

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENVIRONMENT BILL

Twelfth Sitting

Tuesday 10 November 2020

(Morning)

CONTENTS

CLAUSES 37 to 45 agreed to, some with amendments.

SCHEDULE 2 agreed to.

CLAUSE 46 agreed to.

SCHEDULE 3, as amended, under consideration when the Committee adjourned till this day at Two o'clock.

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

not later than

Saturday 14 November 2020

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The Committee consisted of the following Members:

Chairs: † JAMES GRAY, SIR GEORGE HOWARTH

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
 † Anderson, Fleur (*Putney*) (Lab)
 † Bhatti, Saqib (*Meriden*) (Con)
 † Brock, Deidre (*Edinburgh North and Leith*) (SNP)
 † Browne, Anthony (*South Cambridgeshire*) (Con)
 † Docherty, Leo (*Aldershot*) (Con)
 Furniss, Gill (*Sheffield, Brightside and Hillsborough*)
 (Lab)
 † Graham, Richard (*Gloucester*) (Con)
 † Jones, Fay (*Brecon and Radnorshire*) (Con)
 † Jones, Ruth (*Newport West*) (Lab)

† Longhi, Marco (*Dudley North*) (Con)
 † Mackrory, Cherilyn (*Truro and Falmouth*) (Con)
 † Moore, Robbie (*Keighley*) (Con)
 † Pow, Rebecca (*Parliamentary Under-Secretary of
 State for Environment, Food and Rural Affairs*)
 † Thomson, Richard (*Gordon*) (SNP)
 † Whitehead, Dr Alan (*Southampton, Test*) (Lab)
 † Zeichner, Daniel (*Cambridge*) (Lab)

Anwen Rees, Sarah Ioannou, *Committee Clerks*

† **attended the Committee**

Public Bill Committee

Tuesday 10 November 2020

(Morning)

[JAMES GRAY *in the Chair*]

Environment Bill

9.25 am

The Chair: We have a great deal to get through today, so there is no time for idle chitchat.

Clause 37

DUTY OF THE OEP TO INVOLVE THE RELEVANT
MINISTER

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

The Chair: With this it will be convenient to discuss clauses 38 to 40 stand part.

Dr Alan Whitehead (Southampton, Test) (Lab): Hon. Members will see that under clause 38, when the Office for Environmental Protection

“gives an information notice or a decision notice, applies for an environmental review, judicial review or statutory review or applies to intervene in a judicial review or statutory review, it must publish a statement”.

What is curious about this clause is that while it states at the beginning that the OEP “must” publish a statement, the next subsection says that that does not apply

“if the OEP considers that in the circumstances it would not be in the public interest to publish a statement.”

My concern is this: in what circumstances would it not be in the public interest to publish a statement; and why is it only for the OEP and no one else to decide that it should not publish such a statement? I would like to hear from the Minister what she considers those circumstances to be and, if the OEP so decided, what would be the criteria upon which that decision would be taken?

Anthony Browne (South Cambridgeshire) (Con): When we last met we all agreed that the OEP should have as much independence as possible. I fully support that. What I find confusing about the hon. Gentleman’s argument is that he is talking about reducing the OEP’s ability or flexibility to do what it sees fit, and he is trying to set down in law exactly what it should do in different circumstances. Surely we should appoint an independent regulator, make sure that the best people are running it and—as much as one can—let it decide whether to issue a notice or not. This would limit its independence.

Dr Whitehead: The hon. Gentleman will have accepted already that, throughout the passage of the Bill, we have tried to assert robustly—this is accepted on all sides—that the OEP should be truly independent and should undertake its activities in that spirit of independence. We have tried to point out that a number of measures in the Bill would undermine that independence by putting constraints on the way in which it acts.

Secondly, we have tried to ensure that the OEP is set up in such a way that it is fully transparent and organisationally accountable for what it does. Those two things go together: the OEP should be fully independent, and it should be set up in such a way that that independence is based on accountability and transparency in its actions. Clause 38—I remind hon. Members that this is a clause stand part debate, not an Opposition amendment—appears to suggest that the OEP has an option to be less than transparent in its dealings with the public in relation to public statements. That is a substantial caveat on a requirement. It is a “must”, not a “may”. It “must” publish those statements, but the caveat is that if the OEP thinks that it is not in the public interest, it does not have to do so. On the face of it, that is resiling from the second principle that I set out: that the OEP should act in a publicly transparent and accountable way.

What I want from the Minister is either an explanation of why that subsection has been placed in the Bill or to know whether there could be a potential challenge to the subsection, which appears to enable the OEP to decide, regardless of any other criteria, that it feels something would not be in the public interest. If the OEP decided that it would not be in the public interest to publish a statement—so no such statement would appear and people would not know even that a statement was about to come out—what would be the potential challenge, and what machinery exists elsewhere in the Bill that one may not yet have seen that would enable criteria to be applied to how the OEP considers what is in the public interest or otherwise? All hon. Members will agree that if the question of public interest is subjective and internal to an organisation, that is not necessarily a good test of what the public interest might be considered to be.

That is why this is a stand part debate: it is a question to the Minister, rather than a suggestion that this clause be removed.

Daniel Zeichner (Cambridge) (Lab): Good morning, Mr Gray. My hon. Friend is making important points. In paragraph 340 of the explanatory notes, there is a comparison with how the European Commission works. One of the key issues is: is this system now stronger or weaker? Does my hon. Friend believe that this is a more or less transparent process?

Dr Whitehead: As my hon. Friend suggests, it is a less transparent process than before. It appears that, in this clause, we are retreating from the principle of transparency. Of course, I may be completely wrong, and there may be factors, to which I hope to be pointed shortly, that mitigate or dissolve that concern. I am sure that the Minister can reassure me on that, or point to things that mean that the clause, odd though it looks in terms of transparency, is not as bad as it seems on the surface.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): It is good to be back. I thank the shadow Minister for his comments, and all hon. Members for carrying the proceedings last week when I was unwell. I put on record my thanks to the Whip, my hon. Friend the Member for Aldershot, who did a sterling job, and to the Opposition for, I think, being kind.

We are talking about clauses 37 to 40 en bloc. Those clauses ensure that the OEP can operate effectively, openly and transparently when carrying out its important duties, which of course is vital. Clause 37 ensures that relevant Ministers are informed and able to participate in relevant enforcement cases, and that the OEP can recommend ministerial involvement in legal proceedings. That allows it to make a case for a Minister's participation in instances where it may be helpful for Ministers to provide input to the proceedings.

The shadow Minister touched on clause 38. I gather that he will not oppose it, but it is always good to have some questions and inquiries. I hope I will make it clear that the clause requires the OEP to publish statements at specific points during the enforcement process. The clause is important because it establishes the OEP as an open, effective and transparent watchdog.

If the OEP, having decided to carry out an investigation, is to do so effectively, we must enable it to obtain and review all the available information from other public bodies, so that it can reach a robust and fair conclusion. Clause 39 therefore ensures that, in appropriate circumstances, obligations of secrecy that would otherwise apply are disapplied to enable public authorities to provide information to the OEP in complaints and enforcement cases. All these clauses work together. It is important to note, though, that we have also ensured that certain fundamental protections, such as those set out in the Data Protection Act 2018, are unaffected by this clause.

Openness and transparency are important, but confidentiality is also vital to allow the OEP to establish a safe space for dialogue with public authorities, so that it can quickly and effectively establish the facts in a case and explore potential pragmatic solutions without the need for litigation, where that can be reasonably avoided. The whole system has been set up in a way that means that when the OEP is carrying out its enforcement functions, it first takes a liaison, advisory and discussion role. We want to do all that before we get down the road of litigation and all those other things. That is very important.

I thank my hon. Friend the Member for South Cambridgeshire for his comments. He is absolutely right that we do not want to tie the hands of the OEP. It has to be independent, and it has to be able to come to its conclusions about which bits of information will and will not be relevant.

