing agencies for other contaminated land. The Agencies would carry out contaminated land surveys 'from time to time' or when asked to do so by the Secretary of State.

The financial memorandum attached to the Bill says that the effect on local authority spending will be neutral, and that the legislation is not expected to place additional burdens on business.

The Bill's harm-based definition of contaminated land is new. In evidence to the Environment Committee in 1989, the Department of the Environment defined contaminated land as ".....land which represents an actual or potential hazard to health or the environment as a result of current or previous use."[137] Some witnesses pointed out that land polluted by toxic chemicals, but not intended for use, would escape this definition of contaminated land. The view that contamination does not always entail risk is acknowledged by the consultants commissioned by the DoE to prepare the first of a series of reports on research into contaminated land. The definition of contaminated land in this report is "land that contains

---

[136]Contaminated Land Research Report (CLR) No 5, 1994

[137] Environment Committee, First report, *Contaminated Land*, 170-1, Vol 1, para 14.

substances that when present in sufficient quantities or concentrations are likely to cause harm directly or indirectly to humans, the environment or on occasions to other targets"[138].

Nobody knows how much contaminated land there is, even when definitions have been agreed upon. According to studies cited by the National Rivers Authority, there could be as many as 50,000 contaminated sites covering 50,000 hectares (120,000 acres) of land in the UK, although only a small proportion would present an immediate threat to public health or the environment[139]. The CBI has estimated that up to 200,000 hectares could be contaminated.[140]

2. What is contaminated land?

In its first consultation papers[141] on the EPA section 143 registers (an idea which has now been abandoned) the Government listed some 40 uses of land which might connote contamination. This list shows what may have been the Government's intentions when contaminated land registers were proposed, and it includes;

- Burial of diseased livestock
- Extractive industry (coal, oil, gas, shale, ores)
- Energy industry (gasworks, oil refineries, thermal power stations)
- Production of metals
- Production of non-metals by treatment of ore; cement manufacture and brickworks
- Glass making and ceramics
- Production and use of chemicals
- Manufacture of metal goods, explosives, electrical and electronic components
- Manufacture of pet foods or animal feedstuffs
- Processing of animal by-products, excluding slaughtering and butchering

---

[138]DoE, Contaminated Land Research Report, CLR No 1, *A Framework for assessing the impact of contaminated land on groundwater and surface water*, April 1994

[139] Contaminated land and the Water Environment, HMSO, March 1994; pp 3-5.

[140]Financial Times 4 May 94

[141] *Public registers of land which may be contaminated*, DoE and Welsh Office May 1991; and Scottish Office July 1991

- Paper, pulp and printing industry
- Chemical treatment of timber and timber products
- Leather works, textiles and dye industry
- Natural and synthetic rubber manufacture
- Dismantling and maintenance of railway rolling stock, marine vessels, road vehicles, air or space systems
- Sludge or sewage treatment, waste and scrap disposal, storage or disposal of radioactive materials
- Dry cleaning operations
- Research laboratories
- Demolition of buildings, plant or equipment used for any of the above activities

A further consultation document was issued on 31 July 1992[142]. This time, emphasis was to be placed "on the most contaminative uses of land," rather than all the uses listed previously. Land in the new consultation document constituted about 10 to 15% of the land which would have been registered under the initial proposals. The new list included only 8 headings:

- Gas, coke or bitumen manufactured from coal
- Lead and steel manufacture
- Asbestos manufacture
- Petroleum manufacture
- Household waste disposal
- Chemicals or thermal treatment of controlled waste
- Storage of scrap metal

The sites most commonly referred to the DoE Interdepartmental Committee on the Redevelopment of Contaminated Land between 1976 and 1989 were gas works (126 sites), Waste tips (126 sites), metal industry sites (44) and sludge tips/sewage works (38 sites).

---

[142] *Environmental Protection Act: section 143 registers.* DoE 1992

Sludge/sewage installations were missing from the later list. The second consultation document also proposed a split register - part A for land which had not been investigated or treated, and part B for land which had.

3. Risk, not Registers

The DoE announced on 24 March 1993 that the Section 143 proposals would be withdrawn, but that a **review** of responsibility for contaminated land would be set up. The Government was anxious to clear up the question of liability to encourage development in former industrial areas and ease development pressure on greenfield sites.

The reasons given for the abandonment of registers were:

- Registers based on potential contamination would include some 'clean' land and exclude some contaminated land
- There was no mechanism for removing land from the register once it had been treated
- Registration of land would not automatically lead to its remediation, as liability was unclear.

In the course of consultation, the government had come to the view that registers of contaminated land might cause falling land value and increase the development pressure on greenfield sites. They might also lead to unreasonable demand for clean-up of sites not posing any actual risk. The change of emphasis onto the *liability* for contaminated land was accompanied by an affirmation that the proper approach to it was the 'suitable for use' standard. This was aired in a speech by David Maclean to a conference on contaminated land on 14 May 1993. In this speech, Mr Maclean raised a number of the issues which were eventually addressed in the report issued in November 1994 after the completion of the review; namely, the *risk* posed by contamination on a particular site, as opposed to the presence of contaminants; proportionality of effort in clean-up; the liability for pollution (including liability by financial institutions); the *caveat emptor* ("buyer beware") principle; the burden of regulation; and the defences available to those held liable for contaminated land.

In March 1993 the DoE/Welsh Office issued *Paying for our Past* and the Scottish Office issued *Contaminated Land - clean up and control*. These consultation documents were couched in the terms of David Maclean's speech.

The outcome of the review of policy on contaminated land was published on 24 November 1994[143]. Some of it is familiar; for example, the Government's commitment to the 'suitable for use' approach, which means that remedial action will only be required when there are "unacceptable actual or potential risks to health or the environment" given the intended use of the site, and where there are "appropriate and cost-effective means" of dealing with the problem. The suitability of the land is not, at present, addressed by the Bill. Proposed Lords amendments at both the Committee and Report stages of the Bill were withdrawn after the government spoke of the difficulty of referring to the intended use of contaminated land; this, it was said, should be a matter for planning and building control authorities.[144]

The *Framework* said that the first priority is to prevent or minimise further pollution of contaminated land. Improvements can in most circumstances be achieved through the activities of the private sector without need for direct intervention. However, local authorities will be able to identify and act on land contamination, as they can at present. They will be able to require a person responsible for land to remedy and prevent or restore it to a condition where it is suitable for use.

It should be noted that in the UK it has been the private sector rather than the public sector which has carried out most remedial work on contaminated land, although public funds have been made available in the form of Derelict Land Grant (now administered by English Partnerships, a NDPB).

According to the *Framework*, the 'caveat emptor' principle would not be changed, but the situation of property buyers would be improved in principle by proposals to improve the collation and availability of information held by the Agencies. It is not clear that these proposals have yet been translated into the Bill.

The *Framework* says that the responsibility for contamination would in principle rest with the person who caused it; and where this is not known, with the occupier. However, the occupier would not be held liable for pollution caused off-site by predecessors on his land, unless liability had been *conveyed* to the new occupier. To put it another way, the current owner or occupier of land could be held responsible for remediation of pollution on his land even when it came from neighbouring land. This principle is contained in proposed section 78F.

As for legal defences, the *Framework* says that it would be unfair to hold the polluter responsible for unforeseen consequences, but it would not be a defence to say that a polluter was carrying out a 'natural use of land,' as the Cambridge Water Company v. Eastern Counties Leather Company established in December 1993. Rylands v. Fletcher (1866) established that a polluter has strict liability for the escape of hazardous substances from his

---

[143]*Framework for contaminated land*. DoE 1994
[144]For example, HL Deb 7 March 1995 c176

land, but only where the use of the land is non-natural. Until 1993, courts had been generous in their construction of the word natural. The *Framework* said that it would be for the courts to decide what weight to attach to defences based on State of the Art, good faith, compliance with regulatory arrangements (eg under HMIP, the National Rivers Authority or local authority air pollution control), or due diligence.

The *Framework* said that appeals against enforcement action would be provided for in the Bill. The enforcing agency would have to show that its acts were reasonable in relation to the costs and benefits of remediation work. The burden of proof in appeal cases would rest with the enforcing agency (ie, local authorities, or either Agency, depending on the type of land).

The *Framework* says that lenders should not be expected to be relieved of all risk in relation to sums they advance, but lending would not create liability for costs of remediation of contaminated sites. Enforcing agencies should not see lenders as 'deep pockets.' The DoE and the Agencies will publish guideline concentrations which, if exceeded, would be triggers to further action on contaminated land. The Agencies will continue DOE work on technical research and guidance and will issue guidance to local authorities.

4. The proposed contaminated land section

Clause 54 of the Bill would insert **new section 78A to 78R** into the *Environmental Protection Act 1990.*

Significant harm

The Bill proposes a new definition of contaminated land based on the notion of significant harm, or significant possibility of such harm, or of pollution to controlled waters, by reason of substances in, on or under the land (proposed **section 78A**(2)). This measure was originally drafted in terms simply of harm, or pollution to controlled waters. 'Significant harm' and 'significant possibility of harm' were proposed by the government at the Report stage in the Lords. At the Committee stage, Lords had been worried that 'harm' would could include anything, however insignificant.[145] Viscount Ullswater said that significance would be a matter of what was affected, as well as the extent of the affects; for example, harm to humans might be significant in circumstances where harm to insect pests, or to property, was not. The test of 'significant possibility of harm', he implied, would mean that events of low probability could be prevented if their consequences would be far-reaching.[146]

---

[145]HL Deb 31 January 1995 c1426.
[146]HL Deb 7 March 1995, c137-8

Harm is defined in proposed section 78A(7) to mean harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property - but not, as in s.29 of EPA, offence to his senses. This was deliberately excluded as smells are considered to be a different problem from substances on land. Smells would continue to be dealt with under statutory nuisance legislation.[147] Pollution of controlled waters is defined to mean entry into controlled waters of any noxious, poisonous or polluting matter or any solid waste matter (proposed section 78A(12)). This test is imported from section 161 of the *Water Resources Act 1991*.

The question of what is taken to be significant harm, the possibility of this happening, and the likelihood of water pollution, is to be determined in accordance with guidance to be issued by the Secretary of State. This provision (proposed section 78A(8)) was introduced in the Lords[148], as was proposed section 78R, *Supplementary provisions with respect to Secretary of State's guidance* (some parts of 78R are imported from original proposals in the draft of section 78)[149]. The guidance, to judge from a remark by Viscount Ullswater, will relate to the 'detailed risk assessment' to be carried out when local authorities seek to identify contaminated land. The risk assessment will allow the local authority to determine whether there is a significant possibility of significant harm being caused. He said that this would improve uncertainty in the property market - at present local authorities can use their statutory nuisance powers under EPA, in the absence of much technical guidance. The new situation would allow prospective buyers to know what they might have to do by way of remediation. Baroness Hilton of Eggardon asked that the draft guidance be made available before the Bill appeared in the Commons.[150]

The meaning of 'land'

At all stages in the Lords a number of proposals to restrict the meaning of 'land' for the purposes of proposed section 78A were put forward. Some members were worried that contamination by reason of substances *under* the land would make owners liable for pollution caused by mineral operators or firms discharging substances into underground water systems. The government said that its intention in including substances under land was to avoid 'unfortunate and undesirable omissions'. At the third reading, the Earl of Kintore said that a mine owner owns an underground space, and not land; and that it might be difficult to hold him liable for pollution of land. The surface owner might then be held responsible for contamination due to a mineral firm's operations, at least until the beginning of the next century, when clauses 55-57 of the Bill would make minerals firms responsible for water pollution from abandoned mines.[151] Another Lord said that the whole of clause 54 was half-

---

[147]HL Deb 31 January 1995 c1440
[148]HL Deb 7 March 1995 c162
[149]HL Deb 7 March 1995 c226
[150]HL Deb 7 March 1995, c138-9
[151]HL Deb 20 March 1995 c1036

baked. Viscount Ullswater's answer, for the government, that wide consultation on the clause had been carried out was not unassailable, said Lord Harmar-Nicholls; who made the decisions arising out of the consultations?

