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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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The following abbreviations are used to show a Member's party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Monday 28 June 2021

The House met in a hybrid proceeding.

1 pm

Prayers—read by the Lord Bishop of Gloucester.

Arrangement of Business

Announcement

1.06 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing and wear face coverings while in the Chamber except when speaking. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Oral Questions will now commence. Please can those asking supplementary questions keep them no longer than 30 seconds and confined to two points? I ask that Ministers' answers are also brief.

Covid-19: Hospital Patient Referrals

Question

1.07 pm

Tabled by ***Baroness McDonagh***

To ask Her Majesty's Government what assessment they have made of the proportion of hospital patients referred to residential accommodation during the pandemic that were tested for COVID-19 prior to discharge.

Lord Kennedy of Southwark (Lab Co-op): My Lords, on behalf of my noble friend Lady McDonagh, and with her permission, I beg leave to ask the Question standing in her name on the Order Paper.

Baroness Penn (Con): My Lords, there was limited testing capacity in March and early April 2020 and this was prioritised to those with symptoms. On 15 April 2020, the adult social care action plan instituted a policy of testing for all patients prior to discharge to a care home. All clinical guidance issued by the department, Public Health England and the NHS received clinical sign-off, following the best scientific advice available at the time.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I want to understand whether the deaths in care homes, which were absolutely tragic, were down to the incompetence of the Government or just a disregard for the elderly. We all understand the need to free up acute beds in hospitals and it has been long understood that the safe way to do that is through isolation. If that was known by the care homes, were the individuals Covid positive or not being tested? Can the noble Baroness agree to publish all the emails, letters and other correspondence with the care home sector so that we can all see what the Government were doing at a particular time during the pandemic?

Baroness Penn (Con): My Lords, prior to the publication of the Government's hospital discharge service requirements on 19 March last year, engagement was sought from, for example, NHS England, Public Health England, Care England and the Local Government Association—I could go on. I am not sure about the practicalities of everything that the noble Lord requested, but I reassure him that proper engagement has been undertaken with the sector throughout the pandemic.

Lord Flight (Con): My Lords, I think that this Question is asking what proportion of those referred to residential accommodation were tested for Covid-19 and, therefore, what proportion were not. The Question is not asking what proportion of those tested were positive and negative—and testing should be required of all care home staff. When hospital discharge guidance was released on 19 March, why was there no requirement to test people for Covid-19 before release and, if positive, to segregate them from those testing negative? However, 30% of those tested for Covid-19 while in hospital did not receive their results when they left. This was particularly problematic for care homes, given the transmission risk. Why did 30% of those tested while in hospital not receive their test results before they left?

Baroness Penn (Con): My Lords, my noble friend has asked a number of questions. The policy shifted post 15 April and that was based on our understanding of asymptomatic transmission. It was also based on the availability of testing capacity at the time. Prior to that date, those who were symptomatic were tested and every effort was made to ensure that those results were also passed on to the care homes so that they could take the appropriate action needed.

Lord Laming (CB): My Lords, given the awful experiences that residents of care homes had when they were deprived of all contact with their loved ones while patients were being discharged from hospital without having been tested, could the Minister assure the House that there is absolutely no prospect now of patients being transferred from hospital into care homes without having been fully tested and fully vaccinated?

Baroness Penn (Con): My Lords, I can absolutely make that assurance in the case of testing. In the case of vaccination, there may be individual circumstances for a patient that make vaccination not appropriate at that point—for example, if you are symptomatic with Covid, you may not then be vaccinated. If you test positive, you are not discharged into a care home setting; you are discharged into an approved setting that has the right processes in place so that you can get the care that you need while being appropriately isolated.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, while the Minister is doing a really excellent job at answering these questions, it does raise the question as to why the Minister responsible—the noble Lord, Lord Bethell—is in hiding. Is it because, unlike the noble Baroness, he is one of the guilty people responsible for the care home scandal, or is it because of his links with Gina Coladangelo?

Baroness Penn (Con): My Lords, given the number of times my noble friend has appeared at this Dispatch Box to answer questions from noble Lords during this pandemic, the noble Lord's question is without any merit. I am sure that he will welcome the fact that he will see my noble friend at this Dispatch Box two or three times tomorrow.

Baroness Tyler of Enfield (LD) [V]: My Lords, in recent weeks, Ministers have quoted from the Public Health England report published in May, which claimed that only 1.6% of outbreaks in care homes potentially came as a result of hospitals discharging patients who had Covid—this despite the report having been widely criticised by independent experts in the sector as presenting an unrecognisable picture of the impact that hospital discharges in the absence of testing had had. Last week, the noble Lord, Lord Bethell, in response to a question from the noble Baroness, Lady Wheeler, said that he was not aware that the report was being revised. Will the noble Baroness now commit to investigating this issue properly and publishing the outcome?

Baroness Penn (Con): My Lords, I will absolutely take that point away. My understanding is that there is the Public Health England report, while a number of other retrospective studies in Scotland and Wales have looked specifically at the impact of discharge policies. Although there has been a slight variation in the policies implemented across the four nations and the evidence is not as yet conclusive, the studies have indicated that discharge policies were not responsible for a significant number of outbreaks in care homes in the UK. We look at a number of pieces of evidence and we always look to make sure that that evidence is up to date. I will take back the noble Baroness's specific point on the revision of that data and see what I can write to her in response.

Baroness Wheeler (Lab): My Lords, we know that the Government's interpretation of throwing a protective ring around care homes is not what most of us would see as protection, nor was there upfront recognition from the start of the pandemic of the vulnerability of care home residents. The extra resources from the infection control fund have been crucial in helping care homes to keep going and deal with their extra PPE, staffing and huge administrative costs, but it runs out on Wednesday, as the Minister will know, with only an obscure notice on the government website on 15 June to announce its demise. What are care homes to do now with their ever-escalating costs, infections increasing and a minority of care home workers not vaccinated?

Baroness Penn (Con): My Lords, we continue to support the social care sector in its efforts to control infections. The noble Baroness raised the question of vaccinations, which will be crucial in protecting care homes. We have laid the statutory instrument that will require all members of staff working in CQC-approved care homes to get their vaccination.

Lord Bhatia (Non-Afl) [V]: Can the Minister confirm that this was an error, because care homes were not properly staffed or equipped?

Baroness Penn (Con): My Lords, I do not agree with that assessment of the situation. We have been providing support to care homes since the start of this pandemic, including ensuring that proper staffing is in place to help with, for example, infection control methods.

Baroness Greengross (CB) [V]: What consideration have the Government made of utilising currently unused NHS land and buildings for care accommodation? This type of hospital accommodation, similar to that in Scandinavia and other parts of continental Europe, has been a better solution than discharging hospital patients into care homes and other residential accommodation, especially given the challenges of testing for Covid-19 in early 2020.

Baroness Penn (Con): My Lords, in our response to the pandemic, we have introduced a policy of designated settings, where if someone in hospital who is otherwise ready to be discharged tests positive for Covid, they can be discharged to a designated setting. More broadly, the noble Baroness is right: the use of step-down accommodation can be very useful in discharging people from hospital to social care. The point about NHS land is, I am sure, one that we will want to take away.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, going back to last March, was any assessment at all made of the disastrous policy of discharging patients with Covid into care homes? If it was, will the Minister publish that assessment?

Baroness Penn (Con): My Lords, I am aware of the Public Health England report to which noble Lords referred earlier and of reports in Scotland and Wales that have been published. Those are the reports that I am aware of and they have all been published.

Lord Scriven (LD): My Lords, SAGE minutes from the end of January 2020 identified that asymptomatic cases were emerging, so why, out of half a million tests carried out until mid-April 2020, were the vast majority of the 25,000 people discharged from hospital to care homes not tested?

Baroness Penn (Con): My Lords, while there was an acknowledgement of the potential risk of asymptomatic transmission, there was no scientific consensus on the matter. In fact, the WHO did not recognise asymptomatic testing for a number of weeks after that point. However, the first group prioritised for asymptomatic testing was those who were going to be discharged into care home settings.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. We now come the second Oral Question.

Arctic: Security and Co-operation

Question

1.18 pm

*Asked by **Baroness Anelay of St Johns***

To ask Her Majesty's Government what assessment they have made of security concerns about Russian military build-up in the Arctic; and what progress was made at the meeting of the Arctic Ministerial Council in Reykjavik in May to ensure co-operation on Arctic issues.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con) [V]: My Lords, the integrated review states that the UK's primary Arctic objective is to maintain high co-operation and low tension, as an Arctic Council observer. We welcome the commitment to maintaining peace, stability and constructive co-operation made by all Arctic states in Reykjavik in May. Russia, as an Arctic nation, has significant presence in the region. However, we are concerned by Russia's expanding Arctic military footprint.

Baroness Anelay of St Johns (Con): My Lords, the NATO Secretary-General recently said that Russia is trying to control the traffic travelling through the new sea lanes in the Arctic as they are opened up by melting ice. He also said that NATO should assert its rights to freedom of navigation in the area. In the light of the events last week in the Black Sea, what steps are the Government taking to assert the right of freedom of navigation in the Arctic? Does the fact that Russia now chairs the Arctic Council for the next two years help or hinder co-operation on Arctic issues?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, my noble friend is quite right that we have seen increased levels of activity, and it is right that we work with key partners to ensure that a peaceful, stable and well-governed Arctic underpins all our policy. That is a priority for the UK Government, and we support the legal frameworks in the Arctic and the Arctic Council. I assure my noble friend that we are working with NATO and other partners to respond to events in the Arctic, as it is in everyone's interest to keep the Arctic peaceful and co-operative. Of course, recent events have demonstrated the need to stand up for the laws underpinned by UNCLOS.

Lord Browne of Ladyton (Lab) [V]: My Lords, few institutions exist to manage the new security risks of civilian and military activity in the Arctic. The Arctic Council and other effective forums either forbid or do not touch on security, and since 2014 the Arctic Security Forces Roundtable has excluded Russia. Major Arctic players are nuclear powers and adversaries, with multiple facilities and nuclear armaments there. Russian and European Governments have called for the creation of a new dialogue among Defence Ministers, and Presidents Putin and Biden discussed how they can ensure that the Arctic remains a region of co-operation, not conflict. Where do our Government stand on the need for inclusive discussions on security, and what are we doing, if anything, to advance that?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, I agree with the noble Lord that it is important to retain dialogue with all key partners and key players involved in the Arctic, and as an observer at the Arctic Council we have strongly claimed and talked of the importance of convening all Arctic states inclusively for retaining a peaceful, stable and well-governed Arctic. We attend the Arctic Council ministerial meeting and we are looking to work constructively with Russia under its stewardship, particularly as we look at wider issues beyond security in the lead-up to COP 26. However, I hear what the noble Lord says, and I can assure him that we are working with key international partners to ensure that the Arctic remains a peaceful and stable part of the world.

Baroness Smith of Newnham (LD) [V]: My Lords, can I press the Minister a little further? Last week, the leaders of France and Germany were calling for the European Union to engage more closely with Russia. Do Her Majesty's Government believe that, in the context of the Arctic, we should be working more closely with Russia, or do we need to view Russian build-up in the Arctic with suspicion?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, as I have already said, we are concerned by the recent increase in activity by Russia in the Arctic region. However, I assure the noble Baroness that we look forward to working with all Arctic states, including Russia, particularly on important issues such as environmental protection and sustainable development, during the Russian chairmanship of the Arctic Council during 2021 to 2023. However, security remains a concern, and we will continue to work with partners in defence and in NATO.

Lord Boyce (CB): My Lords, the Government are to be commended for the robust stance taken last week in sanctioning HMS "Defender" to passage, perfectly legitimately, through the international separation zone waters past Crimea, and for us not to succumb to Russian bullying and lying. Does the Minister agree that we should be acting in a similarly robust way in the north, allowing our warships to operate in international waters in the Arctic and the Barents Sea and not allowing Russia to claim such waters as their private seas by default—which will be doubly important as the north-eastern passage to the Far East becomes more accessible? I feel that the Minister's answer to the noble Baroness, Lady Anelay of St Johns, was not sufficiently robust on that matter.

Lord Ahmad of Wimbledon (Con) [V]: I assure the noble and gallant Lord that we recognise that—if I may be robust—the actions that we took in the waters that we believe to be the territorial waters of Ukraine demonstrated how we stand very firm in ensuring the right to sea passage, ensuring that the traffic separation schemes that operate are equally recognised. Equally, we will continue to exercise the right of innocent passage in accordance with the UN Convention on the Law of the Sea wherever that may take place. As the noble and gallant Lord will be aware, that is enshrined in Article 19 of that law and we will seek to uphold it. Our recent activities in Ukrainian territorial waters show the robustness of our approach in this regard.