Clause 40 plays an important role in the OEP carrying out its functions by ensuring an appropriate degree of confidentiality during the enforcement process. I assure the shadow Minister that the clause does not create a blanket ability to prevent information being disclosed, which I think is his fear; that is not how the OEP will operate. The OEP and public authorities will still have to assess any requests for information case by case, in line with the relevant regulations.

Clauses 39 and 40 therefore strike a careful balance between retaining confidentiality of that very sensitive aspect of the enforcement process and creating greater transparency across the process. As has been said many times, transparency is absolutely key to good governance. The EU does not even have such a system, so we are setting ourselves up as world leaders by introducing this kind of independent body. I hope those points have reassured the Committee.

Dr Whitehead: I thank the Minister for her explanation. I am not entirely happy with the way the clause is drafted, but I accept what she has said and will not oppose it.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clauses 38 to 40 ordered to stand part of the Bill.

Clause 41

MEANING OF "NATURAL ENVIRONMENT"

The Chair: We now come to amendment 113. No member of the Committee has signed the amendment, but anyone may move it if they wish. No one has signalled that they wish to, so we will move straight on.

Dr Whitehead: I beg to move amendment 126, in clause 41, page 25, line 35, after "structures" insert

"but including sites of archaeological, architectural, artistic, cultural or historic interest insofar as they form part of the landscape".

This amendment seeks to widen the definition of "natural environment" in this Part to include the historic environment. For the avoidance of doubt, we do not seek the inclusion of the historic environment in the definition of "environmental law", or in the enforcement functions of the OEP.

The amendment revisits, in a slightly different way, a discussion that we had about the definition of "natural environment" and the effect of buildings and other structures on the environment. As the Committee will recall, when we spoke about that in a previous sitting, we discussed the fact that the appearance of the natural environment has, over centuries, been changed by human activities. If we went back in time, there would be no point at which we could say, "This is the natural environment, so we will use this point in time for our definition, because after this time, it is no longer the natural environment." The natural environment is clearly constantly changing through human intervention.

Amendment 126 would give the clause a better grip on the issue than amendment 113, which was not moved. Amendment 113 sought to leave out

"(except buildings or other structures)",

but amendment 126 would insert

"but including sites of archaeological, architectural, artistic, cultural or historic interest insofar as they form part of the landscape".

That is the nub of the question, as far as our landscape is concerned. Not only has the natural environment been changed over time in the way that I have described, but there are, in our natural environment, a whole host of structures—they might come under the definition of "buildings or other structures", which, as hon. Members can see, are effectively excluded from the clause—that in various ways become part of the natural landscape as a result of their longevity in it, and because they have, at some stage, changed that landscape, thereby becoming a part of it.

9.45 am

I am sure hon. Members can think of many examples. I think of Maiden castle near Dorchester. That is a huge earthwork that dominates the landscape. I presume that if section 106 agreements and planning authorities had been around in the late bronze age, they would probably have decided that Maiden castle was an appalling blot on the landscape and should not have been built;

they would have asked the proposers to go back and design a much smaller castle that would not obliterate the view towards the sea. However, they did not exist at the time, and Maiden castle is there. It is clearly part of the natural landscape. Under this clause, it appears that that structure would be exempted from consideration. That cannot be right. Another example is Bant's Carn on the Isles of Scilly.

A host of things have changed the landscape and become part of it. If anyone decided that they should not be protected as part of the landscape, there would be quite an outcry. The wording of the Bill skews our approach towards these structures and monuments, which the British public hold dear as part of the natural landscape. I think the British public would be surprised to hear that we are effectively legislating not to protect them and keep them part of that natural landscape.

Ruth Jones (Newport West) (Lab): My hon. Friend makes a powerful point. It is important to recognise that people may not even know of such places. There is a mountain called Twmbarlwm just outside my constituency. On the top, it has a twmp, or pimple, which is an iron age burial mound. People do not even know that that pimple is manmade. They would be affronted if anyone tried to deal with it. They assume it is natural, but it is not, though it has been there for hundreds of centuries. It is important that we make every effort to cover all eventualities. If this Bill is to be groundbreaking for generations to come, we must cover all bases.

Dr Whitehead: I thank my hon. Friend for making that point. That underlines what we know is right in our hearts. If we reduced this to a few lines on a piece of paper, we might have to start making them distinctive in order to define what we are talking about. This amendment tries to ensure that such structures are regarded as part of the natural landscape.

Anthony Browne: The hon. Gentleman makes the valid point that many historical monuments have become part of the landscape. The UK is one of the most densely populated countries in the world. After 40,000 years of continuous human habitation, there is virtually nothing left that is not touched by the hand of man. I fully support the desire to protect monuments and so on, but the Bill is about protecting the environment. There is a separate legal framework for protecting monuments. I am worried about confusing the objective of the Bill, and worried that the OEP will be tasked with protecting monuments—when there is a separate legal framework for that—rather than protecting the natural environment.

Dr Whitehead: I take the hon. Gentleman's point but it is not a question of the OEP having to take on the mantle of English Heritage, or a national monuments commission, and assiduously sweeping the leaves off ramparts and other things. Hon. Members will see that clause 41 is simply a meaning clause: it defines what we mean elsewhere in the Bill. It is important inasmuch as it provides a serious context in which other measures in the Bill can be seated. That is its only function. When we are seating those meanings within other parts of the Bill, it is important that we are clear about the extent of those meanings or indeed the limits of those meanings. That is all that the amendment seeks to do. It does not seek to do anything more, and does not give the OEP

any obligation as far as these monuments and buildings are concerned, nor the changes in the landscape to which I refer. The hon. Member can rest assured that there would be no duty of care on the OEP, and it is merely a matter of including that in the definition.

Fleur Anderson (Putney) (Lab): Does my hon. Friend share with me concerns that the National Trust—one of the custodians of our British landscape—is also concerned about that very clause? They say that heritage and the natural environment “go hand in hand”. They will be looking to the clause to put them together in the correct way, as my hon. Friend said, for the very nature of our British environment. Nobody in this room would disagree with that.

Dr Whitehead: I thank my hon. Friend for that point, which I had not fully covered. The National Trust is, indeed, responsible for sweeping the leaves and various other things from these monuments, and it is among the bodies expressing concern that the meaning of clause 41 will not adequately serve the purpose of guiding the clauses that go before it. I hope that the Minister can provide a good explanation for the meaning in parenthesis being as it is. It is not that it should not be there—it will cover a number of issues, and if it was not there then we might start considering a modern block of flats part of the natural environment. Clearly, we would not want to go that far. I hope that the Minister accepts that amendment 126 strikes the right balance, ensuring that we have a much better definition to work with and that we make a distinction between buildings and other structures that are clearly not part of our natural environment and those that have become so, certainly in the public's view, and deserve to be included in this meaning clause.

Rebecca Pow: I thank the hon. Gentleman for his amendment on the meaning of the natural environment. Obviously, we discussed this previously in some of the earlier clauses relating to heritage and such. I recognise that the natural environment does not exist in a vacuum and that our interactions with it and use of it create a heritage that we should be proud of, as I think we all are. It does not exist in a vacuum—the shadow Minister himself touched on this—but I believe it would be inappropriate to include the elements in the amendment in this particular definition, given that one of its key aims is to determine the scope of the functions of the Office for Environmental Protection.

The OEP must remain focused on its principal objective of environmental protection and the improvement of the natural environment. It is not its place to investigate complaints against breaches of legislation such as that concerned with cultural heritage such as listed buildings, which my hon. Friend the Member for South Cambridgeshire touched on, listed building consents or protection for ancient monuments. There is a raft of legislation that deals with all those things, and that is not the role of the OEP.

