

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENVIRONMENT BILL

Nineteenth Sitting

Thursday 19 November 2020

(Afternoon)

CONTENTS

CLAUSES 98 TO 122 agreed to, some with amendments.
SCHEDULE 17 agreed to, with an amendment.
CLAUSES 123 AND 124 agreed to.
SCHEDULE 18 agreed to.
CLAUSE 125 agreed to.
SCHEDULE 19 agreed to, with amendments.
CLAUSES 126 TO 129 agreed to, some with amendments.
Adjourned till Tuesday 24 November at twenty-five minutes past
Nine o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 23 November 2020

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The Committee consisted of the following Members:

Chairs: JAMES GRAY, † SIR GEORGE HOWARTH

- | | |
|---|--|
| † Afolami, Bim (<i>Hitchin and Harpenden</i>) (Con) | † Jones, Ruth (<i>Newport West</i>) (Lab) |
| † Anderson, Fleur (<i>Putney</i>) (Lab) | † Mackrory, Cherilyn (<i>Truro and Falmouth</i>) (Con) |
| † Bhatti, Saqib (<i>Meriden</i>) (Con) | † Moore, Robbie (<i>Keighley</i>) (Con) |
| † Brock, Deidre (<i>Edinburgh North and Leith</i>) (SNP) | † Pow, Rebecca (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| † Browne, Anthony (<i>South Cambridgeshire</i>) (Con) | † Thomson, Richard (<i>Gordon</i>) (SNP) |
| † Crosbie, Virginia (<i>Ynys Môn</i>) (Con) | † Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab) |
| † Docherty, Leo (<i>Aldershot</i>) (Con) | † Zeichner, Daniel (<i>Cambridge</i>) (Lab) |
| † Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>) (Lab) | Anwen Rees, Sarah Ioannou, <i>Committee Clerks</i> |
| † Graham, Richard (<i>Gloucester</i>) (Con) | |
| † Jones, Fay (<i>Brecon and Radnorshire</i>) (Con) | † attended the Committee |

Public Bill Committee

Thursday 19 November 2020

(Afternoon)

[SIR GEORGE HOWARTH *in the Chair*]

Environment Bill

2 pm

Clause 97 ordered to stand part of the Bill.

Clause 98

INFORMATION TO BE PROVIDED BY THE SECRETARY OF STATE

Daniel Zeichner (Cambridge) (Lab): I beg to move amendment 146, in clause 98, page 98, line 45, at end insert—

“(3A) The Secretary of State must produce a strategy to inform the development of a Nature Recovery Network, including a spatial description of the opportunities for recovering or enhancing the environment through actions to protect or restore biodiversity, in terms of habitats and species, in England.

(3B) The Secretary of State must publish guidelines that set out a process for review and approval of Local Nature Recovery Strategies by Natural England to confirm the priorities and proposals identified in the Local Nature Recovery Strategy would contribute adequately to the delivery of a national Nature Recovery Network and relevant environmental targets.”

The amendment requires the Secretary of State to undertake the mapping and planning work necessary to carry out their functions in relation to the national habitat map.

We welcome the provisions of the clause. It requires the Secretary of State to assist public authorities in preparing their local nature recovery strategy by publishing a national habitat map for England, and to help identify national conservation sites and other areas of particular importance to biodiversity. Predictably enough, we have one or two concerns and comments about that, which our amendment 146 allows us to address.

If this national habitat map is to be effective in informing the preparation of local nature recovery strategies, it needs to be available in good time for the preparation of local nature recovery strategies. As we touched on earlier, we want that to be done speedily, so the national map needs to be done speedily.

It will not be sufficient simply to present national conservation sites on the map. We will also need critical information—on, for example, the condition of sites and the opportunities for recovery—to help direct public authorities in their important work to improve and restore national conservation sites.

The Government’s proposal is a start—it provides some of the information that authorities will need—but good planning for the natural environment requires more than the identification of isolated patches of nature on a map; it requires a strategy for enhancing

and linking sites, throughout urban and rural areas, to facilitate nature’s recovery. What is missing from the clause is provision for the Government to undertake work to identify habitat opportunities. Nor is there any national system of review of the local and national recovery strategies put in place—any quality control to check that each one is making a meaningful contribution. Our amendment 146 would address these omissions by requiring the Secretary of State to

“produce a strategy to inform the development of a Nature Recovery Network”;

to

“set out a process for review and approval of Local Nature Recovery Strategies by Natural England”;

and to confirm that each one

“would contribute adequately to the delivery”

of the national nature recovery networks that we need. Those requirements would give the Secretary of State responsibility for knitting local nature recovery strategies together, which is what the Minister said she wishes to do, so that they function as a coherent national network.

As this is a good opportunity to help the Minister in her endeavour to rescue and strengthen the Bill, I will give her one last opportunity to accept our assistance; we will seek a Division on the amendment.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I welcome the hon. Member’s ambition of providing a national framework to inform the development of the nature recovery network, but the Bill already provides for a framework.

Part 1 of the Bill requires the Government to publish an environmental improvement plan, setting out the steps that they intend to take to improve the natural environment. It also establishes the 25-year environment plan, which, as I said this morning and so many other times, is the first environmental improvement plan. That first plan commits the Government to establishing a nature recovery network, and to publishing a new strategy for nature that includes the network. We have no intention of reversing any commitments made in the 25-year environment plan. Of course, the Office for Environmental Protection will also hold the Government to account on their progress in implementing the environmental improvement plans, including for the nature recovery network.

The clause requires the Secretary of State to provide information that we intend will offer a national spatial framework for the network. This framework includes a national map of areas of existing value for biodiversity, as well as areas where there are opportunities to enhance biodiversity and associated wider environmental benefits. There is also provision in the Bill for the Secretary of State to issue statutory guidance on what the local nature recovery networks should contain and regulations on how they should be protected. These mechanisms will allow the shaping of how each responsible authority reflects the information provided under clause 98.

Natural England has a key role to play in supporting the establishment of the local nature recovery strategy, as I explained earlier. We want them to help produce national guidance to support the responsible authority in producing each strategy and to be the responsible authority themselves where needed. These roles are

provided for in the Bill. Regulations produced under clause 96 will be crucial for establishing roles and responsibilities. Provisions for local nature recovery strategies in the Bill will form part of environmental law. This means that the Office for Environmental Protection will have oversight of these provisions, as it does over all aspects of environmental law.

I hope that the hon. Member is reassured that the Bill, as a whole, provides a suitable framework for the nature recovery network, as well as appropriate mechanisms to ensure that local nature recovery strategies contribute to its development. Therefore, I request that amendment 146 be withdrawn.

Daniel Zeichner: I am grateful for the Minister's response and to her for reintroducing the OEP at this stage. As she will recall, this side were not entirely convinced of the efficacy of this new organisation, and some of us do worry that it will just be a desk in the Department for Environment, Food and Rural Affairs in the early new year, and we want it to be much tougher than that. I suspect her response on this has been the same as on many of these attempts from our side to strengthen and add vim and vigour to this process. However, I am afraid I am still not persuaded or convinced, but I do thank her for the charm and courtesy she has shown in our exchanges. I would still caution her to beware the bloke on the bulldozer, and we do think there is a danger that this Bill's good intentions are undermined. We would like to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 38]

AYES

Anderson, Fleur	Whitehead, Dr Alan
Furniss, Gill	
Jones, Ruth	Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Mackrory, Cherylyn
Crosbie, Virginia	Moore, Robbie
Docherty, Leo	Pow, Rebecca

Question accordingly negated.

Clause 98 ordered to stand part of the Bill.

Clause 99

INTERPRETATION

Amendment proposed: 147, in clause 99, page 99, line 16, leave out "95" and insert "93".—(*Dr Whitehead.*)

Question put, That the amendment be made.

Question accordingly negated.

Amendment proposed: 148, in clause 99, page 99, line 31, at end insert—

"(4) 'Public Authority' means—

- (a) a Minister of the Crown, a government department and public body (including a local authority), and

- (b) a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons—

(i) the OEP;

(ii) a court or tribunal;

(iii) either House of Parliament;

(iv) a devolved legislature;

(v) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998."—(*Dr Whitehead.*)

Question put, That the amendment be made.

Question accordingly negated.

Clause 99 ordered to stand part of the Bill.

Clause 100

CONTROLLING THE FELLING OF TREES IN ENGLAND

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 15 be the Fifteenth schedule to the Bill.

Clause 101 stand part.

Dr Alan Whitehead (Southampton, Test) (Lab): I appreciate that there are no amendments in this group, but I think it is worth having a brief stand part debate here to mark the fact that we have moved from talking about nature and biodiversity to a very brief section in this Bill on trees. I say very brief section, because even though the heading above clauses 100 and 101 and schedule 15 is "Tree felling and planting", it does not actually deal with planting at all. It only deals with cutting trees down.

We think, among other things, that is a tremendous opportunity missed. Although we are limited in this particular group to talking about the clauses and schedule, I ought to draw the Committee's attention to our proposed new clauses later in the Bill on this particular subject that do address tree planting. As we know from the Prime Minister's 10-point plan, the question of tree planting is very much on everyone's minds, and for the obvious reason that tree planting is going to be crucial to reaching our future net zero targets.

There have been various estimates of how many trees need to be planted over the next period to sequester the relevant amounts of CO₂ to create a significant negative contribution to our net zero target by 2050. The tree-planting ambition is not a question of running on to a site, sticking a number of saplings in the ground, running away again, and hoping that they will all have grown into large trees in 30 years and will sequester carbon satisfactorily. The process of planting trees requires an enormous amount of loving care and attention, both in the planting and in the subsequent maintenance of the trees.

2.15 pm

If we were running around planting large numbers of trees, squirrels, deer and various other animals might get to them over a short time, or landowners

might decide, after a rush of enthusiasm for planting on their land, that they did not like the trees very much—we will discuss nature covenants later. Come 2050, if those trees are to count not just for the sake of counting, but for the purpose of sequestration, they have to go through their lives more or less intact, subject to some natural losses.