Lord Collins of Highbury (Lab): My Lords, modelling has shown that the Arctic sea ice could well disappear by the summer of 2035; certainly, the sea lanes will be completely different from what we currently have. Where most of us see a disaster, global powers see that as an opportunity to secure security, political and commercial interests. Can the Minister say exactly what our policy now is, looking back at the 2018 *UK Policy Towards the Arctic* paper, which said that we should be exploring commercial opportunities too? How does that rest with the recent Arctic Council ministerial meeting?

Lord Ahmad of Wimbledon (Con) [V]: The noble Lord is quite right to point towards the 2018 Arctic policy framework. We remain very committed to its core principles of respect, co-operation and leadership. Equally, however, as I have already alluded to, with temperatures rising three times as fast in the Arctic, we also believe that it is important that we focus on the Arctic, as we will at COP 26, to ensure not only that the Arctic remains a peaceful, stable and well-governed part of the world but that we also seek to tackle the important issues of climate and shared biodiversity. The current statistics are quite concerning, with sea level temperatures in the Arctic rising three times as fast as those in the rest of the world. As a near neighbour, we need to be interested and engaged.

Lord Taylor of Goss Moor (LD) [V]: My Lords, I welcome what the Minister just said about climate. The NATO Secretary-General identified climate change as a crisis multiplier, referring not least to the Russian attempt to define the northern sea route as an historically shaped national transportation corridor. There is a clear intention not just to take control of the route but of course to exploit the Arctic, with plans for huge oil extraction, which will only add to the problems of climate change. Can the Minister reinforce the pressure on all states with an interest in the Arctic not to worsen the climate crisis that we are facing by exploiting oil reserves that previously have been unexploitable?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, I agree with the points made by the noble Lord, and we will be working with key partners to ensure that the very areas that he just highlighted remain a key part of our focus in the build-up and planning for COP 26 when we discuss issues in and around the Arctic region.

Lord Walney (Non-Afl) [V]: My Lords, it was good to see the recent defence Command Paper commit the UK to funding the next generation of nuclear submarines, which will give the Royal Navy vital capability in this region into the latter half of the century. Is the Minister in a position to confirm, as reportedly set out in recent RN planning papers, that these submarines are expected to incorporate the Atlantis hybrid underwater capability concept, based on a crewed mother ship in tandem with remote autonomous uncrewed platforms?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, I will ask my colleagues from the Ministry of Defence to write specifically to the noble Lord on that question.

Lord Lancaster of Kimbolton (Con): My Lords, I was deeply privileged to be on board HMS "Trenchant" as she broke up through the ice in the Arctic in 2019, an event that marked the return of the Royal Navy to underwater operations under the ice after an absence of some 10 years. Given that only last week the Russian Navy launched its latest submarine, increasing its inventory in the area, can my noble friend simply reassure me that we will now maintain this under-the-ice capability?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, my noble friend speaks with great insight and experience of this matter, and I can give him that assurance. We are of course very proud of the Royal Navy's sub-surface capabilities, which is why the defence Command Paper emphasises our commitment and ambition in this area. My noble friend will know better than me from his previous experience that the sensitivities of submarine operations mean that I cannot go further. However, I hope my reassurance satisfies him with regard to our commitment in this important area.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. We now come to the third Oral Question.

North of England: Rapid Mass Transport System

Question

1.29 pm

Asked by ***Lord Moylan***

> To ask Her Majesty's Government what consideration they have given to the construction of an underground Maglev rapid mass transport system between cities in the north of England.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government have thoroughly investigated whether our forthcoming major investment in connectivity between northern cities should be maglev rather than rail. We concluded that rail remains the best option for a number of reasons, the most important being that new conventional rail infrastructure can better be integrated into the existing network.

Lord Moylan (Con): My Lords, maglev is a great British invention increasingly deployed in Asia for high-speed travel. As our world-beating British tunnelling engineers have shown, constructing railways in-tunnel can be cheaper than constructing them on the surface, provided that it stays in-tunnel. However, it seems that every proposal for maglev that comes from the Department for Transport is rebuffed. Can my noble friend explain why her department is so wedded to a 200 year-old technology that, when constructed on the surface, can both cost more and be very annoying for local voters?

Baroness Vere of Norbiton (Con): I am sure all noble Lords will agree that, just because something is old, that does not mean it is useless. We must look at all technologies, and that is precisely what we do. My noble friend makes an important point in saying that

systems around the world use this, but just one operational high-speed system does so at the moment: the Shanghai City maglev. There are many others operating at lower speeds—that is, less than 100 mph—and obviously, there is one in construction in Japan, but it is coming up against some cost pressures.

Lord Davies of Brixton (Lab): Will the Minister give a clear commitment on behalf of the Government to Northern Powerhouse Rail as part of the integrated rail plan?

Baroness Vere of Norbiton (Con): I can reassure the noble Lord that the Government are considering all options as part of the integrated rail plan and of course, Northern Powerhouse Rail is a very important part of that. Once the IRP is published, Transport for the North will submit a business case consistent with policy and the funding framework.

Lord Kirkhope of Harrogate (Con) [V]: My noble friend's idea of an underground magnetic railway between northern cities certainly has a strong attraction, especially following Elon Musk's proposal for 1,000 mph trains in the United States, and especially coming from a former deputy chair of Transport for London. However, as Transport for the North has said, our aims in the north should be to improve the frequency, capacity, speed and resilience of our transport system. Can my noble friend go a little further in telling us, in a realistic way, how the Government intend to facilitate those aims in the near future?

Baroness Vere of Norbiton (Con): The Government are working extremely hard on setting out plans as to how we will improve connectivity in the north. As I mentioned previously, the integrated rail plan will be published soon and will bring together the benefits of not just High Speed 2 but Northern Powerhouse Rail and other very significant projects across the north. Of course, our investment in traditional rail and upgrading and improving our current lines also continues.

Lord Beith (LD) [V]: My Lords, what the north-east needs is not an underground line but investment in the East Coast Main Line, which, according to LNER, does not have the capacity even to accommodate the service that it provided up to 2019. How can it be consistent with government policy to halve the daytime service from Berwick-upon-Tweed to London and the major cities, reducing it to a two-hour gap between trains with a longer journey time? This is the railway going backwards, is it not?

Baroness Vere of Norbiton (Con): I accept that there are capacity constraints on the East Coast Main Line, which is why we are investing more than £1.2 billion to upgrade it. On 11 June, LNER launched a consultation on the new proposed timetable for the East Coast Main Line from May 2022. I encourage all noble Lords who have an interest in the East Coast Main Line to respond to it.

Baroness McIntosh of Pickering (Con): My Lords, if it is concluded that what we really need is a strategic rail link between not just Leeds and Manchester but Middlesbrough and Liverpool and all major towns in between to improve connectivity and boost productivity, how likely is that to happen and how much money will the Government allocate to it?

Baroness Vere of Norbiton (Con): I can reassure my noble friend that we are of course looking at connectivity across the regions. A number of urban centres need to be connected, and it is really important that we make sure that towns and villages are connected via local transport to those point-to-point systems.

Lord Birt (CB) [V]: My Lords, I have long been a supporter of improving our strategic rail network, but I now wonder whether we face a mid to long-term future in which electric vehicles incorporating artificial intelligence within intelligent connected road networks will become the de facto mode of speedy, seamless door-to-door travel. Is the Department for Transport contemplating and investigating this possibility?

Baroness Vere of Norbiton (Con): My Lords, I suspect that it will not be an either/or situation in the future, as indeed it is not now. We are actively considering opportunities for automation and AI. We want to see the safe development and deployment of self-driving vehicles. The Government have the Centre for Connected and Autonomous Vehicles, which is looking at developing regulations, investing in innovation and skills and engaging with the public, because it is important that we take them with us.

Baroness Fox of Buckley (Non-Afl): My Lords, it still strikes me as ironic that, although the UK invented maglev, Asia has made far greater and more imaginative use of this high-speed technology. I worry about us being too risk-averse in refusing to keep it on the table. Can I press the Minister perhaps less on the sci-fi possibilities of innovative technology solutions—although I do find them exciting—and more on the concrete plans to bring about high-speed connectivity between northern cities, which is crucial for levelling up? Can the Minister assure us that urgency and speed will be deployed rather than emulating HS2, which has to be the slowest high-speed project in the world? Surely the cost challenges of maglev in Japan are not worse than those of HS2 here.

Baroness Vere of Norbiton (Con): I, too, am extremely excited by technology. The noble Baroness said that there has been widespread take-up of maglev technology across Asia, but that is not the case. The high-speed system is up and running in Shanghai at the moment, but China has now decided to invest in conventional rail rather than rolling out a large number of high-speed maglev systems. As I have mentioned many times, the Government are considering connectivity across the north and this will be set out in the integrated rail plan.

Lord Rosser (Lab) [V]: Can the Minister confirm in the light of her earlier answers that the Government do not know when the Northern Powerhouse Rail project, first promised by the then Chancellor of the Exchequer in 2014, will be approved, when its route

[LORD ROSSER]
plan will be made clear or when its promised infrastructure work will actually start? Assuming that is so—I think the Minister has been telling us that—can she at least assure us that work on the construction of Northern Powerhouse Rail will take priority over the start of work on the Prime Minister's latest project: the construction of a new royal yacht?

Baroness Vere of Norbiton (Con): I think that that is a rather extreme assessment of what I have said so far. I reiterate that the integrated rail plan must come first. Without it, it is pointless having a plan for Northern Powerhouse Rail because, of course, the whole point is that everything has to be integrated. As I said previously, we will work with Transport for the North, which will submit the business case for Northern Powerhouse Rail. Once we have received that, we will be able to set out how the project will go forward.

Baroness Randerson (LD) [V]: Does the Minister acknowledge that continued speculation about the future of Northern Powerhouse Rail and the issuing of new timetables by the East Coast Main Line, which reduced rail links for northern cities, simply serves to undermine confidence in government promises to level up and therefore reduces the likelihood of private sector investment in northern cities?

Baroness Vere of Norbiton (Con): The absolute priority for this Government is to get it right. Endless amounts of pressure—questions such as "When will it be published?"—is probably not particularly helpful and leads to an awful lot of speculation. As I have said previously, we are taking due consideration of what stakeholders are saying and we are working very hard to come up with a robust, deliverable plan. That is exactly what this Government are going to do.

Lord Berkeley (Lab): My Lords, the Minister is right about the Shanghai maglev, which I have been on. It is very fast and very noisy, but the technology, and therefore the costs, are very tight, because the track has to be kept within plus or minus half a millimetre in both directions, vertical and horizontal. She is absolutely right to reject it and I hope that the Government stick to their promises.

Baroness Vere of Norbiton (Con): Now we are all very jealous—I too would love to go on that maglev. The noble Lord makes an important point: it is not just about the cost of infrastructure, but of operation, because it has a very high electricity consumption and can therefore be more costly to operate. I know that the Japanese system will be using superconducting electromagnetics, which should be cheaper but, although maglev has some great applications, it is not applicable everywhere.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed. We now come to the fourth Oral Question.

Marriage and Religious Weddings
Question

1.41 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what progress they have made towards their commitment in the *Integrated Communities Strategy* Green Paper, published on 14 March 2018, to "explore the legal and practical challenges of limited reform relating to the law on marriage and religious weddings".

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, the law regulating legal marriage ceremonies developed over 150 years without systematic reform, so any changes present both legal and practical challenges. That is why the Law Commission is reviewing the law and will report later this year. A separate Nuffield Foundation study, also due to report this year, will investigate why marriage ceremonies occur outside the legal framework in England and Wales. The Government will consider both reports carefully.

Baroness Cox (CB) [V]: My Lords, I remain deeply concerned, because there has been no evidence of any meaningful progress since I first raised these issues over 10 years ago. As the Muslim Women's Advisory Council told me recently, although the plight of many Muslim women in this country is well-known,

"their cry for help is ignored."

The Government have continually failed

"to enshrine the rights of Muslim women who do not yet have the protection of legal marriage."

Will the Minister at last give an assurance that legislation will be introduced, as a matter of great urgency, to ensure that religious marriages are also legally registered?

