

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## ENVIRONMENT BILL

*Ninth Sitting*

*Tuesday 3 November 2020*

*(Afternoon)*

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### CONTENTS

CLAUSES 16 to 21 agreed to.

SCHEDULE 1 under consideration when the Committee adjourned till

Thursday 5 November at half-past Eleven o'clock.

Written evidence reported to the House.

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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,

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**Saturday 7 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)                   | † Longhi, Marco ( <i>Dudley North</i> ) (Con)  |
| † 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)   |
| † Docherty, Leo ( <i>Aldershot</i> ) (Con)                              | † Whitehead, Dr Alan ( <i>Southampton, Test</i> ) (Lab)  |
| † Furniss, Gill ( <i>Sheffield, Brightside and Hillsborough</i> ) (Lab) | † Zeichner, Daniel ( <i>Cambridge</i> ) (Lab)  |
| † Graham, Richard ( <i>Gloucester</i> ) (Con)                           | Anwen Rees, Sarah Ioannou, <i>Committee Clerks</i>   |
| † Jones, Fay ( <i>Brecon and Radnorshire</i> ) (Con)                    |  |
| † Jones, Ruth ( <i>Newport West</i> ) (Lab)                             | † <b>attended the Committee</b>  |

## Public Bill Committee

Tuesday 3 November 2020

(Afternoon)

[JAMES GRAY *in the Chair*]

### Environment Bill

#### Clause 16

##### POLICY STATEMENT ON ENVIRONMENTAL PRINCIPLES

*Amendment moved (this day):* 91, in clause 16, page 10, line 6, leave out “proportionately”.—(*Dr Whitehead.*)

*This amendment removes ministerial estimates of proportionality as a limitation on the policy statement on environmental principles.*

2 pm

**The Chair:** I remind the Committee that with this we are discussing amendment 92, in clause 18, page 11, line 13, leave out subsection (2).

*This amendment removes the proportionality limitation on the requirement to consider the policy statement on environmental principles.*

**Dr Alan Whitehead** (Southampton, Test) (Lab): I was in the middle of a brief exposition of the word “proportionately”, as found in clause 16, which we were discussing this morning. As I mentioned, the clause requires that a policy statement on environmental principles must be prepared in accordance with clauses 16 and 17. Subsection (2) defines the policy statement on environmental principles as

“a statement explaining how the environmental principles should be interpreted and proportionately applied by Ministers of the Crown when making policy.”

The word “proportionately” very much concerns Opposition Members, because the clause not only deals with the statement itself and how the environmental principles should be interpreted, but adds that Ministers of the Crown will be assumed to be proportionately applying those principles. It goes beyond the environmental principles themselves and gives Ministers of the Crown the leeway to apply those principles “proportionately”.

“Proportionately” is a strange word. The Cambridge philosopher of ordinary language J. L. Austin defined it, among others, as a “trouser-word”—a word that does not function properly without a pair of trousers on.

**Daniel Zeichner** (Cambridge) (Lab): Where are you going with this, Alan?

**Dr Whitehead:** I think J. L. Austin is very interesting, but others disagree. Indeed, the dictionary definition of “proportionately”, which underlines his point, is:

“In a way that corresponds in size or amount to something else.”

It has no consequence in its own right, and that is the problem that we have with this particular formulation. If there are no trousers on “proportionately”, it can mean whatever anybody wants it to mean. In this instance, it appears to mean what Ministers of the Crown may

want it to mean. It is possible—not in terms of the intentions or anything else of present company—that the definition of “proportionately” is entirely what Ministers of the Crown may want to make of it. A much more straightforward example of that particular action is Lewis Carroll’s Humpty Dumpty deciding that words mean exactly what he wanted them to mean.

We may come on to this later, but the Bill should define what “proportionately” might mean, what its limits are and what Ministers may do when deciding, proportionately, what environmental principles should be. I accept that it may well be the case that Ministers have a view on environmental principles and how that policy statement may be put into place. This is not an appropriate way to bring Ministers into that particular discussion. For the sake of clarity, we would like to see the word removed from the clause, so that it reads, “a policy statement is a statement explaining how the environmental principles should be interpreted.” That offers enough leeway as far as policy statements are concerned. I welcome the Minister’s explanation as to why that additional line should be necessary in the clause, and what it adds rather than what it takes away, in terms of making quite meaningless some of the things that I have outlined in the first part of the clause with regard to Ministers.

**The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow):** I thank the hon. Gentleman for these amendments, and welcome the opportunity to clarify why the provisions are needed. The amendments would remove the need for the policy statement to set out how the environmental principles should be proportionately applied by Ministers when making policy. They also remove important proportionality considerations associated with the legal duty to have due regard to the policy statement on environmental principles. Proportionate application is a key aspect of use of the principles, and it ensures that Government policy is reasoned and based on sensible decision making. It is vital that this policy statement provides current and future Ministers with clarity on how the principles should be applied proportionately, so that they are used in a balanced and sensible way. Setting out how these principles need to be applied in a proportionate manner does not weaken their effect, nor does ensuring that action on the basis of the policy statement is only taken where there is an environmental benefit. It simply means that in the policy statement, we will be clear that Ministers need to think through environmental, social and economic considerations in the round, and ensure that the environment is properly factored into policy made across Government from the very start of the process.

When the policy statement is then used, Ministers of the Crown will take action when it is sensible to do so. This approach is consistent with the objective in relation to the policy statement of embedding sustainable development, aimed at ensuring environmental, social, and economic factors are all considered when making policy. Not balancing those factors could have consequences that halt progress. For example, a disproportionate application of the “polluter pays” principle could result in anyone being asked to pay for any negligible harm on the environment, when in reality, many actions taken by humans cause some environmental harm, such as going for a walk in the country. It is essential to ensure that

the principles are applied in an appropriate and balanced way, and proportionality is absolutely key to this. Since this amendment removes vital proportionality considerations, I ask the hon. Member not to press amendments 91 and 92.

**The Chair:** Before I call Daniel Zeichner, who caught my eye, can I explain a small point about procedure? It would be helpful if anybody who wishes to speak while the person who has moved the amendment is speaking would catch my eye one way or another—standing up in their place is the clearest way to do so. Those people speak, and the Minister speaks afterwards. That means the Minister is replying to the points that are made. For now, it is fine, but in future, Members should catch my eye while the mover of the amendment is speaking. They can speak, and the Minister can reply to what hon. Members have to say.

**Daniel Zeichner:** Thank you, Mr Gray. My apologies for muddling up the procedure. I am grateful for the opportunity to make a few points on what seems to be one of the most important parts of the Bill. For many of us, the precautionary principle has been a key part of our environmental protections.

It is fair to say that there is a difference of view internationally about how one approaches these things. Without trying to trivialise it in any way, there is a difference between the American approach and the European approach. Of course, we have been part of the European approach for a long time, and the precautionary principle has been absolutely key. The introduction of proportionality will seriously weaken our environmental protections. Although we have reams of paper to go through, that is the key distinction. I fear that the application of proportionality will water down our environmental protections.

I found the explanatory notes very helpful, as I always do. Paragraph 173 says:

“Proportionate application means ensuring that action taken on the basis of the principles balances the potential for environmental benefit against other benefits and costs associated with the action.” Of course, as soon as we introduce that balancing side, those essential precautionary environmental protection are at risk. I am afraid, despite the Minister’s optimism about the Bill, that this is the crunch issue. If this amendment is not carried, there is no doubt that our environmental protections will be weakened.

**Dr Whitehead:** My hon. Friend makes a key point about the importance of the amendment. It is not just that many things pivot on it; one could almost go so far as to say that the whole thrust of the Bill pivots on it.

The understanding has always been that the Bill really will put the environment on the map and will provide not only good environmental protection in the long term, but no regression and enhanced environmental protection in the future. If that word is at the heart of it, things could be traded off against considerations that are completely outwith the intentions and purposes of the Bill, and it could be subverted entirely at ministerial discretion. That is surely not something that we should easily countenance.

In a moment, we will come on to an amendment that attempts to get a definition of proportionality on to the statute book. Although we do not want to divide the

Committee on this amendment, if we do not secure substantial progress with the next amendment, we may seek to divide the Committee at that point. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 16 ordered to stand part of the Bill.*

*Clause 17 ordered to stand part of the Bill.*

## Clause 18

### POLICY STATEMENT ON ENVIRONMENTAL PRINCIPLES: EFFECT

2.15 pm

*Amendment proposed:* 92, in clause 18, page 11, line 13, leave out subsection (2).—(Dr Whitehead.)

*This amendment removes the proportionality limitation on the requirement to consider the policy statement on environmental principles.*

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 5, Noes 10.

### Division No. 4]

#### AYES

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

#### NOES

Afolami, Bim	Jones, Fay
Bhatti, Saqib	Longhi, Marco
Browne, Anthony	Mackrory, Cherilyn
Docherty, Leo	Moore, Robbie
Graham, Richard	Pow, Rebecca

*Question accordingly negatived.*

**Deidre Brock** (Edinburgh North and Leith) (SNP): I beg to move amendment 114, in clause 18, page 11, line 19, leave out paragraph (a).

*This amendment removes the exceptions for armed forces, defence and national security policy from the requirement to have due regard to the policy statement on environmental principles.*

**The Chair:** With this it will be convenient to discuss amendment 93, in clause 18, page 11, line 19, leave out “the armed forces, defence or”.

*This amendment removes the exceptions for armed forces and defence policy from the requirement to have due regard to the policy statement on environmental principles.*

**Deidre Brock:** It is important to establish a principle that no area of Government should be exempted from its responsibilities to the environment. The amendment brings the activities of the Ministry of Defence, the armed forces, defence and national security into the scope of the Bill. I have been talking at length on this subject for some time now, and have submitted numerous parliamentary questions on it. Some of those questions actually received answers, but sadly I am still awaiting a letter from the Minister for Defence People and Veterans outlining the environmental impact assessment of the MOD’s operations at Cape Wrath, which he promised me in February of this year. Perhaps mentioning that today will jog his memory a little.

[Deidre Brock]

We have swathes of munitions dumps up and down the UK coast, still imperilling our fishers and others on our waters. There are also large chunks of land in the UK currently outside the scope of the Bill. Yes, hundreds of nuclear safety incidents on the Clyde were acknowledged by the MOD, but only because of written questions I had submitted. We have no idea what impact military fuels are having. Scientists for Global Responsibility estimates that 6% of global greenhouse gas emissions result from military-related activities.

I understand that the percentage share of the UK's emissions total is lower for defence here, but our omissions from the military are still higher than those of some entire countries. By taking this action, the UK really could act as a world leader and role model. We have no idea what impact weapons testing or training efforts have. I know because of my parliamentary questions that assessments are made, but they are not published. It must be possible to make such assessments transparent without compromising the safety of our forces and their interests.

A number of witnesses to the Committee, when I asked them about the issue, seemed to agree that it was something of an anomaly. Lloyd Austin of Scottish Environment LINK, while accepting that exceptions will exist, said that they

“should be based...on a degree of justification for why...the environmental issue has to be overwritten. Nobody thinks the environment will always trump everything but, on the other hand, where the environment is trumped, there should be a good reason, and that reason should be transparent to citizens.”

John Bynorth of Environmental Protection Scotland said:

“It is a bit arbitrary and unjustified that the military...should not be subject to the same conditions as everyone else.”—[*Official Report, Environment Public Bill Committee*, 12 March 2020; c. 143, Q202.]

Ruth Chambers, from Greener UK, speaking about the fact that this duty will not apply to the Ministry of Defence, said:

“Already, we seem to be absolving quite a large part of Government from the principles.”—[*Official Report, Environment Public Bill Committee*, 10 March 2020; c. 71, Q112.]

The environmental principles, that is.

I am not going to speak for long—we have many amendments to get through—but I have been raising this issue for a long time. I was delighted to see Labour come on board too, although disappointed to see that they still want to keep the exemption for national security. We have to ask what kind of national security will be left to us if the environment goes belly up.

From answers received from the House of Commons Library, I know that there are so many pieces of primary legislation containing exemptions relating to the armed forces that it is not possible to list them all. If we are going to start stopping these exemptions for the military, the place to start should be in the Environment Bill. I am interested to hear the Minister's response, but I am going to press the amendment to a vote.