At the moment, there are some agreements and controls on planting trees in return for grants for management, stewardship and development, but one would have thought that on planting, the Bill presents an opportunity to put precisely those sorts of protective measures in place to ensure that trees are not only planted, but actually go ahead in their careers and become the best trees that they can be for the purpose of sequestration. Indeed, the Government are drawing up a tree strategy at the moment, but it does not seem to have come anywhere near the Bill. We have no clear understanding of what legislation that strategy might lead to or whether it will end up being entirely voluntary, which would be a terrible idea if we want to ensure that planted trees live their lives in the best way possible.

Ruth Jones (Newport West) (Lab): My hon. Friend is making a powerful point. After all, page 99 of the Bill includes “Tree felling and planting”, which are the two sides of the coin, but the whole of the next page gives everybody the authority to cut down trees, as he has quite rightly pointed out. Does he agree that that is a rather negative way forward?

Dr Whitehead: My hon. Friend makes an important point. If someone chanced upon the Bill, flicked through it, looked at the contents at the front and said, “There is a section on tree felling and planting; that’s good, because we want to know about tree planting,” and then found that there was no tree planting, that would be rather an odd outcome, yet that is what we have in front of us. I would like to know, at the very least, what the Minister thinks can be done to rectify that omission and whether she intends, when the tree strategy is mature, to amend the Bill or, if this Bill has already gone through the whole of the House, introduce a subsequent Bill that will match up with what will be in the Environment Act, to give whole-life regulation and protection to tree planting, which is absolutely necessary for our ambitions for the future. Although we do not want to amend these clauses, because we accept that they are within the limitations written into the Bill, we give notice that we intend to proceed to rectify at least part of the issue concerning the heading of the clauses as we move on to the new clauses.

There is an indication, certainly in schedule 15, that the problem of maintenance and stewardship for the future is not anticipated, even on the question of felling and restocking trees. Schedule 15, which is an amendment to the Forestry Act 1967, requires restoration orders to be put in place—a good thing in itself—where people have felled trees when they should not have done or without the proper provisions being applied for.

Schedule 15 provides a welcome advance, in that there is clear regulatory guidance on restocking, but that guidance then starts to fall down, inasmuch as the restocking orders last for only 10 years. The precise problem that we have outlined with replanting could

arise for the restocking orders. The person who has knocked the trees down might grudgingly replant more under the restocking order, but 10 years later, he or she can pull them all up again.

That is certainly not in line with the sort of stewardship that we think has to take place for trees, both in general and in particular with regard to the restocking orders. I would appreciate it if the Minister could comment this afternoon on whether she thinks the provisions in schedule 15 for the duration of restocking orders are sufficient in the light of our discussion, or whether she might review that for future reference.

Fleur Anderson (Putney) (Lab): I know that I represent millions of people across the country in wanting to speak more about trees and seek more about trees in the Bill. There are some things in these clauses that we can agree on. I know that the Minister is a lover of ancient woodland and that the clauses are close to her heart as a chair of the all-party parliamentary group on ancient woodland and veteran trees.

Rebecca Pow: I am no longer allowed to be the chair.

Fleur Anderson: As a former chair, she has said of ancient woodland:

“It is an absolute travesty that only 2% remains and we must ensure that no more is lost.”

We agree on proposed new section 96A(1) of the Highways Act 1980, as inserted by clause 101, in which it becomes statutory for local authorities to

“consult members of the public before felling a tree on an urban road”.

Constituents in Putney will welcome that measure, because in many cases, they do not know why a tree has been felled and they would like to have had a say. It gives our fantastic volunteer tree wardens more power to look at the trees in our urban areas.

We also agree that the Bill is landmark legislation that legislates for urgent action on the biggest environmental challenges of our time. Therefore, it is disappointing that clause 100 is sadly lacking. We will talk about a tree strategy later when we debate new clause 19, but that is where this clause could have come in. Putting an English tree strategy on a statutory footing is key to delivering the commitments in the 25-year environment plan, alongside which the Bill sits.

The 25-year environment plan has targets for net zero carbon emissions by 2050 and for planting 30,000 hectares of trees a year across the UK. We need interim and overall targets in the Bill to ensure that we deliver on those targets. Why is that? Trees sequester carbon, support biodiversity, protect against floods, stabilise the soil, improve our physical and mental wellbeing, filter air pollutants and help to regulate temperatures. The Environment Bill seeks to do all of these, and more on trees would enable us to do it better and make it that landmark legislation. However, 53% of UK woodland wildlife is in decline. Woodland expansion is well below the rate necessary for the future. DEFRA has a woeful track record of missing tree planting targets. It cannot be left out of this Bill and just left to happen. History shows that it does not just happen. We really need a statutory England tree strategy.

There is currently no formal mechanism to set targets for protection, restoration and expansion of trees and woodland in England. Here is the opportunity to legislate and address the importance of trees in tackling the climate and nature crisis we face. This Bill aims to restore and enhance green spaces, yet it falls short in not containing a necessary clause about a tree strategy. There should be a strategy with the following objectives: increasing the percentage of tree cover in England, increasing the hectares of new, native woodland creation by planting and natural regeneration, and increasing the hectareage of plantation of ancient woodland undergoing restoration.

Richard Graham (Gloucester) (Con): I pay tribute to the work of the Woodland Trust, which has helped schools in the hon. Lady's constituency, I am sure, as well as those of all members of the Committee. Does she agree that the sort of projects it leads will help the Government to achieve their goals of planting masses more trees across the country and involving school children?

Fleur Anderson: I thank the hon. Member for his intervention noting the work of the Woodland Trust, which is in agreement with the points I have just made. In fact, this is exactly what it is calling for. Indeed, given that he has talked about the excellent work of the Woodland Trust, I hope he will be supporting new clause 19 when we come back to it. The Woodland Trust would like an English tree strategy to be put on a statutory footing and gave evidence to that effect to this Committee previously, and many constituents from across the country have written in to support this also.

Richard Graham: The point I was trying to make was to highlight the good work that the Woodland Trust is doing alongside the Government, rather than to necessarily support the Opposition's suggested amendments to the Bill.

Fleur Anderson: I understand the clarification. I would say that the Woodland Trust is doing fantastic work, but it is also calling for this statutory framework. I put Members on notice that we will return to this issue when we come to new clause 19. Therefore, I ask all Committee members to hastily look that up and, I hope, support it when it comes. Alternatively, as the shadow Minister has mentioned, let us see an actual, whole tree Bill come to Parliament with all urgency. That would be excellent as well.

Rebecca Pow: It will not surprise those hon. Members who have spoken that I share their passion for trees and ancient woodland particularly. Indeed, I also praise the work the Woodland Trust does and has done, particularly with young people, schoolchildren and all those who want to get involved with this future environment, as was intimated by my hon. Friend the Member for Gloucester.

Deidre Brock (Edinburgh North and Leith) (SNP): I wonder whether the Minister will also pay tribute to the work of the Scottish Government, as over 80% of new plantings in 2018-19 were in Scotland. Are there lessons to be learned there?

Rebecca Pow: I thank the hon. Member for Edinburgh North and Leith for that intervention. Indeed, it is all credit to Scotland. It has a different, much wilder landscape, where trees are very well adapted to the landscape. I do take my hat off to the tree planting that Scotland does, and we all like to learn from good practice across borders. Forestry is, of course, devolved, and that is why introducing a statutory target for the UK is not appropriate for this stage. I just want to touch on general points about tree planting before I address what the actual clause is dealing with, which really pertains to tree felling.

Yes, we do have an England tree strategy, which does set out the means to protect existing trees and see more planted across the country. We have a massive commitment to more tree planting to the tune of 30,000 hectares by 2025. It is ambitious, but we do have, and we are bringing forward, the measures to make that possible. That long-awaited and talked-about tree strategy will be launched in the spring of 2021. A huge amount of work has gone into liaising on that consultation.

2.30 pm

Richard Graham: The Minister is quite right to highlight the good work that has already been done. Does she agree that there is a specific opportunity in many parts of the country in recycling centres? As more councils gradually get out of the business of landfill, there is an opportunity to transform the landscape of these existing recycling centres into places that can generate eco-woodland and green energy and fulfil lots of good environmental purposes.

Rebecca Pow: I thank my hon. Friend for a slightly off-the-wall intervention. I bet he has a recycling centre in his own constituency in mind. There will obviously be opportunities.

I will not say that the whole tree planting industry has to be kick-started, because there was a brilliant piece on "Farming Today" this morning—I do not know whether anyone was awake that early—about massive tree planting going on in the north. There is a huge private forestry scheme; it is private and has lots of input by Natural England and the Forestry Commission. It feeds into a big sawmill; the sawmills need the wood, and we want to stop the wood being imported, so we need to grow it at home. Although one may not think that the word "trees" is mentioned enough, all the policies we are putting in place to deliver biodiversity net gain and local nature recovery, or a great many of them, will involve tree planting.

Ruth Jones: Does the Minister not agree that, although it is great to have the tree planting strategy coming up next year, this is a missed opportunity to put it in the Bill, making it a really good, comprehensive, joined-up piece of work?

Rebecca Pow: I thank the hon. Member for that. While she makes a good point, I point her to the fact that we did a public paper this summer, which explored whether a statutory target for trees in England would be appropriate under the target-setting process of the Environment Bill. Perhaps the shadow Minister missed it, but it shows that all of this work is ongoing. We have this target-setting measure in the Bill, and this will be a prime example of where a target ought to be set.

[Rebecca Pow]

I would take issue. I do not honestly believe that picking out individual things right now, putting them in the Bill and saying there should be a target on them is the right way to go about it. We need the ability to make the target, but we also need to get absolutely right what that target should be. On those grounds, one could say, “We’ll have a target for reeds, for pennywort and for some corncockle.” That is not the way the Bill works. I hope I am making that quite clear. I hope I am also making it quite clear that we have this massive commitment to tree planting. Indeed, that was outlined in our manifesto, and the Prime Minister made his announcement this week in his 10-point plan linking it all together.

Saqib Bhatti (Meriden) (Con): Will the Minister commend Solihull Council, which in line with its commitment to plant a quarter of a million over the next 10 years has linked up with the Woodland Trust to plant nearly 12,000 trees in the first year? It did not need a statutory footing to do so.

Rebecca Pow: I absolutely applaud Solihull if it has already planted that many trees. There is a massive amount of voluntary work and other initiatives going on. I will also point out that tree planting will completely dovetail with the environmental land management scheme to deliver lots of those big projects, especially the landscape-scale projects. That will obviously help the climate change, the carbon sequestration work and all the things Members have touched on.