Lord Wolfson of Tredegar (Con): My Lords, I am aware of the noble Baroness's work in this area and the Private Members' Bills she has brought forward in the past. The offence set out in her Private Member's Bill is one of the potential options on which we are working, but any change in practice must be based on the facts on the ground. We are doing work with the Nuffield Foundation, the Law Commission is looking at this area and we have met with Aina Khan from Register Our Marriage. While I cannot give an assurance on legislation, I can give an assurance that this has a high priority and we are looking at it with real care.

The Lord Bishop of Gloucester: My Lords, during the passage of the Domestic Abuse Bill, now an Act, your Lordships discussed how best to protect migrant victims of abuse. Will the Minister assure me that any reforms, such as those being discussed here today, will safeguard migrant women and children, who are often particularly vulnerable?

Lord Wolfson of Tredegar (Con): My Lords, the right reverend Prelate is right that the position of migrant women and their children, in particular, is of real concern. As we saw in the domestic abuse debates,

those groups can be subject to particular intimidation and abuse. We will, therefore, consider their position in any legislation.

Viscount Bridgeman (Con) [V]: My Lords, a Channel 4 survey found that six in 10 Muslim women, who had had traditional Islamic weddings in Britain, are not legally married—a point made by the noble Baroness, Lady Cox. Of these, over a quarter— 28%—are not aware that they do not have the same rights they would with a legally recognised marriage. Does the Minister not agree that this is an issue of equal rights for women? May I press him on how the Government will safeguard the rights of Muslim women and ensure that the rule of law is upheld?

Lord Wolfson of Tredegar (Con): My Lords, my noble friend is right: if you are not legally married, under the law of England and Wales, you have a significantly disadvantageous position on divorce and on death. The position is simple: there is only one law in this country, the law of England and Wales. That proposition can be traced back to Jeremiah's letter to the Babylonian exiles. There is no separate system of law in this country.

Baroness Butler-Sloss (CB) [V]: My Lords, I declare an interest as the chairman of the National Commission on Forced Marriage. I ask the Minister to bear in mind that any relaxing of the requirements of marriage might have the unintended consequence of not identifying a potential forced marriage.

Lord Wolfson of Tredegar (Con): My Lords, I respectfully agree with the noble and learned Baroness that, in seeking to update marriage law, we must ensure that we do not weaken forced marriage safeguards. Indeed, we criminalised that in 2014. I know that the Law Commission is looking at these issues most carefully.

Can I just clarify my previous answer, before the Advocate-General for Scotland has a go at me? When I said "this country", I was referring to the law of England and Wales; the law of Scotland is a separate matter.

Lord Falconer of Thoroton (Lab) [V]: My Lords, the 2015 review by the noble Baroness, Lady Casey, said that, as of 2015, there were up to 100,000 sharia marriages in the UK,

> "many of which are not recognised under UK laws and leave women without full legal rights upon divorce."

Her review warned that this was worrying in a group with lower levels of female employment and English language. Crucially, the noble Baroness said:

> "The potential for women … to find themselves in what they believe to be a binding commitment, be economically and socially dependent on their spouse, and yet have no legal marriage status, is worryingly high."

The Minister said that this issue is a very high priority. That report was six years ago. When did it become a high priority and what have the Government done in those six years?

Lord Wolfson of Tredegar (Con): My Lords, the noble and learned Lord knows that it is a high priority, because this is one of the issues that both the Law Commission and the Nuffield Foundation are looking at. We have also looked at the sharia review. As I have said, our position is that we want to make sure that people are properly protected, though I would suggest that it is as much a matter of education as it is of legislation.

Baroness Eaton (Con) [V]: My Lords, numerous independent reports, including those commissioned by the Government, have confirmed that some sharia councils embed discrimination against women, including against those women who use sharia council services on matters of marriage and divorce. Given that countless women are suffering as a result, may I press my noble friend the Minister for an assurance that we will see government legislation sooner rather than later?

Lord Wolfson of Tredegar (Con): My Lords, people may choose to abide by the interpretation and application of sharia principles if they wish to do so—that is a matter of religious freedom—provided that their actions do not conflict with the national law. But, importantly, all individuals retain the right to seek a remedy through the English courts in the event of a dispute. For these purposes, the law of England and Wales in relation to the inheritance of property will prevail. We are looking at legislation, and I will of course update the House and my noble friend as and when we reach a decision.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree with the words of a Christian hymn that

> "New occasions teach new duties; Time makes ancient good uncouth",

and that religion and religious teachings should be interpreted in the context of today's times and the recognition of full gender equality? Does he agree that the Government's continuing reluctance to stand up for the rights of Muslim women and girls is not only a betrayal of government responsibility but an insult to the fair name of Islam?

Lord Wolfson of Tredegar (Con): My Lords, I think the theological point put to me will take an answer that is probably longer than the allotted time, but I am happy to consider it further. However, I reject the proposition that we are not concerned about the rights of Muslim women and girls. The history of the work in this area, whether on forced marriage or indeed the matters we are discussing this afternoon, would indicate the opposite.

Lord Cormack (Con): My Lords, I do not think anybody could dispute my noble friend's personal commitment, but this is taking a very long time. Can he tell the House what line the Government will take on the Private Member's Bill from the other place which suggests that the minimum age for marriage should be 18?

Lord Wolfson of Tredegar (Con): My Lords, I think my noble friend will have seen my letter to various groups on that point. Marriage at 16 and 17 has the significant risk of people being forced into marriages and their life chances reducing. Therefore, my noble

[LORD WOLFSON OF TREDEGAR]
friend can take it from me that we will be looking very carefully at the Bill introduced by the Member for Bromsgrove, who now appears to be otherwise occupied.

Baroness Deech (CB) [V]: My Lords, I am sure the Minister believes that there should be equality among religions in relation to divorce, and that the law should bring justice to women who are mistreated by religious husbands and religious courts. So will he ensure changes to the Matrimonial Causes Act 1973, so that the court can refuse to finalise a civil divorce until an Islamic religious divorce has been obtained, if unfair pressure is being used in the religious proceedings? This would bring Islamic divorce in line with the Jewish get.

Lord Wolfson of Tredegar (Con): My Lords, the premise behind the question of the noble Baroness is that the bars to effective relief are the same in Judaism and Islam, but that is not in fact the case. As I understand it, it is significantly easier for a woman to obtain a divorce in Islam than it is for a woman to facilitate or obtain a divorce in Orthodox Judaism. Therefore, the Act that the noble Baroness refers to—I believe it is Section 10A—would not have the same advantageous effect in Islamic marriages as it does in Orthodox Jewish marriages.

The Lord Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

1.52 pm

Sitting suspended.

NHS Test and Trace
Private Notice Question

2 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government what assessment they have made of the effectiveness of the NHS Test and Trace system.

Baroness Penn (Con): My Lords, NHS Test and Trace currently provides 6.5 million virus tests each week, with more than 80% of in-person test results received within 24 hours. It successfully traces 92% of positive cases and 90% of their identified contacts, with more than 80% of contacts reached within 48 hours of someone reporting symptoms. Test and trace is continuously improving the speed and reach of its services and further enhancing the role of local authorities in community testing and contact tracing.

Lord Scriven (LD): My Lords, the Innova lateral flow test purchased by the Government without open competition at a cost of more than £3 billion was last week described by the US Food & Drug Administration as not proven; it said it should be thrown in the bin. Why do the Government still maintain that the Innova lateral flow test is effective, safe and offers value for money to the British taxpayer?

Baroness Penn (Con): My Lords, the Innova test has gone through the rigorous Porton Down assessment process that the UK uses for coronavirus testing approved by the MHRA, the independent regulator for medicines and medical devices in the UK. I reassure the noble Lord that there is rigorous assurance work in the lab and in the field to ensure that Innova tests consistently perform to the required standard.

Lord Blunkett (Lab) [V]: My Lords, will the Minister go back to her department and the Department for Education to see whether we can get some consistency in the advice given by directors of public health in relation to sending children home when someone in the year group or the bubble—whatever advice might be given at any time—tests positive? There are some quarter of a million young people out of education today because of the varying advice. It would be good if we could sort this out.

Baroness Penn (Con): My Lords, I assure the noble Lord that I will take up that point with the Department of Health and Social Care and the Department for Education. We are piloting a programme of daily lateral flow tests as opposed to self-isolation; perhaps that might help avoid such situations in future.

Lord Moynihan (Con): My Lords, does my noble friend the Minister agree that, given the challenges we have of speed, confidence, reach and public compliance, we need a comprehensive and independent assessment of why the rate of tests registered has been low and to make improvements to the system, so that the UK Health Security Agency can be strongly resourced to face down future threats and viruses?

Baroness Penn (Con): I believe my noble friend may be referring to the low rate of registration for lateral flow tests issued for asymptomatic testing. That is something we are looking at very carefully. Around 40% of people say they have taken tests but not registered the results. NHS Test and Trace is taking steps to improve the registration of test results by streamlining the reporting process and improving communications about the importance of reporting results.

Baroness Wheatcroft (CB): My Lords, test and trace can work only if those who are told that they should isolate do indeed isolate. I believe that companies are now being paid to send people to knock on doors to check whether people are at home as they should be. One report stated that the hit rate was 40% success. Can the Minister tell us the current rate of success on that sort of check?

Baroness Penn (Con): My Lords, I do not have data for those who might be physically checked in their home, but the ONS conducts surveys of those who have been asked to isolate, which show a higher compliance rate of about 80%. The Government's focus in ensuring isolation is to provide the right incentives and support for people to isolate, including, for example, the £500 self-isolation payment for those on low incomes. We take enforcement measures, but we seek to persuade and then enforce.

Baroness Brinton (LD) [V]: My Lords, I refer the Minister back to her answer to my noble friend Lord Scriven. The American FDA pointed out that the previous analysis pointed to Innova providing false statistics. What new evidence do the Government have that the FDA is wrong?

Baroness Penn (Con): My Lords, my understanding is that the Innova test has passed the UK's assessment process and that ongoing assurance work is conducted in labs and in the field to ensure that the tests consistently perform to the required standard. My understanding is also that the latest evidence suggests that Innova lateral flow devices have a specificity of around 99.97%.

Baroness Thornton (Lab): My Lords, this morning it was announced that Serco had been awarded a new contract with the Department of Health and Social Care worth up to £322 million to continue providing Covid test-and-trace services. Will the Minister justify this just days after the NAO review found that 600 million tests were unaccounted for, and that the £22 billion scheme was still missing targets and was wracked with problems? Can the Minister explain why more taxpayers' money is being handed out to what has been found to be an ineffective and inefficient company instead of supporting local public health teams to do this work?

Baroness Penn (Con): My Lords, more than 80% of the budget for test and trace goes towards the testing part of that programme. That has proved highly effective. The programme is working to increase its partnership with local authorities and local directors of public health. We are also reducing our reliance on private sector contractors by around 17%, but we recognise the work that those partners have done with us in building up the system over the past year and continue to work with them where it is in the best interests of the country.

Lord Balfe (Con): My Lords, the latest variant is pretty mild—deaths have gone right down—but we are spending billions of pounds on this, while huge waiting lists are building up in the NHS. Is it not about time that this programme was wound down and the money spent on the millions of delayed operations and procedures?

Baroness Penn (Con): My Lords, we are looking at the evidence in relation to the variant and the effectiveness of the vaccine against it all the time. I assure my noble friend that additional resources have already gone into the NHS to catch up on those waiting lists that have grown because of the pandemic. If we were to get this wrong and there were increased hospital admissions due to Covid, we would not be able to make the progress that he and we all want to see on tackling those waiting lists.

Lord St John of Bletso (CB) [V]: My Lords, the recent National Audit Office evaluation of the track and trace performance revealed that the programme is still not as effective as promised and relies heavily on the use of expensive management consultants. Does the Minister agree that more independent medtech and diagnostic providers should be incorporated into the test and trace programme to meet demand, and can she elaborate on the cost-benefit analysis?

Baroness Penn (Con): My Lords, the test and trace programme seeks to partner with all organisations that can help its effectiveness: the private sector, public health authorities in local areas and the NHS. SAGE recommends that an effective contact-tracing service should trace 80% of contacts within 48 to 72 hours of someone reporting symptoms and ordering the test. Test and trace has achieved the 72-hour standard since January 2021 and the more stretching 48-hour standard since March this year.