Local authority inspections

Proposed **section 78B** would oblige a local authority to inspect its area from time to time in order to identify three kinds of sites; contaminated land, closed landfill sites (ie where no waste disposal licence is any longer in force) and closed landfill sites which may be suitable for designating as special sites (ie where serious harm or serious pollution of controlled water is being, or likely to be caused). In all 3 cases, the local authority is to notify the Agency. In the case of proposals for special sites, the Agency will then apply to the Secretary of State for the site to be designated a special site. The Secretary of State will notify the Agency, the local authority, the owner and the *occupier* (this last was added by the Lords[152]) of his intention to designate a special site. Section 78B(2), introduced in the Lords, refers again to Secretary of State's guidance on designations which is the subject of proposed section 78R.

Contaminated land no longer statutory nuisance

The inspection duty in proposed section 78B is comparable with that for statutory nuisances under section 79 of EPA. But detection of contaminated land, soil or groundwater is not as straightforward as detection of smoke, noise, vibration, deposits or other statutory nuisances. If new clause 78B extends the meaning of "inspection" to include the use of documents, then this will permit a greater area of land to be designated as contaminated. A proposal at the Committee stage for inspections 'on a regular basis' and at the Report stage 'every 5 years' instead of 'from time to time' was withdrawn after Viscount Ullswater said that some sites would require more or less frequent inspections; at the Report stage he said that this would be addressed by the Secretary of State's guidance.[153]

Section 79 of EPA would be amended so that the statutory nuisance provisions would not apply to contaminated land, though they would continue to apply to closed landfills and special sites (schedule 18, paragraph 75 of the Bill). The removal of contaminated land from the statutory nuisance framework would mean that an 'aggrieved person' could no longer apply to a magistrates court to compel a local authority to abate a nuisance. The government believes that the proper remedy is through private actions for nuisance. In the Lords, the DoE was said to be unaware of any attempts so far by individuals to use their statutory nuisance rights in respect of contaminated land. It is not clear what this means, as contaminated land

---

[152]HL Deb 7 March 1995 c169
[153]HL Deb 31 January 1995 c1442-4 and 7 March 1995 c167-8

is not currently defined in statute. [154] Some Lords were worried that the Bill creates new owners' liabilities beyond those in nuisance, though the government disputes this; see the paragraphs on defences and on liability below.

At present, only closed landfills to be special sites

Special sites are defined in proposed section 78A(6) so that they can only be closed landfills. The EPA currently provides for a special regime for closed landfills and other difficult sites such as gasworks - section 61 - but this was never implemented; the new section is intended to replace it in respect only of closed landfills. The interesting point is that the Agency will have enforcement responsibility only for special sites, presumably because of the Agency's continuity with the functions of WRAs.

At the Report stage in the Lords an amendment was put forward which would have made any contaminated land, not just closed landfills, eligible for designation as a special site.[155] While this might bring difficult land such as old gasworks within the purview of the Agencies, it would also satisfy waste management industry concerns that old landfills are being singled out for special treatment. A proposal to make other badly contaminated land, such as old gasworks or chemical plants the responsibility of the Agency rather than local authorities, was made and then withdrawn at the Report stage in the Lords. Viscount Ullswater said that since the Agencies would be responsible for operational landfills, it was appropriate for them to deal with the most difficult closed landfills as special sites; contaminated land in general is a local issue, to be managed by elected authorities.[156]

At the Committee stage Viscount Ullswater explained that closed landfill sites need to be treated differently from other contaminated land as the extent of the problems (eg outgassing) presents a special kind of engineering problem. This reflects, he said, the special attention they are given in much of Europe. He also said that closed landfills not presenting any problems need not be considered either as contaminated land, or as special sites.[157]

On another occasion Viscount Ullswater said that the seriousness of the problems caused by a site was not the only consideration in making it the responsibility of the Agency; local authorities may be better placed to deal with some sites. He accepted, however, that some contaminated sites that were not special sites might need the expertise of the Agency, and said that the government 'would like to bring forward an amendment' at a later stage.[158]

---

[154]HL Deb 7 March 1995 c216
[155]HL Deb 7 March 1995 c156
[156]HL Deb 31 January 1995 c1437
[157]HL Deb 31 January 1995 c1433
[158]HL Deb 7 March 1995, c160-161.

Remediation notices a statement of intention

Under proposed **section 78C**, the Agency would have to prepare a remediation statement specifying the steps to be taken in respect of a special site; and a local authority would have to do the same in respect of a closed landfill site. The Bill does not call for a local authority remediation statement in the case of contaminated land which is not some kind of landfill site. At the Committee stage, Viscount Ullswater admitted that remediation statements do not require any specific action of anybody, but were meant only as a public statement of what the enforcing agency intended to do about landfill sites which may require a long-term approach to remediation.[159]

Remediation notices; and the 'fly tipping' defence

In respect of contaminated land, closed landfills or special sites the "appropriate person" (see below) would be served with a remediation notice specifying what is to be done by way of remediation, and the period for compliance. [Proposed **section 78D**(1)]. The remediation measures must be "reasonable", having regard to costs and the seriousness of the harm or pollution in question [78D(2)]. A remediation notice could only require the person on whom it is served to carry out works on land he does not occupy if the enforcing authority (ie local authority or Agency) has obtained the consent of the occupier of the other land [78D(5)]. Proposals at the Committee stage that the enforcing agency consult the owner and occupier of land containing closed landfills when drawing up remediation statements were withdrawn. Viscount Ullswater said that forthcoming guidance would make it clear that consultation was considered good practice.[160] At the third Lords reading, it was announced that remediation notices will be framed in terms of objectives, rather than specific works that have to be undertaken.[161]

A Committee proposal that service of a Notice be a discretionary power and not a duty was rejected by the government. The motivation for this proposal was that all contaminated land would otherwise be given equal priority, leaving local authorities with no discretion to concentrate on the most serious problems.[162]

Baroness Hilton of Eggardon proposed amendments at both the Committee and the Report stages which would have allowed local authorities to use the remediation notice procedure (or, alternatively, an *assessment notice*) to investigate land which was likely to be contaminated,

---

[159]HL Deb 31 January 1995 c1433
[160]HL Deb 31 January 1995 c1451; and 7 March 1995 c170-172
[161]HL Deb 20 March 1995 c1047.
[162]HL Deb 31 January 1995 c1451-2.

and pass the costs to the owner or occupier of the land; as the Bill stood, a notice could only be served after contamination had been established by the local authority at its own expense. She was persuaded to withdraw the amendment, but said she was disappointed by the government's implication that local authorities would use her suggested procedure in an indiscriminate way, and by the burden of investigative costs that would be placed on local authorities.[163]

Proposed section 78D(3) refers to powers of the Agency under section 27 of EPA. Section 27 allows HMIP and River Purification Authorities (henceforth, the appropriate Agency) to remedy 'harm' caused by the failure to observe an enforcement or prohibition notice, or by the carrying on of a prescribed process (part I of EPA) without an authorisation.

Proposed section 78D(4), introduced at the Lords third reading,[164] refers to section 59 of EPA, which contains a local waste authority power to require removal of waste unlawfully or harmfully deposited, treated or disposed of. The intention is that a landowner will not be held responsible for contamination caused by **fly tipping**; the contaminated land provisions would not apply. This is the only part of the new contaminated land provision which refers to the reasons by which land has become contaminated. It maintains the status quo.

The "appropriate person" and defences available

Proposed **section 78E** specifies that the "appropriate person" to receive a remediation notice would be, in the first instance, the polluter of land. If he cannot be found, or if liability has been transferred to the current occupier or owner through the conveyancing process, or if the consent of the occupier for the true polluter to enter onto his land to clean it up is refused, then the present owner or occupier of the contaminated land is the "appropriate person."

Lords proposals to admit a 'state of the art' defence (ie that the polluter cannot have foreseen that his actions would one day lead to enforcement) and a 'compliance with pollution control regime' defence were also rejected. The government had said in the *Framework* that the courts should decide how much importance to attach to these matters. Viscount Ullswater said that the availability of these defences could encourage excessive caution (over-compliance, inappropriately expensive technology) on the part of industry. They would also lead to lengthy litigation in which both parties tried to establish the state of affairs at some time in the past. [165] Attempts to introduce defences based on claims that 'best practicable means were used to abate pollution' (a defence available in statutory nuisance cases on industrial, trade and business premises) and 'contamination could not reasonably have been

---

[163]HL Deb 7 March 1995, c172-177
[164]HL Deb 20 March 1995 c1044
[165]Hl Deb 31 January 1995 c1454-7

foreseen' were also rejected. Unpalatable as it was to some Lords, the government seemed to be insisting that an innocent landowner may have to take responsibility for contaminants on his land; and that the Bill does not alter the power of the courts to interpret expressions such as 'knowingly permit' the presence of contaminants.[166] Proposals to allow appeals against remediation notices on the grounds that the owner could not have known about the contamination when he acquired or occupied the land was withdrawn after the government insisted on the *caveat emptor* principle. The government said that where the polluter cannot be found, the owner for the time being must take responsibility. Any other approach would be to give the current occupier uncovenanted gains, as the public purse would pay the bill.[167] It said that new liabilities would not be created over and above those in current statutory nuisance law.

The government was more sympathetic to claims that water may have become contaminated through lateral migration of contaminants without the knowledge of the present owner, and said, 'We are hoping to bring forward an amendment...at a later stage.' In this area, the government conceded that it might have created new categories of potential liability[168] compared with those created by section 161 of the *Water Resources Act 1991*. (Lord Northbourne seems to have taken Viscount Ullswater's remarks to mean that lateral movement of water, rather than of contaminants of water, was to be the subject of the later amendment). However, the government rejected amendments which sought to remove potential liabilities which fall to landowners under existing provisions. It assured the House that the provisions of the Bill will not apply to past harm which is not recurring. [169]

The problem of apportioning blame where several polluters may have been involved was discussed at the Report stage. If they all contributed to the problem at they same time, blame might be apportioned among them. If at some *later* time only one person knowingly permitted the contaminants to remain on his land, he alone might be held to be the "appropriate person", according to Viscount Ullswater.[170]

Under proposed **section 78F**, the present owner or occupier is also the "appropriate person" if it *appears* that substances have escaped with his knowledge onto any land he owns or occupies, but he is not the appropriate person in respect of the land the substances came from. A Lords proposal to replace *appears* with a stronger test was withdrawn.[171]

---

[166]HL Deb 7 March 1995 c211; on the government's reply on the comparison with nuisance law, see also HL Deb 20 March 1995 c1055.
[167]HL Deb 31 January 1995 c1461; 7 March 1995 c183-4 and 209.
[168]HL Deb 7 March 1995 c209-210
[169]HL Deb 20 March 1995 c1056
[170]HL Deb 7 March 1995 c215.
[171]HL Deb 31 January 1995 c1465-6

Lord Northbourne, apparently referring to proposed section 78F, complained that the Bill gives no power to serve a notice on the owner of a site from which pollution has migrated to a receiving site; the owner of the receiving site will be held liable for contaminants on his land.[172]

At the Report stage the government addressed the problem of contamination where landowners had been compelled to grant rights to minerals operators on their land; the planning conditions, including a requirement for restoration, and the compensation arrangements in compulsory rights cases were held to answer this concern.[173]

Transfer of liability to new owners, lenders

At the Report stage Viscount Ullswater explained that there should be no need for express transfer of pollution liability beyond the transfer of liability in general when land is purchased. [174] At the third reading Lord Northbourne said that according to legal advice given to the Country Landowners Association, undisclosed liabilities at the time of sale might well *not* be transferred. Viscount Ullswater replied that the clause as drafted [**78E**(3)] was not correct and would be changed.[175] Lord Northbourne cited further legal opinion that the new measures create new liability beyond that in common and statutory nuisance law; a person is normally liable for nuisances caused by another only if he has adopted or continued the nuisance; and in general, liability is limited by what is reasonable. In the Bill, however, 'no defences apply save for fly tipping.' [176]

Replying for the government, Viscount Ullswater said that existing statutory nuisance law makes the owner or occupier of premises liable to receive an abatement notice when the person responsible for nuisance cannot be found, and obliges local authorities to serve notices. He conceded that there was a difference between the definition of nuisances and of contaminated land, but that the definitions of nuisance would capture much of the same range of problems as contaminated land. He answered the suggestion that local authorities had more discretion in statutory nuisance matters (ie that they had wider scope *not* to take action) by saying that there was a body of case law in nuisance; and that the Secretary of State's guidance on contaminated land enforcement would bring about more consistency. He said that comparisons with defences at common law were missing the point; common law actions seek compensation for specific damage to private persons and companies, while the proposed statute seeks to remove environmental problems.