Richard Graham: Does the Minister agree that the Queen’s Commonwealth Canopy has also played a helpful role? Many of these plantings were done specifically by primary school children.

Rebecca Pow: I meant to reference that just now, so I am glad my hon. Friend mentioned it. I believe that all MPs got sent three trees—I cannot remember what year that was, but we were—and I planted my three using the instructions. Some other MPs called me up to say, “Gosh, what do I do with these things that look like twigs? How do I plant them?” I talked them through it, because some of the trees had obviously been in the box for quite a long time. It is a great project to link up these areas and to get children, in particular, planting trees.

I am going to deal now with what is actually in the clause. I would not belittle this clause about tree felling and planting at all. It is very important. We have committed to planting and protecting all these trees, and the clause will help us to protect the trees we plant. Street trees are often the closest green infrastructure to people’s homes—the hon. Member for Putney talked about how much value people in urban areas get from trees.

Clause 101 places a duty on local highway authorities to consult before felling street trees, guaranteeing the local public an opportunity to understand why a tree may be felled and to raise concerns if they wish. That is really important, because we have had issues elsewhere in the country, where it has caused an absolute storm when the council has come and cut down trees and people simply cannot understand why that was being done. It is really important to get the messaging right.

Local highway authorities should have regard to guidance the Government will publish. This will provide certainty on how the duty should be implemented, as well as consistent street tree management across the country. Under certain circumstances, however, trees are exempt from the duty, thereby not impeding action to address trees that might have to be urgently felled—for example, due to a tree disease, which would then make them a danger. The introduction of this duty reflects the Government’s commitment to protecting our urban trees, which people value so highly and which are important in the urban space.

While reported illegal tree felling rates are low, no level of illegal felling is acceptable. We propose to address this through clause 100 and schedule 15. The felling licence system works well, but is now over 50 years old. Since its introduction, the driving forces behind illegal felling have changed, and statutory protections no longer serve as a deterrent to some illegal felling. Our forestry enforcement measures resolve this and support effective enforcement of the felling licence regime.

First, we will increase the penalty for illegal felling to an unlimited fine, addressing the gains that can be made from illegal felling to realise the value of the land. Court powers to compel replanting will also be increased. Secondly, the measures will ensure that potential buyers or new owners of illegally felled land are made aware of their obligation to replant that land. That will ensure that restocking is achieved, regardless of whether that land is sold.

The hon. Member for Southampton, Test raised the issue of restocking and the 10-year issue in the schedule. If a person replants following the restocking order, but then fells the trees again, that is breaking the law. The trees can be felled only with a licence, so a fine could be applied in those circumstances. It is thanks to other changes in the Forestry Act 1967 and the changes that the Environment Bill is making that that will be the case. I hope that clarifies the issue.

The public obviously care very deeply about trees, and clauses 100 and 101 and schedule 15 will ensure that we have powers to protect and value them. That will allow us to retain the benefits they deliver for us—capturing carbon, providing shade in our streets and homes, creating homes for wildlife and, not least, looking beautiful. When I chose my flat to live in in London with my allowance, one of my chief criteria was that I could see a tree from the window, which I can. It gives me a great deal of pleasure and makes me breathe easy.

Dr Whitehead: I am sure that the Minister knows this already, but there are many ways of getting rid of trees other than felling them. The issue here regarding proposed new subsection 3(b) relates to the requirement

“to maintain those trees in accordance with the rules and practice of good forestry for a period not exceeding ten years”.

Maintenance in terms of the practice of good forestry might include various things, such as making sure that the trees do not get eaten, or making sure that they are sufficiently watered so that they do not die, and various other things that do not involve felling. However, the penalties in the legislation at the moment are for felling. She may want to have further thoughts about this 10-year rule in the light of that particular observation.

This issue is not just about felling; it is about a number of other aspects of good forestry management of trees as they grow to maturity.

Rebecca Pow: I think I have given a very clear answer about the felling. If someone replants, that is an offence; they will be prosecuted for it. I think I have made that very clear. I agree with the hon. Gentleman that maintenance is important; quite clearly it is. I also agree that planting a tree is not a simple thing; it has to be planted, watered, maintained and protected from pests, and there is a great deal of work to be done. However, I think there is an understanding of that for anybody who plants trees. Indeed, particularly when we bring forward these bigger schemes, maintenance and all that side of it will be an important part and parcel of those projects and those schemes.

I hope that I have covered this issue quite clearly in my explanation and answered the questions, and I ask the Committee to agree that clause 100 stand part of the Bill.

Question put and agreed to.

Clause 100 accordingly ordered to stand part of the Bill.

Schedule 15 agreed to.

Clause 101 ordered to stand part of the Bill.

Clause 102

CONSERVATION COVENANT AGREEMENTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this, it will be convenient to discuss the following:

Clauses 103 to 106 stand part.

Clause 107 stand part.

Government amendments 224 and 225.

Clause 108 stand part.

Clauses 109 to 115 stand part.

That Schedule 16 be the Sixteenth schedule to the Bill.

Clauses 116 to 120 stand part.

Rebecca Pow: Can I just check that I am speaking about all those clauses in one go, because that was a lot to take in?

The Chair: Yes.

Rebecca Pow: Thank you. This part of the Bill is based, by and large, on the excellent work done by the Law Commission; I thank the Law Commission for the ongoing support that it has given us.

Conservation covenants are private agreements entered into voluntarily to deliver a conservation purpose for the public good. They can cover conservation of the natural or heritage features of the land; that is set out in clause 102(3). Importantly, they can bind subsequent

landowners, giving them the potential to deliver lasting conservation benefits for future generations; that is referred to in clause 107.

Conservation covenants are crucial, because there is currently no simple legal tool that landowners can use to ensure that conservation benefits are maintained when land is sold or passed on. Current workarounds are costly, complex and have limitations, so opportunities to secure long-term conservation outcomes are being lost. Our consultation last year found significant support from a range of bodies, including farmers, landowners, and conservation organisations, for the whole idea of conservation covenants. The covenants will provide a way of giving biodiversity net gain sites and other key areas for nature the long-term conservation management that they need, and will make it easier for businesses and others to fund nature recovery.

2.45 pm

Conservation covenants are made between a landowner and a designated responsible body, such as a conservation charity or a public or for-profit body. Organisations must apply to the Secretary of State to be designated and show that conservation is one of their core functions. Applications will be assessed by the Secretary of State against published criteria, as outlined in clause 104. Responsible bodies will monitor delivery of the covenants and can take enforcement action if necessary.

Conservation covenants are a flexible tool: the parties can design them to suit their own circumstances, and the duration of a covenant will be whatever the landowner and responsible body specify and agree. If they choose not to specify a duration, it will default to an indefinite period for freeholders and to the remainder of the lease for leaseholders, as covered in clause 106.

Conservation covenants can include positive as well as restrictive land management obligations. A conservation covenant might be used, for example, when a wildlife charity that is a responsible body identifies an area of land containing the habitat of a key species. The responsible body could offer to make a payment to the landowner in return for the landowner's agreement to maintain the land as a habitat for that species. The conservation covenant agreement would set out the steps that the landowner would need to take, such as coppicing woodland, maintaining a wild flower meadow, or any other kind of land management that might be required.

A conservation covenant agreement must be in writing and signed by the parties, and it must appear from the agreement that the parties intend to create a conservation covenant, as referred to in clause 102. Our guidance on conservation covenants will emphasise those requirements and include suggested wording that could be used to demonstrate that an agreement is intended to create a conservation covenant. We have engaged with stakeholders on our draft guidance, and we will continue to do so before it is finalised. I have had meetings and discussions with a range of organisations, including the National Farmers Union, which particularly wanted to talk about the issue. As outlined in clause 107(5)(b), a conservation covenant has to be registered on the local land charges register to bind subsequent landowners, and that register is available to the public.

Finally, Government amendments 224 and 225 to clauses 107 and 116 respectively will clarify that the reference in the clauses to section 3 of the Local Land Charges Act 1975 is to the version that has been substituted

by schedule 5 of the Infrastructure Act 2015, and not to the original version. I have covered quite a lot there, Sir George.

Dr Whitehead: We have no feelings this afternoon that we want to oppose these clauses. On the contrary, we think that the establishment of conservation covenants is a good idea, provided that those covenants can really last in the way they work. The Minister has given a good account of how the covenants will work and can be enforced. Although this is a lengthy number of clauses in a lengthy part of the Bill, I hope hon. Members will not feel that we have failed to examine it. Indeed, having examined it, we think that these are a proper series of measures to take, and we hope that conservation covenants will, as the Minister mentioned, be an important part of the process in years to come.

Question put and agreed to.

Clause 102 accordingly ordered to stand part of the Bill.

Clauses 103 to 106 ordered to stand part of the Bill.

Clause 107

BENEFIT AND BURDEN OF OBLIGATION OF LANDOWNER

Amendment made: 224, in clause 107, page 105, line 10, after “1975” insert

“(as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015)”.—(*Rebecca Pow.*)

This amendment clarifies that the reference in clause 107(6) to section 3 of the Local Land Charges Act 1975 is to the text as substituted by the Infrastructure Act 2015 and not the original text. The original text still has effect in certain local authority areas to which the new text does not yet apply.

Clause 107, as amended, ordered to stand part of the Bill.

Clauses 108 to 115 ordered to stand part of the Bill.

Schedule 16 agreed to.

Clause 116

POWER OF RESPONSIBLE BODY TO APPOINT REPLACEMENT

Amendment made: 225, in clause 116, page 109, line 13, after “1975” insert

“(as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015)”.—(*Rebecca Pow.*)

This amendment clarifies that the reference in clause 116(4) to section 3 of the Local Land Charges Act 1975 is to the text as substituted by the Infrastructure Act 2015 and not the original text. The original text still has effect in certain local authority areas to which the new text does not yet apply.

Clause 116, as amended, ordered to stand part of the Bill.

Clauses 117 to 120 ordered to stand part of the Bill.

Clause 121

DUTY OF RESPONSIBLE BODIES TO MAKE ANNUAL RETURN

Dr Whitehead: I beg to move amendment 14, in clause 121, page 111, line 17, leave out “may” and insert “must”.