Baroness Walmsley (LD) [V]: My Lords, I follow the line of questioning of the noble Lord, Lord Moynihan, and the noble Baroness, Lady Wheatcroft. According to the NAO, test and trace

"is responsible for … public compliance"—

but it has no targets for increasing the number of symptomatic people coming forward for testing, the uptake of lateral flow tests or compliance with self-isolation. All three are vital to the success of the scheme. Why are there no targets?

Baroness Penn (Con): My Lords, test and trace is working to improve performance across all those areas, in particular through the community testing programme. Local directors of public health are playing a leading role in targeting testing to those parts of their local communities where it will have the greatest impact. In addition, all 314 local authorities in England have local tracing partnerships working with test and trace to improve performance in those areas.

Lord Campbell-Savours (Lab) [V]: My Lords, to return to my noble friend Lady Thornton's question, economy, efficiency and effectiveness are the National Audit Office's and the Public Accounts Committee's measures of confidence in public expenditure. On economy, do the Government regard the £22 billion budget of track and trace as good value for money? On efficiency, is a response rate of 14% on 700 million kits an efficient use of resource? And on effectiveness, do not European calls for the quarantining of UK tourists suggest a total lack of confidence in our tracing systems here in the United Kingdom?

Baroness Penn (Con): My Lords, the noble Lord is correct that the Government allocated £22 billion to test and trace in the last financial year. As I said, more than 80% of that has been allocated to testing. He is absolutely right that we have sought opportunities to drive down costs where possible and free up resources. We have taken a number of steps to reduce costs, including through commercial negotiations with suppliers, which have released £2.2 billion of savings, and technological advancements. A further £6 billion of savings were achieved by lower demand, changing priorities and deferred activities during the national lockdown from December to March.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, this pandemic is far from over. We also know that testing has to go hand in hand with tracing to be effective. The Minister mentioned local authorities playing a vital part. Is she satisfied that what we have

[Baroness Stuart of Edgbaston]
at the moment is a sustainable system of sufficient support for our directors of public health, to marshal us for future demands in a way that is both effective and responsive to the communities they serve?

Baroness Penn (Con): My Lords, we have recently increased the resources available to local authorities—for example, in the amount of money they have for discretionary payments to support those who are self-isolating. The noble Baroness is absolutely right about the importance of partnership in this work, and in particular the role of local authorities and directors of public health, to ensure that the uptake of testing is as high as we need it to be. We find that, once people are tested, they do tend to self-isolate.

Lord Dubs (Lab) [V]: My Lords, will the Minister say how many firms of management consultants have been employed on the test and trace system since it began? Were they all appointed by competitive tender, and what evidence is there that this is money well spent?

Baroness Penn (Con): My Lords, I believe that all the processes in setting up test and trace will have followed the relevant guidance on both the use of private-sector consultants and how the processes for tendering should take place, and I am sure that we will continue to ensure that that is the case.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, research has shown that many people will not co-operate with test and trace because those on low income or in insecure employment fear the loss of vital income when isolating. What assessment have the Government made of the impact of this in delta hotspots?

Baroness Penn (Con): My Lords, we are continually working with local authorities to understand, for example, the uptake of the support payments available to those on low incomes who need to self-isolate. One of the challenges we have found is low awareness of the support available. We are working with local authorities, particularly in hotspots, to see what we can do to improve the communication of that available support—not just financial support but social support for those who may then need to isolate.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, all supplementary questions have been asked.

Skills and Post-16 Education Bill [HL]

Order of Consideration Motion

2.15 pm

Moved by ***Viscount Younger of Leckie***

That it be an instruction to the Committee of the Whole House to which the Skills and Post-16 Education Bill [HL] has been committed that they consider the bill in the following order:

Clauses 1 to 13, Clauses 16 to 25, Clauses 14 and 15, Clauses 26 to 28, Title.

Motion agreed.

2.15 pm

Sitting suspended.

Environment Bill

Committee (3rd Day)

2.31 pm

Relevant documents: 3rd Report from the Delegated Powers Committee, 4th Report from the Constitution Committee

The Deputy Chairman of Committees (Lord Haskel) (Lab): My Lords, I will call Members to speak in the order listed. During the debate on each group I invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request. The groupings are binding. A participant who might wish to press an amendment other than the lead amendment in a group to a Division must give notice in debate or by emailing the clerk. Leave should be given to withdraw an amendment. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely wants their voice to be accounted for if the Question is put, they must make this clear when speaking on the group. We will now begin.

Clause 16: Policy statement on environmental principles

Amendment 73

Moved by ***Baroness Jones of Moulsecoomb***

73: Clause 16, page 10, line 9, at end insert—

"(1A) In exercising their functions and carrying out their duties under this Act, the Secretary of State and all public bodies and authorities must adhere to the environmental principles."

Baroness Jones of Moulsecoomb (GP): My Lords, it is my pleasure to open the debate, especially on this group of essential amendments, which really goes to the heart of making the Bill fit for purpose. We must all know that the Bill currently just does not have any bite. We will have all these lovely environmental principles floating around, but no real duties on the Government other than having "due regard". "Due regard" is a get-out clause. Ministers can easily have "due regard" for something and then make a completely opposing decision, and they know it. That is why they have chosen this wording. It is weaselly, squirming and not worthy of any Government who take the environment seriously.

My Amendment 73 would rectify this by requiring Ministers, public bodies and authorities to all stick to the environmental principles. This would be a clear requirement, so when they do not stick to them those decisions would be judicially reviewable. That is how things should be. It is a simple amendment that would give real clarity, because we all know what the environmental principles are.

My Amendment 75 would flesh out the environmental principles so that they reflect a much broader set of principles, written in simple, understandable language. For example, the precautionary principle and the polluter

pays principle would actually be explained and defined. It would also add things such as using the "best available scientific knowledge", the principles of public participation and the principle of "sustainability" to take into account the health of present generations and the needs of future generations.

Taken together, these amendments would create an accessible blueprint for our country and for the planet. They would set out the clear environmental principles on which our future would be founded, and require—not simply invite—the Government to implement those principles in all areas of policy. This is the type of legislation that a Green Government would implement, these are the principles that we would apply and these are the ways in which we would make ourselves accountable to Parliament, to the courts, and to future generations. I beg to move.

Baroness Parminter (LD): My Lords, I have two amendments in the group. Their aim, rather like those of the noble Baroness, Lady Jones of Moulsecoomb, is to enable the Government to ensure that the environmental principles do the job we need them to do, making sure that environmental considerations are at the heart of decision-making. Indeed, the Explanatory Notes say of the principles:

"The principles work together to legally oblige policy-makers to consider choosing policy options which cause the least environmental harm."

I am sure we would all welcome that, but, as the noble Baroness rightly said, there are far too many caveats and exceptions in this list. My Amendments 76 and 78 refer to four of them, and I would like to spend a little time drawing them out.

The first is alluded to in the amendment from the noble Baroness, Lady Jones, which is that public bodies are excluded. The policy statement on environmental principles applies only to Ministers. We know that public bodies, of which there are well over 350 in addition to all the local authorities in this country, do the lion's share of pushing forward government policy throughout the country. It is therefore an omission of some magnitude that only Ministers of the Crown have to pay due regard to the policy statement on environmental principles. It seems to me that we would want all public bodies, such as Homes England and other bodies, to take account of this policy statement that the Government intend to prepare.

The second issue about which I have concern is the excessive use of the word proportionality by the Government as a caveat. If the noble Lord, Lord Vaux, were here I am sure that I would agree with him that there are times and places when the use of "proportionate" is correct. I feel comfortable with Clause 16(2) saying:

"A 'policy statement on environmental principles' is a statement explaining how the environmental principles should be interpreted and proportionately applied by Ministers … when making policy."

However, by the time we get to Clause 18, there is a disproportionate use of the word "disproportionate", which my amendment seeks to remove. It is again trying to curtail the application of the consideration of the environmental benefit.

Those are two areas, but the two I really wish to concentrate on are the exceptions of the MoD and the Treasury having to take due regard of the policy statement. As I said at Second Reading, the MoD has 2% of the land use in our country. It has a third of our SSSIs, which accounts, in this time of football interest, to more than 110,000 football pitches' worth of the most protected land in its purview and control.

Last year, when the National Audit Office did a review of the MoD that looked at its "taking account of" environmental issues, it said that environmental protection was "a Cinderella service" in the MoD. As it stands, given all these SSSIs on MoD land at the moment, we have to ask: if the Government are going to meet their 25-year environment plan, which says that they want to have 75% of protected sites in a favourable condition by 2042, how are we going to achieve that if the MoD is not involved? At the moment, 52% of the MoD's sites are not in a favourable condition.

I do not wish Members of the House to think that I do not think very highly of the MoD or its job of national security, because I do. It has proved that it can do a sterling job of environmental protection. I know this because last year, on MoD land near me in Pirbright, it found a very rare and endangered spider called the great fox-spider. It is instances like that, of which there are a number around the country, that show that national security and conservation and environmental protection can go hand in hand.

However, I do not understand why there is this blanket exemption for the MoD to have due regard to the policy statement. The Minister in the other place, Rebecca Pow, said in Committee:

"it is fundamental to the protection of our country that the exemptions for armed forces, defence and national security are maintained."

That is not an explanation but merely a statement. She went on:

"The exemptions relate to highly sensitive matters that are vital for the protection of our realm".—[*Official Report*, Commons, Environment Bill Committee, 3/11/20; col. 969.]

Again, that does not explain what those highly sensitive matters are.

Since I was not very clear what the Minister was trying to get at last November, I wrote and asked the MoD. I received a very eloquent reply in February from the Minister, Jeremy Quin, from which I quote:

"the Department remains committed to its duty to conserve biodiversity and delivering on the extended duty to 'enhance' biodiversity within the Environment Bill. These duties are not altered by the focused defence disapplication in the Bill."

I question what Mr Quin is saying there. This is not a focused disapplication, and I ask the Minister here: if there are good and focused reasons why the MoD needs a specific disapplication, then we are all reasonable people and I am sure we will be happy to see that expressed in the Bill, but as it stands it is not a focused disapplication.

My second point is that the MoD is subject to the climate change obligations as outlined in the Climate Change Act. Indeed, the Climate Change Committee regularly offers structured advice to the MoD on how it is applying its climate change targets. So if it is good enough for the MoD to "have regard to" the obligations of the Climate Change Act, why is it not good enough that the MoD must take due regard of the policy statement on environmental principles?

[Baroness Parminter]

Finally, although I am probably going on too long, the other issue I am extremely concerned about is the Treasury's exclusion from the need to have due regard to the environmental policy statement. That means that consideration of departmental budgets and tax spending, which we know are fundamental to delivering the environmental gains, are outwith the consideration of the statement. In the Government's response to the Dasgupta review—a day in Committee cannot go by without someone mentioning it—the Government agreed with Dasgupta that nature is a macroeconomic consideration and spelled out in some detail what they were doing to align national expenditure with climate and environmental goals. They quoted the duty on Ministers to have due regard to the policy statement on environmental principles but, perhaps not surprisingly, they did not mention the disapplication for the Treasury. Perhaps the Minister might wish to comment on the discrepancy between the Government's response to the Dasgupta review and the statement.

I feel strongly that public bodies need to be included within the scope of the policy statement and that the MoD in particular needs to be in scope unless there are very tightly defined exceptions. Excluding the Treasury and all the commitments to departmental spending rides a coach and horses through this measure and frankly, the Government's aim to deliver the environmental considerations at the heart of policy and decision-making will be wasted.

2.45 pm

Baroness McIntosh of Pickering (Con): I am delighted to speak to this small group of amendments. I shall speak particularly to my Amendment 77A but before I do, I would be interested in probing my noble friend on the relationship between Clause 16, on environmental principles, and Clause 45, on environmental law. I have another amendment asking that we write the Aarhus convention into the Bill, so I am interested in how the principles relate to the law in the context of this ground-breaking Bill.

My second point relates to government Amendments 80, 298 and 299. I hope he will look carefully at Amendment 80A in the name of the noble and learned Lord, Lord Hope of Craighead, and Amendment 81 from the noble Lord, Lord Wigley, as there may be nuances relating to Scotland and Wales that the government amendments should consider.

In speaking to Amendment 77A, I am extremely grateful to the Bar Council for briefing me and bringing to my attention that the phrase "due regard to" is inappropriate here and should, as the amendment says, be replaced by "ensure compliance with". The background to this is that the concept of "due regard" has come before the courts a number of times, so guidance is available on the exercise of due regard by public authorities. This is in the context of public bodies making decisions—concerning equality legislation, for example—rather than making policy, as proposed in the Bill before us.

