

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENVIRONMENT BILL

Seventeenth Sitting

Tuesday 17 November 2020

(Afternoon)

CONTENTS

CLAUSES 81 to 90 agreed to, some with amendments.

SCHEDULE 14 agreed to.

CLAUSES 91 and 92 agreed to.

CLAUSE 93 under consideration when the Committee adjourned till
Thursday 19 November at half-past Eleven o'clock.

Written evidence reported to the House.

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

not later than

Saturday 21 November 2020

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The Committee consisted of the following Members:

Chairs: † JAMES GRAY, SIR GEORGE HOWARTH

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

Public Bill Committee

Tuesday 17 November 2020

(Afternoon)

[JAMES GRAY *in the Chair*]

Environment Bill

Clause 81

WATER QUALITY: POWERS OF SECRETARY OF STATE

Amendment proposed (this day): 135, in clause 81, page 80, line 28, leave out subsection (9) and insert—

“(9) Regulations under this section are subject to the super-affirmative resolution procedure.

(10) In this subsection, ‘super-affirmative resolution procedure’ has the same meaning as it does in Section 18 of the Legislative and Regulatory Reform Act 2006.”—(*Dr Whitehead.*)

2 pm

Question again proposed. That the amendment be made.

Fleur Anderson (Putney) (Lab): Before our lunch break, we were discussing clause 81, on water quality and the powers of the Secretary of State. The clause gives the Secretary of State a wide-ranging power to amend the regulations that implement the EU water framework directive, particularly as they relate to the chemical pollutants that should be considered under the regulations and the standards applied to them.

I have some concluding comments to my earlier statement. The amendment would ensure that any changes to water quality regulations would be subject not to the negative procedure, as the Bill sets out, but to the super-affirmative procedure. This would give stakeholders—including UKTAG, the UK technical advisory group, which currently advises on standards and which should retain a lead role in this process—the right to input into any water quality regulations changes. It would also legally require the Secretary of State to have regard to that input, ensuring that standards and targets are altered only in line with scientific advice and following appropriate stakeholder consultation.

A robust, binding legal assurance of non-regression on environmental standards would give further assurance on that point. The Government still have the opportunity to give such assurance through the Bill, and that would be warmly welcomed by the environmental sector and many other stakeholders.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I thank the hon. Member for Putney for tabling the amendment. I understand entirely the desire to ensure an appropriate level of scrutiny when this delegated power is exercised. The clause creates a narrow power for the Secretary of State to maintain a list of the most harmful chemical substances that could enter watercourses and sets out measures to monitor and tackle them, keeping pace with the latest scientific knowledge. This is a key aspect of our wider regulations that protect and enhance our water environment. The exercise of the

power in the clause is subject to consultation with experts in the Environment Agency who provide scientific opinion and have a statutory duty to monitor water.

I highlight the fact that the Secretary of State will take into account the latest scientific evidence when updating lists. In addition to the EA, a lot of that evidence comes through the UK technical advisory group, a working group of experts drawn from the environment and conservation agencies for England, Wales, Scotland and Northern Ireland who already derive threshold values for UK-specified pollutants, which are monitored for the purposes of contributing to the ecological status of our surface waters. A statutory consultation requirement could not be placed on the UK technical advisory group as it is not a statutory body, but it offers valued expert advice. The Secretary of State must also consult any person or bodies appearing to represent the interests of those likely to be affected by these provisions.

I understand that the amendment seeks to increase the level of parliamentary scrutiny of the exercise of the power by upgrading to the super-affirmative resolution procedure, as the hon. Member for Putney mentioned. As we have mentioned, this procedure is used extremely rarely for statutory instruments that are considered to need a particularly high level of scrutiny—for example, legislative reform orders under the Legislative and Regulatory Reform Act 2006, which could be used to abolish, confer or transfer statutory functions or create or abolish a statutory body or office—so we do not feel that that would be appropriate.

The hon. Member was concerned about a lowering of standards, which is absolutely not the case. I know that she has a particular interest in this, and I was so interested to hear earlier that she worked for WaterAid. Lots of Back Benchers engage with WaterAid—I did—when it holds events in Parliament. It does really good work. The wider regulations require the EA to have an extensive and robust monitoring regime for chemicals in the water environment and refer to the priority substances as those that must be used to assess chemical status in surface waters. The EA will monitor for new and emerging harmful substances through an early warning system and, in consultation with the EA, the updates to the list will be based on the latest science and monitoring data, which currently suggest a potential increase in the number of substances of concern, rather than a reduction. An eye will certainly be kept on that, because it is so important.

Although I fully acknowledge the importance of parliamentary scrutiny, a super-affirmative, or indeed a standard affirmative, resolution procedure is wholly disproportionate in this instance. This power can be used only to make relatively narrow changes to existing transposing legislation for the purpose of updating certain water quality standards. The power does not extend to changing the wider regime for assessing and monitoring water quality, which is enshrined in the Water Environment (Water Framework Directive) Regulations 2017. An update to the list of priority substances involves highly technical discussions, as I have mentioned, around emerging pollutants and their threshold values, measured in micrograms per litre, and sophisticated monitoring techniques, including biota testing.

I hope that clarifies the position, and I therefore ask the hon. Member for Southampton, Test to withdraw the amendment.

Dr Alan Whitehead (Southampton, Test) (Lab): As the Minister indicated, the name super-affirmative suggests that this is not an everyday procedure. It has been suggested in the amendment because the clause would allow the Secretary of State, albeit on a reasonably narrow basis, to amend or modify legislation, and thereby to degrade or completely remove environmental protections that are already in the regulations. That would essentially be a power to deregulate current regulations, underpinned by the ability to do so by simply notifying the House. We do not think that is good enough.

As my hon. Friend the Member for Putney emphasised, the super-affirmative procedure would not just allow for greater parliamentary scrutiny but would allow for greater consultation in the process. We think it is an appropriate device to add, although it is a relatively new one. It has been in place, as the Minister alluded to, since 2016.

However, the Minister has given some assurances on the limit of the Secretary of State's power to degrade or remove secondary legislation. She has also indicated that that would not be the intention of the Government, and that, on the contrary, it is their intention to try to uprate those regulations.

Rebecca Pow: Apologies; I was mistaken earlier. It was the shadow Minister who tabled the amendment. In addition to all these matters, the Secretary of State will conduct a two-yearly review of significant developments in international legislation on the environment. That is another prong that will help to keep up the standards of environmental protection. I thought the hon. Gentleman might be interested to hear some of the ways we might use—

The Chair: Interventions must be very brief.

Dr Whitehead: I thank the Minister for her intervention. Alas, we will never hear the detail of what those changes might be, but the fact that she was brandishing a sheet of paper that clearly had them written on it is perhaps further assurance. I did indeed move this amendment, but the multi-talented nature of Opposition Members could have led one to believe that someone else had done so, such is the power of our interventions this afternoon.

We do not intend to press the amendment to a Division, but I hope that this is another thing for the Minister's "to think about" box. I do not think that it is generally a good idea for secondary legislation to be put through the negative procedure on this catch-all basis. Among other things, doing so puts considerable impediments in the face of Parliamentary scrutiny, because the negative procedure requires the legislation to be prayed against. That means that the right to a debate lies with the usual channels rather than being guaranteed, as it is with the affirmative procedure.

I hope the Minister will take the general point on board for future legislative purposes that we do not think that is a good idea. We would be grateful if the Minister could have that in mind when she is reviewing the legislation. On this occasion, we are reasonably happy with the Minister's assurances on this clause and

the additional—alas, secret—assurances that she has on her piece of paper. Therefore, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 81 ordered to stand part of the Bill.

Clause 82

WATER QUALITY: POWERS OF WELSH MINISTERS

Amendments made: 53, in clause 82, page 81, line 19, leave out

"the National Assembly for Wales"

and insert "Senedd Cymru".

See Amendment 28.

Amendment 54, in clause 82, page 81, line 21, leave out "Assembly" and insert "Senedd"—(*Rebecca Pow.*)

See Amendment 28.

Clause 82, as amended, ordered to stand part of the Bill.

Clauses 83 to 86 ordered to stand part of the Bill.

Clause 87

VALUATION OF OTHER LAND IN DRAINAGE DISTRICT: WALES

Amendment made: 55, in clause 87, page 85, line 9, leave out

"the National Assembly for Wales"

and insert "Senedd Cymru".—(*Rebecca Pow.*)

See Amendment 28.

Clause 87, as amended, ordered to stand part of the Bill.

Clause 88

VALUATION OF AGRICULTURAL LAND IN DRAINAGE DISTRICT: ENGLAND AND WALES

Amendment made: 56, in clause 88, page 87, line 33, leave out

"the National Assembly for Wales"

and insert "Senedd Cymru".—(*Rebecca Pow.*)

See Amendment 28.

Clause 88, as amended, ordered to stand part of the Bill.

Clause 89

DISCLOSURE OF REVENUE AND CUSTOMS INFORMATION

Amendment made: 57, in clause 89, page 89, line 9, leave out

"the National Assembly for Wales"

and insert "Senedd Cymru".—(*Rebecca Pow.*)

See Amendment 28.

Clause 89, as amended, ordered to stand part of the Bill.

Clause 90 ordered to stand part of the Bill.

2.15 pm

Schedule 14

BIODIVERSITY GAIN AS CONDITION OF PLANNING PERMISSION

Dr Whitehead: Apologies, Mr Gray, but we had previously notified the Committee that our amendments to the natural environment and environmental protection elements of the Bill would be moved by my hon. Friend the Member for Cambridge.

Daniel Zeichner (Cambridge) (Lab): I beg to move amendment 169, in schedule 14, page 207, line 26, leave out paragraphs (3) and (4) and insert—

“(3) The relevant percentage is a minimum of 10%.

(4) The Secretary of State may by regulations amend this paragraph so as to increase the relevant percentage.

(5) The Secretary of State shall review the relevant percentage after 5 years or sooner.”

This amendment amends the power to vary the 10% level so that it can only be increased.

I apologise to anyone who was expecting to continue to hear the mellifluous tones of my esteemed colleague, my hon. Friend the Member for Southampton, Test. I am grateful to have a backing part; it is a huge honour.

After all the excitement this morning, I hope we can have a similarly exciting afternoon. We are coming to the bit that I have been looking forward to most since I first read the Bill: the exciting part around nature and biodiversity. Part 6 is fascinating. It is hard to imagine a more important and pressing subject when we all know that around the world, the targets we have collectively set ourselves continue, sadly, to be missed. At the same time, we look to find ways out of the economic crisis stemming from covid.

Part 6 is a very important part of the Bill. As I looked at the Bill last night in revising for today, I reread some of the 25-year environment plan. What an optimistic, forward-looking and exciting document it is, full of “wills”, “shalls” and “musts”. The trouble is that some of that enthusiasm seems to have been mislaid en route. One of the key things is that somewhere along the line, the planning White Paper came along, and there is an unresolved tension between the excellent ambition of the 25-year environment plan and those new suggestions.

As my hon. Friend the Member for Southampton, Test said at the beginning of our discussions, we think this is a good Bill, but we want to make it better. My task this afternoon is to try to help the Minister restore it to the Bill it might once have been. We could see this as a bit of a whodunnit. Who was it, and how did the changes creep in? Who did such harm to it, and how can we now help the Government make good? In some of the discussions on this schedule, the Government thought about going beyond net biodiversity gain towards net environmental gain, and we would really like that desire to be addressed.

Much of the schedule is about the planning system. I suspect many Members here have direct or indirect experience of our planning system and know how important it is. For the moment, the provisions for reducing environmental impact in the planning system are focused on preventing and mitigating harm. The net gain objective has been embraced in the national planning policy framework since 2012, when it replaced the previous

policy objective of no net loss, which sought only a neutral outcome after losses and gains were accounted for. Thanks to the rules for site-based protection in the Conservation of Habitats and Species Regulations 2017, the net gain objective has been relatively effective in reducing loss of habitats and species without slowing down development, but it has been far from enough to turn the tide in nature’s decline. The principle of taking a more strategic approach to restoring nature and requiring a 10% net gain in biodiversity is one we fully support. That is what is addressed in this schedule.

We know how important that is because, sadly, the UK continues to suffer rapid biodiversity loss. The Government have failed on too many metrics: 46% of conservation priority species in England declined between 2013 and 2018. This is serious. We welcome the fact the Government have begun to address some of the issues, although we think we need to approach this serious issue in an open and clear way. We note the Prime Minister’s announcement a few weeks ago about 30% of land being protected, but we also gently point out that some 26% of that is achieved through a counting mechanism that includes areas of outstanding natural beauty and national parks. We want to address this problem. We have to be serious about it and not try to play with the figures, and our view is that at the moment the Bill is a lost opportunity to stop the decline. However, the new general condition has the potential to be an effective tool to boost biodiversity across the country, and there are many issues we want to address in the amendments to see how the Bill can be improved.

I will touch on several of our amendments, including on the length of time for which habitats should be maintained, which is 30 years; the exemptions, too many, in our view, from the biodiversity gain condition; the relationship between the new system and irreplaceable habitats; and the lack of a mechanism to guarantee what is prescribed in the biodiversity gain plan to ensure it is actually delivered on the ground. To turn to the detail of amendment 169, our fear is that we are in danger of being left with a rather unambitious percentage of biodiversity net gain that is all too easy for the Government to decrease if they choose to do so. At first sight, setting the condition for planning permission at 10% biodiversity net gain seems a reasonable thing to do, but it is important to note that the impact assessment published alongside the biodiversity net gain consultation in December 2018 said that 10% is merely the lowest level of net gain at which the Department

“could confidently expect to deliver...net gain, or at least no net loss”.