Daniel Zeichner: I welcome the Minister back to the Committee. This is a fine distinction, but does she not agree that, in so dramatically excluding “buildings or other structures”, the Bill goes too far, and the amendment is an attempt to bring it back slightly?

Rebecca Pow: Obviously all that has been considered and thought about, but the hon. Gentleman makes a good point. I will come on to what the 25-year plan says in a minute, because that really nails why the wording he wants is not there: it is because we believe it is already covered. It is important to note that the hon. Member's explanatory statement—[*Interruption.*] I will just stop that buzzing, Mr Chairman; it is very annoying.

The Chair: It is very annoying.

Rebecca Pow: I apologise—I did not know it was on.

It is important to note that the hon. Member's explanatory statement is very specific about the effect he intends the amendment to have. It states that he specifically does not wish the historic environment to be included,

“in the definition of ‘environmental law’, or in the enforcement functions of the OEP.”

It is necessary to have a distinction to ensure that, as I have just touched on, laws concerning, for example, building safety or other matters do not get tangled up in this and are not included in the OEP's remit. Its focus must be the natural environment.

The clarification is welcome, and it is good to think about it, but unfortunately I must also point out our concern about the unintended effect that this amendment will have. The three definitions in clauses 41, 42 and 43 are intrinsically linked, working together to underpin the OEP and determine the scope of its enforcement functions. Therefore, including those matters within the meaning of the natural environment would mean that they would also be included in scope of the meaning of “environmental law” and the OEP's enforcement policy.

Going slightly back on the previous point I made, the definition would not preclude the OEP's looking at any breaches of environmental law that were related to the environment, for example, around Maiden castle or the twmp mentioned by the hon. Member for Newport West. Say, for example, that that was a protected habitat or there was a protected species within that habitat—I have the same around my wonderful Wellington monument, which is managed by the National Trust—and there was seen to be some contravention of the nature conservation law in relation to that habitat, which I would say Maiden castle is very much part and parcel of; that would come under the remit of the OEP to investigate, so a lot of it is included.

In line with the explanatory note, I am sure hon. Members will agree with my earlier point that it would not be appropriate for the OEP to oversee legislation in relation to all those specific wider matters. I assure the shadow Minister that the absence of the historic environment from this definition does not preclude the Government's work on important aspects of the historic environment. For example, to touch on the previous intervention, the Bill ensures that the 25-year environment plan, including the recognition of the connection between the natural environment and heritage that is specifically written out in that 25-year plan, will be adopted as the first environmental improvement plan through the Bill. I also remind hon. Members that we have a manifesto pledge to protect and restore the natural environment, which is all part of this—it is all-encompassing. The 25-year environment plan will set the benchmark for future plans, including how to balance environmental and heritage considerations. In the light of that explanation, I ask the hon. Member to kindly withdraw the amendment.

10 am

Dr Whitehead: With the greatest respect, I do not think the Minister has made the sort of case I anticipated she might make this morning to explain why the clause is so loose as far as buildings and other structures are concerned. It is not the case that our amendment would prejudice clauses subsequent to this—the Minister set out clauses 42 and 43 as falling within, for example, the meaning of environmental law. We think it would be a good thing if the structures and buildings that have changed the natural environment and have effectively become part of it were included in those considerations.

Rebecca Pow: I have the exact words here of the 25-year environment plan, which is the first environmental improvement plan. It commits us to:

“Safeguarding and enhancing the beauty of our natural scenery and improving its environmental value while being sensitive to considerations of its heritage.”

It is in there.

Dr Whitehead: I am sorry to say that that is rather a tenuous linkage to the fact that we must set out a plan. I have a copy of the plan we have already set out in front of me. There is merely half a line within that general plan to say that we should be “sensitive”. There is nothing else in the plan, as far as I can see, that says anything further than that—nothing that goes anywhere near the sort of consideration that we are putting in front of the Committee this morning.

The amendment makes it clear that we should not only be sensitive, but that we should include as a consideration those historic monuments and those elements of heritage that effectively form part of the natural landscape. Nothing in the Bill addresses that point, and the amendment seeks to put that consideration on the face of the Bill.

The Minister has underlined our point to some extent. Being sensitive is not good enough; we have to have something in the Bill that spells out the overall consideration that should be made when thinking about the natural environment. We think strongly about this point, to the extent that we will press the Committee to a Division this morning. The amendment has very considerable merit and, whether or not the Division is successful—we will see when the votes come out, rather in the way of the American election—we nevertheless hope that the Minister will consider the point further.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 10.

Division No. 18]

AYES

Anderson, Fleur
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

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

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

Question accordingly negatived.

Dr Whitehead: I beg to move amendment 125, in clause 41, page 25, line 35, after “water” insert “, including the marine environment”.

This amendment clarifies that the natural environment includes a reference to the marine environment and is not confined to inland waters.

The Chair: With this it will be convenient to discuss amendment 193, in clause 41, page 25, line 35, at end insert—

“(d) the marine environment.”.

This amendment aims to ensure that the seas and oceans and the health of those environments are considered when the OEP is working.

Dr Whitehead: Before I discuss the amendment, I would like to seek your guidance, Mr Gray. As you can see, unfortunately, our Whip is not with us this morning through illness, but I wish to get a note to the Government Whip. Since I cannot walk out of the room to talk to him, may I through you or somebody pass this note to him?

The Chair: I would be delighted to pass that to the Minister, who will pass it on to her Whip.

Dr Whitehead: I shall be grateful if the Minister could draw the Whip’s attention to that when he returns.

The Chair: It might be appropriate for the shadow Minister to appoint one of the other Labour Members as a temporary Whip. That might be helpful for the Committee.

Dr Whitehead: Yes, that is quite right. Perhaps I should have thought of that; it is difficult to do mid-flight.

It was also remiss of me not to welcome the Minister back to her place this morning. I think she knows that when she was absent last week, we sent her our good wishes for a speedy recovery. Indeed, our wishes have come true as she is with us today. I am pleased to see her in her place and I hope that she has indeed had a speedy recovery and is fully back with us, as I am sure she is. I am sorry that I did not place that on the record earlier, but I was rather preoccupied with Maiden castle and various other things.

The amendment seeks to include a better definition, effectively through a few simple words, in the same clause that we were talking about previously concerning the meaning of “natural environment”. It would mean that subsection 41(c), which begins

“land (except buildings or other structures), air and water”, had at the end a clarification that that includes the marine environment.

It seems pretty obvious that that ought to be in the Bill. We are a country with a length of coastline that is almost uniquely extensive in Europe, and we are an island. Obviously, in the UK, we also have extensive inland waterways, such as lakes, rivers and, indeed, man-made inland waterways that have effectively become part of the natural environment, as I am sure hon. Members agree, such that they merit the sort of protection suggested by the definition in this clause. When the Minister replies, will she assure us that man-made inland waterways are included in the definition of “water” in the clause?

At no point does the Bill mention the marine environment. To the credit of Members across the House, we have developed sites of special scientific interest and conservation zones in the marine environment

and around the coastline, sometimes quite a way offshore. It is not a question of having the land and the foreshore, and then simply the deep blue yonder. The marine environment must be seen as an integral part of the process of environmental conservation. Our legislation includes substantial activity to enable environmental protection and conservation to take place in those zones.

Ruth Jones: My hon. Friend is making a powerful point. During the passage of the Fisheries Bill, we spent a long time considering how to avoid dredgers damaging the marine environment. That should be included in this Bill, so that our legislation is joined up and cohesive, and ensures that the marine environment is as protected as the land.

Dr Whitehead: My hon. Friend’s important point underlines the purpose of our amendment and impels me to highlight that this is not just a theoretical question about the protection of the marine environment, but a practical question about how we approach that. For example, the marine conservation zone in Lyme bay has the very practical effect of—among other things—preserving the environment for cold-water corals and various other things in that very fragile ecosystem that require our protection to survive and thrive. Those considerations of the marine environment are absolutely and indistinguishably conjoined.