I shall give a couple of examples. Lord Dyson's description of "due regard" in R (Baker) v Secretary of State for Communities and Local Government in 2008 has been paraphrased as

"regard that is appropriate in all the particular circumstances in which the public authority concerned is carrying out its function as a public authority."

The courts have otherwise considered those circumstances where a public body is required to have regard alone to the policy or government guidance. On the one hand, strength may be given to the terms as set out by the High Court in the case of Royal Mail Group Plc v The Postal Services Commission 2007, in which it was held in the context of a decision under the Postal Services Act 2000 to impose a penalty on the licence holder that must have regard to a policy statement, that:

"The obligation to have regard to the policy recognises that there may be circumstances when it does not have to be applied to the letter but … there must be very good reasons indeed for not applying it."

There is another example, in the context of planning law, where a similar conclusion may be drawn—the case of Simpson v Edinburgh Corporation.

I submit to the Minister that the requirement in Clause 18 of the Environment Bill is currently for a Minister to

"have due regard to the policy statement on environmental principles",

not simply the environmental principles, when making policy, not when making decisions. From that follow a number of qualifications to that requirement, based on the significance of any environmental benefit or the proportion or disproportion of environmental benefit from the policy itself.

I argue that the use of the term "have due regard" in Clause 18 creates a potential tension between the Government's clear entitlement to promulgate policy and to express their policy "in unqualified terms" subject to the

"basic tests of reason and good faith",

as was argued in SSCLG v West Berkshire, and the rule as applied in Padfield v Minister of Agriculture, which is that a statutory discretion must be deployed to promote the policy and objects of the Act and the significance of having a set of environmental principles enshrined in statute in the first place. To that end, a clearer duty to "ensure compliance with" or "ensure accordance with", as opposed to "have regard to", would help to avoid confusion, leave the promulgation of policy open to debate in the courts and give greater recognition to the importance of the principles.

I know that, in the context of previous Bills, we have had cause to discuss the context of "have due regard to". I am arguing for the importance of leaving the courts with a power to impose a financial penalty, as in this case, upon an unsuccessful body—including, for example, statutory undertakings such as sewerage and water undertakers—which has been found to be in breach of environmental law. It is extremely important that, in the context of what we are asking the OEP to do in the remit of the Bill, it be given real teeth when holding public bodies to account and mirror the pre-existing power, previously exercised by the European Commission and which it is now intended that the body of the OEP should fulfil post Brexit.

The requirement that the breach be severe to justify a financial penalty is noted. It is assumed that this is to ensure that a financial penalty be the exception rather than the rule, but this would also be in the

context that the OEP's power to apply for an environmental review is already on the condition that it considers the authority's failure to comply to be serious. To that end, it might be less open for debate as to whether it is severe or serious if the court's discretion were wider, and therefore based upon all the circumstances of the case, but to be exercised where those circumstances are exceptional.

In the circumstances before us, "have due regard to" is not appropriate. I would like to replace it in the Bill with the words: "ensure compliance with". That would give the OEP greater clarity and, should it be subject to judicial review, it would be easier for the courts to clarify in those circumstances. I hope that my noble friend will look sympathetically on probing Amendment 77A.

Lord Wigley (PC) [V]: My Lords, I am delighted as always to follow the noble Baroness, Lady McIntosh, and well understand the points that she has made. I hope that the Minister will listen to them. I support the assertions made by the noble Baroness, Lady Jones, in moving Amendment 73, but my amendments relating to Wales deal with a somewhat different aspect of these policies.

There is a somewhat bizarre linking of issues in the way that they have come together in this debate. We are where we are because of how Clauses 16 to 18 are formulated and the manner in which the Government have tried to ensure that provisions relating to environmental principles do not fall foul of devolved competences in Wales. That is absolutely fair enough but it is far from clear to me, as I suspect it is to the proposers of Amendment 78, what exactly the Government are trying to do. I have tabled Amendments 79 and 81 to try to tease out exactly what their intention is, and I was grateful to the noble Baroness, Lady McIntosh, for highlighting Amendment 81.

As things stand, in making policy that may impact on Wales, the provision is that the Minister must not have due regard to policy statements on environmental principles to the extent that they relate to Wales, whether or not those spheres of environmental policy are devolved. If the Bill has no application whatever to Wales then, as for Scotland and Northern Ireland, Chapter 1 should be excluded from any applicability to Wales. But the Government have insisted on making Chapter 1 applicable in certain circumstances to Wales. On a superficial reading, it would seem that the Government insist that a Westminster Minister will have some powers relating to Wales, although we do not know exactly what they may be. But whatever they are, in applying those policies in Wales, the Minister shall not have regard to environmental principles, though in relation to similar responsibilities in England he will need to have regard to those principles.

The issue of environmental principles is a very important dimension of the Bill and we must be clear about the way in which it applies or does not apply to Wales. It may be that the Minister will look again at the wording of these clauses before Report and, if necessary, bring forward further amendments on the Government's behalf to clarify the situation. I certainly look forward to hearing his response to this debate.

Lord Hope of Craighead (CB) [V]: My Lords, as always, it is a pleasure to follow the noble Lord, Lord Wigley. I am speaking about devolution as well, but devolution in relation to Scotland is the topic that I wish to concentrate on. I will speak to Amendment 80, which is the first of the three government amendments in this group, and to my amendment to that amendment, which is Amendment 80A. I am grateful to the noble Baroness, Lady McIntosh, for what she said about them.

If your Lordships will forgive me, I need to take a little time to explain which problem Amendment 80 seeks to deal with. Both these amendments in fact address the legislative competence of Section 14(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. That subsection states that UK Ministers must have regard to the guiding principles which are set out in Section 13 of that Scottish Act. Those principles are derived from the equivalent principles provided for in the EU legislation, which Scotland has decided to adopt. The UK Ministers are told by subsection (2) that they must have regard to them in making policies extending to Scotland. Amendment 80 seeks to qualify that provision by saying that it

"does not apply to policies so far as relating to reserved matters."

In other words, it seeks to amend the Scottish Act by saying that it does not apply to environmental policies made by the Secretary of State under the provisions of this Bill. Your Lordships are being asked to accept that amendment and I am afraid that this raises a question of law.

The question is whether the direction by the Scottish Parliament to UK Ministers, which we are being asked to qualify in this way, is compatible with the devolution settlement as set out in the Scotland Act 1998. Its wording seems to assume that, in this context, the distinction between what is devolved to the Scottish Parliament—and thus within its legislative competence—and what is reserved to Westminster with regard to the environment can be determined entirely by the geographical area to which the policies relate. In other words, it assumes that environmental policies directed to what happens in Scotland, whatever their subject matter, must be for the Scottish Parliament and the Scottish Ministers.

The problem, however, is that a provision in an Act of the Scottish Parliament is outside the competence of the Parliament if it relates to reserved matters. Guidance from the Supreme Court tells us that the phrase "relates to" requires one to consider the purpose of the provision under challenge. If its relationship to a reserved matter is merely loose or inconsequential, it will not be outside competence. Speaking for myself, I do not see how a direction to Ministers of the kind contained in Section 14(2), with regard to which environmental policies they must have regard, could be said to be loose or inconsequential. In other words, it seems that the Scottish Parliament's competence in regard to environmental matters is determined by the subject matter of the reserved matters, not by the geographical area to which they relate.

Environmental policies with regard to energy and transport, perhaps the most important examples in this context, are therefore for Westminster and not for

[Lord Hope of Craighead]
Holyrood. That extends to things such as the transmission, distribution and supply of electricity; restrictions on navigation, fishing and other activities in connection with offshore installations; the provision and regulation of rail services; and the regulation of aviation and air transport. These activities happen within Scotland but the statute says that they are reserved matters. This means that the making of environmental policies that are to be applied to them must be left to Westminster.

3 pm

However, for the UK Parliament to amend an Act of the Scottish Parliament for the reasons I have just outlined is not a matter to be taken lightly. Normally one would expect the Scottish Parliament to do this for itself. One must assume that the reason why we are being asked to accept this amendment and make the amendment here is that the Scottish Parliament is not willing to do that.

I do not find that entirely surprising, given what happened to a previous EU continuity Bill introduced to the Scottish Parliament in 2018. The UK law officers took the view that much of what it sought to do was outside the legislative competence of the Scottish Parliament. Their view was vigorously contested, so there was a reference to the UK Supreme Court, which resulted in a finding that a number of the Bill's provisions would not be law for that reason. The Bill was not proceeded with any further, and a new Bill, which became the 2021 Act we are looking at, was introduced instead. That Bill was not challenged by the UK law officers before it became law.

As it happens, two other Bills passed by the Scottish Parliament are the subject of references to the Supreme Court which are being heard in that court as we speak this afternoon. One concerns the incorporation into a Scottish Bill of the UN Convention on the Rights of the Child, as to the competence of which there is strong objection from Westminster and an equally strong resistance to that objection from Holyrood. Common to both is the UK Ministers' contention that it is not open to the Scottish Parliament to make laws whose effect would be to impose legal obligations on them with regard to reserved matters.

In view of that history, government Amendment 80 is taking us into a very sensitive and much-disputed area. That is why I have taken such a long time saying what this is all about. We do not have the Supreme Court's view on this case. Nevertheless, I believe, for the reasons I have given, that Section 14(2) of the Scottish Act is in need of correction, so I support this amendment.

But there is an aspect of this matter that the amendment does not deal with: the need for consultation with Scottish Ministers when UK Ministers are making environmental policies with regard to reserved matters in Scotland. Here, geography does matter, because what is done in one subject area with regard to the environment within Scotland is bound to affect another; that is the way the environment works. In its report on this Bill, the Constitution Committee, of which I am a member, has stated:

"Close co-operation between the UK Government and the devolved administrations, including a requirement to consult where policies are being developed relating to reserved matters that affect Scotland, will be important in improving environmental protection across the UK."

I raised this issue with the Minister when we spoke last week. For obvious reasons, he was not able to commit himself one way or the other on the point. I hope that, having had time to think about it, he will agree that a requirement to consult should be written into this clause, as it is in Clause 26(4) for example, and as has become the regular practice in many other Bills. I know that he will say that consultation does in practice take place all the time, but there are occasions when this ought to be written into a Bill and, in view of the highly sensitive nature of what it being done here, I suggest that this is one of them.

To do that would not undermine the Government's position in any way. On the other hand, it would recognise that Scotland has a very real interest in the making of policies with regard to reserved matters that affect the environment there. I hope that noble Lords and the Minister will agree with me that this is the right thing to do, so, when the time comes, I will be moving Amendment 80A.

Baroness Boycott (CB): My Lords, it is always a great pleasure to follow the noble and learned Lord, Lord Hope. I rise to support the amendment tabled by the noble Baroness, Lady Jones of Moulsecoomb. I completely agree with her that to "have due regard" to environmental principles is absolutely not enough and we have to insert the words that we must "adhere" to them.

The fact that environmental protection is not yet integrated into all other policy areas makes it impossible for us to reach our net-zero targets. The fact that, for instance, it does not apply to the Treasury leads the cynic in me to say, "Why on earth did they commission the extraordinary review—the Dasgupta review, which the noble Baroness, Lady Parminter, referenced in her excellent speech? Is it just a cynical operation so we have some good window-dressing leading up to the COP?" Otherwise, why leave the Treasury out? It is, at the end of the day, probably the most important government department to ensure that we carry this out.

I want to speak quickly and specifically about the integration principle a bit more. I have spoken here before about the absurdity of putting houses up on the edge of Knepp, the rewilding estate. Just this morning I read the *Times*:

"More than 60,000 oak, beech and other native trees planted to celebrate the Queen's Diamond Jubilee are to be chopped down … to build up to 4,000 homes."

This is on military land at the Prince William of Gloucester barracks in Grantham. It has been commissioned by Homes England—another body referred to by the noble Baroness, Lady Parminter. The Government are apparently eating up their own plans.

The point about these trees is that 88,000 of them were planted between 2012 and 2013 to celebrate the Jubilee, and, as anyone will know, this means that the trees are just coming into their maximum moment to be wonderful carbon sinks. It is a fantastic time for trees. The trees were planted by a group of people in

the area, including 15 year-old Call McLelland, who yesterday asked what kind of message this sends out to people. He said:

"I planted a tree at the Grantham Diamond Jubilee Wood with my family when I was seven years old. I can remember looking forward to seeing the trees fully grown and feeling we'd done something worthwhile … I would be devastated"

if this goes ahead.