---

[172]HL Deb 20 March 1995 c1053
[173]HL Deb 7 March 1995 c213.
[174]HL Deb 7 March 1995 c210
[175]HL Deb 20 March 1995 c1051
[176]HL Deb 20 March 1995 c1052

In a remark during the third reading that will be of interest to people living near old gasworks, Viscount Ullswater said that he had been advised that the liabilities of British Gas remain, as the legal entity remains. [177]

A proposal to make officers of dissolved companies trying to avoid liability the "appropriate person" was withdrawn.[178] However, the government said that it was looking at anti-avoidance measures.[179]

At the Committee stage and the third reading there were proposals to restrict the scope of meaning of the word 'owner', so that financial institutions would not be held liable for damage caused by borrowers. In particular, a Committee amendment would have removed liability from a mortgagee holding contaminated land only for the purpose of selling it. Opposing it, Viscount Ullswater said that this could prevent prompt action to deal with problems; it would not be right to give mortgagees special treatment. At the same time, he did not want financial institutions to be regarded by local authorities as 'deep pockets.' [180] He said that lenders would retain the right not to go into possession of land over which they hold security if they believe that the land could have a negative net value.[181]

Appeal against notice; penalties and charging notices

Proposed **section 78G** provides for appeal against a remediation notice within 21 days. Appeals would be heard by a magistrates court in England and Wales, a sheriff in Scotland, or the Secretary of State in either jurisdiction. The notice could be quashed or modified or confirmed. In particular, it could be quashed if it contained 'a material defect.' Lords proposals to oblige enforcing authorities to satisfy themselves that a remediation notice had been complied with, and to issue a completion certificate, were withdrawn. The government said that long-term compliance, for example to vent a landfill properly, might not be met for years; and certification might imply immunity from further action. The government said that it would look again at the question of 'cured' contaminated land, the making of appropriate entries in the register (**proposed section 78L**) so that land values were not affected, and the meaning of 'suitable for use' in the absence of a compliance certificate. [182]

At the third Lords reading, it was announced that landowners will be allowed to make entries in the registers about the steps they have taken to manage contaminated land. The onus of

---

[177]HL Deb 20 March 1995 c1048 and 1051
[178]HL Deb 31 January 1995 c1465
[179]HL Deb 7 March c209
[180]HL Deb 31 January 1995 c1449
[181]HL Deb 20 March 1995 c1044
[182]HL Deb 7 March 1995 c186. The matter was also raised at HL Deb 31 January 1995 c1459.

satisfying the requirements of remediation notices would rest with the person on whom it was served, rather than a duty on local authorities. Remediation notices will be framed in terms of objectives, rather than specific works.[183]

Section 78H would make it an offence not to comply with a remediation notice without reasonable excuse. In the case of industrial, commercial or business premises the maximum penalty on summary conviction would be a maximum of £20,000 plus a maximum of £2000 for each day after conviction. For other premises, the maximum penalty would be £5000 plus £500 per day. The Secretary of State might, by order, substitute other penalties; but the government accepted[184] that he should not do this before a draft of the resolution had been approved by both Houses [78H(5)].

Section 78J would allow the local authority to carry out what was specified in the remediation notice and recover reasonable costs, having regard to any hardship this might cause. The rest of the clause applies only to England and Wales. A Report stage proposal which would have introduced the concept of 'reasonableness' in recovering costs, on (unexplained) grounds other than hardship, was withdrawn. The government said that the power to recover costs would be, in any case, discretionary, and remediation notices may require only reasonable measures.[185] The section says that where the local authority serves a **charging notice** on the owner of premises on land which he caused to be contaminated, the cost and accrued interest will remain a charge on the premises until paid. The local authority could allow instalments to be paid for up to 30 years.

Appeal to a county court against a charging notice is provided for. There is no Scottish provision for charging notices in the Bill, as the conveyancing system there does not admit such a procedure. Sums due in Scotland have to be pursued through the courts. A Lords proposal for Scottish charging notices was withdrawn on this basis.[186]

Remaining provisions of proposed section 78

Section 78K would allow a special site to be "de-designated" if it appears to the agency that it is no longer suitable for such designation.

Section 78L would require every local authority and the Agencies to maintain a register of remediation statements and notices, appeals against remediation notices, and appeals against

---

[183]HL Deb 20 March 1995 c1047
[184]HL Deb 31 January 1995 c1467
[185]HL Deb 7 March 1995 c219
[186]HL Deb 7 March 1995 c221

charging notices. EPA 1990 and the Water Resources Act 1991 would be amended so as to change the provisions relating to confidential information held in registers.[187] The government amended proposed section 78L in the Lords so that either Agency, and the local authorities, shall make registers available and provide facilities to make copies of entries on payment of a reasonable charge.[188]

Section 78M would require either Agency to publish a report on the state of contaminated land in its jurisdiction. Every local authority would supply such information as it possesses, but there is no requirement in this clause for a systematic survey.

Section 78N would allow Agencies to issue guidance to local authorities on closed landfills in general or on any particular closed landfill. A Lords proposal to allow local authorities to adopt 'orphan' contaminated sites whose owners could not be traced, in order that they could be redeveloped, was withdrawn after the government said that there were already sufficient compulsory purchase and other land acquisition powers.[189]

Section 78P would allow local authorities to treat land outside, but adjoining or adjacent to its area, as if it were within its area if it were likely to cause contamination within its area.

Section 78P(3) mentions the liability of insolvency practitioners. They would be considered personally liable only if their negligence were responsible for significant harm, pollution of controlled waters, or the condition of land by reason of substances in, on or under it.

Section 78R, on the Secretary of State's guidance, was described earlier.

Lords proposals to transfer contaminated land powers to the Agency or to the Secretary of State if a local authority failed to discharge some function were withdrawn.[190]

B. Old minerals permissions

After the contaminated land provisions were debated at the Committee stage in the Lords, Viscount Addison proposed an amendment to the *Planning and Compensation Act 1991*. This

---

[187]Schedule 18, paras. 69 and 147.
[188]HL Deb 7 March 1995 c222-3
[189]HL Deb 7 March 1995 c223-5
[190]HL Deb 7 March 1995 c 227-30.

amendment addressed the problems caused by minerals planning permissions granted between 1948 (when the requirement for planning permission on application became general for the first time) and 1981, when the Minerals Act was passed. Pre-1948 permissions have been updated as a result of the *Planning and Compensation Act 1991*. There is concern from Council for the Protection of Rural England and other campaigners that extraction is being carried out in areas such as national parks where planning permissions would be much harder to obtain today; that modern planning conditions were not laid down in old permissions; that there is no provision for restoration of sites; and that some 1600 permissions are dormant, but could be activated at any time by developers. At present, minerals permissions granted before 1982 remain valid until 2042.

Viscount Addison proposed that holders of old permissions should seek approval of environmental standards within 5 years, or the permission would cease to remain in force. In any case, all old permissions would run out in 30 years.[191] The amendment was opposed by Lord Howie of Troon, who said that the mineral in the ground was the asset base of minerals firms, and that 30 year time limits on extraction would reduce the asset base by half. He also said that the aggregates industry puts more into the environment than it takes out.

Viscount Ullswater assured the House that the government was engaged in discussion with the industry to take forward the proposals (including proposals for a time limit) in a 1994 consultation document and the subsequent Report.[192] The amendment was withdrawn.

Viscount Addison brought his proposal back to the Report stage. There, the government announced that local authorities would be required to make lists of active minerals sites, the pre-1969 and 'sensitive areas' and peat extraction ones first. Operators would have to submit a scheme of updated planning conditions for approval within 6 years, or permissions would fail. No compensation would be paid for new conditions, but there would be a right of appeal. Dormant sites would not be allowed to re-activate without approval of new conditions. The 2042 expiry date will be allowed to stand, as the new regime should minimise problems. Conditions which affected the asset value, as opposed to amenity conditions, would not be imposed unilaterally. Active planning permissions would not be revoked without compensation. All mineral sites would be reviewed every 15 years. These measures will be introduced as amendments to the Environment Bill at the Commons stage.[193]

C. Abandoned mines

---

[191]HL Deb 31 January c1469

[192]*The reform of old minerals permissions 1948-1981*, deposited paper 10,717 March 1994; the Report is deposited paper 3s/924.

[193]HL Deb 7 March 1995 c133-4

The problem of minewater leaking from abandoned mines when pumping stops, the subsequent pollution of water courses and the statutory defence for this have been sources of widespread concern, heightened by the privatisation of British Coal. The situation in the Durham coalfield has been particularly pressing. These issues were covered in Library research paper 94/43 *Water Pollution from Abandoned Coal Mines.*

To summarise the problem, s85 of the *Water Resources Act (1991)* provides for the prosecution of river polluters, and allows the NRA to recover from the polluter the cost of cleaning up. A working mine is the responsibility of the owners, and if pollution is taking place then the NRA can make the owner deal with the pollution. But abandoned mines are specifically exempted by section 89(3):

> "A person shall not be guilty of an offence under section 85 above by reason only of his permitting water from an abandoned mine to enter controlled water".

To prosecute, one would need to prove that switching off mine pumps had *caused* pollution, which is extremely difficult to do. The Coal Authority assumed its full range of functions on 31 October 1994. Announcing this, the DTI noted that its functions would include "dealing with events such as landslips, water discharges or gas emissions which are its responsibility as owner of the coal reserves"[194].

In its response to the Coal Authority draft model licensing documents[195], the NRA judged in April 1994 that there was nothing to suggest that the Coal Authority would have any more responsibility to prevent pollution than did British Coal, and stated "Clarification is needed about who, and in what circumstances, will have responsibility for water discharges from abandoned mines ... Neither the Bill nor the consultation document address any of the legal deficiencies ... ". The NRA was reported to be still unhappy with the Coal Industry Bill after its passage through both Houses[196].

The *Coal Industry Act 1994* (CAP 21) contained no specific provisions relating to water from abandoned mines however, despite the fact that amendments to that effect were being tabled throughout the Bill's passage. Indeed, Mr Eggar said that the Bill's final stage in the Commons was a "re-run of a re-run of a re-run of previous debates". Lords and Government

---

[194]*DTI Press Release P/94/557* 19 September 1994

[195]*The Coal Authority - National Rivers Authority Response to Consultation on the Explanatory Note and draft model licensing documents plus PQ from Chris Mullin (Sunderland South) dated 20 April 1994.* DTI, 20 April 1994. DEP 10699

[196]*Water Bulletin* 8 July 1994 p.3

amendments dealing with liabilities and the financial wherewithal of operators to meet these were however added to the Bill[197], and Lord Strathclyde gave the most far-reaching assurances during the Bill's passage[198]:

> "I should like there to be no doubt that so far as water pollution or potential water pollution is concerned the Government will not be content for the [Coal] Authority to rest on the present effect of the exemptions. On the contrary, we will expect it to go beyond the minimum standards of environmental responsibility which are set by its legal duties and to seek the best environmental result that can be secured from the use of the resources available to it for these purposes".