I will be brief. This is a further clause concerning mays and musts. I am sure that my hon. Friend the Member for Cambridge will be fascinated by this clause. He will observe that, in the clause, two musts are cancelled out by one may. The clause states that a designated body must make an annual return to the

Secretary of State and that the annual return must give any information that is prescribed under subsection (4). However, that subsection states that the Secretary of State may by regulations make that provision in the first place. Basically, clause 121(1) and (3) put in two musts and, indeed, there are further musts below that. I am sure that my hon. Friend will want to reflect that in his calculations on these matters in the future. Perhaps there will be further opportunities to reflect further as the Bill progresses, but I do not want to press the amendment to a Division. I merely wish to point out that the musts and mays continue in substantial numbers as we progress through the Bill.

Rebecca Pow: I thank the hon. Member for welcoming the conservation covenant, and I am tempted to ask whether it has driven him to excitement.

Dr Whitehead: Steady on. I would not go quite that far. I am sort of elevated.

The Chair: Order. This is all very entertaining, but it is not getting us any further with the Bill.

Rebecca Pow: Sorry, Sir George. I could not resist it, because we were referring to the hon. Member’s excitement on Tuesday. I thank him for his proposed amendment.

Clause 121 places a duty on responsible bodies to make an annual return to the Secretary of State. The return must state whether they held any conservation covenants during the relevant period, the number of covenants and the area of land that each one covers. As the duty is already on the face of the Bill, in clause 121, no regulations will be needed to require responsible bodies to provide that information. However, conservation covenants are a tool that are intended to be used over the long term. It is therefore important that the Secretary of State should be able to obtain additional information in annual returns, if that proves necessary in the future.

Consequently, the clause also provides the Secretary of State with the power to make regulations about the annual returns. That power can be used, if needed, to require from responsible bodies more information than that already required by the Bill. I cannot anticipate at this point what such additional information might be, but any information required to be provided must be about, or connected with, the responsible body, its activities, any conservation covenant that it held during the relevant period, or the land covered by any such covenant.

As I have previously explained about similar amendments, it is therefore entirely appropriate to provide the Secretary of State with flexibility as to when and how the regulation-making provision is given effect. Primary legislation consistently takes such an approach to the balance between powers, which are mays, and duties, which are musts. I therefore ask the hon. Member to withdraw what I think is just a probing amendment anyway.

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 121 ordered to stand part of the Bill.

Clause 122 ordered to stand part of the Bill.

Schedule 17

APPLICATION OF PART 7 TO CROWN LAND

Rebecca Pow: I beg to move amendment 71, in schedule 17, page 222, line 36, leave out from beginning to end of line 9 on page 223 and insert—

“Demesne land

3 (1) Where land belongs to Her Majesty in right of the Crown but is not held for an estate in fee simple absolute in possession—

- (a) Her Majesty in right of the Crown is to be regarded for the purposes of Part 7 and this Schedule as holding an estate in fee simple absolute in possession in the land, and
- (b) any estate granted or created out of the land is to be regarded for those purposes as derived from that estate in fee simple.

(2) The land referred to in sub-paragraph (1) does not include land which becomes subject to escheat on the determination of an estate in fee simple absolute in possession in the land if—

- (a) it is land to which an obligation under a conservation covenant related when the estate determined, or
- (b) it is not land to which such an obligation related at that time and Her Majesty in right of the Crown has not taken possession or control of the land, or entered into occupation of it.

Land subject to escheat

3A (1) This paragraph applies where land becomes subject to escheat on the determination of an estate in fee simple absolute in possession in land to which an obligation under a conservation covenant relates.

(2) The conservation covenant is not terminated on the determination of that estate, even though the appropriate authority has no liability in respect of the obligation unless and until the Crown—

- (a) takes possession or control of the land, or enters into occupation of it, or
- (b) becomes the holder of—
 - (i) an estate granted by the Crown out of the land, or
 - (ii) an estate in land derived (whether immediately or otherwise) from an estate falling within sub-paragraph (i).

(3) If the Crown takes possession or control of the land, or enters into occupation of it—

- (a) the Crown is to be regarded for the purposes of Part 7 and this Schedule as holding an estate in fee simple in possession in the land, and
- (b) that estate is to be regarded for those purposes as immediately derived from the determined estate.

(4) If the Crown grants an estate out of the land after having previously taken possession or control of the land, or entered into occupation of it, the estate is to be regarded for the purposes of Part 7 and this Schedule as immediately derived from the estate mentioned in sub-paragraph (3)(a).

(5) But if the Crown grants an estate out of the land without having previously taken possession or control of the land, or entered into occupation of it—

- (a) the acts of the Crown in granting that estate are not to be regarded for the purposes of Part 7 and this Schedule as taking possession or control of the land, or entering into occupation of it, and
- (b) the new estate is to be regarded for those purposes as immediately derived from the determined estate.

(6) In this paragraph and paragraph 3B ‘the Crown’ means Her Majesty in right of the Crown or of the Duchy of Lancaster, or the Duchy of Cornwall, as the case may be.

Bona vacantia

3B (1) This paragraph applies where an estate in land to which an obligation of the landowner under a conservation covenant relates vests in the Crown as bona vacantia.

(2) The appropriate authority has no liability in respect of the obligation in relation to any period before the Crown takes possession or control of the land or enters into occupation of it.”

This amendment replaces paragraphs 3 and 4 of Schedule 17 with three new paragraphs. Paragraph 3A is new and deals with the application of Part 7 to land to which a conservation covenant relates which becomes subject to escheat to the Crown (for example where the land is disclaimed by a trustee in bankruptcy). Paragraphs 3 and 3B are derived from the current paragraph 3, subject to some minor changes arising from consideration of paragraph 3A.

This amendment ensures that conservation covenants survive when land passes to the Crown through a process known as escheat. Doing so provides consistency in our overall policy on conservation covenants, which is to ensure that they can continue to affect land when it changes hands. The Bill as introduced has the effect that conservation covenants survive when land passes to the Crown as bona vacantia, or ownerless property. Land passes on bona vacantia in various circumstances, such as—in some cases—when a person dies without a will. That actually happened to the house I bought: they could not find who the house was left to in a will, so it went to the Crown and was sold by auction. This Government amendment replicates that effect for land that passes to the Crown by virtue of a process known as escheat. That can happen in a range of circumstances—for example, when a liquidator disclaims freehold land that belonged to a company that is wound up. The purpose of the amendment is to ensure that, in those circumstances, the conservation covenant is not extinguished by the escheat of the land.

Amendment 71 agreed to.

Schedule 17, as amended, agreed to.

Clauses 123 and 124 ordered to stand part of the Bill.

Schedule 18 agreed to.

Clause 125 ordered to stand part of the Bill.

3 pm

Schedule 19

CHARGES FOR SINGLE USE PLASTIC ITEMS

Dr Whitehead: I beg to move amendment 187, in schedule 19, page 229, line 9, at end insert—

“provided that such regulations do not regress upon the scope or purpose of REACH regulations as applied prior to the amended regulations being enacted”.

The Chair: With this it will be convenient to discuss the following:

Amendment 3, in schedule 19, page 229, line 9, at end insert—

“(1A) Regulations made under this paragraph must not regress upon the protections or standards of any Article or Annex of the REACH Regulation.

(1B) Subject to sub-paragraph (1A), the Secretary of State—

- (a) must make regulations under this paragraph to maintain, and
- (b) may make regulations under this paragraph to exceed parity of all protections and standards of chemical regulation with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals.”

This amendment would set a minimum of protections under REACH and remove the possibility that a Secretary of State might lower standards than are in place currently, whilst reserving the right for them to set higher standards should they choose.

Amendment 198, in schedule 19, page 229, line 13, at end insert—

“both in general and, in particular, the precautionary principle referred to in Article 1(3).”

This amendment would require Ministers, in considering consistency with Article 1 of the REACH Regulation, to pay specific attention to the precautionary principle.

Amendment 174, in schedule 19, page 229, line 32, at end insert—

“provided that such regulations do not regress upon the scope or purpose of the REACH enforcement regulations as applied prior to the amended regulations being enacted”.

New clause 11—*Ongoing relationship with EU-REACH*—

“(1) The Secretary of State must not use regulations under Schedule 19 to diminish protections provided by REACH legislation.

(2) The Secretary of State must by regulations seek to maintain regulatory parity with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals after IP completion day.

(3) It is an objective of Her Majesty’s Government as part of any trade negotiations with the European Union to seek to secure associate membership of the European Chemicals Agency for the United Kingdom after IP completion day to enable it to continue to participate in the EU-REACH framework.

(4) Regulations under subsection (2) are subject to the affirmative procedure.

(5) In this section, ‘IP completion day’ has the same meaning as in section 39 of the European Union (Withdrawal Agreement) Act 2020.”

This new clause would require continued parity with REACH.

Dr Whitehead: As you have indicated, Sir George, amendment 187 is being dealt with alongside a number of other amendments, in my name and those of other Opposition Members, and a new clause, which we fully support, in the names of a number of Members who were on the Committee but are on it no longer.

Hon. Members will be aware that we have now moved away from conservation covenants, trees and biodiversity towards a very important new issue: chemical regulation, imports, exports and trading in this country post January 2021. The amendments, and indeed the schedule that they amend, deal with a particularly perverse decision by Her Majesty’s Government upon leaving the EU. They do not wish to have a negotiation or a discussion with the ECHA, the European Chemicals Agency, about associate membership of the agency, under which the REACH regulations—on the registration, evaluation, authorisation and restriction of chemicals—sit, and I will come to that in a moment. Instead, they wish to wholly recreate a UK series of REACH regulations to be regulated by the Health and Safety Executive rather than the ECHA.

The REACH regulations are one of the substantial achievements of the EU. They are a series of regulations that comprehensively sort out the transportation, trade, appearance on particular markets, and safety of chemicals across the EU. They also provide a comprehensive regime for identifying chemicals—a sort of institutional memory of what has gone on with chemicals. Companies that deal with chemicals have to systematically provide additions to the European database of chemicals, which now stands at something like 23,000 different chemicals. That database is available to all EU member states to inform their policies relating to what they consider acceptable for chemical trade and chemicals landing in

their countries, what they can avoid bringing into their countries, and what safety regulations should be applied to the chemicals. All of that has a tremendously advantageous effect on how we steward our environment.