We cannot have this; we must have consistency. These environmental principles are here for a point. Do we want to lose people like Call—the people we are going to need? I will point out to the Government what happened to them in Amersham recently. People do not like it; they have woken up, and they care about the land and biodiversity. We have targets to meet and integration is where we have to start.

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Baroness, Lady Boycott, and to thank her for putting that important case study on our record. I rise to speak chiefly to Amendment 78 in the name of the noble Baroness, Lady Parminter, to which I have also attached my name, as have the noble Baronesses, Lady Jones of Whitchurch and Lady Young of Old Scone.

Before I get to it, my noble friend Lady Jones has already covered the amendments opening this group and they have been powerfully supported by the noble Baroness, Lady Boycott, but I want to briefly address Amendments 77A, 79 and 80A, because those three amendments—as we have just heard very powerfully, in the case of 77A from the noble Baroness, Lady McIntosh—are about the need for the OEP to have teeth. Her important change does that, and this is something I suspect we will be discussing for a good part of the rest of the day. To the noble Lord, Lord Wigley, I say that of course Wales needs equal protection from the environmental principles that are applied in England. The noble and learned Lord, Lord Hope, clearly identified a really important issue. I would like to offer support to all of those.

I will come specifically to Amendment 78. The noble Baroness, Lady Parminter, did a great job of introducing this. We are talking a great deal about security at the moment and I want to focus on two elements of this amendment, addressing the Armed Forces and defence policy, and also a little bit on the Treasury—as others have already. When we heard the noble Baroness, Lady Parminter, read out the letter from the Minister in the other place, it seemed that we have that great catch-out, security: "Oh, it's security—we can't question any of that." Well, I point noble Lords to the recent integrated review and its foreword, written by the Prime Minister, which says:

"In 2021 and beyond, Her Majesty's Government will make tackling climate change and biodiversity loss its number one international priority."

It further points out that

"the UN Security Council recently held its first ever high-level meeting on the impact of climate change on peace and security."

So we should not be saying, "Here's security and here's the environment and security's going to overrule the environment". We are talking about the same thing here. The Government say that they grasp this, but I think it is very clear from the wording that they do not.

The noble Baroness, Lady Parminter, referred to the fact that the MoD has so many SSSI sites. That is really not surprising, when the MoD controls nearly 2% of the UK. Looking at what that is, 82% is training areas and firing ranges, which we might think are natural sources of biodiversity and natural spaces where there is a great deal of nature—and similarly with the 4% that is airfields.

It is useful to note that the Armed Forces themselves regard this as really important. Noble Lords might be aware of the sanctuary awards, which are awarded every year within the defence sector, aiming to showcase sustainability efforts across defence. Last year, the silver otter trophy went to the Chicksands historic walled garden project, which brings us back to an earlier debate about heritage being included in "nature". I also note that the sustainable business award was won by the Portsmouth naval base's Princess Royal Jetty and Victory Jetty project, which aimed to create sustainable moorings in Portsmouth. It would be well if we saw the same thing happening in Oman, where we built a large new military base without any environmental assessment at all. None the less, we are doing this here in the UK. It is really important that we get the Government to see that security and the environment are not in opposition to each other but joined up.

On that point, I apologise to noble Lords because I will mention something that I have mentioned many times before. When we come to the Treasury not being covered by the Bill, let us look at New Zealand: the New Zealand Treasury puts at its absolute heart a living standards framework informed by the sustainable development goals, putting the environment, economy and security together. If the Government want to be world-leading, we need all aspects of their activities, and particularly the Treasury's activities, covered by the Bill.

The Duke of Wellington (CB): My Lords, I will briefly speak to Amendment 76 tabled by the noble Baronesses, Lady Parminter, Lady Jones of Whitchurch and Lady Young of Old Scone. The whole Bill legislates on the way in which we look after, and improve where possible, the environment, both natural and manmade. I looked at the government website over the weekend and saw that, currently, it lists 20 non-ministerial departments and no fewer than 414 agencies and other public bodies, plus 13 public corporations. These public authorities—I assume that we must add to them the local authorities in a certain sense—control almost every aspect of our lives.

The Bill is, in a certain sense, a framework Bill, from which will come many pieces of secondary legislation and various policy decisions. Clause 18(1) requires a Minister, when making policy, to

"have due regard to the policy statement on environmental principles".

Given the large number of public authorities that make policy, it seems to me both logical and necessary that they should also have regard to the statement on environmental principles. Having listened to the debate this afternoon, I am not sure that the words "must adhere" are not better than "have due regard", but that is a matter on which I am sure the Minister will comment.

[The Duke of Wellington]

However, the point of Amendment 76 is to add "public authorities" to the organisms of government that must take account of these principles. Therefore, I look forward to the response of the Minister on why this amendment is not one that the Government could and should accept.

Baroness Young of Old Scone (Lab) [V]: My Lords, I note that—and am honoured to be—listed twice on the speakers' list for both this and a future group today. I assure the House that I will not speak twice.

I support much but not all of Amendment 73 in the names of the noble Baronesses, Lady Jones of Moulsecoomb and Lady Boycott. It certainly increases rigour by adding a requirement that

"the Secretary of State and all public bodies ... must adhere to the environmental principles",

rather than just having

"due regard to the policy statement on environmental principles".

The noble Baroness, Lady Jones of Moulsecoomb, rightly doubts the efficacy of "have due regard".

3.15 pm

In his letter of 10 June, following Second Reading, the Minister made a spirited attempt to defend the rigour of having "due regard", but it was unconvincing, and "must adhere" would add very necessary strength. However, I accept the Minister's account of why a statement on environmental principles is necessary to add clarity.

My name is joined with those of the noble Baroness, Lady Parminter, and my noble friend Lady Jones of Whitchurch against Amendment 76. I support the inclusion of "public authorities" in the duty to adhere to environmental principles. We need all government departments and public authorities, nationally and locally, to adhere to the statement on environmental principles in a consistent and comprehensive way.

I also support Amendment 78 in the names of the noble Baronesses, Lady Parminter and Lady Bennett of Manor Castle, and my noble friend Lady Jones of Whitchurch, sweeping away the quite unacceptable exceptions to the requirement to adhere to the environmental principles. I find it staggering to see the Government exempting policies concerning

"the armed forces, defence or national security, ... taxation, spending or the allocation of resources".

That is a huge chunk of public life. If we are in earnest about environmental sustainability, the environmental principles must be a golden thread running through all government policies.

Taxation, spending and the allocation of resources are fundamental to future environmental sustainability. I will give two examples. The MoD is one of the UK's top three institutional landowners, either owning or having rights over 430,000 hectares of land, and it should not be exempt from the environmental principles and policy decisions about that land. The topical example so aptly raised by the noble Baroness, Lady Boycott, of the Grantham Diamond Jubilee Wood is very germane. I am delighted that the Woodland Trust, which I am chair of, sponsored that, working with local people, donors and funders. It is a disgrace to see that now being threatened by housing development so soon after its establishment and probably in the year in which the Queen's next jubilee will be celebrated. We really are in a poor state if we cannot even safeguard high-profile woods of that nature from damaging developments. The MoD and the military have to adhere to the environmental principles if we are not going to have examples like that all over the country.

Taxation is also a significant lever in achieving environmental benefit. Conversely, poorly designed taxation can have a poor environmental impact, often through unintended consequences—so we really need both government departments, in making their spending decisions, and the Treasury, in making allocations, to take account of and adhere to the environmental principles. I very much believe that these exceptions need to be removed, and I support Amendment 78.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): The noble Duke, the Duke of Montrose, has withdrawn, so I call the noble Baroness, Lady Neville-Rolfe.

Baroness Neville-Rolfe (Con): My Lords, I support the Government's approach on this. Requiring a policy statement on environmental principles is the right approach. Obviously, government must follow the principles, but to make this explicit in the way proposed in the lead amendment would provide scope for mischief-makers and single-issue enthusiasts doggedly to pursue matters in the courts and elsewhere, to the detriment of efficiency and the overall public interest.

The Bill does not and cannot go into the necessary detail, so it seems to me that Amendment 73 would create sweeping requirements and huge uncertainty. For example, how could you prove that environmental protection was integrated into the making of all policies? How could you prove that the polluter pays principle was respected—and in every public body, as now suggested? I am afraid that this is virtue signalling, and it is unenforceable. We have too much repetitive legislation moving in the direction of vague promises and, therefore, storing up decades of trouble for perhaps a favourable headline today. On a Bill so important for the future of our country, I feel that it is time to call a halt.

I have another concern, which is the reference to the precautionary principle in Clause 16. As I think we will hear in due course from my noble friend Lord Trenchard, the Taskforce on Innovation, Growth and Regulatory Reform, set up by the Prime Minister on 2 February, is set to recommend that this principle should not be carried over from EU law. What is my noble friend the Minister's response to this? Can he kindly explain why the precautionary principle needs to be included in the list of environmental principles?

The basic difficulty of the precautionary principle is obvious. It provides no mechanism for determining how precautionary we need to be. It can always be argued that, however precautionary it is proposed we should be, we should be even more so. Should the chance of death from a new medicine be less than one in a million, or one in a billion? We have no means of deciding. Human progress has also been characterised by innovation, from the wheel and wheat yields to the internet. The precautionary principle could put the

latest innovations at risk and, I fear, ensure that they are not invented here in Britain. The list in Clause 16(5) seems more than adequate for environmental protection without this extra principle.

Viscount Trenchard (Con): My Lords, it is a great pleasure to follow my noble friend Lady Neville-Rolfe, and I agree with everything that she said.

The noble Baronesses, Lady Jones of Moulsecoomb and Lady Boycott, seek in Amendment 73 that, in preparing his policy statement on environmental principles, the Secretary of State

"must adhere to the environmental principles."

Clause 16(2) already commits him to explain how the principles should be interpreted and proportionately applied. I therefore rather doubt that this amendment is necessary. The principles already carry great authority, as they are included within the nine environmental principles contained in the withdrawal Act. Four of these were included in the Lisbon treaty and are the same principles—with the addition of the integration principle—that are the subject of the Government's consultation launched on 10 March and included in the Bill.

It is disappointing that, even though the Prime Minister has welcomed the report of the Taskforce on Innovation, Growth and Regulatory Reform, published on 16 June, this landmark Bill is being introduced on the assumption that our environmental regulatory regime will basically stay the same as it has been under the EU. The task force, under the chairmanship of my right honourable friend Iain Duncan Smith, recognises that our departure from the EU provides a one-off opportunity to set a bold, new regulatory framework and proposes the adoption of a proportionality principle to replace the EU's precautionary principle which, as the report points out, has led to innovations being

"stifled due to an excessive caution".

It continues by saying that, freed from the precautionary principle, the UK should

"actively support research into and commercial adoption by UK farmers … of gene edited crops, particularly those which help the transition away from agrochemicals to naturally occurring biological resilience."

It is disappointing that the precautionary principle has found its way into the Bill and that the Government have proposed it as one of the five principles on which future environmental policy is based. It is of some limited comfort that it has been downgraded from its number one position in the Lisbon treaty to the fifth of five in the draft policy statement on which the Government are consulting. Interestingly, Clause 16 of the Bill places it third out of five.

Last Wednesday evening, I tabled Amendment 75A, to replace the "precautionary principle" with the "proportionality principle" in Clause 16(5)(c). It was accepted on Thursday morning, but only for the fourth Marshalled List, which is of course pointless because it will be by-passed by the time that list is finalised tomorrow.

The noble Baroness, Lady Jones of Moulsecoomb, in her Amendment 75, seeks to increase the number of environmental principles to which, following her Amendment 73, not only the Secretary of State but all public bodies and authorities are compelled to adhere. The counter-innovative precautionary principle makes it into her list at number three out of no fewer than 12, some of which are very broadly drawn. Her amendment would have the reverse effect from the objective of the Government to simplify and clarify our very bureaucratic regulatory rulebook.

The noble Baroness, Lady Parminter, in Amendment 76, would require all public authorities to have regard to the policy statement on environmental policies. I am not sure that this amendment is necessary but, if it were adopted, it would certainly provide another good reason why the environmental principles should be simple and clear.

I am unable to support Amendment 77A, in the name of my noble friend Lady McIntosh of Pickering, which would I think put the Crown in a very difficult position. The precise definition of what is in compliance with the principles as drafted and what is not is very subjective.