**Fleur Anderson** (Putney) (Lab): Clause 18 makes the armed forces, defence or national security exempt from due regard to the policy statement on environmental principles. It is detrimental to leave this whole section of

Government out of the Bill's provisions. If we want this Bill to be a legal framework for environmental governance and to have all the correct people in one room, why leave out one of the biggest polluters, the biggest spenders and the biggest landowners? It just does not make sense in terms of achieving ambitious net zero targets.

Were the exemption to be confined and constricted to decisions relating to urgent military matters and those of national security, it is of course entirely reasonable. I fully accept that there will be occasions when national security has to take precedence over environmental concerns. We do not want to impede the work of our armed forces or compromise our safety and security in any way. However, the clause is not drafted as tightly, cleverly and smartly as that. Rather, it is a blanket exclusion for the Ministry of Defence, the Defence Infrastructure Organisation and the armed forces from complying with the environmental principles set out in the Bill.

The carbon footprint of UK military spending was approximately 11 million tonnes of CO<sub>2</sub> in 2018—very significant. Some £38 billion was spent on defence last year alone—more than 2% of our GDP. Bringing how that is spent in line with our environmental aims is essential to achieving our overall national environmental targets. If it is not in the Bill, it is just going to be left to goodwill and to hoping that it will work.

I hope that the Minister will shortly argue that the principle is important and, if it is, the armed forces and defence must not be exempt—that is how we show it is important. The Ministry of Defence is one of the largest landowners in the country, with an estate that is nearly equal to 2% of the UK landmass. Last week I was on Salisbury plain, which is the size of the Isle of Wight. It is where significant military work is carried out, but it is also where a significant environmental advantage could be held.

The Defence Infrastructure Organisation manages 431,400 hectares of land within the UK. The sites are used for training, accommodation and large bases and the organisation has a remit to ensure the safety, sustainability and rationalisation of the estate. It states that:

“MOD has a major role to play in the conservation of the UK's natural resources. Stewardship of the estate means that the MOD has responsibility for some of the most unspoilt and remote areas in Britain; with statutory obligations to protect the protected habitats and species that they support.”

I am not arguing that the Ministry of Defence does not care about the environment. I am saying that, if we all care about the environment, the MOD should come within the legal framework of guidance. We can have an amendment specifically tailored for the armed forces. Much of the land used by the MOD for training and operations is in highly sensitive environments and many parts are located in areas of outstanding natural beauty, including Dartmoor, Lulworth, Warcop and the Kent downs. They are subject to a number of associated policy processes, such as bylaw reviews, planning applications and so on, which means that they are subject to environmental protection. They should be joined up and come within the remit of the Bill as well.

A reason for adding this matter to the Bill is that the Ministry of Defence is already deeply committed to environmental protection and to tackling climate change, but a major rethink of defence policy is needed to achieve our ambitious environmental aims. New approaches

to procurement are needed in particular. The Air Force, for example, is looking at different types of aircraft fuel. That should come within the Environment Bill, not without.

It prompts the question of why there is a blanket exemption, as it does not give credit to the armed forces and to the newly formed strategic command for all the work they are doing to achieve our environmental goals. The clause should be tightened up considerably. Rather than separating them, here is an opportunity to link the Bill's environmental principles to the armed forces' environmental objectives. We are in a climate emergency. There is no time to wait around for the goodwill of enormous Departments to get in line—certainly not one with such significant spending, carbon emissions and land ownership. I urge the Minister to support the amendment, or to come back with a smarter amendment that enshrines our national security at the same time as enforcing the speed of environmental action that we need and expect the armed forces to be able to deliver.

**Dr Whitehead:** What the Committee needs to understand is that the inclusion in the Bill of the application of policy as set out in subsection (1) does not apply to the armed forces. Subsection (1) states:

“A Minister of the Crown must, when making policy, have due regard to the policy statement on environmental principles currently in effect.”

The Minister must, therefore, have “due regard” to policies on environmental principles except where it relates to anything to do with the “armed forces”, as my hon. Friend the Member for Putney said. She mentioned that it is particularly important when the land that the MOD has under its control is considered, which we indeed know from the handy “National Statistics” publication which states what land is owned by the MOD. The issue, however, is not only the land owned by the MOD but also the further 207,400 hectares over which it has rights in addition to its freehold and leasehold-owned land. A reasonable interpretation of that is to consider what is controlled by the MOD and the armed forces. Is that a total of 431,000 hectares, as mentioned by my hon. Friend? That is the size of Essex plus half of Greater London, to put it into context. That is the amount of land that is under no jurisdiction at all as far as environmental principles are concerned.

There may be good reasons for that huge amount of national land resource being exempt from these environmental protections, but none are immediately apparent to me. Not only are they not apparent to me, what is apparent to me is that an organisation that undertakes actions that prejudice the environmental quality or environmental protection of UK land is often required to mitigate those actions elsewhere in any other sector. If a new port berth is being decided upon, then one of the first things to happen is that a consideration of environmental mitigation takes place for the land that has been despoiled by the new port, even if the berth is regarded as necessary. Even that principle does not appear to apply as far as the MOD is concerned.

As my hon. Friend said, I accept that when a person drives across Salisbury plain, for example, they occasionally see great big tracks on the plain where tanks have driven around it, and that on the Lulworth ranges there is weaponry practice that has environmental impacts.

Of course, that is a part of MOD defence activity, and it may be necessary for that activity to be carried out. However, it does not seem beyond our imagination to consider that the MOD and defence should be in a different position as far as environmental mitigation is concerned. It would be quite reasonable to suggest that within the necessary undertakings that the MOD has to go about doing, environmental mitigation should be part of that process, if necessary. To just give the armed forces a blanket let-off as far as any environmental principles are concerned seems, to me, a bridge too far.

2.30 pm

It is not the case that the Army and the MOD do not have policies that they themselves state are mitigating, pro-environmental principles, but under this legislation, those principles would be entirely voluntary. If the MOD decided one day that it did not want anything to do with them, that would be the end of the matter. When we are talking about an area that is, as I say, the size of Essex plus half of Greater London, we surely cannot have that as part of a Bill that claims to protect the environment as a whole over the next long period of time. This has nothing to do with that particular ambition.

**Daniel Zeichner:** We just had a discussion about proportionality, and it strikes me as perfectly possible to say to the MOD that it could react proportionately to these kinds of judgments. In our previous discussion, we introduced a notion that I would say will be used to the detriment of the environment; why could we not ask the MOD to act proportionately when it comes to its environmental obligations?

**Dr Whitehead:** Indeed, my hon. Friend is absolutely right. It would not be difficult to draft something that would both protect the activities that I think we all agree the MOD and the Army need to do on occasions, and ask them to act proportionately in respect of their environmental obligations when undertaking those activities.

An amendment to this clause has been tabled by the hon. Member for Edinburgh North—[HON. MEMBERS: “And Leith.”] And Leith as well, yes; I have been to both Edinburgh North and Leith, so I should remember the connection between the two. The Labour party has also put forward amendments, which take out two sections of this clause and, as it were, challenge their inclusion and these exemptions separately. We do not see any substantive difference between what we are saying through those two particular challenges and, as it were, the overall challenge that the hon. Lady has put forward through her amendment: it is essentially a big question about why these particular exemptions are in place. We do not just have exemptions for the MOD; we have exemptions as far as

“taxation, spending or the allocation of resources within government”. I am not exactly sure what land that controls, as we cannot put that in place in the same way as we can with the MOD, but it is also not apparent to me why those areas should also be treated differently.

**The Chair:** The amendment does not refer to that.

**Dr Whitehead:** Sorry, amendment 94—

**The Chair:** Amendment 93 refers to paragraph (a), not paragraph (b).

**Dr Whitehead:** Amendment 94, which I believe is in this group—

**The Chair:** No.

**Dr Whitehead:** I stand corrected. So we are discussing amendments 93 and 114 in this group and discussing amendment 94 in the next group. I will remove my remarks on amendment 94 and save them for the next group. I have to say that I do not think there is much between the formulation put forward by the hon. Member for Edinburgh North and Leith and the one put forward by us, as we will come to in the next amendment. Therefore, we support the hon. Lady in her endeavours to try and get some clarity as far as this section is concerned.

**Rebecca Pow:** I thank hon. Members for the amendments. Clearly, we have sparked some quite strong feelings here about this particular issue. I want to make it clear, Chair, that I am just going to focus on defence, to which the amendment relates.

While we recognise the intention behind these amendments, it is fundamental to the protection of our country that the exemptions for armed forces, defence and national security are maintained. The exemptions that would be removed by the amendments relate to highly sensitive matters that are vital for the protection of our realm, so it is appropriate for them to be omitted from the duty to have due regard to the environmental policy statement. A critical part of the role of Defence and Home Office Ministers is to make decisions about the use of UK forces to prevent harm, save lives, protect UK interests or deal with a threat. We have several colleagues in the Room who have strong armed forces links, and I think they will agree with that summary. It would not be appropriate for Ministers to have to go through the process of considering the set of environmental principles before implementing any vital and urgent policies related to the issues I have just mentioned.

Furthermore, the Ministry of Defence has its own environmental policies in place, as well as a commitment that its policies protect the environment, with a strong record on delivering on those commitments, which we had reference to from both sides, particularly from the hon. Members for Southampton, Test and for Cambridge. For example, the MOD require that all new infrastructure programmes, projects and activities have to include sustainability and environmental appraisals. Those appraisals cover a similar spectrum of analysis to the environmental principles.

I also want to highlight that the MOD takes the environment extremely seriously. It is adapting to mitigate defence's impact on climate, which was touched on by the hon. Member for Putney, to build resilience and support the Government's commitment to net-zero emissions and a review is underway to develop its response to net zero and climate change, with a new strategy planned to add to the existing sustainable development policy. That is a clear indication that the MOD means business where the environment is concerned.

As was touched on by a couple of Members, and particularly the hon. Member for Edinburgh North and Leith, the Ministry of Defence owns or otherwise controls approximately 1% of the UK's landmass—

**Dr Whitehead:** Two per cent.

**Rebecca Pow:** My facts say 1%, but shall we agree, Chair, that it is nearly 2%?

**The Chair:** It is quite a lot.

**Rebecca Pow:** It is a significant amount. Actually, I think the shadow Minister is right and it is nearer 2%. More than a third—38%—of that area is designated as sites of special scientific interest. SSSIs have a statutory duty that they will be managed and protected and that duty is not removed—it is not exempted. As such, that work carries on. The MOD's record on getting those sites into favourable condition is good, with 48% of the sites in that condition. The MOD works very hard with Natural England on those plans and projects; it has a dedicated environmental team, working on the environment through the MOD.

When I was a news reporter, I had a wonderful day with the MOD up on Salisbury Plain, looking at its tremendous stone curlew project. Even though the tanks rattle across, the stone curlews can still thrive. The Whip is looking at his phone, but I am sure that he lives near there; I would like someone to report back to me on how the stone curlews are doing now, because that is a fantastic project.

To go back to my point, because of the particular sensitivities of this policy area as well as existing environmental commitments, I hope that I am giving some clarity as to why the MOD is exempted. It might be helpful for the hon. Member for Edinburgh North and Leith to note that there are exemptions in the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, and they are in categories that are quite similar to those in this Bill, if not a little bit wider. They are listed in clause 10(3) of that Bill as

- “(a) national defence or civil emergency,
- (b) finance or budgets.”

I thought that it might be interesting to put that on the record.

I hope that I have provided some clarity on this issue. I think we are covering a lot of the same ground here, so I ask the hon. Member to withdraw her amendment.

**Deidre Brock:** The Minister talks about the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, but unfortunately defence is still reserved to Westminster, so I am afraid that the Scottish Government would not have any control over that issue anyway.

The issue for me here is transparency for our citizens, so that they know exactly what impact the armed forces are having on our environment. The Minister talks about the highly sensitive nature of the armed forces' activities, but not all their activities are sensitive. For example, what are their recycling rates and what are their targets towards the reduction of emissions? Regarding the environmental impact of the armed forces, just today we heard on the radio from the actor Joanna Lumley about the impact of underwater explosions on marine mammals, and the hearing loss that results when munitions that have been on the seabed for many years are detonated. Such issues will become more and more important. I have pursued the question of munitions dumps for a while, as I mentioned; it is not going away. There is an increasing clamour about it from around the world, and it is important for the Minister to remember that because it will return as an issue in the near future.

It is simply no longer acceptable for the armed forces to be exempt from reporting their progress towards climate change targets, or their compliance with environmental targets or any of the other targets that other parts of Government are required to report on. I am disappointed that the Government cannot support this amendment. As I have said, the number of exemptions for the armed forces in primary legislation across Government is extraordinary; in fact, there are so many that the Commons Library felt that it could not list them in their entirety in its briefing.