Robbie Moore (Keighley) (Con): Will the hon. Gentleman clarify the purpose of the amendment? Given that paragraph 355 of the explanatory notes to the Bill states:

“This includes both the marine and terrestrial environments. ‘Water’ will include seawater, freshwater and other forms of water”.

I am not sure what the purpose of the amendment is.

Dr Whitehead: The hon. Gentleman has quoted the explanatory note, which is not legislation. One of the problems that Committees face is that explanatory notes have a sort of half-life: they are quite often helpful for elucidation, but they add nothing whatsoever to, or take nothing away from, the legislation in front of us. Explanatory notes might mention what is or is not the case, but essentially they indicate only how benevolently or otherwise the Government look upon the legislation.

10.15 am

Cherilyn Mackrory (Truro and Falmouth) (Con): I am as big a champion for the marine environment as anyone in this room; before this time last year, it was our livelihood. I am struggling to understand the purpose of the amendment because everything in the marine environment is covered by

“land (except buildings or other structures), air and water, and the natural systems, cycles and processes through which they interact.”

I am struggling to see what in the marine environment is not covered by the Bill as originally written.

Dr Whitehead: The hon. Member will see that the Bill merely contents itself with the word “water”, which can have a number of different interpretations. In this instance, it has a substantially strong interpretation. This is not a problem with the present Government, but we are talking about legislation that must stand the test of time. It is

possible and reasonably straightforward to define “water” in this case as internal waterways, rivers and other water services within the land mass. The hon. Member will see that that is what the clause appears to suggest. The “natural environment” is defined as “plants, wild animals and other living organisms,” “their habitats” and “land”, which suggests that the word “water” should be taken in the context of the other things in the clause.

Cherilyn Mackrory: With respect, I disagree. What the hon. Member suggests is that the land stops on the foreshore. It does not, of course; it goes straight out to sea and becomes the seabed. The land does not stop. What we are arguing here are the semantics of where our land and our waters end, which will be covered in the Fisheries Bill.

Dr Whitehead: The hon. Member is right to the extent that land does extend under the water, otherwise the seas would drain fairly rapidly and we would be in a bad state. According to the hon. Member’s definition, we are conjoined with every other country in the world. The clause does not say that we must have a definition of “natural environment” that includes that—it stops in terms of what is on our land and what is not under the sea, as far as land is concerned. Arguably, the fact that it includes water could be defined, as the hon. Member suggests, as including everything on that land that is under the sea. It is nevertheless our responsibility—there are different areas of concern expressed in international treaties about territorial waters and various other things.

Anthony Browne: I completely and utterly support that the definition should cover the marine environment. My question to the hon. Member is why he picks on the marine environment as the one point of clarification needed in “land...air and water”. My hon. Friend the Member for Truro and Falmouth has talked about some aspects of the land, but does it cover soil? Does the hon. Gentleman want clarification on that? Does it cover underground waterways, for example, which are big in my area? The big issue in South Cambridgeshire is the aquifer, which is definitely under the ground. Does it cover cave systems? Is “air” just the air we breathe when we talk about air pollution, or is it also the ozone layer and so on? We could carry on with multiple long definitions and a long train of different qualifications, but I think that would create legal uncertainty for lawyers to interpret. The Bill is very generic—“land...air and water” covers everything that is important.

Dr Whitehead: The hon. Gentleman tempts me to go down a detailed path of discussing subterranean water outlets. I assume, because water is within our land mass, that those would be covered by the elision of land mass and water, which is suggested by the clause. Without going into a lengthy disposition about how far under the ground water might be counted as being covered under this arrangement, we can rest assured that those matters are not a serious issue of dispute.

That is why I do not want to go into enormous detail. The amendment is straightforward and short. It proposes several words that would put the matter to rest. It just states in a modest way that the definition should include the marine environment, so that if anyone is in any doubt, there it is in the Bill. That is all we are suggesting. There is no side to that. There are no additional

consequences. It merely says we should be clear that that is what it includes. I think we all agree that it should include that.

This morning, we were treated to a quote from the explanatory notes, which indicated that the marine environment should be included, but it is not. We are just doing a modest labour in the vineyard by attempting to ensure that when people say something, they mean what they say. The best way to ensure that people mean what they say is to say it. That is what we propose to do on the face of the Bill.

Deidre Brock (Edinburgh North and Leith) (SNP): Amendments 125 and 193 have similar intentions. My amendment was meant as a probing amendment. I will not revisit the areas that the shadow Minister has eloquently gone through. My assumption was that the marine environment was considered for inclusion here and the decision was taken to exclude it. I would be interested to hear from the Minister what the rationale was for that.

Obviously, marine life is just as vital to the global ecosystem as terrestrial life, and the health of marine environments also needs to be protected. There may be some other agencies responsible, which the Government reckon should do the job, but surely there is a good case to be made for an agency with an overarching view of these tasks and challenges for the whole environment. I look forward to the Minister’s comments.

Daniel Zeichner: This is a short clause, but it is very important. I am fortunate to represent Cambridge, a city with some fantastic environmental organisations. The David Attenborough Building is renowned. It houses the Cambridge Conservation Initiative, which includes the Royal Society for the Protection of Birds, Fauna & Flora International and BirdLife International. I was fortunate to visit them a while ago, when I was preparing for a Westminster Hall debate. I was briefed by a range of dazzling experts. I was struck from their presentations by how many talked about the marine environment. I had not realised how significant it was. That was very much the term they used throughout their recommendations and advice to me.

I know the Minister cares passionately about the marine environment. I remember a Prime Minister’s Question Time when she questioned the showering habits of the Speaker. It is amazing the things that people remember. I should be clear that she was referring to the microbeads in Mr Bercow’s shower gel. I do not doubt the passion that she feels for the marine environment.

That leads me to question, given that we all agree on this point, why it cannot be put in the Bill. I believe the Government intend to include it. If there is such resistance to putting it in the Bill, it is either because each side wants to defend its position and does not want to give way, or there is something a bit more sinister.

Rebecca Pow *indicated dissent.*

Daniel Zeichner: The Minister says no. She might want to think about that, maybe not this morning, but as the Bill progresses. I would have said that including that one phrase would strengthen the Bill from the Government’s point of view and not leave people wondering what other treasures close to our land mass some parts of Government organisations have their eye on.

Rebecca Pow: I thank the shadow Minister for his very kind opening words. I also thank him for his interest in the clause, which is crucial to future environmental governance. I appreciate the sentiments behind the amendment, but I must disagree and say that it is unnecessary. I have thought about this matter a great deal myself, as hon. Friends and Members can imagine. I have also spoken to the Natural Capital Committee at length about this, and it is satisfied with what we have come up with after much discussion.

Hon. Members are aware that the marine environment is by far the largest part of the UK's environment and, as such, is an enormous part of our natural world. It is therefore vital that we safeguard crucial marine ecosystems, and that is a core part of our environmental policy. One of the names I get in my portfolio is the marine Minister, so I say, "Leave water and the marine space out at your peril."

That is why the marine environment is included within the existing clause, as is clarified on page 57 of the explanatory notes. I hear what everyone says about the explanatory notes, but the meaning of the natural environment explicitly covers "water". This includes seawater, canals, lakes, the Somerset levels—which are seawater that has come inland, goes back out, and is then joined by inland water—and all the underground aquifers.

A very good point was made: where do we stop with these lists of things? That is important to remember. The definition also covers—I thank my hon. Friends the Members for Truro and Falmouth and for Keighley for mentioning this—the land that includes the seabed, the intertidal zones and the coastal plains. They are all part of the natural environment. Any plant, wild animal, living organism or habitat is also included in the definition, regardless of where it is physically.