Lord Crickhowell went on to say that the Coal Authority (CA) would have to set priorities with the help of the NRA. He was certain this would include a commitment to keep pumping in the Durham coalfield. The CA's resources would "necessarily be limited" but he could assure the Committee that it would in due course have an earmarked budget for these purposes. Mr Atkins has since confirmed that the CA will have "a specific budget...which will enable it to carry forward in full the role and activities of British Coal in this area"[199]. However, Mr Stuart Bell pointed out that Government assurances amounted to "nothing in writing, nothing in the Bill and nothing in the statute book"[200].

As part of its contaminated land review, which has been prompted in part by problems with implementing section 143 of the *Environmental Protection Act 1990* dealing with contaminated land registers (see section A above), the DoE produced the consultation paper *Paying for our Past*[201] in March 1994. This noted that "the justification for the special exemption under the Water Resources Act should be reassessed in the light of the emerging conclusions of the review of contaminated land".

In response to *Paying for our Past*, the NRA issued *Abandoned Mines and the Water Environment*[202]. This described the extent of the problem and called for "abandoned mines" to be legally defined; converting an active mine to an abandoned mine should include, *inter alia,* a duty to carry out works to ameliorate the environmental effects of abandonment.

---

[197] HC Deb 28 June 1994 c688 onwards
[198] HL Deb 26 April 1994 c541
[199] HC Deb 4 May 1994 cc534-535w
[200] HC Deb 28 June 1994 c688
[201] DoE/Welsh Office, March 1994, DEP 10452
[202] Report of the NRA, March 1994, Water Quality Series No. 14

Announcing the conclusion of the Government's review and the publication of a white paper *Framework for Contaminated Land*, the Secretary of State for the Environment Mr Gummer said that[203]:

> "In "Paying for our Past" we said that, in the light of the emerging conclusions of the review, we would re-assess the justification for the present unique statutory exemptions in respect of water escaping from abandoned mines which pollutes controlled waters. In view of the concerns that have been expressed about water pollution on abandoned mines, we shall propose legislative amendments to remove the existing statutory defence and exemptions for mines abandoned after the end of 1999 so that the agency will have the same powers for those mines as for other discharges.
>
> We shall also propose a duty on mine operators to give the agency six months' notice of any proposed abandonment. This will provide an additional safeguard to ensure that when mines are abandoned this is done in a responsible manner with full regard to the effects on the water environment.
>
> These provisions on abandoned mines will end a longstanding anomaly and enhance the agency's ability to tackle and prevent pollution".

Clauses 55 and 56 of the *Environment Bill* insert a new chapter IIA into the *Water Resources Act 1991* for England and Wales, and a similar new Part IA into the *Control of Pollution Act 1974*, for Scotland. "Abandonment" of a mine is defined, and this includes:

- the discontinuation of mining activities or the cessation of the working or use of any seam or vein in the mine or its outlets,
- the discontinuance of operations for the removal of water
- for mines in which activities other than mining are carried out, any substantial change in the operations for the removal of water from a mine, whether or not mining activities are also carried on in that mine.

Furthermore, under these clauses, if a mine has been abandoned more than once, for the purposes of the Act it is regarded as having been abandoned on the more recent occasion.

---

[203]HC Deb 24 November 1994 c245-7w

The operator of a mine which is to become abandoned must give notice of this proposed abandonment to the Agency or SEPA, at least six months beforehand. (It may be prescribed that this notice must include the operator's opinion concerning the likely effects of the abandonment.) Failure to give notice is punishable on summary conviction by a fine not exceeding the statutory maximum (currently £5000), or on indictment by an unlimited fine. Exemptions allow mines to be abandoned in an emergency.

If the Agency or SEPA learn of a proposed abandonment (through receiving a notice or otherwise) and consider that it is likely that this will result in harm to land or pollution of controlled waters, they must inform the relevant local authority.

Clause 57 amends section 89 of the *Water Resources Act 1991*, that presently provides the defence for abandoned mines. After section 89 (3), which, to reiterate, states:

> "A person shall not be guilty of an offence under section 85 above by reason only of his permitting water from an abandoned mine to enter controlled water".

There will be added:

> "(3A) Subsection (3) above shall not apply to the owner or operator of any mine if the mine in question became an abandoned mine after 31st December 1999".

So although the defence is removed, this is only for mines abandoned after 31 December 1999. According to the Bill's explanatory notes[204]:

> "Since these proposals are coming forward in parallel with the privatisation of the coal industry, there could be some adverse effect on proceeds to the Government. Accordingly, the removal of the statutory protections is being timed to reduce any possible effect".

According to one report[205]:

> "A more cynical approach, and one more at odds with the concept of sustainable development, would be hard to imagine".

---

[204] *Environment Bill* p.xiii

[205] "Free lunches all round" FOCUS *ENDS Report* 238 November 1994 p.2

During Second Reading Lord Crickhowell said he very much welcomed Clause 55 and the requirement to give six months' notice of abandonment, but there was as yet no adequate provision to enable the agency to deal with the 'increasingly serious problem' of pollution from mines already abandoned. Also[206]

> "Like the noble Lord, Lord Ezra, I welcome the news that the defence against prosecution for water pollution provided under the Water Resources Act 1991 will not apply to mines abandoned after 1999. But why 1999? I suppose that I am asking a damn-fool question. By then privatisation will have been completed and by then any mines that are likely to close in the immediate future as supply contracts run out will probably have closed. I am pretty certain what happened; someone in the DoE asked that the clause take immediate effect, somebody in the DTI suggested the year 2005 and they settled in the middle! If the requirement is wrong and needs replacing surely it needs to be replaced today and not in five years' time."

The Lords Committee debate on this issue took place late in the evening and was thus perhaps shorter than might otherwise have been the case. Lord Harris of Greenwich went so far as to make the point that were a division to be called there would be no quorum and said "it is wholly unreasonable that we are discussing matters of this importance at this time of night ... I wish it to be placed on the record that in the future my noble friends and I will not accept procedures of this sort[207]".

During Committee Lord Beaumont of Whitley moved an Amendment (No.246) which sought to require mine operators to advertise their proposed abandonments in local newspapers. Lord Mason of Barnsley added that it would be desirable to inform also owners of fishing rights, the local NRA fisheries committee, and the Salmon and Trout Association and the Anglers' Conservation Association. However, Viscount Ullswater pointed out that the provisions as they stood required the local authority to be informed, and he felt that to have to publish notice in the press would place a further unnecessary burden on industry[208]. Lord Beaumont thought this reply extremely disappointing.

The Earl of Kintore moved but withdrew an amendment calling for mine owners to inform the Agency of any proposed change in ownership to avoid "a danger of a rogue mine owner trying to evade his future responsibilities by a quick sale or disposal".

---

[206]HL Deb 15 December 1994 c1402
[207]HL Deb 31 January 1995 c1478
[208]HL Deb 31 January 1995 c1477

Baroness Hilton of Eggardon moved an amendment (No.248) seeking to exempt the Coal Authority from the defence under the 1991 Act and thus to make it responsible for maintaining pumping but Viscount Ullswater countered that[209]

> "We believe it to be right that the defence and exemption should be ended. Clause 57 would have that effect for all mines abandoned after the end of 1999. We have thought carefully about this change in the course of a lengthy review of the legal framework for discharges from abandoned mines and have reached several conclusions. Discharges from abandoned mines vary widely in their impact on the water environment. Some result in no pollution while others are more serious. Outright removal of the defence and exemption as proposed in the amendment would require the Coal Authority to seek discharge consents for all discharges, regardless of the degree of pollution, and to comply with them. That would not be justified in many cases and would place a heavy burden on industry".

Baroness Hilton found that a 'disappointing response' and after withdrawing the Amendment subsequently moved another (No. 249) seeking to change the date for exemptions from 31 December 1999 to 'the transfer date' [probably 1 April 1996][210]:

> "For some strange reason, although the Government are minded to address the problem, they have inserted a date which is nearly five years hence which gives people the opportunity to abandon mines or in some other way to get rid of them in the meantime without having the responsibility for dealing with the pollution pinned upon them".

Lord Mason added in support that the NRA found the 1999 date "incredible" and that it supported amendments bringing the date forward to 1 April 1996. He cited the NRA report *Abandoned Mines and the Water Environment* (see Library Research paper 94/43 and above) and the problems still occurring. Neither in the Coal Industry Act nor in the present Bill, said Lord Mason, had the Government made any attempt to clarify responsibility for environmental pollution that was the legacy of Britain's coal mining industry[211].

Viscount Ullswater said the decision to remove the defence had been taken in the knowledge that it was a step of great significance to the environment but also financially to owners and operators of mines; because of 'the obvious practical and financial implications' a period was needed for adjustment. The requirement for notification of proposed abandonment would take

---

[209] c1480
[210] cc1481-2
[211] c1483

place immediately upon transfer (1 April 1996). Baroness Hilton found this reply 'deeply disappointing'; it was still not at all clear where the responsibility would lie in the next five years[212].

At Report Lord Williams of Elvel moved an amendment seeking to classify mines abandoned between enactment and the date at which the defence ceased to apply as contaminated land. Further Amendments were also proposed to bring this date forward from 1999 to April 1996 and Lord Williams described the package as a short-term measure to allow the Government to decide on a long-term solution, or as he put it, "to come out into the open ... on the Coal Authority's funding and on its responsibilities, and on their proposals to deal with existing abandoned mines of other minerals"[213].

Lord Mason said the Government 'must now be aware of the dismay that met their proposal in the coal legislation [regarding 1999]' and attacked the Bill's explanatory notes (see above) as a blatant admission of the Government's motives. He once more drew attention to the NRA's *Abandoned Mines and the Water Environment* and asserted "There are over 10,000 abandoned mines, many containing pollution time bombs. We have already had a series of frightening reminders and there are likely to be many more ... The Government should now recognise their responsibilities in this regard and abolish the five year defence for all mines and provide the moneys to the Coal Authority to help it protect our coalfield communities from these environmental dangers"[214].

Lord Crickhowell reminded their Lordships of the commitments given by Lord Strathclyde during the passage of the *Coal Industry Act 1994* (please see above) but drew particular attention to the problem of metalliferous mines, such as Wheal Jane, the tin mine (see Library Paper 94/43). He also wondered how the Government's proposed exemption from the Water Resources Act until 1999 squared with the directives of the European Union; "It seems possible at least that the Government are opening themselves to the risk of challenge in the European Court"[215].

Replying[216], Viscount Ullswater welcomed the opportunity to "correct the impression that has been gained from the financial memorandum ...to lay to rest any suggestion that the Government has put privatisation proceeds above the proper protection of the environment, I point out that the arrangements under which British Coal's mines were privatised incorporate important safeguards in respect of any future abandonment." Viscount Ullswater outlined

---

[212]c1484
[213]HL Deb 7 March 1995 c145
[214]c148
[215]c149
[216]cc150-152

the provisions for giving six months' notice of abandonment with consultations; "if necessary, the operator would have to make an appropriate payment to the authority for any continuing cost before he could relinquish the lease". Viscount Ullswater acknowledged however that the Government needed to consider what Lord Crickhowell had said about directives to ensure that the UK did not fall foul of these.

On division, Lord Williams' Amendment to classify abandoned mines as contaminated land (No.128B) was rejected by 175 votes to 105.

Section 161 of the *Water Resources Act 1991* is amended to allow the Agency to carry out investigations to ascertain the source of pollution in controlled waters, and, for the first time, to allow it to recover costs for such investigations.

V. Part III: National Parks

A. Background

The ten National Parks in England and Wales were designated between 1951 and 1957 following the *National Parks and Access to the Countryside Act 1949*. A quarter of a million people live within the Parks[217].