It is important to hold to the principle that we all have a part to play in trying to save the planet. There should be no exemptions for any Government Department. I accept that there are sensitivities around national security, but I think there are ways of addressing them and taking them into account. I am delighted that Labour Members are with me on this issue, and I will press the matter to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 10.*

#### Division No. 5]

##### AYES

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

##### NOES

Afolami, Bim	Jones, Fay
Bhatti, Saqib	Longhi, Marco
Browne, Anthony	Mackrory, Cherilyn
Docherty, Leo	Moore, Robbie
Graham, Richard	Pow, Rebecca

*Question accordingly negated.*

2.45 pm

*Amendment proposed: 93, in clause 18, page 11, line 19, leave out*

“the armed forces, defence or”.—(*Dr Whitehead.*)

*This amendment removes the exceptions for armed forces and defence policy from the requirement to have due regard to the policy statement on environmental principles.*

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 10.*

#### Division No. 6]

##### AYES

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

##### NOES

Afolami, Bim	Jones, Fay
Bhatti, Saqib	Longhi, Marco
Browne, Anthony	Mackrory, Cherilyn
Docherty, Leo	Moore, Robbie
Graham, Richard	Pow, Rebecca

*Question accordingly negated.*

**Dr Whitehead:** I beg to move amendment 94, in clause 18, page 11, line 20, leave out paragraph (b).

*This amendment removes the exceptions for tax, spending and resources from the requirement to have due regard to the policy statement on environmental principles.*

Bearing in mind that we have had something of a debate on this subsection overall, I need not detain the Committee long on this amendment, other than to say that it is a mystery to me that taxation, spending or the allocation of resources should be exempted in the same way that the armed forces should be exempted. The Minister defined why the armed forces should be exempted: they are doing things in the national interest and pursuing our defence. But taxation, spending and the allocation of resources are not doing that. They are doing things that are important to the country but do not come under that definition at all. I cannot understand the justification for exempting them from the provisions on the policy statements on environmental principles or what the exemption's effect will be. I look forward to hearing from the Minister what her justification for this particular exemption is. I presume that it does not relate to national security or defence manoeuvres or activities that we should be pleased happen but do not need to know too much about. It would seem that this falls outside all those categories. There must therefore be some other reason and I am sure that we are about to hear about it.

**Deidre Brock:** The amendment would bring tax and spend into the scope of the Bill. I am glad that Labour is also addressing this because when I mentioned this on Second Reading, few Members seemed to have grasped it. It is a really important point. If we are not considering the big issues of politics and the spending on them, we are not putting the environment high on the list of priorities. Likewise, if environmental considerations do not play a part in taxation decisions, we are missing a great chance to influence people's behaviour and help save our planet.

**Rebecca Pow:** I thank hon. Members for tabling the amendment. While we recognise the intention behind it, it is important to maintain the exemption to ensure sound economic and fiscal decision making. It is important to be clear that this exemption only refers to central spending decisions, because at fiscal events and spending reviews such decisions must be taken with consideration to a wide range of public priorities. These include public spending on individual areas such as health, defence, education and the environment, as well as sustainable economic growth and development, financial stability and sustainable levels of debt.

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

With regard to the exemption for taxation, let me reassure hon. Members that the Government are committed to encouraging positive environmental outcomes through the tax system, as demonstrated already by our commitment to introducing a new tax on plastic packaging, to encourage greater use of recycled plastic. We also have examples

[Rebecca Pow]

such as the woodland carbon guarantee and commitments to biodiversity net gain, with the Treasury commissioning the Dasgupta report. A raft of measures demonstrate this. However, we need to ensure the Treasury Minister's ability to alter the UK's fiscal position is not undermined, since taxation raises the revenue that allows us to deliver essential public services, such as the NHS, police and schools.

Although I recognise the purpose of the amendment, it is beneficial for the country that the Treasury can make economic and financial decisions with regard to a wide range of considerations, which will, of course, include the environment and climate. I therefore ask the hon. Gentleman to withdraw this amendment.

**Dr Whitehead:** As I always am, I will be polite. The Minister, with great aplomb, read out words from a piece of paper that was placed in front of her to explain what the clause means, but she must realise, as we all do, that that is total nonsense. It makes no sense at all.

Let us look at actions in various other areas of Government. The imperatives on net zero and climate change that we just passed through the House effectively apply to decision making in all Departments. Departments are not supposed to make decisions about their activities and spending without reference to those imperatives. Yet what we have on this piece of paper—I am sure it was assiduously drafted by someone seeking to defend this particular exemption—appears to drive a coach and horses through that consideration, let alone other considerations. Apparently, in taking its decisions on larger matters, the Treasury does not have to be bound by considerations on environmental protection.

I think that is a shock to all of us, because it means that the Bill is completely useless. The Treasury considers a large number of things in its policies, covering every area of practical Government activity, one way or another. If the situation is as the Minister has described, where do environmental protections stand? With any environmental protection, if it is part of the consideration of Treasury policy development, there is a door for the Treasury to run out of. As I understand it, that is what it says on the piece of paper.

**Richard Graham** (Gloucester) (Con): Just for clarification, is the hon. Gentleman effectively saying that the Bill should provide the Treasury with an opportunity to give a blank cheque for whatever the Office for Environmental Protection requires?

**Dr Whitehead:** The phrase “due regard” comes in here, importantly. The truth is that clause 18 is a blank cheque in the opposite direction—a blank cheque for Ministers to invoke if they decide under certain circumstances not to be bound by environmental protection, as the Bill appears to suggest that we all should be. That is unconscionable; it should not be in the Bill.

**Cherilyn Mackrory** (Truro and Falmouth) (Con): Could the hon. Gentleman clarify what would happen in the situation that we have faced this year, in which the Treasury has had to make very fast decisions and give billions to businesses because of covid? Some of those businesses might not be of an environmental nature—in

fact, some might be what we would regard as non-environmental or actually detrimental to the environment—but because of the social impact of that money, the Treasury has had to do it. It is my understanding that if the law were as the hon. Gentleman would like it, the Treasury would not have had that leeway. Could he clarify that?

**Dr Whitehead:** The Treasury would have had that leeway, because of the phrase “have due regard”. There are clearly circumstances in which emergencies or other issues mean that Ministers may at particular stages have to draw away from their environmental or climate change imperatives and responsibilities. However, the important thing about having due regard is that if they do so, they have to explain why and under what circumstances they are taking the decision. Clause 18 will do exactly the opposite: Ministers will not have to explain anything—they can just not do anything that they do not feel like doing. I hope that Conservative Members will join us in saying that that is not good enough and is not what the Bill should be doing.

There could be another formulation. The hon. Member for Truro and Falmouth has pointed the way; with the right formulation, we could encompass the sort of circumstances she mentions. Of course we would be happy to support that, because there are indeed considerations that need to be undertaken at certain stages of emergency and difficulty, and which may cause some difficulty with the imperatives. That is what due regard protects us from, to a considerable extent. However, the principle that someone who does something other than what we think the imperative should point towards should justify what they are doing and be accountable for it is a very important part of our processes, and that is not the case here.

**Rebecca Pow:** I just want to clarify a few points. As I am sure the shadow Minister knows, HMT takes environmental impact extremely seriously already; in fact, it is referred to in the Green Book, which guides policy making, that it has to be taken into account including consideration of natural capital. The environmental principles will be referred to in the Green Book, so we already have very strong measures that HMT is obviously being guided by.

**Dr Whitehead:** Forgive me, but I think the Minister has elided “is” and “ought”. Yes, the Treasury may do those things and put them in the Green Book, but under clause 18 it does not have to, just as the Ministry of Defence is doing things that we might say are laudable—we heard about curlews coexisting alongside tanks—but it does not have to, and if for any reason it did not do them, it would not have to say anything about it. It is entirely lucky that the Treasury and the Ministry of Defence are doing what they are doing, but that need not be the case. The Minister illustrated in what she read out a little while ago that that is not the case. They do not have to do those things under the Bill. In defence of the fact that they do not have to do them, she has highlighted examples of where, despite that and because of their good nature and good will, they are doing them anyway. I would expect that to happen, but it does not mean that in legislation we should allow good luck to rule the things that we think are imperative as far as environmental protection is concerned.

3 pm

**Daniel Zeichner:** This is a fascinating discussion. As the debate has unfolded, I have found myself looking at the clause and thinking, “What would have been in anyone’s mind when drafting that extra line?”. What do they think needs to be excluded, and for what purpose? If the clause existed without that line in the first place, then unless people are seeking something rather extraordinary, I would not have thought they would try to open a huge opportunity to drive a coach and horses through an environmental protection Bill. What was the thinking, I wonder?

**Dr Whitehead:** Indeed; my hon. Friend shines a light on it. If one were of a suspicious character, one might say, “Why is this line here anyway?”. As the Minister said, the Treasury and the MOD do quite a lot of work in this respect. One might say, “Good. They do quite a lot of work in this respect, and that needs to be encouraged, so let’s have a pretty strong starting point to bolster the work that they do already, and let’s have some limited exceptions, driven by absolute necessity, with accountability over what they consist of and how they are undertaken.” Instead, we have drafting that does the opposite. If hon. Members were suspicious, they might question why that drafting is in there, and not another form of drafting that is much closer to what we all want to see: environmental protections being respected as far as possible.

Frankly, the Minister has given us no explanation of why it is there. She has given us a very able and clear exposition of who does what through their good nature. I applaud her for that, because it is part of her Department’s remit to make sure other Departments do that. However, her Department’s remit would be strengthened if the clause was strengthened or if it was not there at all. On that basis, I am afraid that we will seek to divide the Committee on this amendment.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 10.*

#### Division No. 7]

#### AYES

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

#### NOES

Afolami, Bim	Jones, Fay
Bhatti, Saqib	Longhi, Marco
Browne, Anthony	Mackrory, Cherilyn
Docherty, Leo	Moore, Robbie
Graham, Richard	Pow, Rebecca

*Question accordingly negated.*

*Clause 18 ordered to stand part of the Bill.*

*Clause 19 ordered to stand part of the Bill.*

#### Clause 20

#### REPORTS ON INTERNATIONAL ENVIRONMENTAL PROTECTION LEGISLATION

**Dr Whitehead:** I beg to move amendment 195, in clause 20, page 12, line 16, at end insert—

“(1A) The Secretary of State must—

- (a) consult on the criteria and thresholds to be applied in determining significance for the purposes of subsection (1), and
- (b) publish guidance on those matters reflecting the results of the consultation.”

*This amendment would require the Government to consult on what counts as “significant” for the purposes of this Clause.*

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

Amendment 196, in clause 20, page 12, line 19, at end insert—

“(2A) The report must include—

- (a) the results of an independent assessment of developments in international environmental protection legislation, and
- (b) the Government’s proposed response to those developments.”

*This amendment would require the report to include an independent assessment and the Government’s response to it.*

Amendment 197, in clause 20, page 12, line 32, at end insert—

“(7) The Secretary of State must make an oral statement to Parliament about the report as soon as reasonably practicable following the laying of the report.”

*This amendment would require an oral statement to accompany the written report.*

**Dr Whitehead:** I am afraid that we come to another discussion about the definition of a word in the Bill, which I know will cause some Members to groan. Nevertheless, as we saw in the last discussion, just a couple of words, or three, can have enormous significance in terms of a Bill’s wider consequences, so it is important that we look at them, what they mean, and their place in the Bill.

Amendment 195 seeks to define what is meant by “significant” where the clause states:

“The Secretary of State must report on developments in international environmental protection legislation which appear to the Secretary of State to be significant.”

The clause therefore provides for reports on what is happening around the world in terms of environmental protection legislation. What are the good and bad points, what can we learn from, and what things can we co-operate on? The clause kindly defines international environmental protection legislation as

“legislation of countries and territories outside the United Kingdom, and international organisations, that is mainly concerned with environmental protection.”

The clause also states:

“The Secretary of State must report under this section in relation to each reporting period.”

It then states what those reporting periods are to be. International environmental protection legislation is therefore defined, but the Secretary of State apparently has a completely free hand to decide which of those developments are significant, without any accompanying definition in the legislation of what that word means.