Out of interest, I want to touch on the target-setting powers in the Bill. Targets can be set on any matter relating to the natural environment, which could include the marine environment. That means we can set long-term targets or legally binding targets that can help improve the marine environment. The Government must set out at least one target in their four priority areas, which include air, biodiversity, water and nature. The initial round of targets might include a marine environment target, and that could be one of the biodiversity targets. That measure is already in the Bill; it will actually bolster, protect and strengthen the myriad measures we already have in place for protecting the marine space. All of this will dovetail with the sustainability elements in the Fisheries Bill, which was mentioned by the hon. Member for Newport West, so it is all part and parcel.

I hope I have provided some assurances. The marine environment is very much included within the definition and, as such, each element of the environmental governance framework—including the OEP—will apply to it. On those grounds, I propose that the amendment is unnecessary, and I respectfully ask the shadow Minister to withdraw it.

Dr Whitehead: The Minister has given some good and solid assurances concerning what she thinks the clause could be interpreted to mean. Clearly, the fact that she has said that this morning suggests that it might be possible, should there be a dispute about this, to draw upon her words as underlining the Government's good intentions. We have never disputed that. We are happy that the Minister thinks in that particular way.

10.30 am

I emphasise what my hon. Friend the Member for Cambridge said, which is that it seems straightforward to us that this should be included in the Bill. There is such potential dissonance between the Minister's warm wishes for the marine environment and what is actually in the Bill. We think overwhelmingly that it would be a good idea to accept the amendment and seek to divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 19]

AYES

Anderson, Fleur
Brock, Deidre
Jones, Ruth

Thomson, Richard
Whitehead, Dr Alan
Zeichner, Daniel

NOES

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

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

Question accordingly negatived.

Clause 41 ordered to stand part of the Bill.

The Chair: I hope it is not impertinent of me to point out that we have now been at this for more than an hour and have achieved only clause 41, which is less speedy progress than other Committees I have chaired. It might be helpful to the Committee to seek to make speedier progress.

Clause 42

Meaning of "Environmental Protection"

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I beg to move amendment 31, in Clause 42, page 26, line 1, after "considering" insert "advising".

Member's explanatory statement

The fourth limb of the definition of environmental protection covers the functions of monitoring, assessing, considering or reporting on anything within the other three limbs. This amendment adds the function of "advising", which was included in the equivalent provisions of the draft Environment (Principles and Governance) Bill (clause 31(2)(d)), and last session's Environment Bill (clause 40(2)(d)).

The Chair: With this it will be convenient to debate Government amendment 65.

Rebecca Pow: Before I begin, it was terribly remiss of me that I omitted to mention the hon. Member for Edinburgh North and Leith when discussing the previous amendment. I meant to do so, but I forgot to pick up my bit of paper. All the hon. Lady's comments were welcome and duly noted, and added to the general

discussion and debate that we had about marine matters. I apologise for that; I meant to do so and then it was too late.

Government amendments 31 and 65 insert the word “advising” into clause 42(d) of the Bill and make the same amendment to schedule 2 in respect of the Office for Environmental Protection in Northern Ireland. This is a technical amendment to ensure that our new environmental governance framework can operate fully and effectively.

Environmental protection is at the heart of what the Bill intends to achieve, and as such it is vital that we ensure that the meaning of environmental protection provided in the Bill is as effective as possible. Without the amendment, statutory duties for public bodies to advise on environmental protection, such as section 4 of the Natural Environment and Rural Communities Act 2006—which we all refer to as the NERC Act—which places a duty on Natural England to provide advice at the request of a public authority, would not be considered environmental law.

The OEP would not be able to monitor or enforce this kind of legislative provision and the Secretary of State would also not be obliged to make a statement about any new legislation in this place. Therefore, not including “advising” in this clause would place unnecessary and unhelpful limitations on our new environmental governance framework. This would limit the Government’s ambition to be a global leader in championing the most effective policies and legislation for the environment. I therefore commend the amendment to the Committee.

Dr Whitehead: The Minister’s amendment does indeed clarify matters and enables a better definition for monitoring assessments and reporting. The Opposition are happy for the word “advising” to go into the clause, but I would like the Minister to reflect briefly on why that word, which she is now putting in as an administrative amendment, was in previous iterations of the Bill. It was in the original Bill two years ago and also in the current Bill’s immediate predecessor, which was unable to make progress because of the election. Why is it, then, that the word did not appear in the current Bill? Was it an accident? Did someone consider it inappropriate, and is the Minister now making up for that lapse? Unless it was an accident, could the Minister assure me that there was no underlying reason for leaving out the word, the reinsertion of which now requires a Government amendment, and that she has not mentioned anything that we ought to consider?

Rebecca Pow: I thank the hon. Gentleman for that question and for saying that the Opposition are happy with getting the word “advising” into this clause. I think I am at complete liberty to say that it was just a technical correction. I am pleased that it has been spotted and thank the hon. Gentleman for having done so.

Amendment 31 agreed to.

Clause 42, as amended, accordingly ordered to stand part of the Bill.

Clause 43

MEANING OF “ENVIRONMENTAL LAW”

Dr Whitehead: I beg to move amendment 127, in clause 43, page 26, line 6, leave out “mainly”.

This amendment ensures that any legislative provision that concerns environmental protection is included in the definition of “environmental law”.

Clause 43 concerns itself with one word, but, as I think hon. Members will appreciate, it provides, as is the case with many Bills, the crucial underpinning of a particular part—namely, those clauses up to clause 43. In other words, it defines the words we have discussed this morning and on other occasions. Although it may appear that a great deal of debate is focused on very small parts of the Bill—on one or two words—it is important to pay attention to them and to get this right. I appreciate that we may appear not to be making the progress we would otherwise want to make, but this is essential for the overall progress of the Bill. I can reveal to the Committee that I have discussed with the Government Whip exactly how much progress we can make today, and we need to ensure that it is commensurate with getting the Bill through in good order overall. I assure hon. Members—and, indeed, you, Mr Gray—that we want to make good progress and get the Bill through in good order and in good time. I hope that what we do this morning will aid rather than impede that progress.

Clause 43 concerns itself with the meaning of environmental law. Subsection (1) states that it “is mainly concerned with environmental protection, and...is not concerned with an excluded matter”.

Subsection (2) defines excluded matters. We are concerned about the word “mainly”. We think that legislation that defines the meaning of environmental law should be “concerned with” environmental protection, not “concerned mainly with” with environmental protection. The use of that word implies that a number of other things could be construed as not being concerned with environmental protection. Logic suggests that the inclusion of the word “mainly” admits the possibility and, indeed, the likelihood that there are things outwith that particular definition.

Subsection (2) refers to excluded matters and I think we will discuss some of those in a future debate. Nevertheless, assuming it stands, it defines what is outwith the concerns of environmental protection. The Bill itself puts forward the things that are excluded from consideration, while subsection (1) uses the word “mainly”, which adds another area of uncertainty regarding what is and what is not excluded.

Ruth Jones: Does my hon. Friend agree that the term “mainly concerned” is ambiguous, with no clear legal meaning? Indeed, Dr David Wolfe QC drew attention to this issue in his written evidence to the pre-legislative scrutiny of the draft Bill.

Dr Whitehead: My hon. Friend is a mine of carefully culled information from previous sittings of the Committee, including the evidence sessions, which underline the points we are making this morning. She has set out that this is not just our concern; it is widely shared outside this Committee Room, and for that reason it deserves additional consideration.

Our case is that the word “mainly” should be removed and that the definition of environmental law should be that it is “concerned with environmental protection”. Subject to concerns that we may have about some of the areas listed under excluded matters, the fact that subsections (1) and (2) sit together should provide a very clear line of discussion about the meaning of environmental law as far as legislative provision is concerned.