I would go so far as to say that the REACH regulations have played a tremendous role in protecting Europe from all sorts of chemical harm, chemical malpractice and dumping of chemicals in markets and. It is generally environmentally advantageous to have regulations in such a good form, in such a comprehensive way and available for all to look at.

I might add that the REACH regulations were brought about in the EU substantially through the agency of the UK. It was UK regulations and the advance of the situation that we had in the UK at the time that persuaded those involved and assisted the development of the REACH regulations. What we did for European chemical safety is something we can be proud of.

One might think that one threw all that away at one’s peril, but that is precisely what the Government have just done. They have decided that, despite quite strong indications that the UK could have engineered an associate relationship with the ECHA. The EU would have been happy for that to proceed, not least because a close, harmonious relationship in dealing with activities relating to various chemicals across Europe is a great advantage for everybody across Europe. Close harmony on chemical standards is beneficial all round. Frankly, the Government have made a perverse decision, which I cannot fully understand, to effectively completely recreate everything that was in EU REACH on a free-standing basis, subsequent to the HSE in the UK.

Ruth Jones: My hon. Friend is making a powerful and important point from a safety perspective. Does he agree that it is odd that the Government have yet to provide a single good practical reason or advantage for severing ties with the world-leading EU chemicals system?

Dr Whitehead: Yes, indeed. My hon. Friend is right. I have not found anyone who has said what the reason is for doing it. On the contrary, every professional body and every joint industry body in this country—all the bodies concerned with chemicals; there is not one dissenter—has said that a close relationship with the EU and a continuing close association with or within the REACH regulations would be immeasurably to the UK’s advantage, and, indeed, would be an advantage all round.

Hon. Members might say, “Well, they would say that, wouldn’t they?” because the estimated cost of the industry variously accommodating itself to the new duplicate regulations in the way that is proposed is about £1 billion. That is damaging to our economy, and needless expenditure for a lot of people. Not only that, but it is needless expenditure for what appears to be, in the Bill at the moment, a substantially deficient system in the UK.

Among other things, the suggested system does not take account of a lot of the checks and balances and arrangements in the original REACH articles, which we will come to later. The database that I have talked about, if it is recreated in the UK, will take an estimated six, seven or eight years to get to a position where it will be even remotely comprehensive regarding chemical lists. Again, that is a huge amount of work for no purpose,

other than us apparently having a sovereign REACH—now known in the trade as British REACH or BREACH. I think that describes fairly well what it looks like there will be in the UK REACH arrangements as set out in the Bill.

The amendments that we will put forward this afternoon would not on their own make up for the Government's calamitous decision to go their own way on REACH in the UK, but would at least ameliorate some of the worst effects of that changeover. I will not speak to the amendments in the first group individually, but they seek, in different ways, to try to make sure that the starting point for UK REACH is that we do not, at least consciously, regress from what there was before, so that its starting framework is as close as possible, including those articles, to what REACH consists of at the moment. Yes, that does mean we would be duplicating something, but at least it would be duplicated properly, with a number of safeguards and checks and balances. I will come later to protected and non-protected articles, which, frankly, the Government appear to want to play games with.

3.15 pm

The amendments would set a framework for how REACH is to be brought about for the UK. New clause 11 was tabled by the hon. Member for Hendon (Dr Offord) and by my hon. Friend the Member for Leeds North West (Alex Sobel), who was previously a member of the Committee. I think my name and that of my hon. Friend the Member for Cambridge were added to it. Nevertheless, we want to support it.

The new clause sets out clearly:

“The Secretary of State must not use regulations under Schedule 19 to diminish protections provided by REACH legislation.”

It continues:

“The Secretary of State must—

I emphasise must—

“by regulations seek to maintain regulatory parity with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals”

and that it should be

“an objective of Her Majesty's Government as part of any trade negotiations... to secure associate membership of the European Chemicals Agency for the United Kingdom”

if possible. The Government would therefore be rowing back on some of the decisions made about going it alone.

Other amendments state how there should be no regression, which is a principle we stand by. That is the minimum we would expect from any new regime in the UK, even if it is not based on associate membership of the ECHA. I therefore commend the amendments to the Committee and ask it, for the sake of good chemical regulation, whichever route we take, to think about them carefully.

We have one go at this and, if we do not demand in the legislation now that the new regulations are as good as the existing ones, we may open all sorts of doors to future chicanery, malpractice, poor decision making, chemical dumping and so on. I am sure the Committee wants nothing to do with any of that, and by agreeing to the amendments and setting down a series of principles by which REACH will be undertaken in the UK, we

have an opportunity to have nothing to do with any of it in the future, with REACH working properly, even if it is separate from its EU counterpart.

The Chair: I can put the hon. Gentleman's mind at rest. His memory was not defective: he has attached his name to new clause 11.

Rebecca Pow: I thank the hon. Member for his comments. Like him, I take this whole area extremely seriously. It is imperative that we establish our own independent chemicals regulatory framework for Great Britain, UK REACH, and that we do not diverge in terms of our standards. I must say that EU REACH will continue to apply in Northern Ireland under the terms of the Northern Ireland protocol.

We are absolutely committed to maintaining high standards of protection for the environment, consumers and workers, but we want the autonomy to decide how best to achieve that for Great Britain. We will consider the best ideas from both inside and outside the EU, alongside the best evidence within the UK, but there are no plans to diverge from EU REACH for the sake of it.

As the hon. Gentleman pointed out, we were instrumental in designing the whole process in the first place, which we kicked off during our presidency in 1990. That should provide some reassurance about how seriously we take this and how there is no intention to regress. I assure stakeholders that our regulatory system will be developed and managed in line with what is best for the UK and reflect our commitment to high levels of environmental protections.

I understand what hon. Members are aiming for in amendments 187, 3, 198 and 174 and new clause 11 as regards not reducing standards of protection, but I do not believe that the amendments are necessary. There are already a number of safeguards in schedule 19. Any changes to REACH must be consistent with article 1, which includes the purpose of ensuring a high level of protection of human health and the environment. We are not moving away from that and schedule 19 clarifies that.

There are 23 protected provisions—principles that cannot be changed. These include provisions relating to the fundamental principles of REACH, such as the progressive replacement of substances of very high concern. I think the hon. Member is going to deal with those shortly, so I will not go into any more detail about them yet. The Secretary of State must also consult on any proposed amendments and obtain the consent of the devolved Administrations in respect of devolved matters.

I particularly do not agree with amendment 3 or new clause 11(2). What they seek to do is impose dynamic alignment with the EU going forward. They would lock the UK into the EU's orbit. We must be able to follow the evidence and have the freedom to adopt approaches that are the most appropriate for us. We should be able to look inside this country and elsewhere in the world, not just in the EU, for the best ideas.

New clause 11 goes further still. It would require the Government to seek to negotiate associate membership of the European Chemicals Agency, ECHA. We continue to push for a chemicals annex to a free trade agreement to enable data sharing, but the Government have been clear that the UK will not agree to any outcomes that bring with them an obligation to align with EU laws or

[Rebecca Pow]

give jurisdiction to any EU institutions, including EU agencies or the European Court of Justice. Associate membership of ECHA would bring all of those consequences with it.

Dr Whitehead: Will the Minister give way?

Rebecca Pow: I am loth to give way, but I will be kind and will do so.

Dr Whitehead: I want to tease out what the Minister is saying about the fact that there is a proposal to try to get some data sharing under way with the EU. I presume she is referring to access to the wonderful database of 23,000 products that ECHA controls. The Minister appears to be saying, “Wouldn’t it be nice if we had access to that database, without any of the obligations that go with maintaining the database in the first place?” I would not have thought it likely that anyone would agree to that in a hurry. Would she agree with it, if it were the other way around? I do not think so. Surely that is not a serious proposal and should only go ahead on the basis that some sort of obligation sharing was also part of the offer.

Rebecca Pow: I am grateful to the hon. Gentleman for that long intervention.

Daniel Zeichner: I thought it was short.

Rebecca Pow: It was short for the shadow Minister. The Government’s approach to negotiating a future relationship with the EU includes a proposal for a chemicals annex as part of the EU free trade agreement. I thought the hon. Member for Southampton, Test might welcome that. A deal on data sharing with the EU could mitigate the need for industry to provide full-data packages. If that were to happen, we would be responsible for the updating of this as it went along. That is a clear direction of travel.

We continue to push for that, but the EU continues to reject any sectoral annexes. However, securing the chemicals annex is still our preferred outcome. It would obviously be in the interests of both UK and EU businesses, including those that will want to continue selling their chemicals into the GB market. The EU must, though, respect the UK’s position on no ECJ jurisdiction and no alignment.

As regards amendment 198, I recognise the importance of the precautionary principle for each, but I do not believe the amendment is necessary or desirable. Article 1 states that REACH is underpinned by the precautionary principle: that means that it is firmly bound into the safeguards I have already described. However, emphasising the precautionary principle could also have unintended consequences. It risks creating uncertainty about how to interpret article 1 as a whole. This is because article 1 sets out a series of overarching aims for REACH, as well as underpinning it with the precautionary principle, so I do not believe that such a consequence would be desirable.

Amendment 174 moves on from REACH itself to the UK REACH enforcement regulations. Paragraph 2(2) of schedule 19 says that any amendments must be “necessary or appropriate” for the enforcement of REACH. Taken

with the protections in paragraph 1 of the schedule, I believe we are already providing what the hon. Member actually wants. There is a lot of detail there, but I therefore ask the hon. Member to withdraw these amendments.

Dr Whitehead: Well, the hon. Member is certainly not going to withdraw these amendments, because we think they are crucial to the establishment of any reasonable REACH regime in the UK. In a minute, we will come to some further particularly bad elements of schedule 19, which even allow the Secretary of State to chip away at protected areas that are in that schedule in the first place. What we are doing is laying down a marker that seeks to hold a line somewhere, as far as diminution and dilution of REACH regulations in future are concerned, so it is important that we put these amendments to a Division. We would particularly like to ensure that amendments 187, 198 and 174 and proposed new clause 11 are all recorded as a divided vote this afternoon.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 39]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

Afolami, Bim
Bhatti, Saqib
Browne, Anthony
Crosbie, Virginia
Docherty, Leo

Graham, Richard
Jones, Fay
Moore, Robbie
Pow, Rebecca

Question accordingly negated.