It does not appear that this is taking us very far forward. Indeed, 10% net gain is less ambitious than the current practice of some local authorities. I am told that Lichfield District Council already requires 20% net gain on new development, so although we welcome the Government’s statement and its response to the biodiversity net gain consultation, the 10% should not be viewed as a cap on the aspirations of developers who want to go further. I was pleased that the Minister reiterated this point on Second Reading. It would be very helpful if she could make a clear statement, to facilitate ambitious developers and to help them and local planning authorities, underlining that the aspiration is to go further.

A number of changes need to be made. Under schedule 14, the Secretary of State has a number of powers to make regulations, including a Henry VIII power to amend the 10% biodiversity net gain objective and to amend the types of developments the net gain will apply to. The Bill's provisions read that "the relevant percentage" of biodiversity net gain for developers is 10%, and:

"The Secretary of State may by regulations amend this paragraph so as to change the relevant percentage."

Our amendment is very clear: that must be amended to include a commitment to monitor and review practice, so that the level of gain can be increased in future if evidence demonstrates this is possible and needed. We also need a lock-in so that the percentage can only be increased by the Government, not simply decreased at a later date. There must be no mechanism in the Bill to lower the level of gain; that would seriously undermine the objectives of the system as a whole, and would likely result in little or no gain being achieved in practice.

Amendment 169 would ensure that the only way the 10% net gain figure could be changed is by being increased after review by the Secretary of State. It would also lock in a timeframe to ensure the percentage is reassessed after an appropriate amount of time, within a maximum period of five years.

I am sure the Minister will, as she has throughout, assure us that there is no need for concern. But to return to my whodunnit, I fear that there may be a villain in my story and Members might be able to guess who some of the contenders might be. Looking back at the Prime Minister's "Build, build, build" speech in July, he did claim—spuriously in our view—that:

"Newt-counting delays are a massive drag on the prosperity of this country."

We will discuss newts in more detail later, but when Government policy lurches from one approach to another, we need certainty that the commitment of the current Minister will not be trumped by future Ministers who might take a different view. Unless we get that certainty, we will certainly wish to press this amendment to a Division.

Rebecca Pow: I welcome the hon. Member for Cambridge as he takes the floor this afternoon. This is a tremendously exciting part of the Bill, through which we can all be a part in doing our hugely important bit for nature in this country. He is right about degradation—I am not even going to think about denying that—and about how important the Bill is. This is the tool for achieving the measures in the 25-year environment plan, which was the first environmental improvement plan. It is great that the plan is full of optimism because it sets out what we want to do and where we want to go, and these measures will be in this Bill.

Let me turn to the amendment. Responses to the net gain consultation revealed that some developers have already made voluntary commitments to no net loss or net gain and there were calls for both a higher and a lower percentage. It was quite interesting how that came out. On balance and having considered all responses, we believe that requiring at least a 10% gain strikes the right balance between ambition, creating certainty in achieving environmental outcomes, deliverability and costs for developers. It should not be viewed as a cap and the hon. Member for Cambridge has already mentioned a local authority that has set its sights higher. Many more are doing that and going voluntarily above 10%.

The hon. Gentleman mentioned the "Planning for the future" White Paper, which I think will probably be referred to a lot today. It specifically sets out support for biodiversity net gain and rightly identifies improving biodiversity as one of our most important national challenges. It is important to build the houses people want and all of the developments that we need, but that cannot be done to the detriment of the environment.

That is quite clear in the White Paper that biodiversity net gain and biodiversity more generally are one of our most important challenges. The Department for Environment, Food and Rural Affairs is working closely with the Ministry of Housing, Communities and Local Government on the implementation of biodiversity net gain to make sure it is fully integrated into the planning system. I have already said that the 25-year environment plan is the first environmental improvement plan, and all these things will work as part and parcel of one another.

The ambition of 10% net gain represents a significant step forward beyond current practice while striking a balance and meaning it does not have to be reviewed as a cap. Restricting the ability to set a lower percentage requirement may force the Government to exempt any development types that cannot achieve a 10% net gain, rather than keeping them in scope and subjecting them to a lower percentage requirement. Broader exemptions would be a greater risk to the achievement of the wide policy aims than targeted application of a lower percentage gain.

Limiting the power might therefore compel future Governments to make other adjustments to the requirement, which could compromise environmental and development outcomes more fundamentally than a lower percentage of net gain.

Dr Whitehead: The Minister is making an interesting case for the clause. However, does she accept that it is a particularly egregious example of "first you have it, then you don't" legislation appearing in consecutive paragraphs? That is to say—a bald statement, as she said—the relevant percentage is 10%, but then the Secretary of State can take that away. Does she have any suggestions as to how one might make that a little less alarming, if she is indeed suggesting that that sort of arrangement needs to be in place?

2.30 pm

Rebecca Pow: I reiterate how closely we are working with other Departments and on the "Planning for the future" White Paper to make sure that biodiversity remains the significant objective that it needs to be, as has been indicated already.

Other measures in the Bill, such as the local nature recovery strategies that we will come on to talk about, will help with our moving towards biodiversity net gain. There are a lot of measures that will make it much clearer where the net gain is, what the advantages and benefits of it are, and where it should go.

One of the main aims of our planning reforms is to enhance the environment while having the development that we need. We want environmental assets to be protected. We want to provide more green spaces, more sustainable development and new homes that are energy-efficient. Many of these measures have already been announced and are being introduced, such as the measures

[Rebecca Pow]

on houses and on the reduction of carbon-intensive modes of transport. All these things will work together, and measures in the Bill will help that process. We will also work through the White Paper to deliver even further on the net gain.

Let me reiterate that limiting the power might compel future Governments to make other adjustments to the requirement that would compromise environmental and development outcomes more fundamentally than a lower percentage of net gain. What we are trying to do overall is to raise up the whole net gain.

Ruth Jones (Newport West) (Lab): Does the Minister agree that these amendments are very moderate? We are not looking to limit things down, but to raise things up. The Bill already has the relevant percentage—10%—so to put that as a minimum is surely a very moderate thing. That word is a very important one. As she has already said, she is very ambitious, so adding that word would surely increase the ambition.

Rebecca Pow: I hear what the hon. Lady says, but I still stick to my point that restricting the ability to set a low percentage requirement might force Government to exempt any development types that cannot achieve the 10%. What we are trying to do is to make sure that everyone gets to the 10% mark, and others might go above that voluntarily.

On the final point about the amendment, about compelling the Secretary of State to review the percentage within five years, I offer my assurances that the Government intend to monitor closely the policy outcome of net gain after its implementation. Of course, Members should remember that we have our Office for Environmental Protection; we have a great big monitoring and reporting body. It will be very difficult for anyone not to stick to these measures. They are all in the Bill and they add to the overall enhancing of the environment. I respectfully ask the hon. Member for Cambridge to withdraw the amendment.

Daniel Zeichner: I am grateful to the Minister. I suspect that a theme is already emerging from this discussion, whereby the Minister tries very hard to explain away the differences that have emerged. That is her job and she has made a very good attempt at it. However, it seems counterintuitive to argue that, on the one hand, the Government are going to introduce this level and, on the other hand, they will have the ability to reduce it. As for the argument that that somehow protects the measure, I think that the cat was slightly let out of the bag by the suggestion that there might be exemptions that will allow another way round it. We will come on to that in a moment.

In some ways, this is a strange discussion, because the White Paper on planning emerged in the summer, after this Committee was in abeyance. It seemed to us—we made this point very strongly—that this process is a complicated set of interactions that would have benefited from the detailed interrogation of experts. We will get into some quite detailed planning law issues in the coming hours, I suspect, and many of us possibly do not have the expertise that some of our witnesses might have been able to bring to these discussions. It is a great pity that we are not able to explore that in more detail. But we are where we are and we will have to do our best.

The problem is that a lot of this goes back to the question of trust. Basically, the Minister is asking us to trust the Government. She says that they are introducing the OEP, but the OEP will work to the legislation that we are putting in place today. Inevitably, there is pressure—we know that there is huge pressure and we understand why—from local developers and a Government who want to build, build, build. That is why nature needs a voice: it needs the legislative protection that the Minister is so passionate about. There should not be any loopholes, because we know what will happen: if we leave loopholes, people will use them. That is why—and I will keep repeating this point—I want to understand what changed, who did it and why, because if we get an answer to those questions, we will understand what is likely to happen in future.

This Bill might look lovely and sound great, but when we begin to delve down into the detail and look at the “mays” rather than the “musts” and at the exemptions and loopholes it introduces, we may find that, like on so many other occasions in the past, it is a great disappointment. That is why we want to absolutely tie this down. On that basis, we wish to divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 31]

AYES

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

NOES

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

Question accordingly negatived.

Daniel Zeichner: I beg to move amendment 168, in schedule 14, page 209, line 37, leave out

“maintained for at least 30 years”

and insert

“secured in its target condition and maintained in perpetuity”.

This amendment requires habitat created under net gain to be secured in perpetuity.

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

Amendment 75, in schedule 14, page 209, line 37, leave out

“for at least 30 years”

and insert “in perpetuity”.

This amendment would require post-development habitat enhancements for the purposes of biodiversity gains to be maintained in perpetuity rather than for 30 years.

Amendment 74, in clause 91, page 92, line 1, leave out

“for at least 30 years”

and insert “in perpetuity”.

This amendment would require habitat enhancements for the purposes of biodiversity gains to be maintained in perpetuity rather than for 30 years.

Amendment 230, in clause 91, page 92, line 1, leave out

“for at least 30 years”

and insert

“secured in its target condition and maintained in perpetuity”.

This amendment would require habitat enhancements created under net gain to be secured in perpetuity.

Daniel Zeichner: The theme continues with this set of amendments because, in exactly the same way as I have just explained, there is a risk of not achieving the desired outcome and ambition of the 25-year environment plan.

The amendment relates to the length of time that the biodiversity gain habitats should be maintained. Our amendment challenges the Government’s suggestion of 30 years. In our view, both schedule 14 and clause 91(2)(b) would allow protected sites potentially to be downgraded or destroyed after 30 years, thereby destroying the ecological gains and carbon storage benefits, and any prospect of those gains and benefits making a long-term impact.

That is essentially the issue: we are talking about the long term. I am sure the Minister will explain in a moment the logic for the Government’s 30-year proposal, but this takes us back to the basic point about how serious and ambitious we are about embedding these changes for the future. There will be little point to the provisions if they do not work in practice. For instance, if someone gets rid of a pond that has been in place for hundreds of years, with all the richness in biodiversity it has developed, and replaces it with another pond nearby, that replacement could be let go after 30 years. Our concern is that the provisions do not give the necessary strong support. The danger is that too short a period could simply see the biodiversity gains swiftly lost. Thirty years sounds like quite a long time, but when one bears in mind that we are already two years down the line from the 25-year environment plan and that politics does not always move at a frightfully great pace, it is not hard to imagine things moving quickly and those gains being quickly lost. If biodiversity gains are to properly contribute to the 25-year environment plan commitments to a nature recovery network and to provide carbon sequestration, which is so crucial to our net zero targets, these areas must be secured and maintained for the long term, because only through that kind of approach will we secure long-term nature recovery.

There really ought to be some binding mechanisms to ensure that the habitat condition target is reached in a timely way. One does not want to be cynical about some of these things, but one can well imagine that people wishing to build, build, build will try to find ways around them and will try, on occasion, to take advantage. The time taken for a habitat to reach its target condition—for example, for woodlands to reach maturity—could be specified in a biodiversity gain plan and included in planning conditions to ensure that it can be enforced. One can see so many possibilities here, and yet, even though the goal is within grasp, it seems that it is being clawed back. Again, I wonder by whom and for what purpose.

Amendment 168 to schedule 14 and amendment 74 to clause 91 would change the provisions by requiring post-development habitat enhancements for the purpose of maintaining biodiversity gains in perpetuity, rather than for 30 years. I have no doubt that the Minister

secretly agrees with that; I suspect that she would like to see these things achieved. However, I suspect that she is constrained.

Our amendment 168 would ensure that those habitats are maintained at their target condition. It is interesting to note that that proposal comes not only from the Opposition Benches but is broadly supported. I was delighted to see a similar amendment in this group from the hon. Member for Chatham and Aylesford (Tracey Crouch), although I do not think that it goes quite as far as ours. However, there are clearly Government Members who see the significance and importance of achieving this for the long term. I have to say once again that, if we do not get the commitment we are looking for on amendment 168, we will divide the Committee.

Dr Whitehead: I want to add a few thoughts to the excellent introduction to the clause from my hon. Friend the Member for Cambridge. This issue has a considerable relationship to not only biodiversity gains generally but our targets under climate change legislation.

Part of the purpose of a number of the biodiversity gains that may arise as a result of putting percentages on biodiversity gain is not only to make a little gain but to actually sequester what is in that gain. That sequestration should and will count towards the carbon balance, so far as getting to net zero is concerned. We will discuss, when considering a new clause later in Committee, the whole question of what to do about planting trees over a period of time and how the planting of those trees leads, as those trees mature—my hon. Friend alluded to this—to substantial gains in net negative emissions, which are absolutely essential for reaching a net zero target in the future. The assumption would be that the carbon embedded in those trees is permanently placed on the carbon account as a negative input, because it has been effectively sequestered by the trees. That means not only that we can get to net zero, but that the whole question of net negative in the net zero equation is an essential starting point, and without that net negative input, there is no way we will get to net zero by 2050. As we in this House have all agreed, 2050 is the proper target, although we would like net zero to be achieved sooner in this country as far as emissions are concerned.