Rebecca Pow: I support the broad approach to defining environmental law, which has always been our intention with clause 43. We also need to ensure, however, that the definition is practical and workable, particularly for the OEP. The definition must not give the OEP such a wide remit that it is unmanageable or intrudes into areas where it would be inappropriate for the OEP to act or to be expected to act.

10.45 am

The OEP's principal objective is to contribute to environmental protection and the improvement of the natural environment, as we have said many times. We must have a definition of environmental law that safeguards that objective by making it clear to all parties that the OEP's focus will be on legislation for environmental protection and improvement. Removing the word "mainly" could bring a large amount of legislation into the OEP's scope—that is not unlike our discussions about heritage and the other legislation connected to that—and would risk diluting the OEP's effectiveness or diverting its resources to matters that could be more adequately dealt with by another body.

Many areas of legislation can be considered to be concerned, to a small degree, with environmental protections, despite being mainly concerned with something else. That is a good point, and I will give one small example: road traffic speed limits are mainly concerned with road safety, but they also have implications for the environment. We do not think that the OEP should have a remit to enforce speed limits.

Daniel Zeichner *rose*—

Rebecca Pow: I think that is quite a good example, but the hon. Member for Cambridge might come up with another.

Daniel Zeichner: I will not come up with a counter-example, but I think many would draw a very different conclusion from the Minister's example. I am not a lawyer, but we are advised that the term "mainly" is mainly ambiguous in law. Others have suggested that "related to" would be a better term. Why have the Government chosen "mainly" rather than "related to"?

Rebecca Pow: Just like the hon. Gentleman, we have also taken a great deal of advice and have used "mainly" for the reasons that I have set out. Although the OEP could still prioritise, it would be unhelpful for stakeholders were the OEP to be concerned in a huge range of issues that have only minor or tangential links to environmental protection or improvement.

It is important to note that the definition is already broader than it might initially seem because it applies to individual legislative provisions, so it could be part of a wider Act or statutory instrument. That means that even if most of an Act or statutory instrument is not mainly concerned with environmental protections, any specific provisions that are considered environmental law would come under the OEP's remit. It is also worth noting that the term "mainly" is not prescribed in the Bill. The OEP and public authorities will therefore be able to interpret it in accordance with its normal—another legal word—meaning.

I appreciate the intentions of the hon. Member for Southampton, Test, but the amendment is not necessary or appropriate because the existing definition is sufficiently

broad and balanced with the need to maintain the OEP's focus on the protection and improvement of the natural environment. I therefore ask him to withdraw his amendment.

Dr Whitehead: I thank the Minister for her response—she had a good go at it. We will not withdraw our concern, but as the Minister has given some reassurance about how the term "mainly" might be interpreted and has indicated that some thought was given to that prior to the Bill's drafting, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Deidre Brock: I beg to move amendment 115, in clause 43, page 26, line 10, leave out paragraph (b).

This amendment removes the exceptions for legislative provisions relating to armed forces and national security matters from the definition of 'environmental law' for the purposes of the scope of the OEP's functions.

I thank the Minister for her kind words and would like to correct myself slightly because I did not welcome her back to her place earlier. I am very pleased to see her and am glad that she has recovered.

The armed forces are potentially among the biggest polluters. The evidence from Scotland demonstrates that there has to be some oversight of the potential for environmental damage. I mentioned that previously in respect of the issues that have arisen. The nuclear bases on the Clyde do some work with SEPA—the Scottish Environment Protection Agency—and local authorities to alert them to some instances, but not all. Even those scant measures are the subject of voluntary agreements rather than obligations or regulatory oversight. No information is forthcoming, however, on the rest of the defence estate across Scotland. I imagine there is nothing about the estates across England either.

We know that the MOD does environmental assessments because it told me so in answer to written questions, but that information is kept secret. That is not good enough. We all have to play our part. As I have said, no individual Department should be completely excused from shouldering that responsibility. The phrase "so far as is reasonably practical" is used in a lot of legislation from which defence and our armed forces are exempt, and it could be too easily used as a get-out when that suited. It is time for that loophole to be removed, and for oversight to be in a place whereby such activities could receive independent and robust scrutiny that—while allowing for sensitivities around national security and similar matters—ensured that activities could be monitored satisfactorily. I look forward to the Minister's response.

Rebecca Pow: I thank the hon. Lady for her contribution. We heard something about the issue with respect to previous clauses as well, and we recognise the intention behind those. Protecting our country is fundamental, which is why exemptions for the armed forces and national security are maintained. Any legislation that could be covered by those exemptions would concern highly sensitive matters that were vital to the protection of our realm, so it is appropriate to restrict the OEP's oversight of and access to information in such areas.

We want to make it clear, so that there is absolutely no doubt, that legislative provisions relating to these matters cannot be environmental law, and so cannot fall within the OEP's remit. Legislative provisions concerning

national security would cover matters such as the continuous at-sea nuclear deterrent and other policy areas vital to the protection and defence of the UK, which are of the utmost importance.

The single most important thing that we do is protect our people. It would not be appropriate for the OEP to have jurisdiction here, where its intervention could hinder vital work. We expect that such specialist matters would also be outside the OEP's areas of expertise. As such, the OEP would not be appropriately qualified to enforce such issues. Legislative provisions concerning the armed forces would cover matters related to personnel and staffing that link to defence capability and matters such as the Armed Forces Act. It would not be appropriate for the OEP to have a role overseeing the legislation.

To be clear: the exemption does not mean that public authorities such as the MOD or any of the armed forces will be exempt from scrutiny by the OEP in respect of their implementation of environmental law—for example, a lot of MOD land has site of special scientific interest designation; it simply means that legislation concerning the armed forces or national security will be excluded from the OEP's remit. Much of the defence land is protected land with SSSI designation. The OEP will still be able to hold public authorities accountable on that land for their statutory duties concerning the protection of the site, as the relevant legislative provisions will not be covered as regards national security or the armed forces.

The Scottish Government have, I note, taken a similar approach on the issue in section 10(3)(a) of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill 2018. They also have a number of exemptions that are not unrelated to this. It is worth noting that the Ministry of Defence has its own environmental policies, and it went into that in some detail last week. It does a great deal of good environmental work. I should mention the stone curlew project I visited, but there are many others where it is doing excellent work for protected species and habitats. It prides itself on that, and has a strong record of delivering on those commitments. On the whole, its SSSIs are in pretty good condition, so all credit to the MOD.

I know that the hon. Member for Edinburgh North and Leith has done a lot of work in this area, and it is something she has talked about from the beginning. I thank her for raising this, because it gives us a chance to make the argument. Given the sensitivities and existing environmental commitments, and given my clarification that the provision does not exempt from scrutiny public authorities that are concerned with national security, I hope she will consider withdrawing the amendment.

Deidre Brock: I remind the Minister again that the Scottish Government have no control over defence issues, so it is perhaps no surprise that they have had to exempt that in the continuity Bill. I hear what she says about some scrutiny being applied, but I still feel that there is too much of a blackout around the information relating to these areas. That is what I, environmental groups and members of the public have issues with.

I appreciate that there are sensitive areas that will have to be dealt with differently, but I am afraid I remain to be convinced that the exemptions are appropriate in this day and age, and that transparency across Government is not required by the public and various

environmental groups that we have all dealt with. This is certainly a principle that is very important to me. With that in mind, I will push the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 20]

AYES

Anderson, Fleur
Brock, Deidre
Jones, Ruth

Thomson, Richard
Whitehead, Dr Alan
Zeichner, Daniel

NOES

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

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

Question accordingly negated.

Deidre Brock: I beg to move amendment 116, in clause 43, page 26, line 11, leave out paragraph (c).

This amendment removes the exceptions for legislative provisions relating to tax, spending and the allocation of resources within government from the definition of 'environmental law' for the purposes of the scope of the OEP's functions.