Amendment proposed: 3, in schedule 19, page 229, line 9, at end insert—

“(1A) Regulations made under this paragraph must not regress upon the protections or standards of any Article or Annex of the REACH Regulation.

(1B) Subject to sub-paragraph (1A), the Secretary of State—

(a) must make regulations under this paragraph to maintain, and

(b) may make regulations under this paragraph to exceed parity of all protections and standards of chemical regulation with any new or amended regulations of the European Parliament and of the Council concerning the regulation of chemicals.”—(*Dr Whitehead.*)

This amendment would set a minimum of protections under REACH and remove the possibility that a Secretary of State might lower standards than are in place currently, whilst reserving the right for them to set higher standards should they choose.

Question put, That the amendment be made.

Question negated.

3.30 pm

Amendment proposed: 198, in schedule 19, page 229, line 13, at end insert “both in general and, in particular, the precautionary principle referred to in Article 1(3).”—(*Dr Whitehead.*)

This amendment would require Ministers, in considering consistency with Article 1 of the REACH Regulation, to pay specific attention to the precautionary principle.

The Committee divided: Ayes 5, Noes 9.

Division No. 40]

AYES

Anderson, Fleur	Whitehead, Dr Alan
Furniss, Gill	
Jones, Ruth	Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Moore, Robbie
Crosbie, Virginia	Pow, Rebecca
Docherty, Leo	

Question accordingly negated.

Dr Whitehead: I beg to move amendment 107, in schedule 19, page 229, line 16, leave out sub-paragraph (4).

This amendment removes the high degree of discretion when setting REACH Chemical regulations afforded the Secretary of State by Clause 127 in the Bill. Without this amendment the Secretary of State is able to make wide provisions to chemical regulations.

This amendment illustrates the continuing problem we perceive with the way that the REACH regulations—or the breach regulations, as I call them—are to be set out in the Bill and implemented as the new regime. Paragraph 1(3) of schedule 19 refers to

“protected provision of the REACH Regulation”,

which are set out in the schedule. Having indicated that there are protected provisions in the REACH regulations, sub-paragraph (4) states that there is nothing to

“prevent any protected provision...being amended by provision made under this paragraph by virtue of section 127(1)(a).”

What appears to be the case here is like other elements of the Bill. The protected provisions of the REACH regulations under paragraph 6 of the schedule include the articles that deal with its principles and scope, animal testing, information for workers, and so on. By the way, we shall later consider the fact that a number of the articles that we think should be protected do not appear in the list, and our amendments would include them in it. However, we must first address the point that the list, even once it is agreed, seems to be infinitely malleable.

I wonder what is the purpose of our agreeing the protected list this afternoon if there will continue to be a sub-paragraph in the schedule stating that if someone decides in future that they do not particularly like it, they can zap particular protected provisions, which will no longer be protected. That is a rather cavalier way, at the very least, of going about translating protections that were in the REACH regulations into a UK equivalent. It must be apparent to anyone that the measure is not, aside from the good intentions of present Ministers, worth the paper it is written on for recreating a REACH regime with similar standards to the previous EU ones.

If paragraph 1(4) is left in the schedule, we will simply be digging a hole in which to bury the protected clauses for the future. They will not really be protected, and we shall not be able to refer to them in the long term as the substance of the REACH regulations in the UK. The amendment would simply remove the sub-paragraph so that the protected provisions would actually

be protected, as they should be. The Secretary of State would not have the ability to remove the protected articles.

The Minister has already referred to several assurances that can be based on the fact that article 1 is protected. It is, indeed, in the list of protected articles, but it is not exempt from the Secretary of State’s ability to remove articles. It is nonsense, to be honest, and pretty shabby nonsense, looked at in any reasonable way.

Daniel Zeichner: My hon. Friend makes a powerful case. I find myself wondering what he thinks the purpose of all that is. He sets out clearly that the protections we have now can be swept away. Who benefits from that?

Dr Whitehead: I presume it would be someone at a future date who did not particularly like the idea that we should have high standards of chemical protection, perhaps because they thought we should have a let-it-all-hang-out, free trade, laissez-faire arrangement that would let all sorts of stuff come in from all over the world that was not subject to that high standard of chemical protection—someone who would be quite happy for those items to flood into the country at a future date—and there would be nothing we could do about it, because our protections would have been knocked over by our own Government.

Rebecca Pow: Amendment 107 relates to provisions that are listed in the table in paragraph 6 of schedule 19. If I hold up my copy of the Bill—it is slightly disintegrating through overuse—Members will see that I have highlighted the table, which lists different articles relating to the protected provisions. I agree with the hon. Member for Southampton, Test about the importance of the provisions, which enshrine the fundamental aims and principles of REACH. That is why we have set out a sizeable list of them and they will not change.

It may be helpful if I explain the reason for sub-paragraph (4). An ability to make

“supplementary, incidental, transitional or saving”

provisions is a standard provision in legislation. The aim is to make sure we avoid inconsistencies, discrepancies or overlaps developing in the statute book, but it would not enable us to make wholesale changes to the protected provisions. I honestly believe that the hon. Gentleman is seeing shadows. He is seeing malign opportunities and things that will occur in the future, when they are not there.

Article 1 of the REACH provisions, on aim and scope, sets out the purpose as ensuring a high level of protection of human health and the environment, promoting alternatives to animal testing and the principles that are primarily responsible for the chemicals that are sold and used. REACH is underpinned by the precautionary principle.

I want to pick out a number of the provisions—hon. Members may wish to turn to page 231 of the Bill. Article 5 is on the “no data, no market” principle. Access to the market is dependent on registering the chemical with the Health and Safety Executive. Article 25(1) is the principle that animal testing should be carried out only as a last resort. Article 35 covers the right of workers to access information received by their employers concerning the safety of chemical substances or mixtures.

[Rebecca Pow]

Article 55 covers the aim of the authorisation process to progressively replace substances of very high concern. Article 4A covers the principle that decisions that affect devolved matters can be taken only with the consent of devolved Administrations. Article 109 covers the duty on HSE to adopt operational rules to ensure transparency in matters of chemical safety. None of those things is going to change. They are all in there. The annexes are included among the protected provisions, as REACH already contains all the necessary powers to amend them. Duplicating powers in the Bill would cause legal confusion and uncertainty.

I want to give an explanation of where a little bit of tweaking might be required, as an example of how we could use the consequential amendment power, which I think is what the hon. Gentleman is worried about. One of the REACH protected provisions, article 35, states that workers and their representatives shall be granted access by their employer to the information they receive on chemical safety under articles 31 and 32. However, articles 31 and 32 apply only to substances such as individual chemicals and mixtures of chemicals—for example, commercial preparations such as paints and cleaning fluids. They do not apply to substances in what are called articles—for example, toxic heavy metals that might have been used in a piece of electronic equipment. The worker does not have that knowledge at this date in time.

If we decided to expand articles 31 and 32, so that information on dangerous substances in items such as electrical products must be sent down the supply chain, we would want to make consequential amendments to article 35, so that workers would have the right to access that information. As we gather more evidence and science moves on, more comes to light about all those different chemicals and whether, for example, something used in my hairdryer, which I use every other day, is damaging me. We want the right to amend that so that the people who produce those items, and everybody else, would know.

3.45 pm

Dr Whitehead: The Minister is making quite a substantial case. She is stating that the apparent contradiction between paragraphs 1(3) and 1(4) of schedule 19 is resolved by reference to clause 127(1)(a), which includes “supplementary, incidental, transitional or saving provision”, meaning that those protected articles could be amended so that, at a subsequent date, they would do what they are supposed to do rather better. Clause 127(1)(b), however, states:

“A power to make regulations under any provision of this Act includes power to make...different provision for different purposes or areas.”

Will the Minister explain how that complete power to do something different if she feels like it does not undermine the idea that amendments should only be “supplementary, incidental, transition or saving provision”?

The Chair: Order. I have been very tolerant of the length of interventions, because I genuinely believe that sometimes an intervention can help to progress the discussion. I make no criticism of the hon. Member for

Southampton, Test, but I hope that future interventions will be kept to a single point and will be as brief as possible.

Rebecca Pow: Thank you, Sir George. It was a detailed intervention. I reiterate what I said about the purpose of the consequential amendments and how useful they will be. I will not run through the whole example again, but there are others like it. Those provisions are in the Bill with a view to protecting people, not to undermine or regress.

Richard Graham: I was not going to come in on the point about hairdryers, which we do not all use. The general element of scaremongering from the Opposition effectively amounts to a feeling that once we are out of reach of the REACH regulation, we are going to be vulnerable to all sorts of horrors. In fact, pages 187 and 188 of the explanatory notes are clear that the Bill allows the Secretary of State the future power to amend the REACH regulation, but only in very specific ways, and almost everything currently in those regulations will be recreated under a UK banner. Does the Minister agree that we should be more confident of what the future will look like?

Rebecca Pow: I wholeheartedly agree. That is what I was trying to get at in the beginning: given that we basically helped to set up those regulations in the first place, we are hardly likely to want to lower standards. Indeed, I would say that we might want to raise them. That will all have to be done on the advice of the experts and the rest. We have no intention whatsoever of lowering our standards.

Ruth Jones: The Minister says that the Government have no intention of lowering standards, but the ECHA—the European Chemicals Agency—has an annual budget of approximately £100 million and 400 staff, while the Government have promised only £13 million to cover those costs. How can that be commensurate with the protection that we need?

Richard Graham: By using it better and more efficiently!

Rebecca Pow: In the chuntering from the Back Benches, some sensible points are being made. Work is ongoing, but given that we were so influential on this in the first place, we have a lot of specialists and experts who are and will be engaged in setting up the system.

I am going to wind up now, Sir George. I think I have addressed all the points I wanted to address, and given quite a detailed explanation. I ask the hon. Member for Southampton, Test if he will kindly withdraw amendment 107, but I am not holding out much hope.