2.45 pm

The Government’s proposals seem to suggest—I think this is probably a coincidence, but it is a very neat elision—that the moment we get to 2050, all the sequestering of carbon that we decided to start doing in 2020 could be over, because someone could dig up all the stuff that had been laid down. The whole point of anything that relates to the carbon account going to 2050 is that it has to continue after that date, otherwise the whole purpose will be overthrown. It is not a case of getting to net zero and then saying, “Yippee! Now we can let everything rip.” It is a question of getting to net zero and staying there. There must be a guarantee that whatever we put into the negative carbon account will be there for the long term, otherwise it will not work. The proposals fail in seeming not to show any understanding that that is what is required.

By the way, it is not beyond the reach of imagination—we have seen this with land banking, because of the number of people working on very long-term timescales—that people could consider the 30-year provision and say,

“Okay, this land is in my company or family’s purview, and it will not be developed for the time being because it is in this structure, but as long as I keep it in reasonably good order and keep it in my ownership, something good can happen with it in 30 years’ time. It is just 30 years; that is all we need to worry about.”

That combination of matters suggests to me that the 30-year limit is just wrong, and it should not be in the Bill. We have suggested “in perpetuity”, and there may be other suggestions for timescales that are long enough to make sure that these effects work. As far as the 30-year rule is concerned, we think it is best simply to say that—with the exception of very specific circumstances, where things can be untangled or undone by other means—the default position is that once it is done, it is done, and it is not to be undone thereafter. We think that that is an important principle that should be enshrined in this Bill, as far as biodiversity gains are concerned.

Rebecca Pow: I thank both hon. Members for their comments. The 25-year environment plan has been referred to, and I would say that Opposition Members are talking about weakening the commitments on biodiversity net gain in the 25-year plan. The Bill actually takes us further on biodiversity net gain. The plan only included a commitment to consult on a mandatory approach and strengthened policy. We are proposing a robust mandatory requirement with a broad scope of mechanisms for securing gains. I think that is important to register at the beginning.

The schedule states that “any habitat enhancement” within a development site that is considered significant by the planning authority must be “maintained for at least 30 years after the development is completed.” Respondents to the net gain consultation expressed strong support for a minimum period of maintenance, and Government responded by confirming that they would introduce a minimum period—hence the 30 years.

Ruth Jones: I am just seeking some clarification on the definition. The Minister said the amendment appears to weaken the Bill, but “in perpetuity” cannot be weaker than 25 years, because perpetuity is longer than 25 years.

Rebecca Pow: My point was that what we are introducing in the Bill is much stronger than what was in the 25-year environment plan. That was the point I was making. I will press on—

Dr Whitehead: We did not write that.

Rebecca Pow: But it was referred to earlier. It is a commitment we have made, and we are strengthening it. Credit should be given where credit is due. A great amount of work has advanced since the launch of that plan, which I went to in 2018 with the then Prime Minister, my right hon. Friend the Member for Maidenhead (Mrs May). We are forging on and doing even more than was promised in that plan.

I welcome the acknowledgment by hon. Members of the importance of long-term maintenance of biodiversity gain sites to ensure that we provide long-lasting benefits for wildlife and communities and for climate change, as was ably referred to by the hon. Member for Southampton, Test. There are, however, practical reasons why we should keep the minimum requirement to a 30-year duration.

We need to create the right habitats in the right places for wildlife. Increasing the minimum required duration of maintenance might dissuade key landowners from volunteering their land for gains. Agreements made for perpetuity would also risk creating permanent conditions or obligations to maintain particular types of habitat, when future changes in climate or ecological conditions might make a different type of habitat more suitable. The Bill leaves space for flexibility.

I want to give some more detail about what we term conservation covenants. Any conservation covenant used for net gain would be drafted to secure the carrying out of habitat enhancement works and maintenance of the enhancement for at least 30 years. We would expect responsible bodies to respect that purpose when deciding whether or how to modify or discharge a conservation covenant. They might consider whether any flexibility for landowners would better serve that purpose than retaining the conservation covenant unchanged. I have talked to landowners about this, and it is a point they make, so that has to be respected. The Bill leaves the flexibility for that.

There are also a range of existing protections for habitats, which will not be going away. They could apply to biodiversity gain sites even after the 30 years have expired. These are principally of relevance to off-site habitat enhancements, but would still apply to habitats created within developments. We understand from stakeholders that there may, in some cases, be little difference in funding requirements between the minimum 30-year agreement and a longer agreement.

In cases where it is acceptable to a landowner and would deliver greater biodiversity benefits, we would, of course, encourage longer-term agreements. We would do that initially through guidance. Should further evaluation of the policy show that this is not achieving the right outcomes, the encouragement might be adjusted through policy, the biodiversity metric, which has been in existence for about five years and is currently being updated by Natural England, or further guidance. Any future decision relating to the mechanisms of the encouragement will be made by Government on the basis of evaluation of the biodiversity net gain practice rather than speculation, which, I suggest, is what is being done at the moment.

Dr Whitehead: First, I think it should be put on record that suggesting that a Government initiative is better than an amendment being proposed, when the comparison is made between two Government initiatives, one of which is better than the other, really should not stand. We did not write the 25-year environment plan; the Government did. If this improves on the 25-year environment plan, fair enough, but it is not to do with us.

Secondly, in law, 30 years means 30 years. It will be found out whether that was the right thing by encouragement only after 30 years. If someone rips everything up after 30 years, they will find the Government’s encouragement was not as good as it should have been. I am puzzled as to how the Minister will find out whether this is working short of the 30-year period. Would it not be better not to have that 30-year period, to ensure that we do not have to find out the hard way at the end of 30 years, when that change is made in law?

Rebecca Pow: I take the point that the hon. Gentleman made earlier. I put on record that I hear what he has said. We will not fall out.

Things will not stop after 30 years. For example, while the agreements made for biodiversity net gain might expire, the created habitats will remain subject to a wide range of protections at that point, as I just said. For example, if a woodland had been created, it would benefit from existing protections for woodland and would then fall into the scope of the felling licence and potential environmental impact assessment regulations for forestry. All those other protections would come into play.

I reiterate that people can voluntarily enter into contracts longer than 30 years if they so wish. I am sure that certain people will want to do that. In light of the reasons I have set out, I ask the hon. Member for Cambridge to withdraw his amendment.

The Chair: I call Dr Zeichner.

Daniel Zeichner: I have been elevated, Mr Gray, to doctor. Thank you very much.

The Chair: You look like a doctor.

Daniel Zeichner: I am not sure what a doctor looks like, but thank you.

This has been a useful discussion, because it begins to show how complicated some of this is. It shows—we will come to this in subsequent discussions—that the interactions between the different pieces of protection legislation are complicated, as I have already hinted. This is possibly already a discussion for lawyers, and my fear is that it will become a discussion for lawyers in the future, because these things will be disputed. If we do not get the legislation clear now, it will lead, I suspect, to disappointment in the future.

Perhaps I was overly gushing in my praise for the 25-year environment plan at the beginning, but I was seeking to make a broader point, which is that in too many cases we have stepped back. This is a case in point. The Minister, in explaining the logic behind the 30 years, has raised more concerns in people’s minds than she might have allayed. I am grateful to my hon. Friend the Member for Southampton, Test for linking this issue to sequestration and our necessary attempts to achieve net zero by 2050. He seems to me to be absolutely right; we need these improvements.

It is striking that, in this schedule, this is the key tool that the Government are adopting. They are using the planning process. If that is the key path to protecting nature in future, we do not want to start introducing loopholes and qualifications in this way. I understand the debate around the 30 years—I was ploughing my way through the submissions to the net gain consultation and the Government’s responses—but I am sure that the Minister will concede that many people agree with our position, which is that this needs to be seen in perpetuity. An additional point is about how we monitor and check that progress in between. As we all know, it is all too easy for this place to pass legislation and think, “job done,” only to wonder why it has not had an effect in the real world. We will probably touch on some of those points as the debate continues.

3 pm

I am afraid that local councils do not always cover themselves in glory when it comes to ensuring that the conditions that they put on planning consents are abided

by. That is not a criticism of the local authorities, which rightly ask, “How on earth do you expect us to do all this when we have limited resources?”—I suspect I shall be asking that on their behalf when discussing some of the subsequent amendments. It is a fair question; if we are asking them to do more, we must ensure that they have the ability, skills, training, knowledge and time to do it.

How can we be sure that these net gain proposals are not only implemented, but monitored and maintained over time? My fear is that what sounds like a good idea risks not becoming practice, which would be a great disappointment, and we will divide the Committee because we think that is a very important point.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 32]

AYES

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

NOES

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

Question accordingly negatived.

Daniel Zeichner: I beg to move amendment 22, in schedule 14, page 212, line 15 leave out “may” and insert “must”.

Amendment 22 would make it a duty for the Secretary of State to provide a clear procedure to planning authorities. Here, again, we come back to the realms of local government. I should perhaps have said earlier that some years ago I was a district councillor in rural Norfolk. I very much enjoyed the experience, and spent many hours—as, I suspect, did many other members of the Committee—on local planning processes. I learned that planning law is lengthy, complicated and sometimes controversial, but very important when it comes to protecting and developing local communities.

This is another one of those “may” and “must” issues. The amendment would strengthen the Bill, which states only that

“The Secretary of State may make regulations as to the procedure which a planning authority is to follow in determining whether to approve a biodiversity gain plan”.

I fear, yet again, that the devil is in the detail. I remember being quite impressed as a district councillor some years ago that there was an interest in biodiversity. We had a biodiversity committee, which meant that we had some fascinating discussions, but I fear that nothing much happened. That is so often the problem: that there is concern but no means of translating intent into action.

Whether the Secretary of State “may” or “must” make regulations is therefore quite important. I fear that many planning authorities that do not have to engage with this will look at it sympathetically, because people want it, but it will be the usual thing: when they

[Daniel Zeichner]

are constrained by so many competing requirements, it is tough to do something unless they have to, which is what we are in this place to ensure.

Regulations may specify the details of the “time by which a determination must be made...factors which may or must be taken into account in making such a determination”, and appeals against the planning’s authority’s decisions. I suspect that we are all familiar with the dilemmas that local councillors often face. We give them a huge range of things to take into consideration while trying to achieve balanced outcomes that can withstand scrutiny and appeal, and quite often—and rightly so—they have to take direction from their expert officers who have already made those calculations.

The question is where we balance this issue as a priority against the other things that councillors take into account. My sense is that unless we strengthen the Bill, it will become one more on the list of things that they really ought to take into account. At best, it may become a line on an agenda that gets ticked: “Yes, we have taken it into account, because somebody raised it,” but will it actually be considered among the trade-offs in the decision-making process? I am not convinced.

We also wish to raise the question of how the regulations will be decided here; again, we believe that they should be subject to the affirmative procedure to allow proper parliamentary scrutiny. They should also be subject to proper public consultation; because the issue is complicated, the input of biodiversity and planning professionals through public consultation would strengthen discussion and improve procedures. These are not simple matters—they have significant consequences and significant costs—but in due course such input would improve the overall planning outcomes. Improved procedures could ensure that all planning authorities’ biodiversity gain plans are sufficiently detailed, subject to public consultation, and made available in draft so as to inform planning applications. That is a part of the democratic process that we believe very valuable, although the planning White Paper seems to suggest that, for whole swathes of the country, that process may not be continued in future.

We want to get the Minister’s thinking on this, because it is not clear why she would not want to accept the amendment. We will not press it to a Division, but we would like an explanation.

Rebecca Pow: I thank the hon. Member for moving the amendment. Paragraph 16 of schedule 14 sets out that the Secretary of State may impose further procedural requirements relating to how a planning authority approves a biodiversity gain plan. Paragraph 15 makes it clear that the biodiversity gain objective must be met; it also specifies that other key factors, such as the accuracy of the plan’s ecological information, must be considered by the planning authority. The Government intend to use the paragraph 16 power to ensure that the requirements fit well with the planning system; the hon. Member alluded to that, and obviously it is really important, but we believe that the other considerations in paragraph 15 should provide confidence that approved plans will meet the legislation’s environmental policy objectives.

Primary legislation consistently takes this approach to the balance between powers and duties, as we have discussed many times. It is entirely appropriate to provide

the Secretary of State with flexibility as to how the provision is given effect. Forcing the use of regulations when they might not be needed risks creating unnecessary complication, or even weakening the purpose of the measures. It may not be necessary for the regulations to cover all the areas in paragraph 16; they are set out to give the Secretary of State discretion to address them if it is considered necessary. While we cannot rule out needing to address appeals in the regulations, that may not be necessary. Forcing the Secretary of State to regulate such matters immediately when that may not be a clear necessity would risk adding complexity to a process that we aim to keep straightforward. The addition of undue complexity risks undermining the benefits of the approach for the planning authorities, the communities—which are obviously so important—and the developers using it.

The biodiversity gain plan is simply the document that allows the developer to demonstrate to the planning authority how it has satisfied the biodiversity net gain requirement. A typical biodiversity gain plan will consist of the completed biodiversity metric and some supplementary information. We expect that the consistency of the plans will make their assessment easier for the planning authorities, and reduce the risk of miscommunication. I therefore ask the hon. Gentleman to kindly withdraw his amendment.

Daniel Zeichner: I listened with interest to the Minister’s explanation. I am not entirely sure that I am convinced by it, because it is not clear to me why making regulations at a later date, rather than making things clear sooner, will make the position less complex. Having the discretion to make them or not does not seem helpful.