You will be relieved to hear, Mr Gray, that I will not be pushing the amendment to a vote, although that is something I am keeping in my back pocket for the future. It seems to me that by fully exempting the main thrusts of Government policy, which are the biggest tools in the Government's cupboard, the Government are not driving their policy towards the best possible environmental goals. By wholly exempting tax and spend from their thinking on such matters, the Government are missing a chance to engage their biggest public policy lever.

I would have thought that at least some consideration of these issues would have been useful for the Government. That would have shown real commitment to change, improvement, making a future unlike the past and putting the environment at the middle of decision making. As I have said in the past, I appreciate the Minister's sincerity and her belief in these issues, but surely she does not want it to look as though the Government are merely ticking a box to say that the gap left by Brexit is being filled. Instead, she can show that there is an environmental heart to this legislation and this Government, not simply warm words. Here is an opportunity to prove that.

I am particularly keen to hear the Minister's reasoning behind the exemption, because it seems that the Government are missing a trick by not showing their commitment to environmental issues on this particular point.

11 am

Rebecca Pow: I thank the hon. Lady for tabling her amendment and for saying she will not push it to a vote. Although I recognise the intention behind the amendment, it is important that the exemption is maintained to ensure sound economic and fiscal decision making. It would be inappropriate for the OEP to have oversight of the implementation of legislative provisions that specifically

[Rebecca Pow]

concerned taxation, spending or the allocation of resources, as the OEP needs to keep its focus on the protection of the natural environment.

Legislation regarding taxation is developed by Treasury Ministers, as the hon. Lady knows, and it is important that they are able to set taxes to raise the revenue that allows us to deliver essential services, such as the NHS, policing, education and schools—all those things that we all need and want. It would not be appropriate for the OEP to have jurisdiction over this area or over the administration of taxation regimes by Her Majesty's Revenue and Customs.

I want to give a bit of clarity on this, as I think there may be some confusion: the term “taxation” does not extend to legislation relating to regulatory schemes such as the plastic bag charge, which was particularly successful, or the imposition of fees to cover the cost of a regulatory regime. Therefore, legislation relating to these matters could be considered within environmental law, and the OEP could take enforcement action if the public authority failed to comply.

The words

“spending and the allocation of resources within government” refer to decisions about how money and resources are designated within and between Departments. When specifically considering the exclusion or allocation of resources, it is important to note that it is only the legislative provisions on this subject that are excluded. It is just a matter of being very clear about that, as there are many other areas, such as the plastic bag charge, where the OEP will be able to engage.

If a public authority were to argue that it did not have adequate resources to implement an environmental law, that would not stop the legislative provisions in question being environmental law, although the authority's comments on its resources could, of course, be considered during the OEP's investigation. On those grounds, I ask the hon. Member whether she might withdraw her amendment, now that I have given her more clarity.

Deidre Brock: I thank the Minister for her comments, which have provided me with some clarity. As I said, I will not be pressing this matter to a vote, although I think I will pursue it in the future. We are all well aware of the Treasury's track record in resisting attempts to constrain its activities in any way—I suspect there has been some arm twisting done behind the scenes on this one—and this is an issue I will revisit. I thank her again for her words and beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 32, in clause 43, page 26, line 16, leave out

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

See Amendment 28.—(Rebecca Pow.)

Amendment 33, in clause 43, page 26, line 21, leave out
“the National Assembly for Wales”
and insert “Senedd Cymru”.

See Amendment 28.—(Rebecca Pow.)

Amendment 34, in clause 43, page 26, line 22, leave out
“Assembly” and insert “Senedd”.

See Amendment 28.—(Rebecca Pow.)

Clause 43, as amended, ordered to stand part of the Bill.

Clause 44

INTERPRETATION OF PART 1: GENERAL

Amendments made: 35, in clause 44, page 27, line 7, leave out

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

See Amendment 28.—(Rebecca Pow.)

Amendment 36, in clause 44, page 27, line 17, leave out

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

See Amendment 28.—(Rebecca Pow.)

The Chair: We come to amendment 78. It was not moved previously by any member of the Committee, but if any member of the Committee wished to move it now, they would be welcome to do so.

Dr Whitehead: I would like to. This amendment, as hon. Members will see, Mr Gray, was tabled by two previous members of the Committee. With the effluxion of time, however, they are no longer members of the Committee, for reasons of ascent—

Daniel Zeichner: They have been elevated.

Dr Whitehead: Elevated indeed, to higher and more august posts in the Opposition ranks. They are therefore no longer on the Committee, but that does not mean that what they put forward should have less consideration by the Committee.

The fact that additional consideration should be given is underlined by the information that we received just before the Committee met, which was that the Government proposed to table amendments that will come up later in the Bill's consideration, concerning illegal deforestation in supply chains and the due diligence to be carried out in connection with those supply chains. Hon. Members will see from the latest marshalled list of amendments that those amendments—a new clause, which we will debate later, and a defining amendment that will be debated a little earlier than that—have now indeed been tabled.

The amendments, in essence, adopt substantial parts of another amendment that was tabled by some hon. Friends and will appear as new clause 5, which we will debate much later. This concerns the question of due diligence in respect of overseas supplies of timber, for example, and various other elements such as that. I suggest that my amendment was an essential defining part of new clause 5, which has in effect been run with by the Government in the proposals they have just tabled. There is a complete chain of connection between all those.

In that context, what is missing from the Bill is a definition not just of environmental harm, whether direct or indirect, but of what is meant in that context by the global footprint of environmental harm or environmental activity. By tabling their amendments, the Government are strongly indicating that the global footprint of environmental harm is a key element of the Bill.

I am delighted that the Government have tabled their amendments, because they cover an area that a lot of people have been concerned about for a long time. We

will debate the detail when we get to the new clause, but the fact that the Government have considered the issue, listened and looked at what is before us in Committee—

Ruth Jones: Does my hon. Friend agree that it is good to see the Government using the important proposal tabled by my hon. Friends the Members for Leeds North West (Alex Sobel) and for Bristol East (Kerry McCarthy) as a stepping stone to improve the Bill? We should welcome the Government doing that.

Dr Whitehead: Yes, indeed. My hon. Friend reminds me of the constituencies of our hon. Friends who tabled new clause 5, so I may now refer to them.

The amendments that the Government have tabled are important and we welcome them. We would like to add to our welcome the idea that the definition in the clause—which is, after all, as I have emphasised, an interpretation clause to ensure that we know the content, detail and background—should be placed so that it links not only to what we have already discussed in the Bill but to what is in the Government amendments. This will be our only opportunity to discuss this because, by the time we get to the Government amendments, we will have gone past this section of the Bill, so it is important that we decide this one way or the other today.

The Chair: I apologise to the Committee. I had not spotted the fact that this amendment was debated on a previous occasion and that we therefore should not be having a second debate on it but should have moved it formally.

Amendment proposed: 78, in clause 44, page 27, line 24, at end insert—

“‘global footprint’ means—

- (a) direct and indirect environmental harm, caused by, and
- (b) human rights violations arising in connection with the production, transportation or other handling of goods which are imported, manufactured, processed, or sold (whether for the production of other goods or otherwise), including but not limited to direct and indirect harm associated with—
 - (i) greenhouse gas emissions;
 - (ii) ecosystem conversion and degradation;
 - (iii) deforestation and forest degradation;
 - (iv) biodiversity loss;
 - (v) water pollution and abstraction; and
 - (vi) air pollution.”—(*Dr Whitehead.*)

Question put, That the amendment be made.

Question negatived.

Clause 44, as amended, ordered to stand part of the Bill.

Clause 45 ordered to stand part of the Bill.