National Parks of England and Wales with dates of designation and sizes (as of 1990 in sq. kms)		
Peak District	1951	1,404
Lake District	1951	2,292
Snowdonia	1951	2,171
Dartmoor	1951	945
Pembrokeshire Coast	1952	583
North York Moors	1952	1,432
Yorkshire Dales	1954	1,760
Exmoor	1954	686
Northumberland	1956	1,031
Brecon Beacons	1957	1,344

The Norfolk and Suffolk Broads (established by the *Norfolk and Suffolk Broads Act 1989*) has been described as "an eleventh in all but name" and enjoys similar status. The Government also accepted in 1992 the idea of designating the New Forest as an area of national significance within which the strongest protection of landscape and scenic beauty should apply[218], and it was recently announced that following a consultation exercise a New Forest Heritage Area will be established. In this, a planning regime will exist similar to that which applies in National Parks[219].

---

[217]HL Deb 16 March 1994 c321-366
[218] DoE News Release 21 January 1992
[219]"Decision announced on New Forest Proposals" Department of the Environment News Release 416 14 July 1994

There are, however, no National Parks in Scotland. 40 National Scenic Areas are further protected where they coincide with other designations such as National Nature Reserves or Sites of Special Scientific Interest, and may be considered for designation as National Heritage Areas. NHAs were introduced in 1991 by the *Natural Heritage Scotland Act* and are intended to provide added protection to wildlife as well as landscape. NHAs could "easily supplant" NSAs, but it has been stressed that they are not a substitute for National Parks, and the possibility remains that National Parks could be established in Scotland[220].

When they were designated during 1951 and 1957, the ten national parks were placed in the administrative hands of county council committees, although in the case of the Peak District and the Lake District boards were established. These national park authorities were given greater powers following the *Countryside Act 1968*, and following the *Local Government Act 1972* single authorities and National Park Committees were formed for each park, although these were left within the county council system. Their power is limited, since they are essentially regulatory bodies, not enabling bodies, and they do not own the land in the parks. For instance, the Brecon Beacons National Park Authority owns the largest proportion, at 13%, but the typical figure is 1-2%.

A comprehensive report on the national parks system, *Fit for the Future* (known as the Edwards report after its chairman, Professor Ron Edwards) was produced in 1991 by the National Parks Review Panel for the Countryside Commission. Overall, the main conclusions were that, first, there should be a new National Parks Act to create strong, independent national park authorities in each national park, more accountable to local people. Second, there should be an Association of National Park Authorities to co-ordinate activities and press the Parks' case with the Government. Third, there should be a new farm support system; farmers should receive incentives for work in enhancing and protecting landscapes and extending access. The report also recommended that district councils should enjoy stronger representation in the new park authorities than is presently the case[221].

In January 1992 the Government published its response to the report[222] and announced its response and proposals[223];

> The Government intends to restate National Park purposes to refer expressly to quiet enjoyment and understanding and to conservation of the wildlife and cultural heritage; to take steps to ensure that responsibility for detailed planning in their areas should rest with National Park authorities; and to invite

---

[220] *Protected landscapes in the United Kingdom* Countryside Commission, 1992 p.4
[221] *Countryside Commission News Release 91/11*, 21.3.91
[222] *Fit for the future. A statement by the Government on policies for the National Parks* DoE/Welsh Office January 1992
[223] DoE News Release 21 January 1992

> local highway authorities, where they have not already done so, to delegate rights of way responsibilities to National Park authorities.
>
> The Government's objective is that major development should not take place in the National Parks save in exceptional circumstances but, if it is, the work should be done to high environmental standards. Because of the serious impact that major developments may have on the natural beauty of the parks, applications for such development must be subject to the most rigorous examination. In our response, we have developed a single test against which all major proposals should be considered.
>
> We also intend to consider further the countryside agencies' recommendations that there should be a statutory duty on Ministers and public agencies in the exercise of their responsibilities as they affect National Parks.

Since then, the Government reaffirmed its commitment on various occasions. For example, in 1993 Mr Gummer stated[224]:

> "Our policy statement on the national parks, published in January 1992, promised legislation to create independent authorities to administer the eight [*i.e.* excluding the Peak District and the Lake District] national parks in England and Wales currently run as county council committees. We remain fully committed to this proposal; the legislation will be introduced as soon as time permits."

When no legislative proposals were included in the plans for the 1993-94 session, Lord Norrie introduced a Private Members Bill, *National Parks Bill* [HL Bill 32 1993/94] into the Lords. Lord Norrie's Bill had Government support[225] and would have allowed an independent National Park authority to be established for each park and for any new parks. Lord Norrie described his Bill as a "first aid measure" and during the debate on the bill's second reading in the Lords several speakers mentioned the need to establish independent authorities in advance of impending local government reorganisation. However, after passing through its Lords stages, the bill was objected to in the Commons[226].

---

[224] HC Deb 30 June 1993 c.519w

[225] *Fourth Report from the delegated powers scrutiny committee* 21 March 1994 Appendix III Memorandum by the DoE/Welsh Office

[226] HC Deb 13 May 1994 c515

This prompted the Countryside Commission to issue a press release urging the Government to find time for legislation to protect National Parks[227];

> " ... so that National Parks Authorities can be established before the onset of local government reorganisation. Without it, our National Parks could face a critical and very uncertain future".

In August 1994 Mr Gummer was reported to be pressing for national parks to be included in the present Bill. According to a "senior Whitehall source", as well as establishing independent authorities, the new powers would include a commitment to hold public enquiries into major developments, and a duty on Government departments to make their policies compatible with the Parks' conservation objectives, which would[228];

> "make it much more difficult, for example, for the Department of Transport to build new roads in parks, or energy Ministers to support major wind farm developments".

See notes on clause 59 below.

B. Establishment of National Park Authorities

Clause 58 redefines the purposes of national parks under the *National Parks and Access to the Countryside Act 1949.* Their purpose, to preserve and enhance the natural beauty of those areas, is extended to:

- conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified ...
- promoting opportunities for the understanding and enjoyment [this has been amended by the Lords to 'quiet enjoyment and understanding'; see below] of the special qualities of those areas by the public

---

[227]*Government Urged: Find Time for National Parks* Countryside Commission News Release 94/21 23 May 1994

[228]"National parks - Gummer gets tough" *Observer* 21 August 1994 p.3

At Second Reading, Lord Norrie said that Part III of the Bill was 'spot on in parts, but less so in others'[229]. He congratulated the Government on the clauses setting up new, freestanding authorities, the main recommendation of the Parks Review Panel and the object of his Private Member's Bill. There were, he thought, two main omissions.

First, there were no tests to assess major developments in National Parks; the Edwards Report had recommended such a test but the Government had so far introduced only a non-statutory assessment through Planning Policy Guidance Note 7. The Bill gave a legislative opportunity to require that any development proposed should meet a national need, and that no alternative was available.

Secondly, Lord Norrie and other Peers were concerned that the legislation should "fulfil the Government's avowed intention to revise the national parks purposes to refer expressly to quiet enjoyment and understanding". [The Countryside Commission agrees with both these points[230].]

In Committee, the Earl of Cranbrook (chairman of English Nature) moved an amendment (No. 252B) to add conserving and enhancing 'natural features' to the purpose of the Parks, fearing that referring to wildlife alone was not enough. The Earl pointed out that 16% of England's SSSIs (not all of which are designated on purely biological grounds) were within National Parks, as were many 'regionally important geological sites' or RIGS; thus natural features and land forms needed also to be considered. Supporting, Lord Renton pointed out that many such features, such as limestone outcrops, would be tempting sites for quarriers. Viscount Ullswater assured the House that the Government regarded the characteristic natural features of the parks as 'an integral part of their natural beauty'. The Earl of Cranbrook wanted to make sure that there was a clear public understanding that this was the case, but in the meantime withdrew his Amendment[231].

Next, Lord Norrie moved Amendment No. 253, to replace 'understanding and enjoyment' in Clause 58 with 'quiet enjoyment and understanding'[232]. Lord Norrie said his Amendment had the support of the 45 organisations that made up the Council for National Parks, the National Park Authorities, the Countryside Commission, CCW, WWF and many other bodies.

---

[229]Hl Deb 15 December 1994 c1418-20
[230]*Countryside* January/February 1995 p.4
[231]HL Deb 2 February 1995 cc1591-4
[232]HL Deb 2 February 1995 cc1594-1613

Lord Norrie said that when the Parks were established no Minister could have imagined the growth in noisy and intrusive motorised activities such as jet skis. The Parks Review Panel had seen the Parks as 'places for quiet enjoyment' and in response the Government had given its commitment to introduce legislation referring expressly to quiet enjoyment. He had no intention to interfere with traditional field sports, nor to remove rights of way for motorised vehicles or rights of navigation for motorised craft. However, where conflicts arose, the amendment would allow management to resolve problems on a case by case basis. Lord Norrie said his postbag showed that such a statutory purpose was immensely popular.

Several Peers spoke in support of the Amendment although Lord Moran regretted that the Sports Council were opposed to it, and Lord Gisborough suggested that clay pigeon shooting and military training might be affected. Lord Greenway was concerned about the effects on powerboating on Windermere and a possible loss of jobs.

Lord Akner and Lord Renton pointed out that the term 'quiet enjoyment' had legal meaning under other statutes and that they would have to be careful not to inadvertently import any extra meanings, but Lord Marlesford said that the amendment's supporters were 'not wedded to the wording' used and looked to the Government to be sympathetic to their intention and perhaps introduce some new wording on Report[233].

Viscount Ullswater said the Government had indeed had problems with the legal meaning of the words 'quiet enjoyment' and he also thought the amendment risked hitting too many inadvertant targets. However, he understood the wishes of the amendment's proponents and the expectations people had of National Parks. He said that the Government had produced a draft circular on National Parks which emphasised their special qualities, and the way they could be managed through negotiation and mediation rather than through blanket bans[234].

However, Lord Norrie felt that 'quiet enjoyment' acquired a legal meaning in the context of national parks and the countryside, and on division his amendment was carried by 129 to 121 votes. In response to the Government defeat, a DoE spokesman was reported to have said that the Government would look again at the matter when the Bill reached the Commons[235].

The Government's draft Circular on National Parks was issued on 31 January 1995 and comments were invited by 3 April[236]. The Circular refers to the Government's original version of Clause 59; particular activities should not be excluded from the Parks as a matter of principle and where conflicts arise the authorities should resolve these through mediation,

---

[233]cc1603-6
[234]cc1609-10
[235]'Peers vote for peace and quiet in national parks' *Independent* 3 February 1995
[236]DoE *Environment Bill: National Parks: Draft Circular* 31 January 1995 Deposited Paper 1033

negotiation and co-operation. Where reconciliation proves impossible, the first purpose of the Parks should take precedence, as set out in Clause 59; this is referred to as the 'Sandford principle' (please see below).

Clause 59 inserts a new section into the *National Parks and Access to the Countryside Act 1949* requiring National Park Authorities to:

- have regard to the social and economic well-being of communities within the National Park.

Clause 59 also defines the duty of any "relevant authority" (which includes Ministers, any public body, statutory undertaker or person holding office), when exercising functions in relation to or so to affect land in a National Park, to "have regard" to the purposes given in clause 58 (above), and, if there is conflict between these, to give greater weight to the Parks' primary purpose of conserving natural beauty, wildlife and cultural heritage (the '**Sandford principle**').

The Country Landowners Association has called for the duty under Clause 59 to be strengthened, so that the promotion of the economic and social interests of park communities is adopted as a third purpose of the Parks, equal to the two listed in Clause 58. Failure to do this, it says, could lead to the obstruction of enterprises and economic decline[237].

Earl Peel moved an amendment to this effect during Committee; he welcomed the existing clause giving a duty to have regard to social and economic well-being of communities, but thought that many people living and working within National Parks felt their interests were at times ignored, when they should be treated in a way at least equal to those who visited the parks. Lord Derwent, who had a similar amendment, pointed out that the draft guidance (para 9) referred to ways of working with the local community, but he also felt the statutory provisions were not going far enough.