The Minister also raised an issue about the biodiversity net gain metric, which is worthier of comment. There is a worry that we are creating yet another algorithm that people will not understand—the phrase “mutant algorithm” has already been bandied about with regard to housing numbers and the planning White Paper. As someone who is interested in data, I am not convinced that it is the algorithm that is mutant, the issue is those who put the data in, or interpret or programme it in a certain way.

Clearly, there is concern that technocratic approaches to making such decisions will take away local input—that those with unique knowledge of the local community and local biodiversity could in some way be excluded. That is a concern. The amendment has the potential to explain to local planning authorities how things should work, so the Minister is missing an opportunity.

An important point was made to me by the Town and Country Planning Association: if there is just a simple metric, where sites have apparently lower biodiversity value, people’s attachment to that local open space and its social values could somehow be lost. There is a big debate to be had about how the metric works, and what parameters feed into it in.

Rebecca Pow: I am sure the hon. Gentleman is aware of this, but although he suggests that the metric is a new thing being imposed on people, it has been used for about five years, and is referred to by planning authorities and developers. As I think I just mentioned, Natural England is working on updating it, because it is complicated—it is not a simple thing, but it is a very useful thing. We want to know what is there, what the value is, and

what the value could be—all that. We must also remember that all of this will link into the local nature recovery networks, which local communities will be really involved with.

Daniel Zeichner: Yes, and we will discuss those local nature recovery networks. The point that I am making is that the amendment was an opportunity for the Government to give direction to local planning authorities. Different planning authorities would do this differently—some would probably not do it at all, some would do it well, and some less well. It is sufficiently important for the Government to give direction. That is the point of our probing amendment.

To some extent, the Minister has clarified things, although I am not sure that has left us any more hopeful about the impacts, but at least we have had clarification. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.15 pm

Daniel Zeichner: I beg to move amendment 170, in schedule 14, page 212, leave out line 26.

The Chair: With this it will be convenient to discuss amendment 171, in schedule 14, page 212, leave out lines 29 and 30.

Daniel Zeichner: Amendments 170 and 171 relate to a major concern about the proposals, which is that a number of exceptions have been made to the condition to provide a biodiversity net gain. As I said earlier, a noble ambition can be undone if there are too many exceptions and loopholes.

Under the Bill's schedule 14 amendments to the Town and Country Planning Act 1990, biodiversity net gain provisions will not apply to development for which planning permission is granted by a development order, an urgent Crown development, or a

“development of such other description as the Secretary of State may by regulations specify”.

I hope Members are all still with me. The excitement of this morning cannot necessarily be replicated when discussing this provision, but it is clear that, in the wrong hands, it could lead to some pretty major exemptions.

In order to maximise the benefits of biodiversity gain, provide developers with certainty and create a level playing field, it is important that the application of the biodiversity gain system is broad, and that most development is part of the net gain system. As I said, the intention is noble, but if people want to find gaps and we give them the opportunity to find lots of them, I am afraid that that is what is likely to happen. We have probably seen that kind of thing happen in the past. If biodiversity gains are to be delivered on the scale that I genuinely think we all agree is needed, we need to ensure that the exemptions and loopholes are limited.

We think that the exemptions for development orders could have a very broad application in practice, particularly if they are extended to the full range of development orders, which include local or neighbourhood development orders, and development orders brought forward by development corporations. That could lead to major developments such as new towns, and wider proposals

for free ports, being exempt from the biodiversity gain provisions. That is a significant loophole, and a major missed opportunity to deliver biodiversity gains at scale.

The problem that we face, which goes right back to where the discussion started, is that the challenge is pressing and huge. We know that. If we start introducing exemptions and loopholes, we know what happens. It is not an aspersion on developers; we know that lots of people are paid in the development sector to find ways around planning laws. In my part of the world, there are many of them, and they are very good. They are assiduous, and they probably know planning law better than I do—in fact, I think I can guarantee it. That is why we need to ensure that we do not give them extra opportunities to get around it. Clarification on the development orders exemption and its intended scope would be very welcome from the Minister, not least because I think her words might be useful in future, as local authorities try to defend themselves against clever people who are trying to find ways through this.

I am sorry to have to go back to the planning White Paper, but it is relevant because of its proposals. Incidentally—I do not think I made this point earlier—the Minister had to search pretty hard in the planning White Paper to find references to net gain and biodiversity; the mention of it is very tangential. Anyway, the White Paper includes proposals for the extended use of development orders for large-scale development, as well as wider permission in principle.

We fear that significant swathes of development could be taken out of the system of net gain. If I were being kind, I would say that that would be an unintended consequence of the planning White Paper, but I think that there are some who know full well what they are doing with this. It allows the Government on the one hand to say, “Look what we’re doing with our wonderful new Environment Bill. We’re delivering on our 25-year environment plan,” while on the other hand it is business as usual. That is really not what we need. Perhaps the Minister could use this moment to explain how she sees the relationship between the Bill and the planning White Paper. It is highly significant, and difficult, because the White Paper has come along since the Bill Committee was originally formed, but it is hardly irrelevant.

Paragraph 17(b) of the proposed new schedule introduced by schedule 14, which effectively enables the Secretary of State to exempt any type of development in future, could lead to wide exemptions from net gain. I note that in their response to the net gain consultation, the Government have outlined that a “targeted exemption” may be intended for brownfield sites. That is quite a significant statement. For many years, there has been considerable interest in pursuing brownfield sites. I think there is sometimes a misunderstanding that nature exists only in some parts of our landscape. It can, of course, exist everywhere. Brownfield sites are no exception to that. It may not always be as diverse and high grade, but it is still very important to our overall attempt to restore and recover nature.

I understand that some environmental organisations such as Greener UK have expressed concerns that the proposed targeted exemption for brownfield sites could undermine the delivery of biodiversity gain as a whole, if a substantial amount of brownfield land is brought forward for housing development. One can see how that could begin to happen. If it is predominantly brownfield

[Daniel Zeichner]

land, frankly, for all our good intentions, we are not making sufficient progress. The sites can have significant biodiversity interest, even when there is no formal biodiversity designation. Under these proposals, we could see damage to brownfield land of high environmental value, which sometimes is not really appreciated until the planning process is well under way. That raises some issues around how the process will happen. At some point in the process, it has to be assessed. The point at which that assessment is done is quite significant. We will come on to that with other amendments.

Will the Minister clarify how brownfield land of high environmental value will be protected and enhanced? What steps will the Government take to ensure that any brownfield site exemption does not undermine our goal of biodiversity gain as a whole? Will she also clarify by what process any future exemptions will be considered by the Secretary of State before being pursued under the broad power in the Bill?

Will there be any public consultation on further significant exemptions from biodiversity net gain? That is a very important point. In my part of the country, which the hon. Member for South Cambridgeshire will be familiar with, we have a very engaged electorate, to put it mildly, which is a good thing, but it means that people are interested and would not want to be excluded from a discussion. It would be hard to exclude some of them, frankly, but they should have a proper, formal role in that discussion, and a sense that their involvement affects the outcome. Otherwise, it leads to further disenchantment in the way our politics works.

There is a range of weaknesses and loopholes, even before we get to what I have described as the real whopper. It is deeply concerning that nationally significant infrastructure projects and other large-scale infrastructure projects are currently exempted from mandatory biodiversity gains. That is a bigger discussion, but it is a factor in this discussion. We know that such projects can cause significant damage to nature and we believe that provision must be made to include such developments within the scope of mandatory biodiversity gain, in line with the Government's 25-year environment plan to embed environmental net gain in infrastructure. We will return to this point later in Committee when we discuss new clause 32.

Amendments 170 and 171 would strengthen what the Government are trying to do, by removing the potentially very wide exemption from net gain for development orders, and remove the broad power given to the Secretary of State in the Bill to lay down regulations exempting further development from biodiversity gain as and when they wish. We are genuinely interested in the Minister's response. I have posed a series of questions. We do not seek to divide the Committee on the amendment, but it is important that people in the wider world get a sense of what the Government are trying to do through this measure.

The Chair: I call the Minister. [Interruption.] I call Dr Alan Whitehead. I am terribly sorry. I would be most grateful if you would indicate more clearly if you wish to speak. The order of speaking goes from the proposer of the amendment to the Minister, but if you wish to add anything, please indicate that to me by standing up or by any other method that is clear.

Dr Whitehead: Thank you, Mr Gray. I escalated from a pen to a hand, but I can escalate to a full body motion, if that is acceptable.

I want to add to the admirable exposition of the two amendments by my hon. Friend the Member for Cambridge by drawing attention to amendment 171, which would leave out two lines from paragraph 17 of the proposed new schedule, which has the heading, "Exceptions". I ask members of the Committee to see what has been done here, because I think it is shocking. At the start of part 2 of the proposed new schedule, conditions for planning permission relating to biodiversity are laid down:

"Every planning permission granted for the development of land in England shall be deemed to have been granted subject to the condition in sub-paragraph (2).",

which is,

"The condition is that the development may not be begun unless"

there is a biodiversity gain plan. That looks terrific. The casual observer would think, "That's it sorted out. The biodiversity gain plan has to be in place. That's what the Bill's about."

On turning to paragraph 17, we see that there are some exceptions:

"development for which planning permission is granted...by a development order, or...under section 293A (urgent Crown development)".

That is arguable, but then we have this sentence:

"development of such other description as the Secretary of State may by regulations specify."

Put into English, that means that if the Secretary of State introduces a regulation, development is exempted. The whole thing is meaningless from the beginning. All it needs is a regulation, which I presume may well be under the negative procedure, for this to be completely undone.

I know that it is fashionable to blame drafting for these issues, but something as shocking as this has to have had an intention behind it. This cannot arise from someone taking a lax instruction, writing the provision in the bowels of a building, presenting it and no one noticing. How these things are written is instructed by Ministers, who under the Bill can simply remove stuff that the Government do not feel like doing. It refers to all development, not just to some developments—it says "development". That really is not good enough for a Bill of this kind.

Rebecca Pow: I thank hon. Members for their comments. The hon. Member for Cambridge asked a lot of questions, so if I do not cover them all, we will put something in writing because I could not keep up with them all.

Paragraph 17 of the proposed new schedule introduced by schedule 14 sets out when the general biodiversity gain condition does not apply. Sub-paragraph (b) creates a power to exempt specific types of development through regulations. While I welcome the hon. Member's acknowledgement of the importance of keeping exemptions narrow, there are good reasons to use this power, which amendment 171 seeks to remove, to introduce targeted exemptions for more constrained development types.

The Government will not introduce broad exemptions from delivering biodiversity net gains, which was something the hon. Member specifically asked about. The power

will be used to make narrow practical exemptions in order to keep net gain requirements proportionate. Exemptions will ensure that the mandatory requirement is not applied to development on such a small scale that it could be negligible, and I will go on to talk a bit more about that and about no losses in terms of habitat value. Some development will result in negligible losses or degradation of habitat. Examples of such development might include changes or alterations to buildings and house extensions, for example. Applying the 10% targets to such development would not generate significant ecological gains, and the requirement might result in undue process costs for developers and planning authorities alike.

3.30 pm

The removal of the power for the Secretary of State to exempt certain types of development by regulations is likely to create the need to exempt certain classes of development from the requirement on the face of the Bill. As developers become increasingly familiar with the biodiversity gain approach in the future, Government and stakeholders may come to deem some initial exemptions unnecessary as they get used to the way it works, and it will be easier to review and remove any such exemptions in regulations than it would be if they were all in primary legislation.

Ruth Jones: The Minister has talked about targeted, narrow exemptions, but that is not what it says in the Bill. I take on board the fact that she is enthusiastic about and fully committed to this, but somebody coming after her—heaven forbid—could use the wording in a completely different way and we would need to follow that is actually in the Bill, rather than what is in an explanatory note.

Rebecca Pow: I thank the hon. Lady for that and I reiterate my first sentence. The Government will not introduce broad exemptions from delivering biodiversity net gain, and we have made that quite clear.

Amendment 170 would undo the exemption for permitted development from the net gain requirement. Permitted development rights play a vital role in freeing up local planning authorities to deal with planning applications that really matter to local communities, and have a wider social, economic and environmental impact. The hon. Member for Cambridge will know that from his time on the planning committee at the district council. Many permitted development rights are for small-scale development or changes of use, such as modest alterations to buildings, small fences or temporary use of land for fairs, where there is little or no impact on biodiversity.

Development undertaken through local planning orders is not exempt from net gain, as we have touched on. Only development under the general permitted development order, such as adding a conservatory, is exempt. It is true that we have extended the scope of the permitted development rights in recent years in order to deliver more homes, but permitted development rights such as allowing office-to-residential conversions and allowing residential blocks to be built up are principally about the use of existing developments and development land, and so are generally outside the scope of biodiversity net gain.

Brownfield sites were mentioned. It is not the Government's intention to exempt brownfield sites. We absolutely recognise the biodiversity value those sites can have and, indeed, their value to communities—many of them are right in the centre of towns and cities. Any brownfield exemptions will be narrow and will have to recognise biodiversity value. We will consult further on the details of exemptions. For example, brownfield sites will have a set of criteria that would relate to them when these matters were being considered.

Special development orders are rarely used, but it is important to retain the legislative flexibility to make them very quickly to respond to urgent priorities. For instance, in recent years they have been used to secure urgent planning permission for the temporary lorry parks as part of the Brexit preparations, and Members will be able to see the benefit of that and why it is important to do that quickly.

New towns were also touched on, and we are aware that there are extant powers in the New Towns Act 1981 to use special development orders to set out the planning framework for new towns. There are no plans to use those powers at present, and the Government recently consulted on modernising the planning powers of development corporations to ensure that they are fit for purpose. However, we are clear that any new town would need to contribute to biodiversity gain: indeed, one of the great things about new towns is that there is the opportunity and scope to make them wonderful, green, biodiverse spaces in which to live. We have learned so many lessons this year about how important those things are.