One might say that that is quite significant, because clearly there can be an enormous range of judgments on what, subjectively, a particular Secretary of State might think are significant international developments. For one Secretary of State, it might be that a particular state has adopted legislation similar to our own in their Parliament. Another might think it significant that

[Dr Whitehead]

another jurisdiction has decided that its army should be exempt from land holdings coming under its own environmental legislation, and that such an omission has produced riots and street clashes in that country as a result of the population deciding that it was a bad idea. A range of things might be regarded as significant or not.

**Bim Afolami** (Hitchin and Harpenden) (Con): This point is fundamental. As drafted, the Bill has it as a subjective judgment by the Secretary of State. The hon. Gentleman's amendment seeks to make it objective. In our system—this goes to the heart of the amendment, and many others—the Secretary of State and Ministers representing the Department are responsible to Parliament for their actions and whether any judgment they make is correct. The Bill deliberately leaves it in the hands of the Secretary of State to make that subjective judgment, and if the House disagrees at the time the debate will happen at the time.

**Dr Whitehead:** I thank the hon. Member for his intervention, but that is not quite right, really. The Secretary of State must report on developments and on international environmental protection legislation that appears to him or her to be significant, and after he or she has taken a judgment, he or she produces a report that must be laid before Parliament. What comes before Parliament is not what is before the Secretary of State. It is not a gazetteer of international environmental protection action. It is a report after the Secretary of State has decided what is significant and what is not significant. Those things that the Secretary of State defines as not significant are left out of the report.

Parliament could conceivably say, "Aha! We have done a great deal of separate assiduous research and we have decided that the Secretary of State has left this and this and this out—why has the Secretary of State left these things out?", but that requires a separate series of actions from Parliament that are outwith the report, not about the report itself. The amendment seeks to define what the Secretary of State should reasonably put into a report for Parliament to look at. We have also tabled an amendment on what should be done in addition to the report being published, which we will come to in a moment.

The central point of the amendment is that the Secretary of State should

"consult on the criteria and thresholds to be applied in determining significance"

and then

"publish guidance on those matters".

That still gives the Secretary of State some leeway in determining what is in the report, but it means that there is a body of guidance by which the Secretary of State should be guided in terms of what he or she puts in the report for the subsequent perusal of Parliament. At present, because there is no definition of "significant" in the Bill, that guidance is completely lacking.

I hope that now I have given that explanation, the hon. Member for Hitchin and Harpenden can support the amendment, as I think what he seeks to ensure is that Parliament gets a report and the chance to discuss what the Secretary of State has done. I would suggest

that a much better way of doing that is by agreeing to the amendment, rather than the word standing unexplained, as it does at the moment.

**Rebecca Pow:** I thank the hon. Member for the amendment. I recognise the intention behind requiring further guidance on what counts as "significant". However, this is a horizon-scanning provision. As such, it would be counterproductive for the Government to try to anticipate in advance the kinds of significant developments that might be identified.

There is no single overarching metric for the environment. Many of us touched on the complex landscape that is the environment earlier today. Creating an objective test is impossible. It is important that there is flexibility to take account of the full range of developments in the period, in order to produce a report that is useful in informing domestic legislation. The amendment would reduce the flexibility, potentially limiting the scope and use of the report.

The review will cover other countries' legislation that aims to protect, maintain, restore or enhance the natural environment or that involves the monitoring, assessing, considering or reporting of anything in relation to the above that is significant. What is significant will depend on the period being assessed. Something significant today might not be significant next year and different things might be significant next year.

On the proposals for an independent assessment and an oral statement, I assure the hon. Member that there are already effective measures in place to allow Parliament to scrutinise the report. That point was ably raised by my hon. Friend the Member for Hitchin and Harpenden. When the report is laid before Parliament, Members can highlight any areas where they believe the Government have missed important developments. It is obviously really important that they do this, and it will ensure independent scrutiny. It is crucial that this is carried out and that we look at what is going on internationally. If we want to call ourselves global leaders, we have to be aware of what is being done elsewhere. If there are good examples, we need to copy them.

3.15 pm

**Daniel Zeichner:** As I listen to the Minister, I think there is so much subjectivity involved in this. Just thinking back through the glorious array of Secretaries of State who we have had in the Conservative Government over the past decade—

**Leo Docherty** (Aldershot) (Con): Glorious!

**Daniel Zeichner:** There has been a glorious range of opinions, including those of one or two notorious climate change deniers, so there would have been a completely different view on things that were happening internationally, depending on which part of the spectrum of opinion was held by the office holder at the time. Clearly, there can be a change of Governments in the future when this legislation is in place. Surely having an objective set of criteria for how this is done is far better than just having a subjective view, with it depending on whether something is deemed to be significant by the office holder and Government at the time.

**Rebecca Pow:** I think the hon. Gentleman has stepped right into my trap, because that is why it is really important that the report goes before both Houses so

that they can both comment. The whole purpose of it is that it will be well scrutinised, so that the right measures are introduced. There will be many measures, and we will not want all of them to be introduced, so we need to choose the very best ones. The whole idea of the Secretary of State's report is that it will be open and transparent—I honestly hope that I have made that clear.

The clause is about ensuring that the Government take active steps to identify significant improvements and are accountable to Parliament for the actions that they will take in response. It is therefore right that the Government take full responsibility for producing the report. I do not think that requiring the Secretary of State to outsource the responsibility is the right approach. Additionally, independent consideration can already be provided by the Office for Environmental Protection—for example, clause 27 provides Ministers with the power to require the OEP to advise on any other matters relating to the natural environment, which could include developments in international environmental protection legislation that it sees as important, positive or progressive, so we have that extra layer there as well.

I hope that I have given some clarity, and I ask hon. Members not to press amendments 195 to 197.

**Dr Whitehead:** I think we have not got to amendment 197 yet.

**The Chair:** Amendments 195 to 197 are grouped together. We have debated them, but we will not be deciding on amendments 196 and 197.

**Dr Whitehead:** Indeed, but I have not spoken to amendment 197.

**The Chair:** They are one group: amendments 195, 196 and 197. That is the group we are currently discussing.

**Dr Whitehead:** I wanted to say a few words about amendment 197.

**The Chair:** Well, it is too late. I asked you to discuss it in the first place, and you did not. You can now wind up on the group of amendments.

**Dr Whitehead:** Thank you, Chair. Following your advice, I will wind up on this group of amendments. In so doing, it is conceivable that I might refer to some of the amendments during the course of my discussion.

**The Chair:** Quite right.

**Dr Whitehead:** We have the Minister's explanation of how the word "significant" is to be defined: it is not to be defined, effectively. We also have what I would kindly say is a descriptive, rather than an objective, passage about what Secretaries of State do about significance. The point made by my hon. Friend the Member for Cambridge is really important, and it underlines what I said previously. We do not impugn the motives or the commitment of either the present Secretary of State or the present Minister in this respect. I am sure they will do everything they can to ensure that such reports are

open and transparent, are put before the House and are properly discussed and that they include everything that most people would consider significant, as far as international environmental protection events are concerned.

However, that is not the point. The point is that different people could occupy those offices. They might have significantly different views and might produce virtually nothing for the House regarding environmental protection events. There would be nothing in the Bill to stop them doing that, except, possibly, if we were to pass amendment 197. That amendment would add to this part of the Bill by saying:

"The Secretary of State must make an oral statement to Parliament about the report as soon as reasonably practicable following the laying of the report."

As the hon. Member for Hitchin and Harpenden envisaged, the Secretary of State would have to come before the House and make an oral statement, on which he or she could be questioned. There would therefore be a clear line of transparency at that time as far as whatever the Secretary of State decided to do concerning the report. If the Minister went as far as to accept amendment 197, that would make a difference concerning this test of significance. As matters stand, we feel that the protections are woefully inadequate in terms of the way in which the report must be compiled and presented. Therefore, we seek to divide the Committee.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 5, Noes 10.*

#### Division No. 8]

#### AYES

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

#### NOES

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

*Question accordingly negatived.*

**Dr Whitehead:** I beg to move amendment 95, in clause 20, page 12, line 32, at end insert—

"(7) The Secretary of State must—

- (a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect full compliance with the Aarhus Convention, and
- (b) if they consider it appropriate to do so, take any of the steps identified by that consideration.

(8) A report under this section must set out what steps have been taken during the reporting period to secure better or further effect full compliance with the Aarhus Convention and what steps the Secretary of State intends to take during the next reporting period to that effect."

*This amendment requires the Secretary of State to consider what steps may be taken to improve compliance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and, if they consider it appropriate to do so, to take those steps.*

**The Chair:** With this it will be convenient to discuss amendment 97, in clause 22, page 13, line 8, at end insert—

“(c) respect, protect and fulfil the rights contained in the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.”

*This amendment requires the OEP to oversee implementation of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.*

**Dr Whitehead:** The explanatory statement for this particular amendment relates to the question of securing better or further effecting full compliance with the Aarhus convention, which is a wide-ranging convention relating to environmental protection and activities.

The amendment suggests that the Secretary of State should keep under consideration how the UK Government might secure better or further effect full compliance with the Aarhus convention. We are signatories to it, so one would have thought that we should try to fully comply with it, in general terms. The amendment is really asking the Secretary of State to do something that we ought to do anyway. If the Secretary of State considers it appropriate, the amendment also suggests that they take the steps identified in that consideration and produce a report setting out what steps are being taken to secure full compliance and what steps they intend to take over the next reporting period.

The Aarhus convention is important, but it has been, in some people’s eyes, somewhat overtaken by other events. Nevertheless, it remains important in international environmental considerations, and it important that it should be put into the Bill as one of the Secretary of State’s considerations to undertake.

**Rebecca Pow:** I thank the hon. Gentleman for drawing the Committee’s attention to the Aarhus convention, which is of course an international agreement. I do not deny its importance, so he and I agree on that.

The UK ratified the convention in 2005, and we remain a party to it in our own right. Our exit from the EU does not change our commitment to respect, protect and fulfil the rights contained in this important international agreement. Implementation of the Aarhus convention is overseen by the Aarhus convention compliance committee, and the Department for Environment, Food and Rural Affairs co-ordinates the UK’s ongoing engagement with the committee on our implementation and on findings pertaining to the UK on specific issues. The committee has welcomed the willingness of the United Kingdom to discuss compliance issues in a constructive manner.

Clause 20 requires the Government to review significant developments in international environmental protection legislation, as we discussed. The findings of that review will then be used to inform Government policy on environmental protections, enabling the UK to stay at the forefront of international best practice on environmental protection. The amendment would require that report to include material about existing obligations under the Aarhus convention, not new, innovative developments in environmental protection legislation. That would dilute the purpose of the clause. We independently meet our convention obligations, and there is no need to amend clause 20 to ensure that we continue to do so.

Amendment 97 is unnecessary, as the provisions of the Aarhus convention already fall within the remit of the OEP, where they have been given effect in UK law and meet the definition of environmental law. The OEP will improve access to justice: it will receive complaints free of charge to complainants and will have powers to investigate and enforce compliance with environmental law by public authorities. The OEP will be legally required to keep complainants informed about the handling of their complaints, and it will also have to produce public statements when it takes enforcement action, unless it would not be in the public interest to do so. In addition, public authorities that have been subject to legal proceedings by the OEP will be required to publish a statement setting out the steps they intend to take in the light of the outcome of the proceedings.

Given that we are already engaged with the convention committee on our obligations, the amendments are unnecessary. I ask the hon. Gentlemen not to press them.

**Dr Whitehead:** I appreciate that the Minister has already replied, but I wonder whether she could—

**The Chair:** The Minister could intervene.

3.30 pm

**Dr Whitehead:** Has the Minister thought about the extent to which the Aarhus convention is fully implemented in the UK, either via retained EU law or the existing domestic system? In terms of her response to this debate, was she saying that it is the case that the Aarhus convention is now fully implemented in UK law?

**Rebecca Pow:** I know I am not able to speak again, but perhaps the shadow Minister will allow me to intervene on him—I think I will have to put this in the form of a question, which makes it quite tricky, Mr Gray. Does the shadow Minister agree that the UK’s commitment to the Aarhus convention is unaffected by EU exit, because the UK is a party to the convention in its own right?

**Dr Whitehead:** That is true, but nevertheless there is the question of the extent to which that commitment itself is a freestanding commitment or additional, via EU retained law. I think the Minister will agree that there is EU retained law in respect of the Aarhus convention. While it is true that we are an individual signatory to it, we were also effectively a joint signatory to it through the EU joint law arrangement. Therefore, we were actually twofold signatories, as far as the Aarhus convention is concerned. Does the fact that we are now a onefold signatory to the Aarhus convention fully replace what it was that we were originally as a twofold signatory to the Aarhus convention? I think the Minister was saying yes, but I am not absolutely certain that that is the case.