Lord Elis-Thomas illustrated the problem of employment in National Parks by citing the case of Trawsfynydd power station in Snowdonia, where 600 jobs would be lost on decommissioning; a longer term cycle of employment was needed. Earl Peel's amendment was finally withdrawn after a fairly lengthy debate in which Viscount Ullswater said that he fully agreed that the well-being of local communities was 'vital for the continued success of

---

[237]'Landowners warn of decline'. *The Western Mail* 3 April 1995

national parks as living working landscapes' but that he believed that the Government had the balance right with the duty contained in clause 59[238].

Lord Vinson moved but later withdrew an amendment which prompted a similar debate at Report[239].

In Committee Lord Norrie attempted to insert a new clause after Clause 58 requiring a **Test for Major Development Proposals,** but his amendment (No. 255ZA) was defeated by 91 votes to 66[240]. Viscount Ullswater had said it was Government Policy that major development should not take place in National Parks save in exceptional circumstances, and that this policy was contained in Policy Planning Guidance Note 7 (PPG7). The Government objected to having planning policy written in statute.

Clause 60 and Schedule 7 allow the Secretary of State to establish a "National Park Authority" for any existing or new Park, and to wind up any existing authority.

Members of the authority will be half local authority members from those councils wholly or partly covered by the park, with the other half appointed by the Secretary of State. Presently, not less than one-third of Authority board membership is appointed by the Secretary of State and the other two-thirds are local government appointees.

At Report, Viscount Ullswater moved a Government Amendment to insert a long new clause after Clause 60, which he had promised at Committee stage, introducing the conversion power in respect of the national parks in Wales[241].

This **new Clause 61** is needed because a comprehensive reorganisation of local government will be taking place in Wales at 1 April 1996; the Welsh Office has already consulted on the need for these new provisions[242].

Clause 62 and Schedule 8 apply general duties under the *National Parks and Access to the Countryside Act 1949* and *Countryside Act 1968* to the authorities.

---

[238]HL Deb 2 February 1995 cc1613- 1626
[239]HL Deb 9 March 1995 cc400-413
[240]HL Deb 2 February 1995 cc1626-1638
[241]HL Deb 9 March 1995 c418
[242]*Local Government (Wales) Act 1994; Environment Bill, Part III: National Parks in Wales* Welsh Office 2 February 1995 Deposited paper 1051

Rights under the *Local Government (Miscellaneous Provisions) Act 1976* are transferred to the Park authorities; including compulsory acquisition of rights over land and survey of land for compulsory purchase. The rights of Park authorities to compulsorily acquire land is also inserted into the *Town and Country Planning Act 1990.*

Clause 63 requires each authority to, within three years of becoming the local planning authority for the Park, prepare a National Park Management Plan formulating its policies. These must be reviewed within five years and notice of the plan must be given to every relevant local authority and countryside agency.

Clause 64 amends the *Town and Country Planning Act 1990* to make any National Park authority the sole local planning authority for the area of that park. Functions conferred by any of the Planning Acts on a planning authority, including a mineral planning authority, will henceforth be functions solely of the National Park authority. However, functions of planning authorities in those areas but outside the parks will be otherwise unaffected.

Clauses 64-67 and **Schedule 9** make National Park authorities the planning authorities under the *Wildlife and Countryside Act 1981,* the *Countryside Act 1968,* the *National Parks and Access to the Countryside Act 1949* and under other pieces of legislation. For instance, Schedule 9 makes the National Park Authority the planning authority as regards the provisions of the *Highways Act 1980,* that is to say, with regard to

- footpaths and bridleways
- widening of public paths
- stopping up and diversion of public paths

Clause 68 allows National Park Authorities, under the *Local Government Finance Act 1988,* to raise money through levies on the local councils who have appointed members to that authority.

Clause 69 also allows, with the consent of the Treasury, the Secretary of State to make grants to the authorities, "of such amounts and on such terms and conditions as he thinks fit".

Time does not permit a detailed consideration of all the Lords Amendments moved regarding national parks, but the remainder in Committee, including Lord Derwent's amendment concerning **rights of way** (No. 259A), can be found at HL Deb 2 February 1995 cc1656-1702.

VI. Part IV Miscellaneous provisions

A. National Waste Strategy

Clause 76 would insert new sections 44A and 44B into the *Environmental Protection Act 1990* [the EPA], and a new schedule 2A (Schedule 11 in the present Bill). The two new sections are concerned with a national waste strategy for England and Wales, to be prepared 'as soon as possible' by the Secretary of State; and for a national waste strategy for Scotland, to be prepared by SEPA.

Proposed section 44A(5) would require the Secretary of State, when preparing or modifying the waste strategy, to consult the Environment Agency, and such bodies representative of local government and (formerly *or*) of industry as he may consider appropriate. On the other hand, the parallel section 44B(4) would require SEPA to consult bodies representative of industry, as it may consider appropriate; and such local authorities as appear to it "likely to be affected" by the strategy or its modification. The difference of emphasis in Scotland has not been explained.

44A(6) would allow the Secretary of State to require the Agency to *advise* him on policies in the strategy; section 44B(5) allows the Secretary of State to *direct* SEPA as to the policies in the strategy.

Apart from these differences, either of the two new sections has essentially the same intention as the other, one applying to England and Wales and the other to Scotland. The waste strategies are to say how the objectives of schedule 11 to the Bill are to be attained; and to make provisions relating to the type, quantity and origin of waste. In either jurisdiction, the Secretary of State may require the Agency to carry out a survey into the nature of wastes likely to be produced, the facilities likely to be available or needed, and 'any other matter' on which he wishes to be informed in connection with the preparation or modification (by him or by SEPA as the case may be) of the strategy.

The Lords made changes to proposed sections 44A(8) and 44B(7) so that either Agency, before carrying out any survey or investigation, shall consult with bodies representative of industry. The first draft of the Bill referred only to local planning authorities.

Schedule 11 to the Bill concerns the objectives of the national waste strategies. These include:

- ensuring waste disposal or recovery does not endanger human health and does not use processes **harmful** to the environment, or entail **risk** to water, air, soil, plants or animals, or cause **nuisance** through noise or odours, or adversely **affect** the countryside or places of special interest.

- establishing a network of waste disposal installations, taking account of best available techniques not involving excessive costs (or BATNEEC).

- ensuring that waste is disposed near to the place where it arises

- encouraging the prevention or reduction of waste production through the development of clean technologies, product design, appropriate disposal of dangerous substances

- encouraging waste recovery and the use of waste as a source of energy

These objectives are laid down in articles 4, 3 and 5 of the *Framework Directive on Waste, 75/442/EEC* as amended by 91/156/EEC and by 91/692/EEC. However, the European Court ruled in 1992 that article 4 (dealing with risk, nuisance and adverse effects) "sets objectives which member states must observe". In a circular on the new Waste Management Licensing Regulations the DoE advised that these articles did not impose absolute requirements.[243]

On 23 November the DoE announced 'Minister outlines plans for a national waste strategy' in a short news release. The themes of the announcement include waste minimisation, recycling, and 'sustainable waste management.' This news release refers not to the national waste strategy provided for by the Bill, but to a consultation draft *Waste Strategy for England and Wales* published in January 1995. This brought together policy on the hierarchy of waste management options (reduction, recycling, reuse, disposal), the management of different waste streams and the role of householders, industry and local government. It was drafted in line with *Sustainable Development - the UK Strategy*[244]. The final version of the waste strategy will probably be issued in Summer 1995[245]. It will eventually be superseded by the national waste strategies informed by the Agency surveys provided for by clauses 44A(6) and 44B(5) of the present Bill, but probably not before 1998.

---

[243]Circular 11/94 *Waste management licensing; the Framework directive on waste*, annex 1, para. 1.31
[244]HMSO January 1994. See especially chapter 23.
[245]source: DoE 13 December 1994

B. Producer Responsibility

The 'producer responsibility' clauses concern, primarily, the re-cycling and re-use of packaging waste, although regulations might be made to promote any kind of recycling. The Government asked the packaging industry in September 1993 to come up with a scheme for recycling value from 50% To 75% of packaging waste by the year 2000. The industry published a public consultation document *Real Value from Packaging Waste* in February 1994.

The PRG chairman appeared to support the idea that the obligation to meet any recycling target should fall on packers/fillers using packaging materials, and on the owners of big brand names. These organisations would pay a contribution to a fund organised by the industry. Sir Sydney Lipworth was commissioned to look into the financing of a scheme, but his proposals, involving payments made by packaging users, wholesalers, retailers and manufacturers and eventually passed onto shoppers is unlikely to be supported[246].

The PRG believed that statutory backing was necessary to ensure compliance with any industry-led scheme, and has managed to persuade the DoE that it should have the power to make regulations. It is not clear that the industry will stick to its original 58% target, or that domestic packaging waste (as opposed to commercial or industrial waste) will be priority. The EC proposed Packaging and Packaging Waste Directive (expected to be adopted on 12 December) sets a minimum of 50% target for packaging waste recovery, and a minimum of 25% for recycling, with a 15% recycling minimum for each kind of material (plastic, paper etc). The industry would not need to exceed these targets to meet UK obligations.

A major concern is the question of markets for the materials collected, which was not properly addressed before the German DSD packaging waste initiative was implemented in 1991. The result was that the European recycling markets were flooded with German packaging waste, depressing the price for recyclates in other EU member states.

Clause 77 would allow the Secretary of State to make regulations imposing **producer responsibility** obligations for promoting the reuse, recycling or recovery of waste materials on such persons as may be prescribed. These obligations would attach only to persons (eg firms in the packaging chain) which were not registered in a scheme set up by industry.

---

[246] *Financial Times* 28 July 1994

The clause does not mention explicitly the *reduction* of waste, which the government says is at the top of the waste management hierarchy, subject to it being the best practicable environmental option (BPEO) in the circumstances[247]. The PRG in its evidence to the Environment Committee said that its aim to recover value from waste 'included' minimisation of waste.[248] Nevertheless, the Committee recommended that the DoE should resolve the question of minimisation with the industry. According to *ENDS Journal* (November 1994) the PRG final report mentions minimisation but suggests no targets or concrete measures.

UK regulations made to fulfil EU or international obligations may be made to sustain a minimum level of reuse, recovery or recycling [77(4)]. This was introduced by the Lords.

Regulations would only be made after consultation, and only if the following conditions obtained:

- regulations would be likely to result in an increase in the re-use, recovery or recycling of materials that have become **waste**;
- this would bring environmental or economic benefits;
- the benefits were cost-effective;
- the minimum burden were placed on business;
- and the desirability of acting fairly between manufacturers, procurers, distributors and suppliers were considered.

The Lords decided that Regulations fulfilling international obligations should also have regard to these matters, and that references to *increase in the reuse* (etc) and the *production of environmental or economic benefits* should be taken to mean the sustaining of at least a minimum level of reuse (etc) and of such benefits. This appears to mean that Regulations could be made in pursuit of minimal outcomes.

Central to this clause is the definition of **waste**, which applies to articles that have been discarded or which the holder intends to discard. [249]

---

[247]DoE circular 11/94, paragraph 9.

[248]Environment Committee second report 1993-4 *Recycling*, paragraph 132.

[249]Section 75(2) of EPA 1990 defines waste according to directive 75/442/EEC as an unwanted surplus substance or an article which requires to be disposed of. This definition was amended by 91/156/EEC but UK law has not been adapted in line with this. The government has said that primary legislation will be needed to repeal section 75(2), but that in the meantime only the articles defined as waste in directive 91/156/EEC will be subject to waste recovery and disposal controls. This definition of waste has been carried over into the UK Waste Management Licensing Regulations, SI 1994/1056.

Clause 77(5) (e) says that obligations may be imposed on one class of persons to the exclusion of others. The regulations would be made by Statutory Instrument, requiring the approval of both Houses, but not if the SI were only to vary the targets set by the regulations.