We think it is right that the legislation is clear that biodiversity gain should not be included in permitted development rights, and that a clear exemption for development orders is the best way forward. I hope I have given clarity on some of those other areas, and for the reasons I have set out, I ask the hon. Gentleman not to press amendments 170 and 171.

Daniel Zeichner: I thank the Minister, and I do think that some of what she said was helpful. However, I have to say that not only was my hon. Friend the Member for Southampton, Test excited this morning; he is now shocked. Being excited and shocked in the same day is a bit worrying, but the Minister will have heard the shocked tones from the Opposition Benches.

I think a close reading of the text gives cause for concern, and I hope that the Minister might, on reflection, look at what she described as “narrow”. One person's flexibility is sometimes another person's loophole. There are different definitions of narrow, and some of us can see a yawning chasm—a big gap that anyone who is astride a bulldozer could drive straight through—so we do think there is legitimate cause for concern. Clearly, the permitted development rights extensions have been extremely controversial and a cause for concern, so I am not entirely sure that the Minister's defence would reassure everyone. Certainly in my part of the world, some huge problems have arisen from some of those changes, and I am not convinced that any concern was given to restoring nature when making those changes. I also have to say that whenever a Minister says there are no plans to do something at present, that is generally a good sign that it may happen sometime soon, so that is also a cause for worry.

[Daniel Zeichner]

I do think this issue needs to be further examined, and I suspect we will be coming back to it. I also suspect that the other place will look quite closely at this, so I do not think today's discussion will be the end of the matter. However, it is useful to have had it, because if the Bill is not precise, the words that Ministers use become more helpful in defining and limiting.

I suspect that many people will look at the Bill and think that this is too big a loophole, and ask—exactly as my hon. Friend the Member for Southampton, Test did—what was the thinking behind doing this? That is the question I keep going back to: why has there been this change from the optimism of a couple of years ago? It may just be that this is what happens in government: officials look at it more closely and say, “You really do not want to do that, because”—and then the Government find that they are losing out on the noble ambition they had at the outset. We are pretty determined to make sure that that noble ambition stays on track.

I hope the Minister thinks we are in being in some way helpful to her; I am sure that is not how it feels at the moment, but she may come to see that in time. With the reset of Government policy, she may suddenly be flavour of the month. Maybe she can feature in a 10-point green plan—who knows? However, we do not need to pursue this issue further at the moment, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 172, in schedule 14, page 212, line 32, leave out “may” and insert “must”.

This amendment would commit the Secretary of State to make regulations excluding irreplaceable habitat from the net gain policy.

I am afraid that we are going to go further into the legalities of the planning system. I apologise: mid-afternoon is probably not the time to be doing this, but it needs to be gone into. This amendment is another may/must one. We are concerned about the provisions for net gain in the Bill, and the relationship between this new system and the irreplaceable habitats that, in many places, we treasure and love. These irreplaceable habitats are very precious places and include ancient woodlands, salt marshes, blanket bog and lowland fen, which, if destroyed, are technically extremely difficult to restore, and it takes a hugely long time to do so. By their very nature, these habitats cannot be properly recreated, so this is not a case of providing a replacement or, in any real sense, a gain.

The national planning policy framework sets out that “development resulting in the loss or deterioration of irreplaceable habitats...should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”.

We need further clarity that provisions on biodiversity net gain will not undermine existing protections for irreplaceable habitats. The amendment seeks to explore the complicated relationship between these new provisions and the existing protections.

Schedule 14 gives the Secretary of State powers to define what is meant by “irreplaceable habitat” and to exclude such habitats from net gain or amend how the legislation applies to them. Amendment 172 would place a duty on the Secretary of State to make such regulations, such that they “must” rather than “may” make them.

Any regulations and associated guidance on irreplaceable habitats should make it clear that current legal protections and requirements for irreplaceable habitats are fully retained and take precedence.

That is the problem with the interpretation of the different pieces of legislation. I suspect that the Minister has probably had these conversations. We want to add clarity to the process. If that is not done, we fear that it will be open to dispute in future. Not only that, but people would also be able to do things that they would not have been able to do before. The theme of some of the upcoming amendments is that there is a danger that something that looks good could end up doing harm as a result of unintended consequences. I am not in any way suggesting that that is the intention, but it is the risk, and that is why it is important that this is sorted out.

The Government should also reiterate that adverse impacts from development should be avoided, not just minimised. Our concern is that if the requirements for irreplaceable habitats are less arduous than those for other habitats, a perverse incentive could be created. We do not want the regulations to do that or to end up with the extraordinary situation of developers being incentivised to target irreplaceable habitats instead.

The Bill should be absolutely explicit that the mitigation hierarchy, existing designations, and statutory and planning protections for sites and species are not undermined by any of the new proposals. Net gain should be what happens right at the end of the process, if planners cannot find a way of stopping damage to habitats along the way. These protected sites should remain inviolate and rely on and benefit from the current protections and systems, which we want to ensure are in no way diminished.

Any regulations proposed by the Secretary of State should be taken under the affirmative procedure, and there should be public consultation because there is very real public interest in these issues. We believe that allowing third parties, including experts in the nature sector, to input into those regulations through public consultation would ensure that new net gain conditions would not inadvertently provide the kinds of loopholes that I have been describing. I do not think that the Minister will disagree with this, but in my experience local people invariably know their own locality best, and we should not be silencing them.

I say again that this amendment is an attempt to tease out from the Minister some safeguards and words of reassurance, and that we will not need to divide the Committee.

Rebecca Pow: I thank the hon. Gentleman for looking into this issue and for the amendment. Some habitats include ancient woodland, with which I have a great affinity, having been chair of the all-party parliamentary group on ancient woodland and veteran trees. We did a lot of cross-party work on this habitat. These habitats cannot be recreated and are typically considered irreplaceable. They are of enormous ecological and cultural importance and significance.

3.45 pm

National planning policy already provides that such irreplaceable habitat is affected by development only where there are exceptional reasons for doing so. Where such exceptional reasons exist, we do not want to prevent such exceptionally important development, nor do we

want those circumstances to weaken the requirement in the planning policy for suitable compensation to be agreed down the line, as the hon. Member for Cambridge suggested.

Paragraph 18 of proposed part 1 under schedule 14 grants the Secretary of State the power to modify or exclude the application of the biodiversity gain condition to develop where irreplaceable habitat is present on the development site. I welcome the hon. Gentleman's acknowledgment of the importance of the provisions for irreplaceable habitat and understand the Opposition's wish that these powers should be exercised. Without regulations made under paragraph 18, a development with irreplaceable habitat on the proposed site may not be able to legally satisfy the biodiversity requirement at all. Such a development might, therefore, be unable to proceed, even if it were fully compliant with planning policy, justified by exceptional reasons and had perfectly followed the mitigation hierarchy.

I confirm, therefore, that we intend to make regulations that will disapply the requirement for the 10% biodiversity gain on irreplaceable habitats before commencement of the mandatory net gain requirement. Furthermore, I confirm that the strong planning policy protections for irreplaceable habitats will not be undermined in any way. That is something that the hon. Gentleman specifically asked about. The existing strong statutory and policy protection for our statutory protected sites and species will not be undermined by the Bill's biodiversity net gain measures or any other measures in the Bill. A proposal to deliver biodiversity net gain does not affect the weight that should be given to other planning considerations, matters of planning policy or legal obligations, including those relating to protected sites, protected species and irreplaceable habitats.

The key to achieving the objective of continued strong protections for these irreplaceable habitats will be not only in the presence of these regulations, but in the quality of their content. Forcing the creation of regulations without guaranteeing their quality or purpose will not help to meet their objective. I therefore ask the hon. Gentleman to withdraw his amendment.

Daniel Zeichner: I welcome the Minister's helpful comments. I do not think anyone doubts her commitment to those irreplaceable habitats. The key points are ensuring that that message is clear and understood and that the regulations are made, and the relationship between them explained, in the correct way. We are concerned about future arguments as a result of misunderstanding the gaps. We are all trying to get to the same place. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 14 agreed to.

Clause 91

BIODIVERSITY GAIN SITE REGISTER

Daniel Zeichner: I beg to move amendment 10, in clause 91, page 91, line 37, leave out "may" and insert "must".

I am sure you will be delighted, Mr Gray, that we have moved on to another clause, but the previous schedule was a big and important one. The biodiversity gain site register requires another discussion about "may" and "must". The amendment seeks to tease out the intention behind the measure.

Clause 91 sets out that the Secretary of State may make provision for a biodiversity gain site register to be created. To some extent, this is the last stage of the mitigation hierarchy: it is not something that anyone would want to do, but we recognise that it might sometimes be necessary. It is very important that a register of compensatory habitat sites is publicly available and updated regularly, and that we are able to see how the process works.

All our amendment does is seek to tighten the Government's responsibility to provide the register by turning it into a duty for them to do so. A register of sites is essential to secure and record meaningful and lasting net gain. I refer to some of my earlier comments: we worry that in some cases there will be not necessarily a lack of will but a lack of capacity to check and monitor. Not only does this have to work, but the message needs to go out that it works, such that, as my hon. Friend the Member for Southampton, Test said earlier, people will not think, "Well, no one is ever going to check. It's not going to matter, and after 30 years who's going to know and who's going to care?" If that becomes the attitude, clearly this whole process and system will have failed in its intentions.

We do not want a simple tick-box exercise where it looks as if it has been done but no one knows what is happening in the real world. We think the amendment would help check on progress in delivering and maintaining enhanced habitat sites. We think it would help with the checking, monitoring, and enforcement function, even though we worry whether it will actually be done. This is a probing amendment, so we will not seek a Division. The question to the Minister is: why would one not do it? If the net gain system is to be established respective of mitigation hierarchy, it is hard to see why one would not do this as soon as possible.

Rebecca Pow: I thank the hon. Member for his amendment. It is definitely worth enquiring about this register, so I am pleased to have the opportunity to talk about it.

Clause 91 makes provisions for the creation of a register of these biodiversity gain sites. The register is necessary for the biodiversity gain condition to work effectively. Without a register, no habitat enforcement outside development sites would be undertaken in pursuit of biodiversity net gain. Furthermore, without the register, a development that is unable to achieve biodiversity net gain within its site boundary may not be able to commence development at all. That would block a significant proportion of new development, so the register is useful in a number of ways.

I welcome the hon. Member's acknowledgement of the importance of the register and the provisions in this clause, and understand his wish that the powers within it should be exercised in good time. There is a clear need for the Government to design and implement this register before the biodiversity gain condition comes into effect, and I can confirm that, while the hon. Member seemed to suggest that one or may not create the register, it is the Government's intention to do so.

I want to clarify that this clause provides this power for the Secretary of State to make regulations that will set out the rules and procedures for the operation and maintenance of the new register of biodiversity gain sites. That will include setting fees for applications to

[Rebecca Pow]

add land to the register, criteria for determining eligibility of land to be added to the register, and rules for the allocation of land in the register in relation to developments. The use and nature of the register is likely to evolve, and flexibility will be needed to update its requirements. Before making an order under this power, the Department wants to consult stakeholders. Detailed regulations will need to be in place to provide all parties with sufficient guidance on how the biodiversity gain register will operate. This will help create confidence that the system can achieve the intended environmental outcomes. I hope I am answering all the things that the hon. Member has on his mind.

Primary legislation consistently takes this approach to the balance between powers and duties, as I have said many times before. It is entirely appropriate to provide the Secretary of State with the flexibility as to how this provision is given effect. I hope that provides clarity. I think it is a probing amendment, and I ask the hon. Member to withdraw it.

Daniel Zeichner: I am grateful to the Minister. This is a probing amendment, so we will not divide the Committee, but it is extraordinary that it almost seems like a global change has resulted in “shall” or “will” appearing as “may” throughout the Bill. We could do a global change back again. It is clear that the system cannot work without the register, which gives rise to the question: why the delays? The Minister may be slightly nervous, in the sense that she said that we will need to design and implement the register. It comes from a 25-year environment plan from two or three years ago, so how long is this all going to take? She might want to intervene to say roughly how long she thinks it will take, but I suspect she will not want to do so.

Why is there not a greater sense of urgency? To go right back to where we started, it is urgent and crucial that we tackle this crisis, yet in designing the system it appears that there was a presumption that it would take a few months for the legislation to get through and that the register would then need to be designed.

Rebecca Pow: I will intervene. I am sure the hon. Gentleman will agree that local authorities in particular will want a system that works, not some flim-flam, half-developed thing that is going to go wrong. That is why it is so important to do it step by step. There is urgency, hence the Bill and all the measures in it. All this has to work with the local nature recovery strategies and the overall nature recovery strategy. The targets and all the rest of it will fit together, and it will come on stream with some urgency. Was that an intervention? Does he agree?

Daniel Zeichner: I have clearly touched a nerve. I am delighted to hear that. All I gently observe is that things move rather slowly sometimes. I am sure that the Minister wants it to happen quickly, just as we all want it to happen quickly and to work. I am not entirely sure that those two things have to be mutually exclusive, but I suppose experience suggests that things do not always instantly work smoothly. I appreciate the Minister’s contribution, and having heard what she has had to say, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Amendment 74 was discussed previously. It was originally tabled by the hon. Member for Chatham and Aylesford (Tracey Crouch). I suspect that it will not be taken forward by another Member. Perhaps the Committee might like to send our warmest, best wishes to the hon. Lady. Perhaps the Minister might like to take that forward.