Schedule 2

IMPROVING THE NATURAL ENVIRONMENT: NORTHERN IRELAND

Amendment proposed: 194, page 127, line 6, schedule 2, leave out sub-paragraph (4) and insert—

- (4) An environmental improvement plan must set out—
 - (a) the steps that the Department intends to take to improve the natural environment;
 - (b) any steps that any other Northern Ireland department intends to take to improve the natural environment;

- (c) long-term targets, setting a measurable standard which must be achieved by a specified date that is no less than 15 years after the target is set; and
- (d) interim targets relating to each long-term target, setting a measurable standard which must be achieved by a specified date that is—
 - (i) no more than 5 years after the target is set; and
 - (ii) no more than 5 years after the most recent review of the environmental improvement plan.

(4A) It is the duty of the Department to ensure that all long-term and interim targets set in an environmental improvement plan are met and the Department must publish an annual report stating how it is meeting these targets.”—(*Deidre Brock.*)

The amendment will ensure that Northern Ireland has interim and long-term environmental targets, and places a duty on the Department of Agriculture, Environment and Rural Affairs to ensure these targets are met.

Question put, That the amendment be made.

Question negatived.

Amendment made: 65, page 132, line 1, schedule 2, after “considering” insert “advising”.—(*Rebecca Pow.*)

This amendment makes provision for Northern Ireland equivalent to the provision made by Amendment 31.

Schedule 2, as amended, agreed to.

Clause 46 ordered to stand part of the Bill.

Schedule 3

THE OFFICE FOR ENVIRONMENTAL PROTECTION: NORTHERN IRELAND

Amendment made: 66, in schedule 3, page 133, line 33, at end insert—

“(2A) But the OEP must not monitor the implementation of, or report on, a matter within the remit of the Committee on Climate Change.

(2B) A matter is within the remit of the Committee on Climate Change if it is a matter on which the Committee is, or may be, required to advise or report under Part 1, sections 34 to 36, or section 48 of the Climate Change Act 2008.”—(*Rebecca Pow.*)

This amendment modifies the OEP’s duty to monitor, and power to report on, the implementation of Northern Ireland environmental law under paragraph 2 of Schedule 3. It provides that the OEP must not monitor or report on matters within the remit of the Committee on Climate Change, which is defined in sub-paragraph (2B) by reference to specified provisions of the Climate Change Act 2008.

11.15 am

Rebecca Pow: I beg to move amendment 221, in schedule 3, page 146, line 24, at end insert—

“22A (1) Section (Guidance on OEP’s enforcement policy and functions) (guidance on OEP’s enforcement policy and functions) is amended as follows.

(2) At the end of subsection (1) insert ‘, so far as relating to the OEP’s Part 1 enforcement functions.’

(3) In subsection (2)—

- (a) in paragraph (a) after ‘policy,’ insert ‘so far as relating to its Part 1 enforcement functions.’;
- (b) in paragraph (b) for ‘enforcement functions’ substitute ‘Part 1 enforcement functions’.

(4) In subsection (5) for “enforcement functions” substitute ‘Part 1 enforcement functions’.”

Schedule 3 to the Bill confers on the OEP enforcement functions in relation to Northern Ireland, which are similar to its enforcement functions under Part 1 of the Bill. Guidance issued by the Secretary of State under NC24 is not to apply to the enforcement functions conferred by Schedule 3, which are devolved. This amendment ensures that when Schedule 3 comes into force, the guidance power under NC24 will be limited to the OEP’s enforcement functions under Part 1 of the Bill and will not include its enforcement functions under Schedule 3.

The Chair: With this it will be convenient to discuss Government new clause 24—*Guidance on OEP's enforcement policy and functions*.

Rebecca Pow: That was a massive canter or, actually, a gallop. We have whizzed on. The amendment and new clause will provide a power for the Secretary of State to issue guidance to the OEP on the matters listed in clause 22(6) concerning its enforcement policy. The OEP will be required to have regard to this guidance in preparing its enforcement policy and in carrying out its enforcement functions. This is an important new provision, which will allow the Secretary of State to seek to address any ambiguities or issues relating to the OEP's enforcement functions where necessary. We expect the OEP to develop an effective and proportionate enforcement policy in any event, but Secretary of State guidance can act as a helpful resource for the OEP in the process. For example, the Secretary of State may issue guidance to the OEP relating to how it should respect the integrity of other statutory regimes, including those implemented by regulators such as the Environment Agency. That could also be invaluable to resolve and clarify any confusion that may arise regarding the wider environmental regulatory landscape.

As the Minister ultimately responsible to Parliament for the OEP's use of public money, it is appropriate that the Secretary of State should be able to act if the OEP were not exercising its functions effectively or needed guidance from the Secretary of State to be able to do so, for instance, if it were failing to act strategically and, therefore, not taking appropriate action in relation to major systematic issues. The new clause will not provide the Secretary of State with any power to issue directions to the OEP—that is important—or to intervene in specific decisions. Rather, the OEP is simply required to have regard to the guidance in preparing its enforcement policy and exercising its enforcement functions. Furthermore, the Secretary of State must exercise the power in line with the provision in paragraph 17 of schedule 1, which requires them to “have regard to the need to protect” the OEP's independence. That is important as well.

Daniel Zeichner: Will the Minister give way?

Rebecca Pow: May I just finish? Any guidance must also be laid before Parliament and published. That means that the process will be transparent, and the Secretary of State will ultimately be accountable to Parliament.

There are precedents elsewhere in legislation for this type of approach. For example, the Climate Change Act 2007 provides for the Secretary of State to give guidance to the Committee on Climate Change—a body that is considered to be highly effective and independent.

Daniel Zeichner: This is very important, and it came as a surprise to many of us that the Government are introducing it as an amendment. Will the Minister

explain why it was not in the Bill originally? What was the process that led to the introduction of these amendments?

Rebecca Pow: As usual, much debate and discussion went on. It is all about transparency and clarity for the OEP—[*Interruption.*] The hon. Gentleman is raising his eyebrows. The Opposition are always seeking to suggest that there is something underhand going on, but I wear my heart on my sleeve, and this is all in the interests of transparency. There is a whole flowchart about how the OEP will remain independent. Schedule 1(17) sets out that the Secretary of State must be aware of the independence of the OEP. It is about giving much more clarity and focus to the way that the OEP will operate.

Amendment 221 is a consequential amendment to schedule 3, which provides an option to extend the OEP's functions to apply to devolved matters in the future. As the functions conferred by schedule 3 are devolved, the amendment ensures that, if schedule 3 comes into force, any guidance issued under new clause 24 will not apply to those devolved functions. Amendment 221 is therefore necessary to ensure that new clause 24 is compatible with the devolution settlement in Northern Ireland. It leaves the Government the flexibility to assist the OEP through guidance if ever necessary while ensuring that it remains an independent enforcement body. In the light of that, amendment 221 is essential to ensuring that new clause 24 is compatible with the devolution settlement for Northern Ireland.

Dr Whitehead: I do not have any great objections to this clause, but we should reflect on the point made by my hon. Friend the Member for Cambridge. It is a bit shocking that this proposal was not in the Bill previously. This section is about ensuring that the OEP is set up and functions well in Northern Ireland, with all the issues that go with devolved government and the replication of its functions in the Province. Yet the ability to transfer functions on a devolved basis appears not to have occurred to the framers of the Bill before it was put before us. It is only after what in this context we might call the fortunate suspension of the Bill for quite a long time that it has been possible to reflect on that omission and this amendment appears before us. That is a bit concerning, in terms of what else in the Bill might not do justice particularly to the devolution settlements. That is a worry, but we are not worried about the actual content that has appeared. Therefore, we do not want to divide the Committee on this amendment.

Amendment 221 agreed to.

Amendment made: 67, in schedule 3, page 148, line 18, leave out

“the National Assembly for Wales”

and insert “Senedd Cymru”. —(*Rebecca Pow.*)

11.25 am

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

Adjourned till this day at Two o'clock.