Dr Whitehead: We will not withdraw this amendment. The Minister’s attempted explanation has increased our resolve, because I do not think it took account of what is in the legislation. By the way, explanatory notes are not legislation—we ought to bear that in mind.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 41]

AYES

Anderson, Fleur

Whitehead, Dr Alan

Furniss, Gill

Jones, Ruth

Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Moore, Robbie
Crosbie, Virginia	Pow, Rebecca
Docherty, Leo	

Question accordingly negated.

Amendment proposed: 174, in schedule 19, page 229, line 32, at end insert

“provided that such regulations do not regress upon the scope or purpose of the REACH enforcement regulations as applied prior to the amended regulations being enacted”.—(*Dr Whitehead.*)

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 42]**AYES**

Anderson, Fleur	Whitehead, Dr Alan
Furniss, Gill	
Jones, Ruth	Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Moore, Robbie
Crosbie, Virginia	Pow, Rebecca
Docherty, Leo	

Question accordingly negated.

Amendments made: 72, in schedule 19, page 230, line 47, leave out

“the National Assembly for Wales”,
and insert “Senedd Cymru”.

See Amendment 28.

Amendment 73, in schedule 19, page 230, line 48, leave out “Assembly” and insert “Senedd”.—(*Rebecca Pow.*)

See Amendment 28.

Dr Whitehead: I beg to move amendment 227, in schedule 19, page 231, line 22, at end insert

“and take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”.

This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

The Chair: With this it will be convenient to discuss amendment 228, in schedule 19, page 231, line 30, at end insert

“take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms, and”.

This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

Dr Whitehead: These two amendments are what one might call blindingly obvious amendments. They seek to ensure that, before making regulations, the Secretary of State should not only consult with the bodies and persons indicated, but

“take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms”.

Be guided by the science, quite simply. That might be quite important in terms of some of our concerns about other clauses.

That is why we have tabled the amendments. I fear that they will not get a very positive hearing, but I feel sure that the Minister will agree with the sentiments behind them. I would not like us to end up as Trumpton-on-Sea and go in the opposite direction. I offer the amendments for the purpose of elucidation. We think that it is a very important principle, albeit a rather obvious one, and will therefore divide the Committee on board. It would be nice if she took some amendments on board, given that they are meant in the best possible way, but I fear that that will not be the case.

Rebecca Pow: I understand why the hon. Gentleman has tabled amendments 227 and 228. It is obviously really important that decisions in the field of chemicals regulation are based on strong science and robust evidence. That is a no-brainer. That is why any proposals to amend REACH in the future must be subject to consultation, and the agency in particular must always be consulted. We are absolutely in agreement on that. It is up to the agency to decide how to mobilise its various scientific advice mechanisms and then reflect the opinions that emerge in its consultation response. That is the role of the Health and Safety Executive, as it has the necessary expertise and experience. The Government will of course take the agency’s considered advice into account.

To that extent the amendment is necessary, but it goes beyond that, requiring the Government to go back and take those opinions into account directly. That would require the Secretary of State to bypass the agency’s expert assessment and potentially replace it with his own interpretation. Perhaps the current Secretary of State would be quite capable of that, but who is going to come along afterwards? We do not want that to happen, and I do not believe that it would be a desirable outcome or a good use of HSE’s scientific expertise.

Amendment 228 has the same aim, but in respect of the REACH enforcement regulations. Again, I understand why the hon. Gentleman has tabled the amendment. Obviously, I absolutely agree with him about the importance of science and the evidence, but the amendment risks the same undesirable consequences as amendment 227. I am sure that that is not really his intention, and therefore ask him to withdraw the amendment.

Dr Whitehead: I am sorry to have to do this again, but we do not think that such an obvious addition can be subject to the undesirable side-effects in the way that the Minister describes. We think that the amendments should simply be added to the Bill and we wish to emphasise that by dividing the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 43]**AYES**

Anderson, Fleur	Whitehead, Dr Alan
Furniss, Gill	
Jones, Ruth	Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Moore, Robbie
Crosbie, Virginia	Pow, Rebecca
Docherty, Leo	

Question accordingly negated.

Amendment proposed: 228, in schedule 19, page 231, line 30, at end insert

“take account of all relevant scientific evidence and advice through the Agency’s science advice mechanisms, and”.—(*Dr Whitehead.*)
This amendment requires the Secretary of State and any relevant devolved authority to take into account the relevant independent scientific advice when making decisions.

The Committee divided: Ayes 5, Noes 9.

Division No. 44]**AYES**

Anderson, Fleur	Whitehead, Dr Alan
Furniss, Gill	
Jones, Ruth	Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Moore, Robbie
Crosbie, Virginia	Pow, Rebecca
Docherty, Leo	

Question accordingly negated.

4 pm

Dr Whitehead: I beg to move amendment 229, in schedule 19, page 231, line 31, at end insert—

“(4) The Secretary of State, or any relevant devolved authority, shall make transparent the reasons for all decisions taken under this regulation by publishing this information in the public domain.”

This amendment requires the Secretary of State, or any relevant devolved authority, to publish an explanation as to how they reached a decision.

Although the amendments are set out for individual debate, they all refer in one way or another to a requirement to operate the UK REACH regulations transparently, publicly and openly. They mandate giving access to information by providing requirements to publish and for Ministers to report. Later amendments address the question of why the elements that are in the REACH articles at the moment are not included in the protected articles that the Minister has already talked about—articles concerned with the right to know, the publication of material and so on.

The question we want to ask through these amendments is related to basic issues around transporting chemicals, the harm that they might do and what might happen to people if they ingest products that have not been properly certified—all those things. Why are protections in terms of the publication of documents or decisions and the public right to have access to the decision-making process all missing from this part of the Bill? I would have thought that the Minister would agree that they should be present in some form or other. I do not know whether it has just been overlooked or whether there is any reason—I am jumping forward a little—why the

very good protections in terms of transparency, public access and so on in the original REACH articles should not be translated directly into protected articles in the UK.

We will seek to divide the Committee on some of the amendments. In different ways, they are designed to place in the UK REACH regulations those issues of the right to know, public access and the interrogation of decisions. I am sorry that they are not in there. They should be. I do not think, Sir George, that we need separate debates on all these amendments, because they all address that principle in different ways and, for that reason, they should all be supported.

The Chair: I will have to take the further amendments the hon. Gentleman refers to, because they are all on the amendment paper, but if Members do not want to proceed with them, that is relatively easily dealt with—if nobody wishes to speak to them or move them, they effectively fall.

Rebecca Pow: I understand why the hon. Member for Southampton, Test tabled amendment 229, which I will talk to now. The amendment calls for transparency in decision making, which I completely support, but I do not think that the amendment is necessary. There must be consultation on any proposals under these provisions, as set out in paragraph 5 of schedule 19. The timely publication of responses is a fundamental part of the Government’s consultation principles. Any legislative changes as a result of that consultation will be subject to the affirmative procedure, which gives the opportunity for explanation and scrutiny, which I know the hon. Gentleman will welcome.

There is an important difference in procedure between the powers in the Bill and decision making under REACH. The Secretary of State’s decisions under REACH are given effect through a statutory instrument using the negative procedure or through Executive action, whereas powers in the Bill are exercised through the affirmative procedure, with the higher levels of explanation and scrutiny that that entails. I therefore ask the hon. Gentleman to withdraw the amendment.

Dr Whitehead: I am anxious not to overthrow procedure completely, but it might be acceptable to the Committee if we were able to indicate that we would, in principle, wish to divide the Committee on a number of amendments that we feel particularly strongly about, without actually proceeding to divide the Committee. Might the Committee think that that was an acceptable procedure at this time in the afternoon?

The Chair: I am not quite sure what the hon. Gentleman proposes. Can he be a bit clearer?

Dr Whitehead: Yes, I can. We face a debate on essentially the same points about transparency, public access and so on, which we feel strongly about. We particularly want the Minister to explain why articles are missing from that list of potential REACH articles. We may have a brief debate about that subsequently. However, we intend, in principle, to divide the Committee on all these amendments, which would of course take quite a while to complete. However, if we were able to state

that, in principle, we wish to divide the Committee on those amendments, we could perhaps have an indicative Division on this this particular amendment.

The Chair: I think I now understand what the hon. Gentleman is saying. It would be an ingenious new addition to the rules of the House, but I am afraid that that is way above my pay grade.

Leo Docherty (Aldershot) (Con): On a point of order, Sir George. Would it be helpful to suggest to the shadow Minister that we debate the current amendment, but that he does not press the subsequent amendments to a Division?

The Chair: The situation is straightforward. If the hon. Member for Southampton, Test wants to make his point about the issue, the best way to do it is to have a Division on the lead amendment. When we come to the subsequent amendments, it is a question of saying, “Not moved,” or of saying, “Moved formally” and we will then take a vote. There will have to be some sort of Division, but the hon. Member for Southampton, Test does not have to take part in it if he feels that the point he is trying to make has already been established with regard to the lead amendment.

Dr Whitehead: Thank you, Sir George. We wish to seek a Division on this amendment, and we may seek a Division on subsequent lead amendments when they come up.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 45]

AYES

Anderson, Fleur	Whitehead, Dr Alan
Furniss, Gill	
Jones, Ruth	Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Moore, Robbie
Crosbie, Virginia	Pow, Rebecca
Docherty, Leo	

Question accordingly negatived.

Dr Whitehead: I beg to move amendment 108, in schedule 19, page 231, line 37, at end insert—

“Article 13 (General requirements for generation of information on intrinsic properties of substances)”.

The Chair: With this it will be convenient to discuss the following:

Amendment 109, in schedule 19, page 231, line 38, at end insert—

“Article 26 (Duty to inquire prior to registration)

Article 27 (Sharing of existing data in the case of registered substances)

Article 30 (sharing of information involving tests)”.

Amendment 176, in schedule 19, page 231, line 38, at end insert—

“Articles 32, 33 and 34 (communication in the supply chain & a right to know for consumers)”.

This amendment includes Article 32, 33 and 34 of REACH (communication in the supply chain & a right to know for consumers) in the “protected provisions” that may not be amended under Schedule 19.

Amendment 110, in schedule 19, page 231, line 39, at end insert—

“Article 40(2) (third party information)”.