**Richard Graham:** I am slightly confused that the shadow Minister appears to be suggesting that if we are a signatory to any convention in our own right, we are somehow a stronger signatory if we are also a signatory as part of the EU, which we have already left. Are we not straying into areas of semantics way beyond the Environment Bill today?

**Dr Whitehead:** I can understand the hon. Member indicating that this may be semantics, and indeed, it may be. I was attempting to elucidate the question of whether our being an original signatory to the Aarhus convention—when the convention took place—is identical to what has happened in terms of our being a joint signatory to the Aarhus convention, which took place through our EU membership. There are instances where something that the UK originally signed up for was signed up for jointly through the EU at a different stage. A lot of the conventions on atomic materials transfers and various similar things, which have gone through Euratom or the International Atomic Energy Agency are subject to that sort of progression, where what we signed with the IAEA and what the European Community signed up to subsequently, are a progression in terms of those original signatories. They therefore mean slightly different things, even though it appears that there are two signatories.

It may be the case that the hon. Member is right, and I am seeking to get the Minister to elucidate whether, indeed, the hon. Member is absolutely right. Is the fact that we are a signatory to the Aarhus convention exactly the same as what was the case when we were previously—in addition—a joint signatory with the European Union? Are there any particular matters relating to that signatory which should be converted into UK law to ensure that we are actually in the right place, as far as that signatory issue is concerned? The Minister may well stand up and say yes, that is the case—in which case, I will be a very happy Member of Parliament.

**The Chair:** That question must hang in the air, because the Minister has already spoken. Does the hon. Gentleman wish to withdraw the amendment?

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

*Amendment, by leave, withdrawn.*

*Clause 20 ordered to stand part of the Bill.*

*Clause 21 ordered to stand part of the Bill.*

### Schedule 1

#### THE OFFICE FOR ENVIRONMENTAL PROTECTION

**Dr Whitehead:** I beg to move amendment 179, page 121, line 16, at end insert

“with the consent of the Environmental Audit and Environment, Food and Rural Affairs Committees of the House of Commons”.

*The amendment would require the appointment of the Chair and other non-executive members of the Office for Environmental Protection to be made with the consent of the relevant select committees.*

We have now moved from chapter 1 of the Bill, which is about environmental governance and improving the natural environment, to the very important topic of the Office for Environmental Protection, which I think will detain the Committee for a little while, as we will discuss not only its formation and operation, but the amendments that the Government made while the Bill was not before us, changing what the Opposition think are substantial elements of the OEP’s operation.

Clause 21 states:

“A body corporate called the Office for Environmental Protection is established.”

So before anybody worries too much about where we have got to, that is all we have done so far. We have just established the Office for Environmental Protection. As with all good Bills, however, the meaning is often contained at the end, in the schedules. That is the next bit we are dealing with this afternoon—the schedule that sets up what the Office for Environmental Protection is about. I assume that we will get stuck into the substance of the Office for Environmental Protection’s objectives, independence and general function in our next sitting, but this afternoon we are concentrating on some details about the OEP’s membership, non-executive directors, interim chief executive and so on. Some people may say that those are not particularly central or important to the OEP, but they nevertheless have quite considerable repercussions in terms of its independence or otherwise.

Amendment 179 looks at the first appointment of the chair and non-executive members, and at how they are appointed and with what agreement. I am sure hon. Members will agree that, in addition to what the Office for Environmental Protection does, a key part of its independence lies in who its chair is, who the non-executive directors are, how they act in their role and the extent to which they ensure and guarantee that the office carries out an independent function in terms of that protection role. Paragraph 1(1) of schedule 1 defines what the OEP consists of: a chair, at least two but not more than five other non-executive members, a chief executive, and “at least one, but not more than three, executive members.”

Paragraph 1(2) states:

“The members are to be appointed by the Secretary of State”.

Under paragraph 2, the non-executive members are also to be appointed by the Secretary of State, but

“The Secretary of State must consult the Chair before appointing any other non-executive member.”

The key is that a lot of the appointments effectively flow from the appointment of the chair. The Secretary of State must consult the chair on how other members are appointed having appointed the chair in the first place. The question then is whether it is right that the chair of the OEP is appointed simply because the Secretary of State decides that he or she should be appointed and has an untrammelled ability to do that. We think that that could create a cascading lack of independence in the whole OEP, depending on how the process is carried out. If it is carried out without any scrutiny or accountability, it is quite possible that the Secretary of State could appoint someone whom he/she particularly favours or thinks will give him or her an easy time with the appointment of other members of the office, and shape the office to be entirely subservient to what the Secretary of State wants to do.

**Daniel Zeichner:** My hon. Friend is making an important point. A theme runs through the debates today: an extraordinary concentration of power in the hands of the Secretary of State. In the discussion on the Aarhus convention, we saw the move away from supranational bodies. It is a basic principle that if power is spread, there is far more chance of it being exercised properly, particularly with something as important as environmental protection. Does he agree that this is just the latest example of a theme that has developed all the way through?

**Dr Whitehead:** That is indeed a concern. We have raised, and will repeatedly raise, the difference between the Bill’s aspirations and many of the practicalities. The

[Dr Whitehead]

difference between the Bill's lofty aspirations and its often severely lacking practicalities is apparent throughout its construction. This is one instance where that is the case. The chair of the OEP is, in the first instance, to be a non-executive member of the office. I would be interested to hear whether the Minister shares my understanding, but it looks to be the case that the chair will be appointed from among the non-executive members whom the Secretary of State has appointed in the first place. The key at that point is who the non-executive members are and how they are appointed. In this instance, they are appointed just by the Secretary of State. We suggest a procedure that grounds those appointments within parliamentary procedures.

**Robbie Moore (Keighley) (Con):** Does the hon. Member recognise that the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee have the opportunity in the appointment process to scrutinise the Secretary of State's preferred candidate?

**Dr Whitehead:** The hon. Member has put his finger exactly on the problem, because according to this piece of legislation, in practice, they do not. There is no requirement to do that in the Bill. The amendment is designed to do exactly what he suggests should be done, which is that the appointment should take place with the scrutiny and consent of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee.

3.45 pm

I think the spirit of what the hon. Member said this afternoon about the operations of this House is exactly what we take to be the case. Regularly, Select Committees scrutinise and discuss appointments and put forward their opinion to the House, so the House may then decide what the Secretary of State's decision might be, informed by their scrutiny and discussion. As far as I can see, there is no provision for that in the Bill. I hope that the hon. Member and others agree that it would be a good idea for those non-executive directors to be appointed by the Secretary of State with the consent of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee, as this amendment proposes.

The hon. Member will undoubtedly have experience of that. That is what we do in this place, in general terms. The Committee on Climate Change, like all sorts of committees, has its appointments run in front of Select Committees. The Select Committees do an honest job for the House to ensure that the Executive and legislative branches are in line with those appointments when they come through.

I hope the Minister will agree that that is an omission from the Bill that needs putting right. In practice, I do not think it would make an enormous amount of difference, but constitutionally it could make an enormous amount of difference. If we do not have this in the legislation, there is the possibility that the Secretary of State could decide in the absence of any parliamentary scrutiny or discussion of what he or she will do, and thereby subvert some of the Bill's good intentions on environmental protection. The Office for Environmental Protection has to be the centrepiece of protection activity; to do

that, it needs not only theoretical independence, but stated independence, laid down in legislation concerning its activities for environmental protection.

**Rebecca Pow:** I will keep my comments to what the amendment refers to, which is the involvement of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee. I agree with the hon. Gentleman that Parliament should have a role in the process of making significant public appointments. To scrutinise key appointments made by Ministers is a proper role for Parliament. The Environment, Food and Rural Affairs Committee and the Environmental Audit Committee—I am proud to have been a member of both, and many hon. Members here are members of those Committees—will jointly carry out a pre-appointment hearing with the Secretary of State's preferred candidate for the OEP chair.

As the shadow Minister knows, there has already been a lot of discussion about this. This is a commitment. The Secretary of State will duly consider any recommendation made by the Committees.

**Ruth Jones (Newport West) (Lab):** The Minister says that the preferred candidate can be scrutinised. Is that not a bit of a Hobson's choice?

**Rebecca Pow:** This is an open and fair process, and other appointments are duly scrutinised in that way. The considerations and views of both Committees will be taken extremely seriously because the work they do is very pertinent to the work in this sphere of Government. The OEP chair is then consulted by the Secretary of State on the appointments of the non-executive members. We do not believe it necessary or desirable for Parliament to scrutinise all those individual appointments in the way that has been suggested.

Ministers are accountable and responsible to Parliament for public appointments, and they should therefore retain the ability to make the final determinations. Ultimately, Ministers are accountable to Parliament and the public for the overall performance of the public body and of public money. The OEP will be added to the schedule of the Public Appointments Order in Council and so will be independently regulated by the Commissioner for Public Appointments. The Secretary of State will be required to act in accordance with the governance code, including with the principles of public appointments, which would ensure that members are appointed through a fair and open process.

The chair of the OEP will be classed as a significant appointment, requiring a senior independent panel member, approved by the commissioner, to sit on the advisory assessment panel, which can report back to the commissioner on any breaches of process. We have also introduced, in paragraph 17, a duty on the Secretary of State to have regard to the need to protect the OEP's independence in exercising functions in respect of the OEP, including on public appointments.

Those arrangements, and the requirements in the Bill, provide the appropriate balance between parliamentary oversight and ministerial accountability, while ensuring that appointments to the OEP are made fairly and on merit. I therefore request that the hon. Member for Southampton, Test withdraw his amendment.

**Richard Graham:** Will the Minister give way?

**The Chair:** Order. The Minister sat down before you asked, Mr Graham, but I dare say you may intervene on the shadow Minister. I call Dr Alan Whitehead.

**Dr Whitehead:** The Minister has yet again provided us with a description of things that happen, as opposed to what ought to happen as far as this House is concerned. On the second category of events, she appears to be saying that Select Committees may well take it upon themselves to interview and discuss candidates for posts—with the agreement of that candidate—and report back their thoughts, and that Ministers may then decide that they like or do not like what the Select Committee has said, but are pleased, in any event, that the Select Committee did that piece of work.

I do not think the Minister can show me anything in the Bill that requires that process to be cemented, so that the Secretary of State could not go ahead with an appointment without Select Committees having done that work. Let us say, for example, that the Select Committees decided that they did not want to do the work or were too busy with other matters, and the Secretary of State appointed the chair and the non-executive members of the board, there would be nothing that anyone could do about it, because nothing in the legislation says that that scrutiny has to happen. The Minister should be able to confirm that there is nothing in the legislation for that.

**Richard Graham:** I think I understand the position of the Opposition, which is to undermine slightly the independence of the new Office for Environmental Protection before it has even got under way by suggesting that the appointments process for the chair will somehow be rigged, with some crony of the Minister or the Secretary of State comfortably slotted into position. Shock, horror! That never happened under the Government of which he was a member.

In fact, what has taken place is rather remarkable. It is much closer to an American appointments hearing than almost anything that has ever happened in relation to senior appointments to new independent offices. The idea that two—not just one but two—Select Committees would be so disinterested in their unusual and new power to scrutinise and hold to account someone who is being put forward as the first chairman of a new independent body and would completely overlook their responsibilities is surely bizarre. The hon. Member is a reasonable man. Can he not agree that this is a very good process?

**The Chair:** Interventions must be brief. That was a speech.

**Dr Whitehead:** A very good one, if I may say, but nevertheless a speech. You are right, Mr Gray.

The point the hon. Gentleman was making is that a process of scrutiny will, in this instance, be undertaken by the Select Committees in question. However, we need to look at the circumstances whereby that scrutiny comes about. The Committee and, indeed, members of the Select Committee, may say “Actually, this particular piece of formulation in the schedule relates to the appointment of the initial chair of the Office for Environmental Protection” but I think it probably applies to the appointment of chairs as they go forward.

**Rebecca Pow:** I remind the hon. Gentleman that the Select Committees pressed for that scrutiny and they have welcomed the fact that they will be able to scrutinise the potential chair. They did some prelegislative scrutiny of the Bill; that was one of their recommendations and we accepted it. It has gone down extremely well. I want to back up the comments from my hon. Friend the Member for Gloucester in terms of what is being put in place. I am sure the shadow Minister, when he fully understands the process, will agree with me that the purpose is that non-exec members in particular are appointed on a fair and open basis, regulated through our public appointments process.