Amendment proposed: 230, in clause 91, page 92, line 1, leave out

“for at least 30 years”

and insert

“secured in its target condition and maintained in perpetuity”.—
(*Dr Whitehead.*)

This amendment would require habitat enhancements created under net gain to be secured in perpetuity.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 33]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan

Zeichner, Daniel

NOES

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

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

Question accordingly negated.

Clause 91 ordered to stand part of the Bill.

Clause 92

BIODIVERSITY CREDITS

Daniel Zeichner: I beg to move amendment 11, in clause 92, page 93, line 5, leave out “may” and insert “must”.

I am afraid that this is going to sound remarkably similar to the previous discussion. We welcome the measures in the Bill to ensure that developers who cannot achieve biodiversity net gain on a particular site will be required to fund improvements elsewhere, through purchasing biodiversity credits, to make up their required 10%—we would say at least 10%, but that is what the Bill requires—biodiversity net gain. We also welcome that the funds from these credits must be used for projects to enhance habitats and biodiversity. However, we have some concerns about clause 92, which we will interrogate with amendment 11 and amendment 136, which we will come to next. On amendment 11, clause 92(1) uses the wording:

“The Secretary of State may make arrangements under which a person who is entitled to carry out the development of any land may purchase a credit from the Secretary of State for the purpose of meeting the biodiversity gain objective”.

This is exactly the same point as in the previous discussion: the system cannot work unless that is done. The amendment would tighten the Government’s responsibility to operate those credits by requiring them to get on with it—to put it crudely.

4 pm

Again, we think that subjecting the regulations to parliamentary scrutiny and public consultation, with input from biodiversity experts, would likely improve the effectiveness of the credit scheme and deliver better outcomes for nature. I ask the same question again: will the Minister explain why the Government are not getting on with it? Once again, we will not seek a Division on this probing amendment.

Rebecca Pow: Clause 92 makes provision for the Secretary of State to set up a system of statutory biodiversity credits. Some developers might find that there are no suitable local habitat enhancement schemes to enable them to achieve net gain, and in such cases, a biodiversity gain requirement might become a barrier even to the most appropriate and sustainable of developments. To mitigate that risk, the Government will sell biodiversity credits, which may be counted towards a development's net gain. That will allow us to achieve biodiversity net gains through strategic investment in habitat restoration, while reducing the risk of undue delay to development.

I welcome the hon. Gentleman's clear acknowledgment that this and the environmental potential of the statutory biodiversity credits system are important. Obviously, there is a clear need for the Government to design and implement the credits system before the biodiversity net gain requirement comes into effect, and I can confirm that that is the Government's intention. He is right about urgency and about wanting it to happen now, but it all has to happen step by step. The Government have every intention of doing that, because it will be an important part of the whole machine.

The Government will apply principles for setting the tariff rate—that was set out in the net gain consultation—in setting the standard costs of statutory biodiversity units. Although the Government still consider the consultation's proposed range of between £9,000 and £15,000 for the cost of a biodiversity unit to be broadly appropriate, some respondents raised concerns that it was too low and would stifle habitat creation, while others thought it was too high. Several respondents asked for further evidence and work to refine the cost per unit.

The Government will undertake a review of the rate and seek further stakeholder engagement on this subject before announcing specific costs per unit of biodiversity. That is really important. I have spoken to a whole range of different people, from those who have land and who might want to offer it up for the offsetting, to the agents operating for them. Loads of people in this space clearly need to be consulted. I hope this explanation gives a bit more clarity.

Primary legislation consistently takes the approach, as we have set out in the clause, of balance between powers and duties. Forcing the creation of arrangements that might not be needed risks creating unnecessary complication in the process, or even a weakening of the purposes of the measures. In the long-term, for example, we might no longer need a credit system if sufficient habitat enhancement opportunities were offered by local landowners or conservation bodies. I hope that has given a bit more clarity and I ask the hon. Gentleman to withdraw his probing amendment.

Daniel Zeichner: The Minister's comments are helpful. There is concern that if the system does not work appropriately, we could end up with credits stacking up without the work being done, which is clearly not the aim of the exercise. I think that we are all trying to get to the same place, so there is no need for me to re-rehearse the previous arguments. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 136, in clause 92, page 94, line 5, at end insert—

“(11) In accordance with the biodiversity metric, the Secretary of State or another person, is obliged to carry out such works as necessary to enhance the biodiversity of habitat associated with the sale of biodiversity credits.

(12) The Secretary of State or another person is required to secure and maintain the enhancement in perpetuity after the habitat enhancement has reached its target condition.”

There is concern that biodiversity credits could undermine the biodiversity gains system as a whole. Our worry—to some extent this touches on my previous point—is that it is obviously uncharted territory. We do not entirely know how it will work, but the key thing, in our view, is that it is linked as much as possible to local priorities. The Minister hinted in her previous reply that it may be a touch optimistic to imagine that local alternatives will always be found, which is the reason for setting this up in the first place, but through the amendment we want to press her on how the Government can guard against the long-term pooling of revenue, instead of funds being used to achieve the net gain that we all want. That is our worry.

We also think—this goes back to an earlier discussion—that it would have been possible to make a requirement for habitats created through the purchase of biodiversity credits to be maintained in perpetuity. I suppose our worry throughout is that, for all the good intentions, it is possible that the system could end up not achieving what we want it to. It could be abused, and could, in effect, buy a way through for developers to access habitats that none of us would want to see developed. That is the danger and the risk, and we want to help the Government, through the amendments, to ensure that is not the case.

We also think that there ought to be a reporting function, and that the added value of biodiversity credits to local habitat creation projects and strategic ecological networks should be set out clearly in an annual report. To ensure transparency, habitats created through biodiversity credits should also be held on a register of biodiversity gain sites. That is partly about ensuring that the mechanisms work in an open and transparent way.

We have had strong representations from both the Town and Country Planning Association and the Local Government Association, which are genuinely worried about the possibility that biodiversity credits really will not be reinvested in their own locality. I think that is a reasonable concern. The danger, as those organisations see it, is that communities that accept developments might not see improved biodiversity, which could, in turn, make the process really quite hard to justify to local people. I can see how that could happen.

There is a question about whether credits should be retained by local authorities, so that funding stays in the area where development takes place, and local people

[Daniel Zeichner]

can have a say in how the funding can be used to improve the natural environment. What level we should set that at is quite a big question. To some extent, we are trying to tease out from the Minister what she thinks it should be. We think that there is a genuine discussion to be had. I think she has already hinted that she shares my view that the overwhelming priority should be to get new development to achieve net gain onsite and locally, and that offsite contributions and credits should be a last resort. Further reassurance on that would be helpful.

We are placing, through the amendments, two key requirements on the Secretary of State, or any other body charged with using biodiversity credit funds, to ensure that natural sites created or enhanced by biodiversity credit funds are held to a high and lasting standard. I guess one of the running themes through our amendments is the sense of the provisions actually being for the long-term, rather than a mechanism for developers to find a way through to sites that they might not have had access to before.

The first requirement is that all habitat work carried out using biodiversity credits would have to achieve an actual enhancement in biodiversity, as measured by the biodiversity metric. The second requirement is that enhancement be maintained in perpetuity. I anticipate the Minister's answers, because I think we have heard some of them before, but this amendment is sufficiently significant that, unless she comes back with a miraculous response, we will seek to divide on it.

Rebecca Pow: I thank the hon. Gentleman for his acknowledgement of the importance of the long-term maintenance of biodiversity gains in order to ensure that we provide that long-lasting benefit to wildlife and communities. The Government, too, recognise the importance of those long-term benefits. Indeed, the Government response to the net gain consultation confirmed that through the stated criteria for selecting habitat projects. The response stated that enhancement projects will be selected

“on the basis of their additionality, their long-term environmental benefits and their contribution to strategic ecological networks.”

Obviously, they have to have some real value.

The long-term benefits of habitats are vital, but binding future Secretaries of State to deliver only habitats that can be secured “in perpetuity” risks compromising another of the criteria: that of delivering habitats in strategically critical networks. We would not want to see new habitat creation fail to provide the coherent networks that our wildlife needs because we are bound only to use land that can be secured forever. Where enhancements in perpetuity are an appropriate option, the Secretary of State will have powers under the clause to use payments to purchase land interests in England for habitat restorations, or to secure the enhancements through other means.

With regard to the obligation on the Secretary of State to spend those credit sale funds, I draw the Committee's attention to the reporting requirement under the clause, which will create a strong incentive for the Secretary of State to spend the funds both promptly and prudently. It was intimated by the hon. Gentleman, I think, that the Secretary of State might be hoarding

the funds, but the idea is that this becomes its own trading platform—a bit like the nitrates trading platform, for example. DEFRA would only get involved were the market not working, or potentially just at the beginning when it is getting going. The intention is not that he or she is the banker—that is absolutely not how it should work.

Subsection (6) of the clause should also provide some reassurance. It clarifies that funds may only be used for activities related to habitat enhancement. I think the hon. Member for Cambridge was pressing to ensure that that is what would happen, but that is absolutely what they are for. Furthermore, subsection (10) will ensure that the long-term value of the money received from the sale of credits and the use of biodiversity enhancements can be monitored. That is important as well.

In the light of the reasons that I have set out, I ask the hon. Gentleman to withdraw his amendment.

Daniel Zeichner: I welcome much of what the Minister has said but, as I intimated, the perpetuity issue, and the concern about what might happen with the system not working and the potential for achieving outcomes other than those we are all trying to achieve, mean that we think our amendment would strongly improve the clause. On that basis, we seek to divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 34]

AYES

Anderson, Fleur
Furniss, Gill
Jones, Ruth

Whitehead, Dr Alan
Zeichner, Daniel

NOES

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

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

Question accordingly negatived.

Clause 92 ordered to stand part of the Bill.

Clause 93

GENERAL DUTY TO CONSERVE AND ENHANCE BIODIVERSITY

4.15 pm

Daniel Zeichner: I beg to move amendment 140, in clause 93, page 94, line 13, after “biodiversity in England” insert

“, including in particular the species and habitats listed in section 41,”.

The amendment clarifies the intent of the duty in relation to the conservation of priority species and habitats.

I am afraid that we are back to some of the interaction with different pieces of legislation. We welcome the change in the Bill to strengthen the Natural Environment and Rural Communities Act 2006—abbreviated to NERC—so that local authorities have a duty not just to

conserve but to enhance biodiversity, as well as to follow the obligations of public authorities to plan for appropriate action in order to fulfil their duty and to report on their actions regarding that duty. That is the good news. That is the bit we support.

However, we have some concerns. Public authorities have a key role to play in turning around the state of nature, and the current duty on public bodies to have regard to conserving biodiversity has been rightly criticised for not being strong enough. A House of Lords Select Committee report on NERC in 2018 clearly outlined that

“the duty is ineffective as it stands, as a result of limited awareness and understanding among public bodies, weak wording and the lack of clear reporting requirements and enforcement measures.”

I cannot help but notice that those are exactly the kinds of concerns that I have been expressing all the way through this Bill as well. I guess what it shows is that there is nothing new about the difficulties that people have had trying to do good things but not necessarily doing them in ways that are clear and specific enough to translate into action.

The Lords Select Committee said:

“We recommend that the NERC Act should be amended in order to add a reporting requirement to the duty; the Government should also consider strengthening the wording.”

The measures taken in the Bill to do so are welcome, but we have concerns about the rewording of the duty of public authorities. We want to probe some of those points with some amendments. We will come to the more serious changes, but the first one is proposed in amendment 140. Currently, clause 93 stipulates that the “general biodiversity objective” be defined as

“the conservation and enhancement of biodiversity in England”.

Our amendment would broaden that to include the species and habitats listed in section 41 of the NERC Act. In effect, it is a clarifying amendment, as we feel that the provisions in the duty could be seen as being too open-ended to guide everyday action by public authorities.

We think it would be more helpful for there to be a direction that the biodiversity duty clearly requires authorities to act in order to further the conservation of the species and habitats listed under section 41. For those who are not familiar with section 41, it is a list of some of our most precious and vulnerable species, from water voles and otters to particular species of orchids and the short-haired bumble bee. We believe the amendment would provide a closer link between the public duty to enhance biodiversity and the species that need the most attention. Although I will listen with interest to the Minister’s comments, I do not think it is an amendment on which we will seek a Division.

Rebecca Pow: I appreciate that the intent behind the amendment is to ensure that action that might be taken under the biodiversity duty is effective and is targeted where it is most needed. At the same time, one of the strengths of the duty is that it is broad, and we want public authorities to consider all functions when determining the best action to take. That could be action on limiting their biodiversity footprint or addressing wider, indirect impacts on biodiversity, such as from transport policy, water use or energy consumption. We would not want to stop authorities considering such action, even inadvertently, by focusing their attention on what can

be done for a targeted set of species and habitats. Also, there are some 943 species, some of which the hon. Member for Cambridge named, including the hairy bumble bee.

Daniel Zeichner: The short-haired bumble bee.

Rebecca Pow: There are some fantastic creatures and 56 habitats of importance on that list, as set out under section 41 of the Natural Environment and Rural Communities Act 2006. Interpreting this list and the actions required is likely to require specialist knowledge, which may not be available within every public authority.

In complying with the strengthened biodiversity duty, public authorities must have regard to any relevant local nature recovery strategy. If Government amendment 222 is agreed to, public authorities must also have regard to relevant species conservation strategies and protected site strategies, which will help public authorities to identify the actions with the most benefits for biodiversity, including for species and habitats listed in section 41 of the 2006 Act. I therefore suggest that the amendment is not needed; indeed, it might constrain public authorities’ actions to conserve and enhance biodiversity. While I think that it was a probing amendment, I urge the hon. Member to withdraw it.