Amendment 111, in schedule 19, page 232, line 25, at end insert—

“save insofar as they contain endpoints for tests using animals”.

Dr Whitehead: As I said, these amendments deal with elements of the REACH articles as they stand that we would seek to be protected in the translation into UK jurisdiction. We are concerned that the articles mentioned in the amendments have been left out, all of which are concerned, one way or another, with public access, the right to know and transparency. My hon. Friend the Member for Putney may say a few words on that in a minute, so I will restrict my remarks to that.

I also indicate to you, Sir George, that although we would in principle seek to divide on all the amendments if the Minister is not able to accept them or to give a fully satisfactory explanation, we will seek to divide on the lead amendment only.

4.15 pm

Fleur Anderson: The Bill gives the Secretary of State for Environment, Food and Rural Affairs the power to amend UK REACH and the REACH Enforcement Regulations 2008—REACH being the registration, evaluation, authorisation and restriction of chemicals, for the benefit of those reading in *Hansard*. However, specified elements of REACH are excluded, as we said earlier, from the Secretary of State’s amending power. We are referred to the table that the Minister mentioned earlier and told, “It is all there and included.” It is not all there and included.

We would like to highlight some articles that have not been included in the protected provisions—specifically, article 13 in amendment 108, articles 26, 27 and 30 in amendment 109 and—an interesting set of articles—articles 32, 33 and 34 in amendment 176, which are highly important to the REACH regulations actually working for consumers and those within the supply chain of chemicals. The provisions refer to everyday products that we and our constituents would all use, including paints, cleaning products, clothes, furniture, electrical appliances and, as already mentioned, hairdryers.

In article 32, which I would argue should be a protected principle, there is the duty to communicate information down the supply chain free of charge and without delay. In article 33, the duty is to communicate information on substances in articles for the consumer free of charge within 45 days. In article 34, the duty is to communicate information on substances and preparations up the supply chain.

There are duties up the supply chain, down the supply chain and to the consumer. That is all protected, and it absolutely should happen to ensure that, as the Minister has said, when more information, science and

[Fleur Anderson]

data come to light as we go along with new products and chemicals, the consumer and all of those in the supply chain have a right to know what that new information is, and what is up and down the supply chain. The consumer should know what is in the products that we consume.

Under article 33, suppliers of articles that contain a substance of very high concern are required to provide sufficient information in response to consumer requests about those products to allow their safe use, including disclosing the name of the substance that is used. However, that will be taken out of a protected requirement. There are substances that, for example, meet the criteria for classification as carcinogenic, mutagenic, toxic to reproduction and persistent bioaccumulative toxic. This is an essential public policy safeguard, and it is unclear why the Government wish to exclude it from the list of protected provisions. Other things are included in that list. It is seen as beneficial to have a list of protected provisions. Why are those provisions not protected?

That is the question we are asking by tabling these amendments. We are saying that it is important to the whole of the REACH regulation that these things are included and cannot be subject to change by the Secretary of State.

Rebecca Pow: I thank hon. Members for amendments 108, 109, 176, 110 and 111. I understand the desire to protect further provisions of UK REACH in the Environment Bill. However, I do not believe that these amendments are necessary or, in many cases, desirable—shock, horror!

The protected provisions of REACH are intended to ensure that the fundamental principles of REACH cannot be changed, while allowing a flexibility to ensure UK REACH remains fit for purpose. The intention is not to freeze detailed processes. Any proposed amendments by the Secretary of State are subject to consultation, to the consent of the devolved Administrations in respect of devolved matters and to the affirmative procedure, ensuring a full debate in Parliament, which I know Opposition Members will welcome.

Amendment 108 applies to article 13 of REACH, which sets out detailed provisions about alternatives to animal testing, including when animal tests can be waived—I think the hon. Member for Putney was referring to that. She wants us to avoid unnecessary animal testing and to promote alternative approaches. We agree with that aim, but adding this article to the list of protected provisions could make that more difficult. For example, it could prevent us from extending the range of tests for animal testing that may be omitted where there is appropriate justification.

The same objections apply to the articles that would be affected by amendment 109, that is, articles 26, 27 and 30, and by amendment 176, that is, articles 32, 33 and 34. These articles are not just about the principles of information sharing. They also include prescriptive details about how information should be shared with the REACH supply chain and how the agency should deal with inquiries. We should not bind ourselves to these detailed procedures going forward but instead remain free to adopt new ways of working that draw on our experience of applying REACH in the UK. The whole idea is that we will improve and benefit.

Amendment 110 would protect REACH article 40(2). Again, the point is that we do not want to freeze the detail of how REACH operates. Instead, we need the flexibility to amend REACH, to ensure that it works for the UK. In this case, article 40(2) includes specific details, such as timescales for publishing information.

I do not believe that amendment 111 is necessary or desirable. I agree that we may consider it appropriate to amend the REACH annexes to drive the use of non-animal alternatives, but the power to amend the REACH annexes is already within REACH itself, which makes it unnecessary to add an overlapping power to the Bill.

I therefore ask the hon. Member for Southampton, Test to consider withdrawing his amendments.

Dr Whitehead: I think I have already indicated that although we do not wish to withdraw these amendments, we will seek—for the purpose of the record, as it were—an indicative division on amendment 108. However, the fact that we will not press all the subsequent amendments to a vote does not mean that we would not ideally like to divide on them. However, we are doing this for the sake of the comfort and sanity of the Committee this afternoon, and I hope that will be appreciated.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 46]

AYES

Anderson, Fleur	Whitehead, Dr Alan
Furniss, Gill	
Jones, Ruth	Zeichner, Daniel

NOES

Afolami, Bim	Graham, Richard
Bhatti, Saqib	Jones, Fay
Browne, Anthony	Moore, Robbie
Crosbie, Virginia	Pow, Rebecca
Docherty, Leo	

Question accordingly negatived.

The Chair: Before I put the question on amendment 109, which again was tabled by Dr Whitehead, I wonder if it would be helpful if I try to explain the hon. Gentleman can achieve what he wants to achieve. With advice, I think there are two options, which apply to amendments 109, 176 and 110. I take it that the hon. Gentleman, in principle, does not want to have a Division, but does not want to concede the principle; I think that that is approximately his position. When I call each amendment and he says, “Not moved”, then there would not be a Division. The other option is that he can move each amendment, but then simply remain silent when I put the question. So, when I say, “As many of that opinion say aye”, he should just not say anything and then there will not be a Division in that instance either. Those are the only two options available to the hon. Gentleman, so I will leave them with him. The advice I have given is intended to be helpful to him and to the Committee.

Amendment proposed: 109, in schedule 19, page 231, line 38, at end insert—

“Article 26 (Duty to inquire prior to registration)

Article 27 (Sharing of existing data in the case of registered substances)

Article 30 (sharing of information involving tests)".—(*Dr Whitehead.*)

Question put, That the amendment be made.

Question negatived.

Amendment proposed: 176, in schedule 19, page 231, line 38, at end insert—

“Articles 32, 33 and 34 (communication in the supply chain & a right to know for consumers)”.

This amendment includes Article 32, 33 and 34 of REACH (communication in the supply chain & a right to know for consumers) in the “protected provisions” that may not be amended under Schedule 19.

Question put, That the amendment be made.

Question negatived.

Amendment proposed: 110, in schedule 19, page 231, line 39, at end insert—

“Article 40(2) (third party information)”.—(*Dr Whitehead.*)

Question put, That the amendment be made.

Question negatived.

Amendment proposed: 111, in schedule 19, page 232, line 25, at end insert—

“save insofar as they contain endpoints for tests using animals”.—(*Dr Whitehead.*)

Question put, That the amendment be made.

Question negatived.

Schedule 19 agreed to.

Clause 126

CONSEQUENTIAL PROVISION

Amendments made: 58, in clause 126, page 113, line 28, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.

Amendment 59, in clause 126, page 113, line 36, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.

See Amendment 28.

Amendment 60, in clause 126, page 113, line 37, leave out “Assembly” and insert “Senedd”.—(*Rebecca Pow.*)

See Amendment 28.

Clause 126, as amended, ordered to stand part of the Bill.

Clause 127

REGULATIONS

Dr Whitehead: I beg to move amendment 149, in clause 127, page 114, line 11, leave out subsection (1)(b).

I have alluded to this amendment previously. I must admit that, having read the clause on a number of occasions for different purposes, I cannot come to any

other conclusion than that subsection (1)(b) is a serious attempt to destabilise what happens before it in the clause. One has to read it differently from common English to conclude that

“different provision for different purposes or areas”

means anything other than that the Minister can do what he or she wants. That should not have a place in the Bill. I would be grateful if the Minister would explain briefly—I mean briefly—why that is in the Bill. We do not intend to divide the Committee, but we would like to hear something from the Minister to that purpose.

Rebecca Pow: I thank the hon. Gentleman for his contribution on this matter. Clause 127 sets out the scope of regulation-making powers as well as the procedures to be used when making those regulations. Subsection (1)(b) makes it clear that regulations made under the Bill are able to make

“different provision for different purposes or areas.”

That is a standard provision that has been used for many years in any Bill that includes delegated powers. It is necessary to provide clarification as to the flexibility of the delegated powers. Different circumstances may require different provisions. The amendment would remove necessary, proportionate and appropriate flexibility from the delegated powers, making it more difficult to deliver the ambitions set out in the Bill, including setting targets, creating deposit return schemes or delivering biodiversity net gain. I hope that was brief enough to clarify what is meant. I ask the hon. Gentleman to withdraw the amendment.

4.30 pm

Dr Whitehead: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 61, in clause 127, page 114, leave out line 32 and insert “Senedd Cymru”

See Amendment 28.

Amendment 62, in clause 127, page 114, line 35, leave out “the National Assembly for Wales” and insert “Senedd Cymru”.—(*Rebecca Pow.*)

See Amendment 28.

Clause 127, as amended, ordered to stand part of the Bill.

Clauses 128 and 129 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned—(*Leo Docherty.*)

4.32 pm

Adjourned till Tuesday 24 November at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

EB82 Letter from Rebecca Pow to Dr Alan Whitehead
re: Resource efficiency requirements (Schedule 7)

EB83 Letter from Rebecca Pow to Daniel Zeichner
re: new burdens on local authorities (Clause 54)