**Dr Whitehead:** I am not suggesting that anything is other than that, and I am not suggesting that the Select Committees are anything other than pleased with what they have undertaken to do and the welcome their work has received from the Government. However, the Minister, in a sense, answered her own question by stating that the Select Committees pushed for that. That is what Select Committees do, and they have the power to summon all sorts of people. In this instance, as far as I understand—I may not have fully understood the process—the Select Committees in their power as Select Committees in general pushed for the hearing and Ministers thought that was a good idea and they went ahead with it. To that extent, yes, things have gone well, but it is still not in the Bill that that should ever happen. It is entirely down to the Select Committees. We should not do it that way round.

**Rebecca Pow:** Does the hon. Gentleman not agree with me that the very fact that that has happened demonstrates that Select Committees are taken seriously? As such, the measure in the Bill is sensible, serious and fair.

**Dr Whitehead:** As it happens, yes. However, again, we are in “as it happens” territory, which we seem to be in rather a lot this afternoon. As it happens, yes, that appears to be working quite well. I do not know, should there be a future reconstitution of the Office for Environmental Protection or future appointments of non-exec members and the chair, whether that procedure would necessarily be replicated. It might be; it might not. We are lucky we have Select Committees that are as strong as they are.

**Cheryl Mackrory:** As a new Member, I am just understanding the mechanisms here. From what I am hearing, the process that has just taken place to ensure that we are where we are is due to good parliamentary mechanisms. It seems that the hon. Member is asking Ministers to put more parliamentary mechanisms in the Bill when those checks and balances are already in place and work very well.

4 pm

**Dr Whitehead:** The hon. Member is quite right to draw attention to good parliamentary mechanisms. I do not want us to be diverted into a long discussion about the Executive and the unwritten UK constitution, but Parliament is not putting a provision on the Executive by passing this Bill—that does not exist. Instead, Parliament has used parliamentary procedures outside of that to have an effect on the Executive, and the Executive have

[Dr Whitehead]

agreed for that effect to be placed upon them. That is a good thing—I do not in any way want to undermine that. As the hon. Member says, that has worked well.

**Cherilyn Mackrory:** The hon. Gentleman is illustrating the point perfectly. Secretaries of State come and go at the mercy of the electorate, whereas the parliamentary checks and balances are always here. That is what should govern the procedure.

**Dr Whitehead:** Yes, indeed—Secretaries of State come and go, just as Presidents of the USA come and go. Nevertheless, while they are there, Presidents can appoint justices of the Supreme Court who are always there. Although the member of the Executive has gone, the effect of their actions remains—in this example, with the judiciary branch in the US. In principle, that is what could happen as far as this construction is concerned in the Bill. A Secretary of State who comes and goes could appoint, without involving the parliamentary process, somebody who will outlast the Secretary of State in that position.

**Anthony Browne** (South Cambridgeshire) (Con): I am a member of the Treasury Committee. We do a lot of selection hearings and most of them are agreed through parliamentary processes. We find we end up doing an awful lot of selection hearings, and we have spent a huge amount of time doing them, on the board of the Bank of England, the Prudential Regulation Authority, the Financial Policy Committee and so on. We end up having discussions about whether we want to do all these hearings. Do we do them in this way or that way? Do we do reappointment hearings? We retain flexibility around that, because it is done through the parliamentary procedure.

It seems to me that the danger of setting down in legislation that all non-executive members should be appointed on the consent of the two Committees is that we bind their hands into the future. They may decide that they want to do it in some other way. We retain more flexibility for the Committees if they do it through parliamentary means.

**Dr Whitehead:** Well, yes is the answer. We are trying to bind those Committees to some extent to do the right thing, as far as those appointments are concerned. The hon. Gentleman who has experience on the Treasury Committee and other hon. Members who have experience on Committees will know that Committees take their responsibilities seriously. I have been party to that sort of discussion in Select Committees that I have served on in the past. They take their responsibilities very seriously. They take the issue seriously. They do it very carefully and make sure that the result of their deliberations is as good as it can be. That is something that I am absolutely fine with; I do not wish to fetter that in any way.

However, the hon. Gentleman and other Members also know that that has not always been the case with Select Committees. Indeed, in my time in Parliament, it has largely not been the case. The process of deciding upon the appointment of members of various organisations via a Select Committee hearing is a relatively recent innovation. That came about not as a result of legislation but as a result of Select Committees pushing their own authority within the parliamentary system.

In one sense, that is perfectly acceptable, but I am seeking to draw a distinction between that process, which has by and large resulted in a good outcome as far as these appointments are concerned, and the fact that it says in a piece of legislation, “That is what is supposed to be done.” There are other pieces of legislation in existence that specify what is supposed to be done, but this piece of legislation does not. I wonder to myself why those pieces of legislation specify those things whereas this piece of legislation does not.

It would not be difficult—on the contrary, it would be very straightforward—to specify in this piece of legislation what is to be done, while agreeing that that is largely what happens in practice in this Parliament. That is a good thing, and it is a sign of our changing unwritten constitution—I emphasise the word “unwritten”. That is why, in a piece of legislation, it is probably necessary to write down what our intentions are and how they are to be carried out in practice by the House in its interpretation of the unwritten constitution of this country.

**Daniel Zeichner:** I had the privilege of serving on the Transport Committee for a couple of years. Like the hon. Member for South Cambridgeshire—my near neighbour—I went to a number of hearings and found them very useful. It strikes me that there is a range of levels of significance. This appointment is hugely significant. It takes back from a supranational body, the European Union, responsibility for one of the most important oversights. We all agree that it would be good to go through this process, so I do not understand why the Government do not want to codify in law what will in fact happen. I do not quite see what they are frightened of. Does my hon. Friend agree?

**The Chair:** Order. I do feel that we are slightly going round in circles.

**Dr Whitehead:** Yes, indeed, Mr Gray. I agree with my hon. Friend. It would be a good idea for the Government to put this in the Bill, notwithstanding the fact that, in practice, the creaking oak of the British constitution does things in sometimes surprising ways in order to develop itself. It is always useful to have something on the face of a piece of legislation to fix how the unwritten constitution works in respect of a particular function of Government. There is nothing to lose and everything to gain from putting this in the legislation.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 5, Noes 10.*

#### Division No. 9]

#### AYES

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

#### NOES

Afolami, Bim	Jones, Fay
Bhatti, Saqib	Longhi, Marco
Browne, Anthony	Mackrory, Cherilyn
Docherty, Leo	Moore, Robbie
Graham, Richard	Pow, Rebecca

*Question accordingly negatived.*

**Dr Whitehead:** I beg to move amendment 15, in schedule 1, page 122, line 5, leave out “may” and insert “must”.

The amendment asks for “may” to be left out and “must” to be inserted. As I recall, we have had previous discussions about that in this Committee, so I do not think I need to add anything further.

**The Chair:** I think the hon. Member is therefore seeking to withdraw the amendment.

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

*Amendment, by leave, withdrawn.*

**Dr Whitehead:** I beg to move amendment 154, in schedule 1, page 122, line 11, leave out sub-paragraph (3). *This amendment prevents the Government from giving directions to the interim chief executive of the OEP.*

The amendment concerns the directions that the Secretary of State may give an interim chief executive of the Office for Environmental Protection. As hon. Members will see, paragraph 4(3) of schedule 1 refers to an interim chief executive

“exercising the power in sub-paragraph (2)”,

which states:

“Where the OEP has fewer members than are needed to hold a meeting that is quorate...an interim chief executive may incur expenditure and do other things in the name and on behalf of the OEP.”

The key point is that the interim chief executive may do “other things” in the name of and on behalf of the OEP, even though the OEP does not have sufficient members to be quorate and take a decision.

What appears to be envisaged is that in those circumstances,

“an interim chief executive must act in accordance with any directions given by the Secretary of State.”

Quite simply, if an interim chief executive is in post without those other members of the OEP being appointed—depending on the speed with which that is done, it could be quite a while—the independence of the OEP will not be compromised just a little bit; it will be compromised completely, in that the interim chief executive is completely the creature of the Secretary of State.

**The Chair:** Order. I think the hon. Gentleman is addressing himself to the wrong amendment, because this amendment requires that sub-paragraph (3) be deleted from paragraph 4. You are referring to sub-paragraph (2), I think.

**Dr Whitehead:** Mr Gray, if I gave that impression then I am sorry, but I thought I was speaking to sub-paragraph (3) of paragraph 4, which is that the chief executive

“must act in accordance with any directions given by the Secretary of State.”

As far as I can tell, amendment 154 leaves out sub-paragraph (3), which is the sub-paragraph to which I was referring.

That is, in essence, the case that we want to make this afternoon. As hon. Members have already asked, why is this particular provision in place? What is the problem here? If this is an interim chief executive of a body that is going to be independent, why the lack of independence

when the OEP is still forming itself? Is it because the Secretary of State thinks that the interim chief executive might go rogue and do all sorts of odd things in the absence of other non-executive directors to hold them in place? In that case, the appointment process for the interim chief executive must be pretty lacking. Is it that the Secretary of State might be tempted to mould the OEP and its operations before it is fully functional as an independent office and can therefore, as it were, hit back?

I would not like to think that either of those are correct interpretations of this sub-paragraph, but as it is written, that is what it appears to say: that the interim chief executive does as the Secretary of State says. That seems to fly in the face of everything I have understood about the OEP and how it is supposed to work, how it is supposed to be set up and how it is supposed to start operating. As the amendment states, we would therefore like to see the sub-paragraph excised from this Bill, so that the interim chief executive has the beginnings of the independence in his or her actions in the OEP that we would expect the OEP to have when it is fully formed.

4.15 pm

**Anthony Browne:** I have set up lots of organisations and it is completely standard to go through a process where there is a shadow or interim chief executive and an interim board. There is a critical difference between that position and a substantive chief executive, which is that they are setting up the way the whole system works—the operations, the modus operandi—and making significant decisions that will last for many years or decades. They are doing it in a position where there is not full governance around it, such as a fully established board, an established chair and everything else. It is right that there is some oversight of what an interim chief executive is doing in setting up the organisation, because the rest of the governance infrastructure will not be there yet.

**Daniel Zeichner:** There has not been any comment yet on the extraordinary situation we find ourselves in. We are just 55 days away from the end of the year and the new situation that we are about to embark upon, and there is nothing in place. That is part of the problem. It is a shambles, quite frankly, that we are leaving the European Union and entering a period where it is unclear how our environmental protections will work. I suggest much more will be said about that as we go through our debates.

As my hon. Friend the Member for Southampton, Test and the hon. Member for South Cambridgeshire have said, this is a key moment in setting the path ahead for this new organisation. This provision feeds into this general sense that, far from having a much more sophisticated and wider way of approaching these issues, it all comes down to centralising power in the hands of the Secretary of State to determine the way forward. That cannot be right and I think there is genuine outrage among many who are looking at how this process is unfolding.

We have gone from helping to establish strong environmental principles as a leading player in the European Union to the extraordinary position we find ourselves in. We have no idea how long this is going to

[Daniel Zeichner]

take. Is it going to be in place? Perhaps the Minister could tell us. Perhaps things are in train and we are waiting for announcements. Perhaps it will happen next week or in January, or perhaps it will not happen for months and months. In the meantime, many of our own protections are in limbo, effectively.

The schedule gives us no confidence that the Government even have a plan for where we are going with this. I hope the Minister can give us some reassurances, because many of my constituents—and, I suspect, many constituents of other Members—are really worried about these issues. At a time of climate crisis and biodiversity emergency, how can we possibly be setting an example to the rest of the world as we approach COP26 when we are in this shambolic position, with the suggestion that this so-called independent agency should effectively be run by the Secretary of State?

**Rebecca Pow:** There have been some fiery comments about this particular amendment, Chair.

I welcome the support of the hon. Member for Southampton, Test for our inclusion in the Bill of a mechanism to appoint an interim chief executive of the OEP. I want to give some reassurances that establishing this independent body that can hold future Governments to account is of crucial importance. That remains very much in focus when considering this power for the Secretary of State to appoint an interim chief executive.