Daniel Zeichner: We will not press the amendment to a Division. While the Minister and I might have a slight difference of opinion, the approaches are legitimately different. I was grateful for her reference to the short-haired bumblebee. Like many Members, I am a species champion. I stand up for the ruderal bumblebee, although I have never had the pleasure of meeting one—I live in hope. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner (Cambridge) (Lab): I beg to move amendment 138, in clause 93, page 94, line 18, at end insert—

“(1ZA) A public authority which has any functions exercisable in relation to England must exercise those functions consistently with the aim of furthering the general biodiversity objective.”

This amendment requires public authorities to apply the biodiversity duty in the exercising of all of their functions.

This is a slightly more serious amendment, in the sense that this is a more difficult issue, as we think that the clause has a couple of key weaknesses. Section 40 of the 2006 Act currently states that any public authority must,

“in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.”

That implies a biodiversity duty in all day-to-day public authority decision making. As it stands, although the new duty widens public authorities’ responsibility to both conserve and enhance biodiversity, the wording narrows the application of the duty. Its current drafting applies only to actions taken in line with specific policies and objectives developed in relation to clause 93(3), which requires authorities to consider from time to time what action they can take to further the biodiversity objective and to take the actions appropriate to do so.

I apologise that this is slightly complicated, Mr Gray, but, yet again, we see the interaction between different forms of wording in various pieces of legislation. The risk

[Daniel Zeichner]

is that the Government are changing the duty on public authorities to have regard to conserving biodiversity in all their functions to a duty on conserving and enhancing biodiversity with specific considerations that they must make from time to time. The reach into their everyday functions is not made clear.

This is, I guess, a discussion about how local authority members should make their decisions—what they should take into consideration and when. We fear that a key opportunity is being missed to improve the effectiveness of public authorities' biodiversity work, namely by requiring them to factor in the need to conserve and enhance biodiversity in all decision making, including statutorily required planning and spending decisions. This is actually quite a big issue.

Biodiversity work is in continual danger of being marginalised. I referred to that when I spoke about my experience as a councillor, and I suspect that others will have had the same experience. This is not a criticism of councils or local government—they are under pressure, and many, many demands are put on them. However, if we have the challenge of restoring nature to a level that every member of the Committee would agree is what we are seeking, and if that is actually going to happen, the agenda needs to be taken up in local government. Embedding biodiversity into all public authority decision making is vital to ensure that we do not miss the opportunities that are available.

During my time as a councillor, I very much enjoyed our discussions but, as I have said, I do not think I could honestly say that I recall, when we came to make big decisions—we did make some quite big decisions, such as when the new Norfolk and Norwich hospital was discussed, which was referenced at today's Health questions—any discussion around biodiversity, although we tried to take many things into account. It would make a real difference if biodiversity was central to decision making.

It is worth noting that the House of Lords Select Committee identified the “have regard” wording in the current obligation as the main reason, in its view, why the duty has been ineffective. That point has not been properly addressed. “Have regard” is a perfectly innocuous term, but it is just that—have regard in passing, not as a central part of decision making. We would welcome an explanation from the Minister on that point.

The amendment would fix the problem with the current wording of legislation and prevent biodiversity opportunities from being missed by requiring public authorities to exercise all their functions consistently with the aim of furthering the general biodiversity objective. That would prevent biodiversity being siloed. It would be rendered as a critical factor to be considered in all public authority decisions, including statutory planning and spending decisions, which can have significant impacts on nature and biodiversity.

Rebecca Pow: Our purpose in strengthening the current biodiversity duty is to ensure that public authorities take robust action to drive nature recovery. It is absolutely not the intention for biodiversity to become siloed, as the hon. Member has just said. He referred to the Norfolk hospital planning having no reference to biodiversity. I do not know what year that was—

Daniel Zeichner: A while ago.

Rebecca Pow: How times have changed. That will change—biodiversity will come into the general parlance. This is an ambitious duty. All public authorities will have to undertake a thorough consideration of what they can do to enhance biodiversity at least every five years, and then take action. As I said before, they will need to have regard to local nature recovery strategies and, if Government amendment 222 is accepted, relevant species conservation strategies and protected site strategies will provide information, data and tools to identify the most beneficial action to be taken in the region.

Clause 93 requires all public authorities to take a broad look across all their functions to identify the action they can take that would be most beneficial for nature. In our view, the strengthened duty in the Bill strikes the right balance by supporting action to conserve and enhance biodiversity while retaining the flexibility for public authorities to balance competing priorities. The amendment risks distorting those priorities by requiring public authorities always to exercise their functions to further the objective of conserving and enhancing biodiversity. Public authorities must retain the power to decide the best use of their resources. I am sure that the hon. Member for Cambridge, having been a councillor, appreciates that point.

We expect public authorities to look across all their functions and prioritise the actions that will have the most impact, in contrast to the existing biodiversity duty, which is a reactive duty. It is intended to be universal but, as we know, in many cases it has not driven action on the ground, as the hon. Member suggests. The amendment risks replicating the reactive nature of the existing duty by requiring a case-by-case assessment of each individual function and decision to ensure that it is furthering the biodiversity objectives. We would thereby lose the advantages of the more strategic view, which allows the most effective measures to be prioritised, so I urge the hon. Member to withdraw the amendment.

Daniel Zeichner: I hear what the Minister says, but the amendment is crucial to tilt the balance in local authorities. On that basis, I wish to divide the Committee.

The Committee divided: Ayes 5, Noes 8.

Division No. 35]

AYES

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

NOES

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

Question accordingly negated.

4.30 pm

Daniel Zeichner: I beg to move amendment 139, in clause 93, page 94, line 42, at end insert—

“(1G) In this part, “public authority” has the meaning given by section 28(3) of the Environment Act 2020.”

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

Amendment 147, in clause 99, page 99, line 16, leave out “95” and insert “93”.

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

“(4) “Public Authority” means—

- (a) a Minister of the Crown, a government department and public body (including a local authority), and
- (b) a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons—
 - (i) the OEP;
 - (ii) a court or tribunal;
 - (iii) either House of Parliament;
 - (iv) a devolved legislature;
 - (v) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998.’

Daniel Zeichner: We tabled these technical but important amendments to interrogate the definition of “public authority” in the Bill as it applies to the biodiversity objective and the local nature recovery strategies—they are linked. Amendment 139 is consequential on amendment 147 and would clarify the meaning of “public authority” under section 40 of the Natural Environment and Rural Communities Act 2006 by using the definition set out in clause 28(3) of the Bill, as that particularly strong definition would apply well to biodiversity provisions. It would make it clear that the term “public authority” would apply to local authorities or organisations “carrying out any function of a public nature”,

which would ensure that bodies with key public statutory undertakings, such as water companies or rail providers, would have a responsibility to comply with the enhanced biodiversity duty.

Such bodies might not be included in a narrower definition, and that is important because we know that they have many responsibilities, or a lot of land or many rivers to look after. Keeping them within the ambit of the biodiversity duty would therefore give them a much stronger incentive to do the right thing. Such bodies’ legal status or corporate structures might be different from those of local government authorities, but they still provide key public functions. Amendment 148, like amendment 139, would make it clear that the term “public authority” in relation to local nature recovery strategies applies to planning authorities and all planning functions.

Amendment 147 would amend clause 99, which currently provides definitions of a “local authority” and a “national conservation site”. However, that clause applies only to clauses 95 to 98, which set out provisions for local nature recovery strategies. Our amendment would extend the definition of local authorities and national conservation sites to the Bill’s broader provisions on biodiversity objectives and reporting—clause 93 on the general duty to conserve and enhance biodiversity; and clause 94 on biodiversity reports. Yet again, our proposals would strengthen the Bill, so my question to the Minister is: why would she not choose to support us on that?

Rebecca Pow: I thank the hon. Member for tabling the amendments—I shall rattle through them.

Amendment 139 would change the definition of “public authority” in relation to the strengthened biodiversity duty to that used in clause 28. Taken together, amendments 147 and 148 would have the same effect. Clause 93 does not alter the definition of public authority under section 40 of the Natural Environment and Rural Communities Act 2006, but clause 28 represents a different approach: it is drafted to be UK-wide, and then has carve-outs. Amending the definition to that in clause 28 would not make a significant difference to the bodies covered by the duty, although it would mean that the parliamentary estate would not be captured.

Amendment 147 would apply two additional definitions to the Bill’s biodiversity duty provisions, the first being “local authority”. The definition in clause 99 is very similar to the existing definition in section 40 of the 2006 Act. However, that definition includes parish councils, so the amendment would remove parish councils from the scope of the biodiversity duty—[*Interruption.*] “Shocking,” says the hon. Member’s colleague, the hon. Member for Southampton, Test.

I accept that many parish councils are very small and have limited resources, but they are likely to make a contribution to local biodiversity and we do not want to exclude them from the duty. I speak from experience: the hon. Member for Cambridge might have been a district councillor, but I was on my parish council for 10 years—I am very proud of it. We did a great amount of work on biodiversity, including by planting a chestnut avenue and creating a village garden out of a piece of tarmac. There is biodiversity if ever I saw it—we walk past it every day.

The second definition, “national conservation site”, is not a term used in the Bill’s biodiversity provisions, so applying it would have no practical effect. On its own, amendment 148 would have no effect. It would insert a new definition of “public authority” into clause 99. The definitions in clause 99 apply to the provisions relating to local nature recovery strategies, which are set out in clauses 95 to 98, but the term “public authority” is not used in a way that has an effect in those clauses.

I hope that that information was helpful, and I ask the hon. Member for Cambridge to withdraw the amendment.

Daniel Zeichner: I am grateful for the Minister’s clarification and I endorse her comments about parish councils. I, too, started on a parish council, and as a district councillor, I diligently attended my five parish councils regularly. They have a hugely important role to play. We were trying to widen the scope of the bodies that would be drawn into the process. That might be something that we need to revisit in order to embrace both points, which would be a good outcome.

The amendments were probing, so we will not need to divide the Committee. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Daniel Zeichner: I beg to move amendment 137, in clause 93, page 95, line 1, leave out subsection (5) and insert—

“(5) After subsection (2) insert—

“(2A) the authority must act in accordance with any relevant local nature recovery strategy in the exercise of relevant public functions, including strategic and local land-use planning and decision making and in spending decisions, and in particular in complying with subsections (1) and (1A).”

[Daniel Zeichner]

This amendment would ensure that Local Nature Recovery Strategies are considered in day-to-day planning and spending decisions by public authorities.

Amendment 137 addresses a key issue in the Bill's current drafting regarding local nature recovery strategies, which we welcome. If they are implemented properly, the strategies can enable a wide range of organisations to contribute to measures needed to address the biodiversity crisis and deliver the Government's ambitions in the 25-year environment plan, in particular by supporting the creation of a nature recovery network.

By identifying local biodiversity priorities, including restoration opportunities, we think—I am sure that the Government agree—that policy integration and better value for money could be achieved at the same time as saving nature. I suspect that we all have good examples from our areas, but I am sure that the hon. Member for South Cambridgeshire will join me in praising Natural Cambridgeshire, chaired by Richard Astle, and the excellent work that it is already doing through its nature recovery toolkit. I believe that the hon. Member addressed Natural Cambridgeshire recently. I hope to do so again soon, and I will be keen to bring news of a strengthened Bill.

At the moment, despite local enthusiasm, the duty to use local nature recovery strategies is very weak. It is included in the duty to conserve and enhance biodiversity under clause 93(5), which requires local authorities to “have regard” to the strategies when making plans to conserve or enhance biodiversity, but that risks creating obligations for local authorities to develop local nature recovery strategies, thereby expending precious local resources, only to see that that effort might be wasted through a failure to give the strategies any influence on real decision making. That is a problem.

The duty should be a much stronger requirement to take the strategies into account in the exercise of public functions, including in the statutory planning system and in spending decisions. This mirrors arguments that I have previously made. Unless such a change is made, there is a real risk that local nature recovery strategies will overburden local authorities and once again risk sitting on the proverbial dusty policy shelf.

This is not a criticism of local authorities, but a reflection of the fact that many are already hard pressed and will not have the capacity to do what is asked of them. When I raised this previously, the Minister reassured me that all necessary funding will be made available under the Bill. I liked her reassurance, but she was not able to point me to where that was specified. I invite her to do so again, but I do not think she will be able to do so, because it is not specified—it is just an aspiration. This is not a party political point, but anyone who has been in local government well knows the problem that while central Government frequently make promises, the outcomes rarely transmit. They often end up in general funding, and we are told that it is in there somewhere, without clarity that it is enough. It is important to note that the success of the measures in general will be dependent on the Government making those funds available. I recognise that at this stage it seems difficult to predict the costs—there was some discussion in the impact assessment about how it was not entirely clear how much would be needed—but I ask the Minister

how the Government intend to carry out an assessment of how the new duties operate and how they can ensure that resources are available to make the duties work.

The strategies are potentially a very useful tool. If they work well, they could effectively co-ordinate the actions of multiple stakeholders and direct local use of biodiversity gains from the planning system, environmental land management systems and other sources, helping to build and maintain ecologically coherent networks and nature recovery sites. That leads me back to the 25-year environment plan, particularly page 58, which is littered with “we will”, “we shall” and “it will happen”, including the statement that we

“will coordinate our action in England with that of external nature conservation...as well as farmers and land managers.”

That is great, but I have to ask when that will happen.