I am also unable to accept Amendment 78, in the name of the noble Baroness, Lady Parminter, because the exception for the Armed Forces is very important. There may be other exceptions regarding resource allocation that the Government may reasonably need to rely on.

I look forward to hearing my noble friend the Minister's response on the amendments regarding the devolved authorities and their powers. I just say, however, that I regret that this United Kingdom Parliament cannot legislate for the whole country on such high-level matters as environmental principles. Politicians in the four home nations will constantly try to adopt slight differences in policy to show their power and for their own political purposes. I have listened to the noble and learned Lord, Lord Hope of Craighead, on this matter, but I very much hope that my noble friend, through the UKIM Act and otherwise, will find a sensible way through to a common position. I certainly look forward to hearing his rationale for Amendments 80, 298 and 299, which I am inclined to support.

Baroness Quin (Lab) [V]: My Lords, this is the first opportunity that I have had to speak on the Bill, since I was unable to take part at Second Reading. Perhaps I should begin by assuring noble Lords that I do not intend to make a Second Reading speech on this group of amendments, even though they are wide-ranging. I simply say that, through the course of the Bill, I hope to take an interest in the key issues of air and water quality, biodiversity and waste management. I also wish to raise again, where appropriate, the issue of access to the countryside, concerned as I am about the 38,000 miles or so of permissive access that have been lost with the closure of the CAP-funded stewardship schemes. In speaking today, I should perhaps also point out a non-financial interest that I have, namely that I am president of the Northumberland National Park Foundation.

Regarding the amendments in front of us, I support those in the names of my noble friends Lady Jones of Whitchurch, Lady Hayman of Ullock and Lady Young of Old Scone, who spoke a few moments ago. I also broadly agree with the noble Baronesses, Lady Jones of Moulsecoomb and Lady Parminter, on the importance

[BARONESS QUIN]
of the environmental principles and stating what they are, as well as on embedding environmental principles at all stages in the work of government and public bodies and authorities.

I shall comment briefly on the amendments that relate to devolution, although I understand and rather sympathise with the point made by the noble Lord, Lord Wigley, that this seems a rather strange marriage of amendments in this particular group. I support full respect for the devolution settlement, but I hope none the less that there will be proper and full consultation and, indeed, willingness—despite political differences—to learn from each other in the relationships between the devolved authorities.

I read with interest the letter the Minister sent to all of us at the end of last week, addressing some of the points that had been raised in the debate last Wednesday regarding environmental principles and the devolution settlement. In explaining the position, he talked about policies that were tailored to each of the nations, and while I broadly accept what he said, I would like to make the point, which echoes something the noble and learned Lord, Lord Hope, said, that environment issues cross borders. I am particularly sensitive to that, living in Northumberland, where the countryside and agriculture are similar on each side of border. On a recent, wonderful hike in the Cheviot hills, I concluded that nobody had explained to the wandering sheep exactly where the border was and certainly had not explained that they might be subject to different rules on each side of the border.

The hill agriculture and countryside in the north of England—Northumberland, Cumbria, the Yorkshire Dales, for example—are very similar to areas in Wales and Scotland. Therefore, as well as co-operation across borders and the importance of sharing with and learning from each other, I hope the Minister's policy for England will take fully into account the huge countryside and environmental differences and variety within England. Perhaps he can reassure me on this point.

3.30 pm

Lord Krebs (CB): My Lords, I strongly support the amendments in this group that aim to strengthen the role of environmental principles, including Amendments 73, 75, 76, 77 and 78. When we started out on this journey towards an environment Bill, we were told it would be a non-regression Bill. I thought the idea was not only to maintain but to strengthen environmental protections after leaving the European Union. Yet Clauses 16 to 18, as the noble Baroness, Lady Parminter, explained so clearly, appear to weaken environmental protection in at least three ways: first, by weakening the legal effect of the environmental principles—since instead of acting in accord with the principles, there is only a much weaker duty to "have regard" to them; secondly, by introducing proportionality in the application of the principles, suggesting that they may be compromised for other priorities; and thirdly, as a number of noble Lords have pointed out, by exempting many public authorities, including two government departments that were specifically referred to.

I shall focus on Amendment 78 in the name of the noble Baroness, Lady Parminter, and others, and on Clause 16(2). Can the Minister explain why he considers the introduction of proportionality necessary, when the precautionary principle, according to the High Court, already includes proportionality? I strongly disagree with the noble Baroness, Lady Neville-Rolfe, and the noble Viscount, Lord Trenchard, and I hope this example will help to explain why there is no need to replace a precautionary principle with a proportionality principle.

I refer to the High Court judgment of 28 May 2021 in the case of Natural England applying the precautionary principle in relation to nitrogen loads in the Solent. In his decision in favour of Natural England, Mr Justice Jay said that Mr Elvin, who was representing Natural England

"also submitted that the precautionary principle embodies both proportionality and a degree of inherent flexibility to reflect the nature of the harmful outcome. … If all that Mr Elvin was submitting was that in some circumstances it would be close to impossible to obtain precise scientific data and consequently it may be appropriate, as well as proportionate, to draw from generic data and experience in analogous situations, I would agree with him. … But that is the whole point of the precautionary principle: the uncertainty is addressed by applying precautionary rates to variables, and in that manner reasonable scientific certainty as to the absence of a predicated adverse outcome will be achieved, the notional burden of proof being on the person advancing the proposal."

There is no need for a principle of proportionality according to the High Court; the precautionary principle includes proportionality. I look forward to the Minister's response to this example.

Finally, I refer to the extended list of environmental principles in Amendment 75 in the name of the noble Baroness, Lady Jones of Moulsecoomb. One principle in the extended list is the

"use of the best available scientific knowledge."

I do not understand why that is not in the Government's list, because it is surely uncontroversial that the best scientific evidence should be used to make determinations about environmental matters. Good science is particularly important since many key scientific matters—the safety of certain pesticides, for example—are hotly contested. It is important that we have a good understanding of where the certainties and uncertainties in the science lie. I look forward to the Minister's response.

Lord Berkeley (Lab): My Lords, I support some of the amendments in this group in the name of the noble Baroness, Lady Jones of Moulsecoomb, and others. I support the views of the noble Lord, Lord Krebs, who just spoke about the importance of the list of environmental principles contained in Amendment 75.

We are in danger of having a debate over a more detailed list, that some noble Lords have said may be unenforceable, and a higher-level list which, sadly, many people would say was a bit like motherhood and apple pie and probably unenforceable for that reason. I think the list in Amendment 75 is extremely good. But, as other noble Lords have said, environmental interests can conflict with commercial interests, even if they are hidden by something that is called "environment." A debate can sometimes use pretty abstruse environmental information to put forward an argument that is not necessarily compliant with everything that should be on this list.

I was involved in the Aarhus convention some years ago, and that seems to sum this up. It is a great shame we do not have it and it has to go back in here if this amendment is accepted; it is about public participation and how to extract information from Governments and public bodies wishing to hide it until it is too late to cause any problems. It is very important to put this in more detail in the environmental principles.

I am also concerned about exemptions. The noble Baroness, Lady Boycott, and my noble friend Lady Young of Old Scone mentioned the example about trees, which was quite frightening. Some friends from Plymouth who live next to one of the muddy creeks said that the MoD turned up with a jack-up barge a few weeks ago. They asked, "What is this jack-up barge doing? This is mud, which is quite environmentally friendly—there are lots of birds, fish and everything else,". The MoD said, "We are going to put a large pylon in to help the submarines go into one of the docks in Plymouth." My friends asked, "Shouldn't you have told anybody? Shouldn't you have told the local council? Shouldn't you have consulted the residents along this little muddy creek?"

They ended up having three public meetings about this, with the top brass of the Navy turning up with an ever-increasing number of stripes on their arms to say how important this particular pylon was. They said in reply, "Anybody who knows anything about pilotage or moving big ships knows that you do not need this anyway, so why are you doing it? You're supposed to be the experts". We can go into the navigation issues, but that does not really matter. The point is that this is another example of the MoD trampling over people. If my friends had not phoned up those at the council and asked whether they knew about this—oh no they did not—it would have gone ahead, and they would have had a great big pylon in the middle of a rather nice creek which was quite happy as it was.

Unfortunately, the MoD has a reputation for not always consulting and not always thinking about whether something is really necessary. My view on so much of this is that we say it is necessary for A, B or C—and the noble Baroness, Lady Neville-Rolfe, said that we have to move forwards, or something like that—but we must occasionally think "Can we do without it?" We do not have to go back to the horse and cart, but life and the environment might be much better if we did do without it.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): As the noble Baroness, Lady Young of Old Scone, pointed out in her earlier speech, she has been listed twice. I will not call her a second time, but will instead call the noble Baroness, Lady Bakewell of Hardington Mandeville.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I declare my interest as a vice-president of the LGA. This is a very extensive group of amendments which, quite rightly, places the responsibility for the environmental principles on all public bodies and authorities. Amendment 75 from the noble Baroness, Lady Jones of Moulsecoomb, removes these environmental principles and substitutes a far more extensive set to ensure that biodiversity, climate change and human health are all part of the consideration of the Bill.

My noble friend Lady Parminter seeks in Amendment 78, again quite rightly, to put the environmental principles at the heart of government and has expanded on the wish to include all government departments within the scope of the Bill. It is a nonsense, as we have just heard the noble Lord, Lord Berkeley, eloquently say, to allow the MoD and the Treasury to be excused from the need to take responsibility for what happens to the planet. We cannot have highly influential policymakers ignoring the efforts that the rest of the country is making to improve our environment for future generations, especially where this includes SSSIs, as my noble friend Lady Parminter said.

The noble Baroness, Lady Jones of Moulsecoomb, and others, including the noble Baroness, Lady McIntosh of Pickering, raised the knotty issue of ensuring the Minister "must ensure compliance with" and not only "have due regard to". The Minister can have due regard to the comments your Lordships are making this afternoon, but he does not have to comply with them, no matter how passionately our arguments are put. He can have due regard, take note of what we say and then completely ignore it. I am not suggesting that the Minister will do this, but it shows that, unless compliance is in the Bill, there will be little confidence that it will make the difference we are all looking for.

The noble Baroness, Lady Boycott, gave us a very powerful example of where environmental principles should be upheld by all government departments. The noble Baroness, Lady Bennett of Manor Castle, urged the Government to adopt the New Zealand Treasury model, where the environment is at the heart of its policies. I regret that we cannot agree with the noble Baroness, Lady Neville-Rolfe, but I note that she is chair of the Select Committee on planning, and so can understand where she is coming from. The noble Lord, Lord Krebs, also gave a very powerful example of the precautionary principle where it affected Natural England.

The noble and learned Lord, Lord Hope of Craighead, and the noble Lord, Lord Wigley, make the case for the involvement of, and consultation with, Scottish Ministers and the Welsh Senedd respectively with regard to environmental principles and reserved matters. The devolved Administrations cannot be ignored, although the Bill makes it clear that it relates only to England. Unless we have a holistic approach across the whole of GB, we will see piecemeal policies and uneven progress on vital matters. I look forward to the Minister's response and hope we will not have to bring these issues back on Report, because I can tell from the level of enthusiasm and passion we have heard in this debate that, unless we get a satisfactory response, we will go around them again.

3.45 pm

Baroness Hayman of Ullock (Lab): My Lords, it has been a very interesting debate, with some excellent speeches. I hope the Minister is clear about the concerns of the majority of those who have spoken. I will speak particularly to Amendments 76 and 77 in the name of my noble friend Lady Jones of Whitchurch, and to Amendment 78 in the names of the noble Baronesses, Lady Parminter and Lady Bennett of Manor Castle, and my noble friend Lady Jones of Whitchurch. We

[BARONESS HAYMAN OF ULLOCK]
also support the other amendments in this group that aim to improve the application of environmental principles and address the proportionality limitations and exemptions currently in the Bill.

The Bill enshrines important principles in law, as we have heard, but the clauses on these principles are largely unchanged from previous drafts, despite very clear evidence from pre-legislative scrutiny of the need for them to be strengthened. As the noble Baroness, Lady Jones of Moulsecoomb, said, these are the principles a green Government would wish to implement. As the noble Baroness, Lady Boycott, said, we must have consistency. Other noble Lords have spoken about the importance of the principles and the inadequacy of just having to "have due regard". The noble Lord, Lord Krebs, rightly reminded your Lordships' House that we were expecting a Bill of non-regression.