The initial role of the interim chief executive would be to take urgent administrative decisions to ensure that the OEP is up and running as soon as possible, which I know is a key concern of Members. I want to say a little about that role and why it is necessary. Such decisions would include staff recruitment and other matters related to setting up the new body. I welcome the comments of my hon. Friend the Member for South Cambridgeshire, who has a lot of experience in setting up these bodies. It is a fully practical step to help with the interim period. By way of background information for the hon. Member for Cambridge—he raised some pertinent points—we intend that the permanent chief executive will be in place no later than autumn 2021, and the proposed timeline then allows for the OEP chair to lead the appointment of that chief executive.

By way of more background, the Secretary of State has asked officials to assemble a team of staff within the Department for Environment, Food and Rural Affairs group, to be funded from the Department's budget, to receive and validate any complaints against the criteria for complaining to the OEP; so there will be a team in place in the interim. A lot of work has gone on behind the scenes but we had a lull because of the coronavirus, so it is nobody's fault that this has happened. Obviously, other structures and plans are being put in place, but that is why details of an interim chief executive have had to be considered. That power will be required for the interim chief executive only in the event that a quorate board is not in place in time to make the decisions. If the board is quorate in time, it will be able to make its own arrangements. During any period when they are making administrative decisions on behalf of the OEP before the board is quorate, the interim chief executive must be capable of being held to account. That is essential good governance and oversight of

public funds. That is why we are giving the Secretary of State, as the accountable Minister, the power to direct the interim chief executive during that period.

The shadow Minister was, if I may say so, making some slightly malign intimations about what he potentially thought the Secretary of State had in mind in controlling the interim chief executive. I would like to set all those thoughts and views aside—that is not the purpose; it is a practical arrangement. I would like to give more reassurance on two points. First, the Bill provides for the interim chief executive to report to the OEP's board, not the Secretary of State, as soon as the board is quorate. Secondly, the Government will not commence the OEP's statutory functions before the OEP is quorate. Therefore, the interim chief executive will only be able to make decisions relating to the OEP's statutory functions when they report to a quorate board, not to the Secretary of State. Therefore, the Secretary of State will not have any power of direction over the OEP's statutory functions. It is important to make that clear. Amendment 154 is, consequently, unnecessary and I ask the hon. Member to withdraw it.

**Dr Whitehead:** I wonder whether the Minister has considered at what point the interim chief executive of the OEP must be in place, bearing in mind that the actual chief executive is not to be appointed until next August. The OEP, which is essential, should be operational from 1 January—indeed, we have had assurances on that—because of the differences in environmental protection that may result from our leaving the EU, and so not having areas of EU law available for environmental protection purposes, which are supposed to be replaced by, among other things, the independence of the OEP, to ensure that those areas of law are fully upheld.

The Minister appears to be telling us that there will be something like an OEP in existence from 1 January, and that it will have something like an interim chief executive to run it—indeed, I understand that a lot of work on that has already been done—but that during that entire period the OEP will not be independent, because effectively it will be run by the Secretary of State. That may be a function of the fact that the process is dragging on in a way that we did not anticipate, and that the Minister probably did not anticipate, overlapping the period when lots of work should have been under way to get this system going, to ensure a seamless change on 1 January. Instead we will have a raggedy process that is a very, very long way from any of the aspirations that were expressed for the OEP—the way it will operate, what it will do in terms of environmental protection, and its independence of the Secretary of State.

I accept that when a new organisation is set up—as the hon. Member for South Cambridgeshire said, and he has experience of these matters—there can be issues. If someone is setting up, say, a new subsidiary company, the board of the company that is setting up the new company will appoint a chief executive of that subsidiary company, and while that chief executive is getting in place it is quite reasonable for the board of the superior or parent company to expect that person to be responsible to the superior or parent company as the new company is being set up. Only if, for example, at a later date Chinese walls are inserted between the operation of the subsidiary and that of the superior or parent company does that reporting go adrift; but that is only when things are properly set up.

We are not in that situation here. We said from the word go that we would set up an independent body that would be responsible for all the environmental legislation that has come over to us from the EU, which is now bedding down in UK law, and that that responsibility needed to be exercised from day one of that transfer.

**Rebecca Pow:** Does the shadow Minister not agree that an unprecedented and unexpected incident has occurred? We have had the coronavirus pandemic. In the light of that, does he not agree that arrangements are well under way for setting up the OEP, and that the Government fully intend—I have given more details today—to introduce the OEP by 2021? Because of the pause in consideration of the Bill and because of the coronavirus, we cannot confirm the exact date, but we will implement—indeed, are implementing—bona fide transitional arrangements, with a secretariat that will support the OEP chair. The chair is currently being sought, through a public appointments campaign. The whole system is in process. We will have an interim chief executive and my hon. Friend the Member for South Cambridgeshire understands exactly the role of that person. There is nothing malignant about it, and the Secretary of State will certainly not control him. Does the hon. Member agree that I made that quite clear in my speech just now?

**Dr Whitehead:** Well, I hope the Secretary of State will not be controlling him. *[Interruption.]* Or her. I hope the Secretary of State will scrupulously keep his or her hands out of controlling that person. I am pleased to hear assurances from the Minister that that may well be the case—in terms of the Minister’s bona fides, I would expect nothing less. That is what the Minister should be saying, because that has always been her commitment on the OEP in the past; but that does not in any way excuse the fact that it says something opposite on the face of the Bill. That is the issue that, as legislators, we need to look at.

4.30 pm

Yes, it is true that there have been problems with moving the legislation forward, and I have great sympathy with the Minister for having to deal with those problems. That still does not excuse the fact that, one way or another, we will have a non-functioning or barely functioning OEP for a considerable period, whereas we were always told that the opposite would be the case. Sub-paragraph (3) underlines why that is the case.

This piece of the Bill was not written after these events took place; it was actually in the original Bill from the end of 2019. It is not the case that, as a result of the great difficulties that we have had and the problems that there have been in setting up the OEP, needs must and actions have been taken—I appreciate that that may well be a problem. It was always the intention, regardless of whether things were operating perfectly by this stage, that that is how things would operate: it is clear from sub-paragraph (3). I am afraid the argument that, “Well, there have been big problems. Give us a break on this”—powerful though it is in practice—does not stand up. That is what the legislation says; that is what the legislation always suggested. Notwithstanding other matters, that is what would have happened with the legislation. That perhaps underlines why it is necessary to take sub-paragraph (3) out under these circumstances.

Although I applaud the Minister’s efforts in getting the Bill together under the present circumstances, and her fortitude in pushing it forward when it looked like it was seriously in jeopardy, we nevertheless have an almighty mess situation here, which it seems has been exacerbated by the original intentions behind the legislation. Obviously, we would want to do everything we can to support the Minister in ensuring that the OEP is up and running as soon as it can be and that it is a good as it can be, but we are still in a position where we are about to write a piece of legislation that seems to underwrite the mess, not resolve it.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 4, Noes 10.*

#### Division No. 10]

#### AYES

Furniss, Gill  
Jones, Ruth

Whitehead, Dr Alan  
Zeichner, Daniel

#### NOES

Afolami, Bim  
Bhatti, Saqib  
Browne, Anthony  
Docherty, Leo  
Graham, Richard

Jones, Fay  
Longhi, Marco  
Mackrory, Cherilyn  
Moore, Robbie  
Pow, Rebecca

*Question accordingly negatived.*

**Dr Whitehead:** I beg to move amendment 155, in schedule 1, page 122, line 15, after sub-paragraph (4) insert

“;but an appointment may be made in reliance on this sub-paragraph only with the approval of the Chair.”.

*This amendment requires the Chair’s approval for civil servants or other external persons as interim chief executive of the OEP.*

Although it is late afternoon and I do not want to go on the record as being excessively shirty for a long period, I am afraid that discussion of the amendment is part of that shirtiness process. Paragraph 4(4) of schedule 1, which was written as part of the Bill and was not part of the suite of amendments we saw when the Bill reconvened from the Government side, suggests that rules that the chief executive may not be an employee or a civil servant do not apply to the appointment and operation of an interim chief executive.

The constraints on the appointment of an interim chief executive are not there. They could be an employee of the Department, a civil servant, or someone placed by the Secretary of State in that position, when the requirement to underpin the independence of the OEP means that should not be the case for the chief executive proper. That underlines the theme of determined non-independence of the OEP in its early stages, and the Secretary of State’s ability to mould and shape how the OEP works, before it is properly formed.

Amendment 155

“requires the Chair’s approval for civil servants or other external persons as interim chief executive of the OEP.”

Having been appointed, the real chair—not the interim chair—would have the authority to act as a guardian of the independence of the OEP. We have already been through the process of appointing the chair, so at the point at which the interim chief executive might be

[Dr Whitehead]

appointed from within the civil service or the Department, or that might be proposed, the chair of the OEP would not necessarily say that was bad or impossible, but would at least have the authority to decide whether the Secretary of State was doing the right thing. That seems to me to be the least of the requirements that should be placed on this sub-paragraph.

We have discussed the independence of the OEP as it is set up. Having got to the position of having a reasonably independent chair in place, to then not involve the chair in the appointment of the interim chief executive seems perverse. The amendment does nothing except try to ensure that the OEP is visibly independent; Members from all parties can agree to that.

**Anthony Browne:** I used to be the chair of the Regulatory Policy Committee, a non-departmental public body linked to the Department for Business, Energy and Industrial Strategy; I appointed its entire new board. In a previous life, as I have mentioned, I was involved in setting up various other bodies, such as TheCityUK and the HomeOwners Alliance, and I have been involved tangentially in setting up independent bodies as part of the civil service.

I completely salute the support expressed by the hon. Member for Southampton, Test and the Opposition for the independence of the OEP. They are doggedly making sure that it is fully independent, and I totally support that; it will function properly only if it is fully independent. However, on the issue of the interim chief executive, I think—to follow the dogged analogy—that they are slightly barking up the wrong tree.

The whole point about the interim chief executive of any organisation is that they are setting it up. They are designing the org chart, saying “Right: this committee will do this, we need to hire these personnel to do that, these are the finances, this is the first draft budget,” and everything else—they are not actually fulfilling the substantive end function of the public body. The Opposition are worried about the timing, and I am worried about the timing too.

What normally, or very often, happens is that an organisation does not go through a recruitment process for an external interim chief executive. The chief executive is normally banned from being a civil servant, which is absolutely right, but we are talking about getting somebody to set the body up and get it going before the recruitment process for the end chief executive, the appointment of the entire board and everything else, which will take a long, long time—I think it took me about eight months to recruit a new board for the Regulatory Policy Committee.

The thing to do is get a civil servant who has experience of setting up bodies. Because of employment rules in the civil service, they can basically just be reassigned and put in place immediately. They can start setting up the organisation and doing all the stuff that needs doing, and in the meantime we can recruit the full, substantive, independent chief executive, which takes longer. When the independent chief executive is recruited, they will then have an organisation that they can work with and can retune and rejig if they want. That is a far better and more efficient way of setting up an organisation than taking the completely purist approach that the

first chief executive has to be a fully independent person who is not a civil servant and will not take directions from the civil service.

**Daniel Zeichner** *rose*—

**Anthony Browne:** I have finished, but the hon. Gentleman is welcome to succeed me.

**Daniel Zeichner:** I am grateful; I am sure that the hon. Gentleman can unfinish briefly.

This is not just about setting up another body; it is an extraordinarily delicate issue. The complaint out there is concern about independence. Because of the substantial shift away from a supranational body, surely it is much more important to make sure that everybody sees that that the new body is independent from the outset. This is exactly the wrong way of going about giving people that confidence.

**Anthony Browne:** I will just make one observation, speaking as somebody who has hired various chief executives for other organisations. On the boards that I have been on, the recruitment processes for external chief executives has taken at least three months just to identify the candidate. The sort of people we are looking for are often on notice periods of three or six months, so we are really talking about a minimum of six months, maybe nine months—quite probably a year—to hire the substantive chief executive.

Do we want to sit around doing nothing, with no organisation and no one doing anything for a year or nine months, while we hire the substantive chief executive? I agree with the principle, but what is more important is getting the machinery up and running, the cog wheels going and the pieces in place, and doing the recruitment of the substantive chief executive in the meantime. When we finally appoint them, which might well be six or nine months later, they will then have a skeletal organisation to run.

**Rebecca Pow:** I thank the hon. Member for Southampton, Test for his interest in the interim chief executive's role and the Secretary of State's power to appoint them. I reiterate what I mentioned in our debate on amendment 154: that the role of the interim chief executive is to take the urgent administrative decisions required to ensure that the OEP is up and running on time. That power will be required only in the event that a quorate board is not in place soon enough to make those decisions; that is the crucial point. If the Secretary of State is required to consult the chair on the appointment, the power may not be worth exercising, because we expect the board to become quorate soon after the chair starts in post.