I had the pleasure of being an Opposition spokesman on the Agriculture Bill, and we were begging constantly, and tabling amendments, for an integrated approach between this Bill and the Agriculture Bill. I am afraid that we were constantly knocked back. Here we are, just a few weeks from the beginning of the phasing out of basic payments, and we do not have ELM schemes in place. The Secretary of State will have to deliver a fix in 10 days' time. I am happy to be corrected by hon. Members on the other side if that is not correct, but that is what I hear. While the sustainable farming initiative sounds fine, it is a missed opportunity to link to the local nature recovery strategies that we are discussing today. Because of this weak duty to apply the strategies in decision making, I am afraid the potential that these have may well fall short.

Amendment 137 aims to strengthen the duty to use local nature recovery strategies by requiring all public authorities to “act in accordance with” any relevant local nature recovery strategy in exercising their duties, including the statutory requirements, planning and spending decisions. That would make a big difference and deliver real change, and that is why I worry that it is not in the legislation as it stands at the moment. It is essential to ensure that the local nature recovery strategies actively influence important day-to-day decisions that affect nature.

Fleur Anderson: I, too, would like to support amendment 137. I can picture the scene in the drafting committee. One group wanted to have “act in accordance with”, to make the duty very strong so “we would definitely put this into action”, and on the other side was the “must have regard to” group. I would like to speak on behalf of the “act in accordance with” group, and it was a mistake that the “have regard to” group won the day.

The provision for planning to work for nature is very welcome, but there is a risk that it will be stalled indefinitely if we do not have the amendment in the Bill. The duty to use local nature recovery strategies is very weak. The environmental coalition, Greener UK, has similar concerns. The amendment would embed biodiversity in public authority decision making, because here the rubber hits the road—or the hedgerow or the greener area of a siding. The amendment includes complying with spending decisions, and that is what will ultimately decide whether this is put into action.

There is great potential for these strategies to be a highly effective tool, and I welcome the five pilot schemes, as I know the Minister does. However, as it stands, the

potential will not be realised because the duty is so weak. The amendment would ensure that local nature recovery strategies actually influence day-to-day decisions that affect nature. There are two examples of how that would work out in my constituency. We have many wonderful green spaces which have “friends of” groups, and they are knocking on the door and trying to get the attention of the local authority all the time. It is not a given that that will happen. Those groups really care about biodiversity, but the day-to-day work of the local authority is not reflecting that.

I have a very active save our hedgehogs group, and I am surprised that they have not been mentioned this afternoon up to now, so I want to put that straight. Those vulnerable mammals have been in decline by 30% in urban areas and 50% in rural areas since 2000. That is dreadful. If the local authority will have regard to the local nature recovery strategies, rather than acting in accordance with those strategies, there is a danger that the work to reverse the decline of hedgehogs will not happen. There is a mention of hedgehogs in the environment plan, but this amendment would cement action to save hedgehogs and all other biodiversity in our planning system.

4.45 pm

Rebecca Pow: Some strong points have been made about local nature recovery strategies. I think we all agree that they are a good idea. When I was a trustee of the Somerset Wildlife Trust many years ago, it was working on a similar idea to that which is now coming into legislation. Subsequent Government amendment 222 changes the provision so, if accepted, public authorities will be required to have regard to species conservation strategies and protected site strategies. However, I will speak only to the original purpose of the amendment now.

We want public, private and voluntary groups to engage openly in the development of local nature recovery strategies and for this to follow through into their implementation. That is exactly what the hon. Member for Putney is asking for, so that those hedgehog highways and interlinking runways through fences in towns will stay there. I love a hedgehog as much as she does. I had some rescue ones from the rescue centre sent to my garden. We need to look after our hedgehogs.

Requiring public authorities to have regard to a specific document is an established and effective means of achieving that aim. I have discussed this with the officials. They have convinced me that this is the right terminology. We should also be mindful that public authorities have a wide range of existing duties such as housing, health and social care, which have to be considered. Some flexibility to take these wider considerations into account is important. Similarly, local planning authorities are required to balance a wide range of important considerations when establishing their planning policy for this area. I am keen that we continue to work with the planning system, rather than create complexity by making separate demands on planning authorities. The spatial information provided by the local nature recovery strategies will support the development of local plans.

I want to reassure the hon. Member for Cambridge that the Department for Environment, Food and Rural Affairs, will continue to work closely with the Ministry of Housing, Communities and Local Government to

set out clearly the role for local nature recovery strategies as part of the ongoing planning reforms. The work has already started, and it has been clear that this must be an integral part of our future going forward. Those five pilots will inform the local nature recovery strategies. They have already been announced and money has been agreed for them. We will learn a lot from those about how these strategies will work.

We want the reformed system to play a proactive role in promoting environmental recovery and long-term sustainability. We have really high ambitions for the local nature recovery strategies in helping to do this. They are a crucial tool towards the whole endeavour of biodiversity from the ground upwards. I therefore urge the hon. Gentleman to withdraw his amendment.

Daniel Zeichner: I am grateful particularly to my hon. Friend the Member for Putney for enlivening our discussions late in the afternoon—well past teatime, in some people’s view, which I understand—and for introducing hedgehogs into the discussion. I had a side bet with one of my colleagues as to how long it would take for the Minister to raise a hedgehog highway. I am grateful to my hon. Friend the Member for Putney because that allows me to mention Nora the rescue hedgehog. The Cambridge Wildlife Trust allowed her to escape down a hedgehog highway in my sight. I am not sure where she went, but hedgehogs are very important.

The problem was confirmed by the Minister, who admitted that she had been convinced by her officials that this is the correct terminology. We do not think that it is the correct terminology; it is not strong enough. I invite the Minister perhaps to go and have that conversation again. That point takes us back to the beginning of our sitting, when my hon. Friend the Member for Southampton, Test and I questioned why some of these things are as they are. I am led to conclude, I am afraid, that despite the admirable enthusiasm, there are flaws in the process.

The Minister said that we do not want to put too many demands on planning authorities. Actually, we do want to put demands on planning authorities; that is exactly what this will be about if our goals are to be achieved. We get distracted by the hedgehogs and the bumblebees, but at heart there is a serious question of allocation of resources, effort and money through the planning process. That is often what it is about, and my fear is that, wonderful though much local effort is, sadly if it cannot be translated into action it will go on being just good effort, without the kind of gain that we want to see.

I suggested at the beginning of our sitting that there were some villains in the piece, and I think the Committee has a sense of who I think one villain is, but it is not just about the current Prime Minister. It is worth remembering that in 2011 the then Chancellor, George Osborne, described the EU habitats directive as placing “ridiculous costs on British businesses”, and spoke about companies being burdened with “endless social and environmental goals”.—[*Official Report*, 29 November 2011; Vol. 536, c. 807-808.]

The point is that there is a view out there that this is all “green crap”, as another eminent former Prime Minister described it. That is why we are worried, why this matters, and why the Bill needs to be strengthened.

The Chair: The hon. Gentleman used the word “villain” with regard to the Prime Minister. He might wish to withdraw it as unparliamentary.

Daniel Zeichner: “Pantomime villain”—will that do?

The Chair *indicated dissent.*

Daniel Zeichner: I withdraw the comment. [*Interruption.*] But I would like to press the amendment to a Division. I was distracted by the pantomime.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 36]

AYES

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

NOES

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

Question accordingly negated.

Rebecca Pow: I beg to move amendment 222, in clause 93, page 95, line 3, at end insert

“and

(b) any relevant species conservation strategy or protected site strategy prepared by Natural England.”

This amendment requires a public authority to have regard to a species conservation strategy or protected site strategy in complying with its duties under section 40 of the Natural Environment and Rural Communities Act 2006.

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

Government new clause 25—*Species conservation strategies.*

Government new clause 26—*Protected site strategies.*

Government new clause 27—*Wildlife conservation: licences.*

Rebecca Pow: The overall purpose of this group of amendments is to enable better species and habitat conservation in England as part of the Government’s commitment to growing back better, faster, greener. They will allow for the creation of two new types of strategies and will resolve inconsistencies regarding the licensing of development.

New clause 25 will allow Natural England to create species conservation strategies, which are innovative approaches to safeguard the long-term future of species that are at greater risk. The strategies will be developed using up-front surveying, planning and zoning across a wide area. Natural England will then develop measures to mitigate, or compensate for, the impact on species—from building projects, for example. This approach helps to avoid the need for reactive site-based assessments and mitigation.

The legislation is based on the successful district-level licensing approach to the conservation of great crested newts, which have already been mentioned today. An area is comprehensively surveyed in advance and a licensing strategy is developed. Up-front mitigation work is then carried out to cover the creation or restoration of ponds in areas that are known to provide the best habitats for newts to thrive in. Developers then make a conservation payment and can begin work without delays.

New clause 26 will allow Natural England to prepare and consult on protected site strategies. These will enable the design of bespoke solutions for sites that are affected by a combination of different impacts, such as pollution from agriculture and pressure from development. Protected site strategies are also based on existing, innovative schemes such as that in the South Humber Gateway, which has unlocked development on hundreds of hectares of land while creating 275 hectares of new wet grassland for birds, and is held up as something of a model.

For both species conservation and protected site strategies, local planning authorities will be placed under a duty to co-operate with Natural England. They will also be required to have regard to relevant strategies as they carry out their planning functions. These new strategies will deliver better environmental protections through simpler processes, and are therefore fully aligned with the proposals set out in the “Planning for the future” White Paper. The planning reforms will reinforce the implementation of these measures.

Amendment 222 adds an important provision to support the new strategies. Clause 93 strengthens the existing duty under the Natural Environment and Rural Communities Act 2006 to require public authorities to take action to further the conservation and enhancement of biodiversity. It also requires public authorities to have regard to local nature recovery strategies as they do so. This amendment extends that duty so that public authorities must also have regard to any relevant conservation strategy or protected site strategy as they consider what action to take, so the three kinds of strategies are designed to work together. The local nature recovery strategies will be a system of strategies covering the whole of England, and will identify where action can be taken to reverse the decline of nature as a whole. Species conservation and protected site strategies are more bespoke, targeted measures to help protect specific species and sites that are at risk, and are intended to ensure public authorities comply with legal protections in a way that achieves better outcomes for nature. It is therefore important to make this amendment, to ensure public authorities have regard to all three types of the new strategies.

Finally, new clause 27 makes three changes related to protecting species licences granted under section 16 of the Wildlife and Countryside Act 1981. Those changes are intended to unlock the full potential of strategic licensing for protected species. First, the new clause will introduce an additional “overriding public interest” purpose for granting a licence. Secondly, it will introduce two additional tests that must be met before a licence can be granted if

“there is no other satisfactory solution, and...the grant of the licence is not detrimental to the survival of any population of the species”.

Thirdly, the new clause will extend the maximum permitted licence period from two years to five years.

Taken together, the amendment and new clauses strengthen the nature chapter of the Bill and help to protect and restore species and habitats at risk, while also enabling much-needed development. I have rattled through them, Chair, and there is a lot of detail there, but I commend amendment 222 to the Committee.

Amendment 222 agreed to.

Daniel Zeichner: I think I may have missed a point. We discussed all those new clauses, did we?

The Chair: Yes.

Daniel Zeichner: In which case I apologise. I should have come in earlier.

The Chair: There was no sign from the Opposition that the hon. Gentleman wished to discuss Government amendment 222, so it was passed. Therefore, we will move on to Government amendment 223. If you are waiting for votes on Government new clauses 25, 26 and 27, they will come at the appropriate point in the consideration of the Bill—not now.

Dr Whitehead: May I seek your guidance, Mr Gray? Presumably, we will want to have a stand part debate on the clause.

The Chair: We can perfectly happily do so if that is what people like.

Daniel Zeichner: That may be the way out of the dilemma.

The Chair: Hang on, this is not a general conversation. It is of course possible that if anyone in Committee wishes to have a stand part debate, they may do so at the appropriate moment. That is absolutely fine, but it is not to become a discussion.

5 pm

Rebecca Pow: I beg to move amendment 223, in clause 93, page 95, line 21, after “(England))” insert—

“(a) in subsection (1), after ‘conserving’ insert ‘or enhancing’;”.

This amendment adds a reference to enhancing biodiversity to section 41(1) of the Natural Environment and Rural Communities Act 2006.

This amendment makes a small change to section 41 of the NERC Act. The section requires the Secretary of State for Environment, Food and Rural Affairs to publish a list of species and habitats that are of principal importance to conserving biodiversity. The amendment will change the requirement to “conserving or enhancing” biodiversity.

The language mirrors that of the strengthened biodiversity duty under section 40 of the NERC Act, as amended by clause 93. The duty will require public authorities to take action to further the conservation and enhancement of biodiversity. The amendment will therefore create consistent language across two related sections of the NERC Act.

When the list is updated in future, the amendment will allow wider consideration of which species and habitats should be included. That is consistent with our intention, as expressed in the 25-year environment plan, to improve beyond merely trying to maintain the status quo—or conserving—and instead recovering and restoring nature. This small amendment further signals our ambitions to enhance biodiversity.

Daniel Zeichner: I regret to say that we have some extensive questions about clause 93 as amended, which may not come as a welcome moment for the Government. I get the sense, however, from looking at the Government Whip, that he may think tea has come.

Ordered, That the debate be now adjourned.—(Leo Docherty.)

5.3 pm

Adjourned till Thursday 19 November 2020 at half-past Eleven o'clock.

Written evidence reported to the House

EB78 Agricultural Industries Confederation (AIC)
(Due diligence on forest risk commodities for NS1)

EB79 Energy UK and RenewableUK (Schedule 14
amendments 75 and 168)

EB80 British Glass

EB81 Letter from Rebecca Pow to Dr Alan Whitehead
re: OFGEM