Clause 78 says that regulations could make provision affecting persons, products, targets, the certification by either Agency of compliance with obligations, the duty of Agencies to monitor compliance, fees payable to Agencies, the approval or withdrawal of approval (Lords) for exemption schemes, registration of exemption schemes, conditions and variation of conditions on registration (Lords), appeals against refusals to register exemption schemes, and other matters besides. 'Exemption schemes' means schemes set up by the packaging industry, which would exempt firms registering with them from complying with producer responsibility obligations imposed by the state.

Under **Clause 79** it would be an offence to contravene a requirement of the Regulations. On summary conviction, the statutory maximum fine would apply; on conviction on indictment, a fine would be payable. This clause places personal liabilities on the officers of a body corporate as well as on the company itself.

C. Hedgerows

The *Countryside Survey 1990* published in 1993 for the Department of the Environment revealed a net decrease in hedgerows by 23% between 1984 and 1990[250]. This loss amounted to 53,000 miles of hedgerows. Most loss was due to a change in form, by, for instance, hedges being replaced by a line of trees, but 10% was complete loss. The hedgerow results had been released and published in 1991, ahead of the Main Report[251], because of "current political interest in countryside matters, and particularly in hedgerows".

According to the Countryside Commission, hedgerows[252]:

> "often mark ancient boundaries and are frequently the oldest visible features in the countryside. Equally important is the contribution hedgerows make in supporting wildlife".

However, hedges reduce the area of open farm land that can be planted and harvested in one go. In a five acre field a tractor pulling a ten foot wide implement spends around two thirds of its time turning and negotiating corners. In a 100 acre field only one fifth of time is spent manoeuvring, and the rest is spent doing useful work[253].

Hedges are extremely important reservoirs for wildlife, particularly where they occur in otherwise "desert-like" agricultural land, but precisely because of this, farmers have blamed hedges for harbouring pests and diseases that affect crops; rabbits that graze field edges, birds that eat ripening corn, and fungal diseases and weeds that invade crops. If a hedge's ecology is in balance however, it will be largely self sustaining and self limiting[254]. Hedgerows also act as corridors or "linear landscape features" providing migration and travel route for animals. Although there is some debate about the importance of such features, hedges may be particularly valuable where pockets of vegetation are otherwise isolated, allowing small terrestrial animals to cross otherwise hostile open countryside, and ensuring that populations can mix and disperse.

---

[250] *Countryside Survey 1990 Main Report*. Institute of Terrestrial Ecology and Institute of Freshwater Ecology for the DoE 1993

[251] *Changes in hedgerows in Britain between 1984 and 1990* Institute of Terrestrial Ecology for the DoE October 1991

[252] *Handbook for the hedgerow incentive scheme* Countryside Commission CCP 383 1993 revised edition

[253] "Hedgerows divide green lobby from farmers". *The Times* 17 August 1993

[254] *New hedges for the countryside* Murray Maclean 1992 p.54

Town and country planning legislation does not restrict the vast majority of countryside activities. Farmers can decide whether to plough up a grass field and plant crops, without any restriction, for example. The planting of a conifer forest cannot be prevented, although grants are only available if the planting satisfies environmental criteria. Although a tree preservation order can be made to prevent the felling of a tree, hedges can presently be removed without any sanction.

In July 1992 the Government launched the Hedgerow Incentive Scheme for land managers, with £550,000 funding in 1992/93 offering grants to help cover the cost of maintaining hedges[255]. Legislation to allow local authorities to list hedgerows of particular importance and to preserve them was promised.

The *Hedgerows Bill* [Bill 28 1992/93] introduced by Mr Peter Ainsworth MP sought to make destroying or reducing the quality of a hedgerow an offence where the hedge was situated on certain land and where planning permission had not been granted. The Bill received Government support, explicitly in the Environment White Paper second year report of *This Common Inheritance*[256]. However, the Bill ran out of Parliamentary time, having its report stage adjourned on 7 May 1993[257]. It was alleged by several newspapers that Members who represented farming and landowning interests talked the Bill out[258]. Mr Peter Hardy introduced a further *Hedgerows Bill* last session [Bill 31 1993/94]. This had its first reading on 11 January 1994 but the order for the Bill's second reading was objected to on several occasions.

In July 1994 Mr Atkins described the results of a follow-up survey to the *Countryside Survey*, which indicated a new downward trend in the rate of hedgerow removal, which was down to a loss of 3,600 km per year between 1990-1993. Mr Atkins said that this was partly due to the Countryside Stewardship and Environmentally Sensitive Areas schemes, and that the rate of removal was now exceeded by the rate of new planting. However, Mr Atkins said that[259]:

> "We remain committed to protecting hedges of key importance, and we are therefore considering how to focus protection on the highly valuable hedges for which no amount of replanting can substitute- for example, an ancient parish boundary hedge".

---

[255]*Countryside Commission Press Release* NR/93/2, 21 January 1993 and Cm 2068 HMSO October 1992
[256]Cm 2068 HMSO October 1992
[257]HC Deb 7 May 1993 cc452-69
[258]for instance, *The Times*, 17 August 1993, *Independent* 7 December 1993 p.8
[259]HC Deb 21 July 1994 c470w

Clause 80 of the *Environment Bill* allows Ministers to make regulations in connection with the protection of important hedgerows in England or Wales; prescribed criteria will be used to decide whether a hedgerow is "important" or not.

At Committee[260], Lord Wade of Chorlton was concerned that the provision would place unnecessary regulations upon farmers and proposed an amendment (No. 309C) requiring consultation before Ministers made any orders. However, in complete contrast, Baroness Hilton thought the Clause an enabling one and thus extremely weak, and moved an amendment setting a deadline by which the Government had to have regulations in place.

Viscount Ullswater said research was in hand to test workable criteria for the definition and notification of 'important' hedgerows, and indicated that this would include a measure of biodiversity. He declined to accept Lord Wade's amendment, which was withdrawn.

Making the point that all hedgerows could be thought potentially important for facilitating the movement of animals (and thus for facilitating gene mix and maintaining biodiversity) Baroness Hilton moved amendment 309E, seeking to remove the word 'important' from clause 80. However, Lord Crickhowell feared that this was amounting to a blank cheque regarding future regulations and Lord Moran mentioned agri-environmental schemes such as the CCW hedgerow renovation scheme; the proportion of the CAP allocated to environmental schemes was where money needed to be increased. Earl Peel supported this point; finance was what it was all about and the emphasis of the CAP had to be changed. Viscount Ullswater said the Government supported hedgerows though a range of incentives including the incentive scheme under Countryside Stewardship.

Further amendments sought to change 'hedgerows' to 'countryside features' and to thus include **ponds.** Viscount Ullswater said that the apparent loss of many ponds in 1990 was due to drought and mentioned the Government's undertaking to carry out a further national survey of ponds in 1996[261].

At Report[262], Lord Marlesford moved another amendment (No. 234A) designed to make Ministers produce Regulations to a deadline, which was to be 1 July 1996. Lord Moran said it was five years since the commitment to legislate on hedgerows was made (see above) and Lord Renton agreed that protection was needed urgently in East Anglia and elsewhere. The Earl of Lytton and Lord Monk Bretton were concerned about over-regulation and the economic impact on farmers, however.

---

[260]HL Deb 9 February 1995 cc391-430
[261]c412
[262]HL Deb 9 March 1995 cc478-499

Lord Ullswater noted the similarity between Lord Marlesford's amendment and Baroness Hilton's at Committee. He said it was the Government's intention to have the hedgerows regulations in place by July 1996, but they had to ensure that they were subject to prior consultation outside Parliament. The Government would not be bound to a statutory deadline. Viscount Ullswater gave an undertaking to reflect on whether some provision on appeals should be included in the Bill at a later stage[263].

There followed further consideration of the need to protect ponds and dry stone walls[264].

D. Grants for conservation

Clause 81 allows the Minister for Agriculture, Food and Fisheries, or the Secretaries of State for Scotland or Wales, to make regulations providing grants for the

- conservation and enhancement of the natural beauty or amenity of the countryside (including flora, fauna, geological and physiographical features) or features of archaeological interest

- and for the promotion of the enjoyment of the countryside by the public.

[263]c484
[264]c485 onwards

E. Water and fisheries provisions

Clause 83 and 84 extend the definition of drainage in the *Water Resources Act 1991* and the *Land Drainage Act 1991* to include water level management. They also allow grants to be paid for studies possibly leading to flood defence schemes, and for performance and post-project evaluations of these.

Clause 85 to 88 deal with fisheries and give scope for furthering marine conservation. The *Sea Fisheries Regulation Act 1966* is amended so that local sea fisheries committee byelaws can be made for marine environmental purposes. Similarly, the *Sea Fish (Conservation) Act 1967* and *Inshore Fishing (Scotland) Act 1984* are amended so that orders can be made for marine environmental purposes, and the *Water Resources Act 1991* is amended to allow the Agency to make fisheries byelaws for aquatic and marine environmental purposes. A fixed penalty system is introduced in relation to fisheries offences.

Clause 89 and Schedule 13 essentially replace existing Scottish water law (on discharges and pollution, presently covered by the *Control of Pollution Act 1974*) with that drawn from English and Welsh law.

F. Statutory nuisance: Scotland

Clause 90 and Schedule 14 extend the statutory nuisance system to Scotland, by amending the definition of "local authority" under section 79 of the *Environmental Protection Act 1990* (EPA) to include Scottish district and island councils. Section 83 of the EPA (exempting Scotland from the statutory nuisance system) is also repealed by the present Bill.

Sections 79-82 of the *Environmental Protection Act 1990* were initially not extended to Scotland, where the very similar provisions of the *Control of Pollution Act 1974*, which the 1990 Act replaced, were retained. Under the 1990 Act,

- any premises in such a state
- smoke emitted from premises
- fumes or gases emitted from premises
- any dust, steam, smell or effluvia arising on industrial, trade or business premises
- any accumulation or deposit

- any animal kept in such a place or manner
- noise emitted from premises
- any other matter declared by enactment

so as to be prejudicial to health or a nuisance,

are designated "statutory nuisances". Each local authority is given a duty to "cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with...and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint".

Mr Andrew Hunter's *Noise and Statutory Nuisance Act 1993* extended the 1990 Act to add a further statutory nuisance:

- noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in the street

Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or reoccur, s.80 of the EPA enables the local authority to serve an "abatement notice" which may require the abatement of the nuisance and/or prohibit or restrict its occurrence. The notice may also specify how this is to be achieved. Failure by the recipient to comply with such a notice is an offence. Direct complaint can also be made by the individual to a magistrates' court.

In the case of noise, the DoE advises individuals who wish to make a complaint to contact the environmental health department of their local authority. The Government has just announced a working party to look at the problem of noise. This will consider how to make better use of "scarce local authority and police resources", how to simplify procedures, and will "look at options for improving the effectiveness of the legislation in this area"[265].

The main differences which arise from the present lack of statutory nuisance provisions in Scotland are that Scottish local authorities (LAs) do not have a duty (under the 1974 Act) to investigate complaints of statutory nuisances and the maximum fines are much smaller.

Clause 91 of the Bill gives enforcing authorities (including the Agency, SEPA and local authorities) power of entry to carry out their duties. **Clause 96** deals with appeals.

---

[265]DoE Press Notice 556, 3.10.94

VII Air Quality

A. Air Quality Management

During Committee[266], Lord Lewis, supported by Lord Nathan, moved Amendment No. 264 to insert a new clause dealing with Air Quality Management, requiring local authorities to produce management plans and designate air quality management areas, and Ministers to produce a national strategy. Lord Nathan said that

> "I am very conscious of the fact that this environmental Bill covers so many aspects of environmental problems. But it is interesting to note that it says very little about air pollution. I find that rather surprising, in view of the high level of public concern that exists over health problems and air pollution".