Amendment 155 actually has the potential to delay the appointment of the interim chief executive, which I think is what my hon. Friend the Member for South Cambridgeshire was alluding to. That would actually defeat the point of appointing one. He or she might be there for just a couple of days.

**Richard Graham:** The only disappointing aspect of this debate has been a relatively determined approach by some Opposition hon. Members in trying to demonstrate that the independence of this new Office for Environmental Protection will be somehow compromised from the start. Does my hon. Friend agree that, actually, what is

being put in place is a pragmatic approach to try to get something up and running as fast as possible, given the extraordinary circumstances of this year, and that to do anything else would only delay things and be counterproductive? We all want the same end; this is the best way to do it.

4.45 pm

**Rebecca Pow:** I thank my hon. Friend for that intervention; I could not have put it better myself. I feel that I am under a certain amount of attack here. This is all being put into place so that we can get things up and running. As everyone knows, we are in an extraordinary time. I know the shadow Minister said that the provision was in there anyway as a failsafe, in case we needed this interim set-up. It could well have never been needed to be used, but it is there in case we need it.

We want the OEP to get off to a good start. When the chair is appointed—as I said, that process is well under way—we want them to be the person to appoint what I would call the first real chief executive. That is the right process. I think we would all agree with that. The requirement in the amendment would be disproportionate to how long the interim post might be there, because we expect this chief executive to be fully in place during 2021.

I must clarify another separate point. Although it would be a short-term role, the interim chief would be able to make decisions on behalf of the OEP, but they would be just set-up decisions. That is also why—I allude again to my hon. Friend the Member for South Cambridgeshire—we need to get the right person in place, because they have a lot of work to do to put the tools in place. Allowing for the successful candidate not to be an employee of the OEP, such as a civil servant on secondment, helps to widen the field of candidates. We need to ensure that the person has the right skills to swing into action very quickly and get this whole system set up.

I remind the shadow Minister that the Secretary of State is subject to parliamentary scrutiny—there is a long process by which that will happen—concerning all the decisions taken in respect of the OEP. I have a page I could read about how the OEP will be independent, but I am sure we will get into that in discussing other clauses. The Secretary of State would be legally required to have regard for the need to protect the OEP's independence in making this appointment, as required by paragraph 17 of schedule 1 to the Bill. The amendment is unnecessary and I ask the hon. Member for Southampton, Test to withdraw it.

**Dr Whitehead:** The Minister spoke of the importance of getting things done now. After all the problems we have had, I cannot for the life of me see how that is in any way impacted by the idea that the chair of the OEP, who will shortly be in place, should have a say in deciding—guidance has properly been put in for the independence of the OEP—whether long-term recruits should not be from the civil service or any other external persons. Why should the chair not have that say in an appointment?

I assume that the chair of the OEP would be equally concerned to ensure that things are up and running as quickly as possible, that a proper and good appointment is made of an interim chief executive, and that, if a

good case is put forward, that appointment might be of someone in the civil service or another person in the Department.

The amendment does not stop any of those things from happening; it merely says, as my hon. Friend the Member for Cambridge mentioned, that if it is the intention that the OEP will be truly independent it is the look of the thing from the beginning that will convince people of that.

I do not think that we can duck the issue. There are a lot of people out there who are profoundly suspicious and concerned that the OEP will not have its independence and will not be able to act as an environmental watchdog in the way that is claimed. Indeed, they will have suspicions, many of which we do not share, that a lot of what is being done is to undermine that independence, and—I would not go so far as to say to strangle the OEP at birth—to clutch the OEP much more closely to the bosom of Government than might have otherwise been the intention.

I hear what the Minister says about the fact that it was extremely fortunate that the provisions in the Bill were there anyway, which sort of came to the rescue when we were in the position of having to do these things very much at the last minute, rather than in a more considered way over a longer period. The fact that they have always been here, and always allowed that to happen, increases some of the suspicions out there. It is our duty, and would at least be good sense, for us to dispel those suspicions as early as we can in the life of the OEP.

Accepting the amendment would not, therefore, be a big deal. I do not intend to divide the Committee yet again, because we have made our point by dividing the Committee on other amendments, but this one is entirely on the same theme. I enjoin the Minister to think again about whether she wants to introduce something at a later date in proceedings that at least waves a flag in the direction of proper independence for the OEP as it gets under way, in addition to when it is fully under way. That would be very helpful for all of us who are concerned, in terms of what we will try to do to ensure that the OEP does its job properly.

**Cheryl Mackrory:** Paragraph 17 of schedule 1 explicitly says:

“In exercising functions in respect of the OEP, the Secretary of State must have regard to the need to protect its independence.”

I notice that the Opposition have not tabled an amendment to that, because they are obviously happy with it.

**Dr Whitehead:** That is right, but that is the OEP as it is up and running; this is about the OEP as it is formed. Our point on a number of things this afternoon has been that if we undermine the independence of the OEP as it is being formed it is rather difficult to carry out paragraph 17 later on, when the OEP is fully functioning. I thank the hon. Member for drawing attention to that point, but it is not entirely what we are discussing this afternoon—although I fully agree that the Secretary of State should, of course, have regard to the independence of the OEP when it is up and running and functioning. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Deidre Brock:** I beg to move amendment 188, in schedule 1, page 124, line 26, at end insert—

“10A Where the function is being exercised in relation to Scotland or in Scotland the OEP must—

- (a) delegate the function to an environmental governance body designated by the Scottish Ministers, and
- (b) provide the resources for that function to be exercised.”

*This amendment aims to introduce the geographical imperative to ensure clear lines of reporting and response in Scotland and to clarify that the body acting in Scotland will be acting with consent of Scottish Ministers, thus respecting the devolution settlement.*

Clearly, the Bill before us is applicable largely to this place because, as I have already referenced, environmental policy is, in the main, devolved. There are, however, still areas here and there within the Bill that require a little tidying to ensure that there is no danger of devolved regulatory powers being affected or even overridden inadvertently.

The amendment ensures that on the rare occasions when the OEP acts in Scotland, it will do so only with the consent of Scottish Ministers. In fact, amendments 190 and 191 also seek to respect the devolved Administration in Scotland.

Amendment 188 is about respecting the devolved Administration in Scotland, ensuring that the regulatory functions remain with the Scottish regulator, as is currently the case. It is about the Scottish Parliament and Government forging a different kind of future that will keep driving forward improvements in environmental policy. It means, too, that the Scottish regulator—currently the Scottish Environment Protection Agency—would maintain a holistic view of environmental policy in Scotland. I look forward to hearing the Minister’s response.

**Rebecca Pow:** I thank the hon. Member for Edinburgh North and Leith. The amendment gives me a good opportunity to demonstrate that the Government’s new environmental governance framework respects the devolved settlements. She will be aware that the environment is largely a devolved matter and, as such, it is for each Administration to develop and deliver their own environmental governance proposal in relation to the devolved functions.

The Bill therefore makes a clear distinction between devolved and non-devolved functions, and we have ensured that the OEP can cover England and any matters across the wider UK that have not been devolved. That is necessary, as non-devolved matters cannot be addressed by the devolved Administration’s own governance arrangements once these ones are in place.

We expect that all the remaining devolved matters that fall outside the remit of the OEP will be addressed by the devolved Administration’s governance proposals in due course. Indeed, we welcome the steps that Scotland has taken to establish its own environmental body. The Bill is drafted in such a way as to ensure that the OEP can exercise its functions only on matters that are not devolved in respect of Scotland, so it would be inappropriate to delegate such functions to Environmental Standards Scotland, the intended equivalent Scottish body, to deliver those functions.

We do, none the less—and I did want to be at pains to say this—expect that the OEP will work harmoniously and productively with equivalent bodies in the devolved Administrations. That is obviously really important, since we cannot control the air, water or lots of things like that: in many cases, we will be working in tandem.

That is why in clause 40(2)(f) we have made provision for the OEP to share information with its devolved equivalents and why in clause 24(4) we have placed a duty on it to consult them on any relevant matters.

Beyond the provisions already in the Bill, the OEP and its equivalent bodies will also have discretion to jointly decide how best to co-ordinate these activities. The OEP has been carefully designed to respect the devolution settlements by limiting its scope to environmental law, the definition of which specifically excludes matters falling within the devolved competence in Northern Ireland, Scotland and Wales.

The Government consider it inappropriate and contrary to the delineation of legislative responsibilities under the devolution settlements to delegate the OEP’s functions in this context. I thank the hon. Member for raising this issue, because I want to be at pains to be clear about how we are working with the devolved Administrations, but I believe the amendment is unnecessary. I ask her to kindly withdraw it.

**Deidre Brock:** I have great respect for the Minister and for her sincerity—I genuinely do. I think she absolutely means what she says and she absolutely thinks that the way things are at the moment under her ministerial leadership will remain the same forever.

I am afraid that, ultimately, her suggestions do not cut the mustard with me, because environmental policy is devolved to Scotland. The amendment simply requires that, rather than Scottish Ministers just being consulted, they are actually required to give some sort of consent. As the amendment says in sub-paragraph (a), whatever the environmental issue is, the function should be put to a

“body designated by the Scottish Ministers”.

Without that agreement from the Government, I am afraid that I will have to ask that the amendment be put to a vote. Things are either devolved or they are not. I do not think that whether the Government at the time feel that they have a greater locus in an area than the devolved Government in place at the time should be part of the consideration. It is important that the responsibility for environmental policy that rests with devolved Governments is fully respected and that the agreement of the Scottish Government is sought in all instances to do with environmental policy.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 1, Noes 8.*

#### Division No. 11]

#### AYES

Brock, Deidre

#### NOES

Browne, Anthony  
Docherty, Leo  
Graham, Richard  
Jones, Fay

Longhi, Marco  
Mackrory, Cherilyn  
Moore, Robbie  
Pow, Rebecca

*Question accordingly negatived.*

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

5.1 pm

*Adjourned till Thursday 5 November at half-past Eleven o'clock.*

### Written evidence reported to the House

- EB29 The Law Society of Scotland
- EB30 Bio-based and Biodegradable Industries Association (BBIA), and the Association for Renewable Energy and Clean Technology (REA)
- EB31 Aldersgate Group
- EB32 Forest Peoples Programme
- EB33 United Kingdom Without Incineration Network (UKWIN)
- EB34 Mineral Product Association
- EB35 Nappy Alliance
- EB36 Severn Trent Group
- EB37 Chemical Industries Association
- EB38 Environmental Investigation Agency
- EB39 Bright Blue
- EB40 ReNew ELP
- EB41 News Media Association
- EB42 Yorkshire Humber & North Lincolnshire Regional Access Forum
- EB43 British Soft Drinks Association
- EB44 Policy Connect
- EB45 Food and Drink Federation (supplementary)
- EB46 Scottish Land & Estates
- EB47 Association of Convenience Stores
- EB48 Convention of Scottish Local Authorities (COSLA)
- EB49 Pesticide Action Network UK
- EB50 Veolia
- EB51 Environment & Threats Strategic Research Group & Centre for Ecology, Environment and Sustainability, Bournemouth University
- EB52 Alupro
- EB53 InSinkErator
- EB54 Mayor of London
- EB55 UKELA (UK Environmental Law Association)
- EB56 Professor Eloise Scotford, Centre for Law and Environment, Faculty of Laws, UCL
- EB57 Woodland Trust
- EB58 Sustrans
- EB59 Paper Cup Alliance
- EB60 NO2PLASTICS
- EB61 Professor Elizabeth Fisher, Professor of Environmental Law, Faculty of Law, University of Oxford
- EB62 Northern Ireland Food and Drink Association (NIFDA)
- EB63 National Biodiversity Network Trust
- EB64 Foodservice Equipment Association
- EB65 AMDEA—The Association of Manufacturers of Domestic Appliances
- EB66 Alliance for Beverage Cartons and the Environment (ACE UK)
- EB67 Western Riverside Waste Authority
- EB68 Ancient Tree Forum (ATF)
- EB69 Camfaud Concrete Pumps Ltd
- EB70 Waitrose & Partners
- EB71 Lead Ammunition Group
- EB72 Inland Waterways Association
- EB72a Inland Waterways Association: Appendix A—Vision for Sustainable Propulsion on the Inland Waterways
- EB73 Woodland Trust (further submission)