Lord Nathan referred to the Government's recent initiatives on air quality, particularly the consultation paper *Improving Air Quality* issued in March 1994[267], which was followed by the framework policy document *Air Quality: Meeting the Challenge* prepared jointly by the Departments of Environment and Transport in January 1995[268]. The proposals promised in the latter include:

- the establishment of a framework of national air quality standards focused on the nine pollutants of most concern;
- early legislation on a new role for local authorities, and the creation of Air Quality Management Areas where air quality falls short of targets;
- a 20 point action plan on transport.

Mr Gummer had said:

> "While air quality in the UK has been improving, air pollution episodes both last Summer and before Christmas emphasise the importance of Government taking action now to build upon those improvements, and tackling problem areas where they occur. These proposals set a strategic framework for air quality management which will deliver continued improvements into the next century."

---

[266]HL Deb 9 February 1995 cc311-318
[267]*Improving Air Quality A discussion paper..* DoE March 1994, deposited paper 10635
[268]DoE Press Notice No. 14 19 January 1995 'John Gummer and Brian Mawhinney pledge to bring cleaner air to our cities'

> "Specific local air quality issues should be tackled in the most cost-effective and appropriate way, and the proposals I am launching on local authority air quality management will free the imagination, energy and initiative that exists at a national and local level throughout the UK.
>
> "As a first step, I propose to require local authorities to carry out regular assessments of local air quality. Where it is found to be poor, there will be a duty to establish an Air Quality Management Area. Plans to ensure air quality targets are met will be drawn up, with the help of Government and the appropriate Environment Agency.
>
> "I intend to legislate swiftly to implement these proposals..."

The lack of any commitment to set statutory air quality standards or targets in the document were lamented by environmental groups however, especially since the Expert Panel on Air Quality Standards EPAQS has progressively been producing these for given pollutants. (The Government says its strategy will ultimately involve national standards and targets for 9 pollutants, but it expects to achieve the demanding [EPAQS recommended] standards for benzene by 2000, and CO and 1,3-butadiene by 2005. On particles it will adopt a precautionary approach, and on ozone decisions will be made with the EU; decisions on targets for other pollutants will "follow quickly.")

Prime among many other major developments in this field recently has been the Royal Commission on Environmental Pollution 18th Report on *Transport and the Environment.* The NSCA has pointed out that the present Bill represents an 'excellent opportunity which might not reoccur for several years to implement and develop the recommendations of the Royal Commission...This calls for systematic management to achieve standards of air quality that will prevent damage to health and the environment[269].

Responding, Viscount Ullswater said that the Government welcomed the initiative of Lord Nathan and Lord Lewis[270]:

> "I can now confirm that it is the Government's intention that relevant provision can be made in the Bill now before us.
>
> "The Government will therefore bring forward their own proposals at a later stage ...[in another place]."

---

[269] *Clean Air* vol. 24, No.4, p.146
[270] c317-8

B. Emissions from vehicles

Also during Committee[271], Lord Jenkin of Roding moved an Amendment (No. 264A) requiring stationary vehicles to switch off their engines, and allowing local authority officers working with the police to stop and test vehicle exhausts.

Lord Jenkin cited a recent private Bill for which the Government had stated its support in principle. The *London Local Authorities Bill* [HL, 1994/95] is sponsored by Westminster City Council on behalf of the London borough councils, against the background of many recent reports linking air pollution and smogs in London to ill health and even to extra deaths. To finance itself, the Bill introduces a fixed penalty scheme.

The Bill seeks to permit a council officer to stop and test motor vehicles to check whether their exhaust emissions are legal (as defined in the MOT test), and to demand a name and address. It permits a penalty charge system to be levied (this is intended to fund enforcement of the scheme, in a similar manner to the new local authority parking enforcement system). Failure to comply would be an offence punishable by a fine of up to £5000. Motorists may be asked to sign a statement to the effect that they will not drive the car until it has been given an MOT test and has obtained a certificate. Emergency vehicles would be exempt. The Secretary of State would be able to make directions to be enshrined in the code of practice governing the scheme.

The Bill has not been welcomed in all quarters. According to the *Daily Mail* (16 January 1995 p.23);

> MOTORISTS could be stopped at random by a council official and fined up to £5,000 for a faulty exhaust under a plan being put to the Government. They could also be prevented from driving away in an offending vehicle. Those whose cars passed the test - possibly conducted by parking attendants- would have no redress for inconvenience or time lost, and any fine would be pocketed by the council. The Government is being asked by at least 34 major councils for such powers as a way of improving the quality of air in congested urban areas. Opponents accuse them of being more concerned about profit. If the Government gives the go-ahead it will be the first time that anyone other than the police, or the Army during war, has had the legal right to stop motorists on public roads.

The RAC is reported to be horrified by the Bill and has petitioned against it, saying that it would give "tin-pot officials" powers to stop a person driving through London in every borough (ibid). Unsurprisingly, the London *Evening Standard* appears sympathetic to the London motorists' case (16 January 1995);

---

[271]HL Deb 9 February 1995 cc320-329

> "LONDON motorists face random roadside car exhaust testing and a £5,000 fine - five times bigger than drivers outside the capital - under legislation now passing through Parliament. New 'pollution police' authorised by local councils are likely to be the parking attendants who currently enforce restrictions on London's residential streets.... Drivers with cars found to exceed permitted emission levels face a fine without the chance to put things right and the borough will pocket the penalty, though a joint committee staffed by adjudicators will be set up to hear appeals.

Lord Jenkin said that the Government had welcomed the LBA initiative and recognised that there might well be wider application for such powers[272].

However, Viscount Ullswater said while he had sympathy with the amendment, that in practice it was difficult to enforce existing legislation (*The Road Vehicles (Construction and Use) Regulations 1986*) requiring motorists to switch off stationary vehicles. The Government was[273]

> "keen to consider the approach of giving powers to local authorities...[but] the idea that enforcement in this area should be given to bodies other than the police and vehicle inspectorate is one which, while it merits consideration, also needs close examination".

The Government was ready to consider such proposals, along with those it would bring forward in another place, but Viscount Ullswater gave no assurances because of the difficulties associated with this particular amendment.

---

[272]c321
[273]c328

Appendix 1.
Environmental agencies abroad

With an Environmental Agency we are moving into line with Europe and the US. The US Environmental Protection Agency (EPA, US) has existed for over 20 years[274], and the European Environment Agency (EEA) has now been operating in Copenhagen for one year[275]. The EPA and the EEA illustrate the different functions that environmental agencies can fulfil.

The US Environmental Protection Agency (EPA, US)

The EPA in the US has a high profile, and its mission is different from our proposed agencies, with more intended emphasis on scientific research. The EPA's Office of Research and Development runs 12 environmental research labs and around 30 smaller establishments, but the EPA has its critics (Congress, independent groups and its own administrators) who allege a lack of scientific rigour.

Despite the claims of the EPA's director Carol Browner, who says that "science is the backbone of everything we do" the EPA has had difficulty in appointing a prominent scientist to lead its Office of Research and Development, and it has been alleged that the Agency ignores advice from its own science advisory board. The EPA has been called "a regulatory agency at heart, with little aptitude for scientific work", and it recently announced a review of its procedures, to include the way that its research is peer-reviewed externally before release[276].

For instance, a draft EPA report of October 1990 on the cancer risks associated with electromagnetic fields [overhead power lines] was never formally published, following criticisms as to the quality of the science involved[277].

The EPA's most recent report, on dioxins, has caused much comment, for suggesting for the first time that dioxins "probably cause cancer" in humans. However, the report was released in draft, and the EPA itself does not intend to change the way it regulates dioxins until the

---

[274] *Water Bulletin,* 19 July 1991
[275]"The 'infant' agency celebrates one year of life at Copenhagen" *Europe Environment* 22 November 1994 p.5
[276]"Environmental agency responds to its critics" *Nature* 15 May 1994 p.93
[277] *Overhead power lines and health* Commons Library Research Paper 94/119

full report is published in 1995. Since 1985, the EPA has taken the view that even minute amounts of dioxins pose a health risk, and that there is no safe level. This is not universally accepted. The draft report acknowledges that there is insufficient information on the known sources of dioxins. The *Statement* by Assistant Administrator Lynn Goldman accompanying the draft report notes a proven cancer link in experimental animals, and 'probably in humans'.

The European Environment Agency (EEA)

A Regulation (EEC 1210/90) to establish the European Environment Agency (EEA) was adopted in May 1990, but arguments about where the EEA should be sited contributed to a delay of three years in its inauguration[278]. In October 1993 the Council finally decided to place the EEA in Copenhagen, making the EEA, along with the Medicines Evaluation Agency, one of the first of the newly formed European Agencies to start up[279].

The Executive Director of the EEA is Sr Domingo Jimenez-Beltran. Sr Beltran was formerly Director General of the Spanish Environment Ministry, and took up his new post from 1st June 1994 with an initial appointment for five years. Sr Beltran was chosen "on the basis of entirely objective criteria, but with some slight political overtones, to ensure balance in our [Community] decisions". Before Denmark was decided upon, Spain had been pushing hard to host the EEA and Madrid only narrowly missed out[280].

The EEA has a Management Board consisting of one representative from each Member state, two Commission representatives, and two scientists nominated by the European Parliament. The UK representative is Derek Osborne (Director General of the DoE's Environmental Protection Group), alternating with Hiliary Hillier (Head of the DoE's Environmental Protection Statistics Division)[281].

The EEA's small core staff of only forty[282] means that it will have to rely on "topic centres" designated by each Member State to carry out work under contract, and upon "national information networks" of organisations who collect environmental data on a regular basis. These will be co-ordinated nationally by National Focal Points; the UK's is within the DoE's Environmental Protection Statistics Division[283].

---

[278]"European Council awards agency to Copenhagen" *Europe Environment* 30 November 1993 p.9
[279]"[EEA]: work to begin at last in Copenhagen" *Europe Environment* 18 January 1994 p.1
[280]"A Spaniard to head up the European Environment Agency" *Europe Environment* 3 May 1994 p.4
[281]*Clean Air* vol 24, no. 3 Autumn 1994 p131
[282]"[EEA]: work to begin at last in Copenhagen" *Europe Environment* 18 January 1994 p.1
[283]ibid, and HC Deb 9 December 1994 c366w

The EEA will in turn co-ordinate the data gathered, building on work started by the EU's CORINE programme, which will be incorporated into the EEA. The Agency will also provide technical and scientific backup, as well as keeping the public informed about the state of the environment. To this end, the EEA will produce an annual "State of the European Environment" report covering not only the EU member states, but the whole of Europe, reaching so far as the Urals.

One year after the EEA was established, the work of collecting and co-ordinating information has "only just begun", according to its President, Clemens Stroetman. The EEA Management Board met at the end of October and Mr Stroetman said that the Agency should be most concerned with community-wide problems such as depletion of the ozone layer; specific national problems did not fall within the EEA's sphere of competence[284].

The EEA's address is 6 Kongens Nytorv,1050 Copenhagen, Denmark.

---

[284]"The infant agency celebrates one year of life at Copenhagen" *Europe Environment* 22 November 1994 p.5

Appendix 2
Abbreviations

CoPA	*Control of Pollution Act 1974*
CPRE	Council for the Protection of Rural England
EEA	European Environment Agency
EPA	*Environmental Protection Act 1990* (CAP 43)
EPA (US)	Environmental Protection Agency (US)
HMIP	Her Majesty's Inspectorate of Pollution
HMIPI	Her Majesty's Industrial Pollution Inspectorate (Scotland)
IPC	Integrated Pollution Control (under part I of the EPA)
LAAPC	Local Authority Air Pollution Control (under part I of the EPA)
LAs	Local Authorities
NRA	National Rivers Authority
NSCA	National Society for Clean Air
SEPA	Scottish Environmental Protection Agency
The Agency	Environment Agency for England and Wales
VRWRCs	Voluntary Regional Waste Regulation Committees
WRAs	Waste Regulation Authorities