Amendment 76 seeks to drive consideration of the environmental impacts of policy-making throughout all governmental bodies. Amendment 77 ensures that a Minister must, when making policy, directly apply the environmental principles in effect at that time. Environmental principles have been binding on all public authorities, including in individual administrative decisions, but this legal obligation on all public authorities will be undermined by the Bill. The impact of the principles has extended deeply and routinely into administrative decision-making, often having a binding effect on the public bodies directly delivering measures, including, for example, in respect of GMOs, pesticides, waste regulation and water regulation. As my noble friend Lady Young of Old Scone clearly laid out, it is vital that the duty applies to all public authorities. The principles must be taken account of in the formation of policy, implementation, public authority decision-making and many other stages of environmental management.

We have heard concerns about the impact on our devolved Administrations from the noble Lord, Lord Wigley, for example, and the noble and learned Lord, Lord Hope of Craighead, talked about the Scottish legislation. I draw the Minister's attention to Section 14 of the Scottish continuity Act, which requires Scottish Ministers to have direct and due regard to the guiding principles on the environment in developing policies, including proposals for legislation. It also places additional requirements on public authorities to have direct and due regard to the principles when carrying out strategic environmental assessments of plans, policies and programmes. Can the Minister explain why he believes the Government's approach here will have a better outcome for the environment?

Clause 16 of this Bill requires the Secretary of State to prepare a policy statement on environmental principles, but only Ministers, and not public authorities, must have due regard to this statement, and this requirement does not apply to decision-making. Furthermore, Clause 18 brings in a number of wide-ranging exemptions, as we have heard, seeming to absolve the Treasury, the MoD and those spending resources in government from having to consider the principles at all. The noble Baroness, Lady Parminter, clearly explained why this is very problematic. It is important to establish a principle that no area of government should be exempted from its responsibilities to the environment.

Amendment 78 removes the proportionality limitations and exemptions for the Armed Forces for defence policy, tax, spending and resources. The noble Baroness, Lady Parminter, introduced her amendment on this extremely clearly, and the noble Baroness, Lady Bennett of Manor Castle, explained further why it is particularly important to include the MoD.

However, in considering the exemptions for the Armed Forces and defence policy, we do not want to impede the work of our Armed Forces or compromise our safety and security in any way. Were these exemptions to be confined or constricted to decisions relating to urgent military or national security matters, it could perhaps be considered reasonable. However, the clause is not drafted in this way; rather, it is a blanket exclusion for the Ministry of Defence and the Armed Forces from complying with environmental principles at all, as set out in the Bill.

We are in a climate emergency. There is no time to wait around for the good will of departments to take action and certainly not those with those such significant spending, carbon emissions and land ownership. In response to media coverage of concerns about the wide exclusions in the Bill, Defra offered some clarification on spending, including:

"It is not an exemption for any policy that requires spending."

However, these wide exemptions remain in the legislation, meaning that policymakers are less likely to apply the policy statement in relation to the policy on defence and financial matters without explicit instruction to do otherwise.

The truth is that Clause 18 is a blank cheque for Ministers to invoke if they decide under certain circumstances not to be bound by environmental protection. I look forward to the Minister's consideration and response.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con): My Lords, I thank all noble Lords for their contributions on this important subject.

I start with Amendment 75 tabled by the noble Baroness, Lady Jones of Moulsecoomb. The Government's view is that the current list of five environmental principles will work to protect the environment. The principles outlined in the Bill have significant case law and history so their meaning and application is clearly understood and defined. These five principles are also consistent with those agreed through the UK-EU Trade and Co-operation Agreement. If we were to increase the number of principles to those outlined in the noble Baroness's amendment, this would create confusion, leading to ineffective application of the principles for policymakers and an uncertain impact on future policy-making

Amendment 78 tabled by the noble Baroness, Lady Parminter, deals with proportionality and exemptions for tax and spending, the Armed Forces and defence policy. Environmental principles will be embedded at the heart of policy development across government, but there will be times when action is not proportionate. As such, it is right that Ministers are able to reject a policy change where this is considered legally disproportionate—for example, where a policy

change would be very costly and the environmental benefit insignificant. I do not believe that this is an unreasonable position. If the exemption to act proportionately were removed, Ministers would be required to prioritise environmental concerns even where they incurred significant and disproportionate cost to society and where the gains were nevertheless insignificant.

Similarly, exempting some limited areas from the duty to "have due regard" provides flexibility with respect to the nation's finances, defence and national security. In relation to defence and national security, removing the exemption in the Bill could restrict our response to urgent threats. Policy decisions concerning defence are often made rapidly, or even in real time, where there is an urgent need to achieve operational imperatives. The Government wish to retain that agility.

Let me add now rather than later, in relation to the point made by the noble Baroness about land—in particular, SSSIs, which are currently owned by the MoD—that the exemptions do not apply in any respect to SSSIs. There should be no change in status for land that is protected in law as a consequence of its designation as an SSSI or anything else. As it happens, the MoD is meeting its national target in relation to SSSIs.

The noble Baroness, Lady Boycott, gave an example of trees planted on MoD land for a special purpose but which now face a threat. Given that this is a live planning matter there is a limit to what I can say, but she will not be surprised to hear that neither I nor—I am quite certain—my colleagues would want to see such trees grubbed up. The Bill adds protections for trees, through strengthening the Forestry Act as well as through other measures, which we have discussed, and will continue to discuss in Committee. In addition, Defra and MHCLG are currently working closely together to work out how we can boost protections for trees in various ways, including through the new designation of "long-established woodlands".

Taxation, spending and allocation of resources are excluded from the remit of the principles of the office for environmental protection to provide for maximum flexibility in respect of the nation's finances. For example, at fiscal events and spending reviews, decisions must be taken with consideration to a wide range of policy priorities, such as sustainable economic growth, macroeconomic and financial stability and sustainable levels of debt. These macroeconomic issues are too remote from the environmental principles for them to be directly applicable. However, I emphasise that this is not an exemption for any policy that requires spending. For example, if in future the Department for Transport were given funding from the Treasury to achieve a particular transport aim, the programme in question would still have to have due regard to the environmental principles policy statement in policy and decision-making.

As regards Amendment 76 tabled by the noble Baroness, Lady Parminter, given that it is central government that sets the overall strategy and approach for any key decisions taken by other public bodies, it is not necessary to extend the environmental principles duty to cover these public authorities. The application of the environmental principles policy statement by Ministers will mean that the environmental protection promoted by the principles will filter down into local policy and strategic decisions. This means, for example, that in the case of a planning application for a village pub, the decision will be made in compliance with the National Planning Policy Framework, which will in future be set by Ministers having had due regard to the policy statement. It would therefore be unreasonable, and create unnecessary duplication, for the local authority to also have due regard to the principles policy statement—as well as in considering a planning application in the case of that village pub. We need to try to avoid imposing excessive and unnecessary burdens on public authorities. That is why we have taken the approach that we have.

I turn to Amendment 77 in the name of the noble Baroness, Lady Jones of Whitchurch, and Amendment 73 tabled by the noble Baroness, Lady Jones of Moulsecoomb. Requirements to apply the principles directly via a duty through the policy statement would risk inconsistency in their interpretation and application by Ministers. It could result in the principles being applied either too stringently or ineffectively. Placing a legal duty on the environmental principles policy statement offers greater clarity for policymakers because the policy statement will set out specific details on the application and interpretation of the principles. By comparison, a similar requirement in the EU framework is opaque and effectively impossible for anyone to legally challenge. The extent of the EU requirement to consider the principles—the manner in which it has actually impacted EU environmental policy—is an unknown. Our policy statement, with more detail and more context, will mean better and clearer application of the environmental principles to policy-making.

I hope that it will also reassure the noble Baroness, Lady Jones of Whitchurch, if I clarify that Clause 46 already provides through a definition that policy includes proposals for legislation. The noble Baroness, Lady Jones of Moulsecoomb, I believe—I apologise if it was not her—mentioned the Aarhus convention. I know that we will be debating that issue in some detail in a later group of amendments, so I will leave my comments until then.

Finally, I turn to Amendment 77A in the name of my noble friend Lady McIntosh of Pickering. By placing a statutory duty on Ministers of the Crown to "have due regard" to the policy statement, the Government are ensuring that the application and interpretation of the five environmental principles is consistent across government policy-making. In answer to the noble Baroness, Lady Parminter, the Clause 18 duty is amenable to judicial review. It provides flexibility for the policy statement to be considered with substance, rigour and an open mind. The due regard duty is used in other high-profile areas, such as in the case of the public sector equality duty, and has been shown to have significant effect to catalyse a change in behaviour. There is also extensive case law and, notably, the Brown principles setting out what this duty means in practice. The practical effect of these principles is that a duty to ensure compliance with the policy statement as proposed in the amendment would not add any additional benefit or clarity. However, such a duty would add unnecessary burdens and inflexibility for policymakers compared to the due regard duty as the clause stands.

[LORD GOLDSMITH OF RICHMOND PARK]

To address the comment made by the noble Lord, Lord Krebs, echoed by the noble Baroness, Lady Hayman, I say that our approach is not designed to replicate the EU framework; it is designed to provide a more effective process. Our approach goes further than the EU by ensuring that Ministers across government are legally obliged to consider the principles in all policy development where it impacts on the environment. In the EU, the principles apply only in the development of policy that is specifically environmental. In addition, the environmental principles listed in the Treaty on the Functioning of the European Union do not apply directly to, and therefore are not legally binding on, member states. Rather, they apply when the EU makes environmental policy. Under our membership of the EU, there was no legal obligation for the UK or any other member state to use these principles when making environmental policy unless they featured in domestic law. That clearly changes with, I hope, the introduction of the Bill. With respect to the noble Lord, Lord Krebs, I think he could not be more wrong on the point of regression in relation to our previous status under the European Union.

4 pm

I would like to speak to government Amendments 80, 298 and 299 tabled under my name. As recognised by the noble Lord, Lord Wigley, it is important that the principles apply across the UK. The Scottish continuity Act creates a version of the environmental principles duty for Scotland. However, our interpretation is that the duty in the Scottish continuity Act applies to devolved areas only. This means that the duty does not apply to Ministers of the Crown in relation to reserved matters in Scotland. These amendments expand the scope of the duty in Clause 18 so that UK Government Ministers will need to have due regard to the environmental principles policy statement when making reserved policy that relates to Scotland. The intention is simply to have a clear and consistent process in place for embedding environmental protection considerations in policy-making with regard to reserved matters, and this is in keeping with the devolution settlement. We will continue to work with the Scottish Government to ensure that our environmental approaches work together.

I turn to Amendments 79 and 81 from the noble Lord, Lord Wigley. As I have said, our approach to environmental principles respects the devolution settlements, and these differ slightly from country to country. The Welsh Government signalled their intention to come forward with further legislative proposals for the environmental principles in Wales, and it would not be appropriate for the UK Government to legislate in advance of this process. I also note that, at the request of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, the Bill makes provision for environmental principles to be introduced in Northern Ireland, subject to the approval of DAERA and the Executive.

Finally, I take this opportunity to thank the noble and learned Lord, Lord Hope of Craighead, for Amendment 80A. His support and interest in this matter is greatly personally appreciated, and I reassure him that the UK Government will certainly engage with the Scottish Government when developing reserved policies that have an impact on Scotland. This engagement corresponds to the memorandum of understanding on devolution—namely, that all four Administrations are committed to the principle of good communication with each other, especially where one Administration's work may have some bearing on the responsibilities of another. Over half the measures in the Bill are joint with the devolved Administrations, as a result of extensive consultation and engagement over a number of years and months. I hope this has reassured noble Lords, and I beg them not to press their amendments.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received two requests to speak after the Minister, from the noble Earl, Lord Caithness, and the noble Baroness, Lady McIntosh of Pickering. I will call them in that order.

The Earl of Caithness (Con): My Lords, I listened with care to what the noble Lord, Lord Krebs, said about the precautionary principle, because this is hugely important to conservation and land management. I note that my noble friend the Minister did not respond specifically to the question he posed. While he is considering an answer to that, I am going to ask him a couple of questions too. How will the precautionary principle be interpreted by government? Will it be on the basis of a hazard approach or of a risk approach? The two are very different. It has to be a balanced approach; I think the courts have indicated that this is the right way forward. He will know that the precautionary principle, depending on how you interpret it, can stop some vital research. His department, Defra, has been guilty of stopping research because it used the precautionary principle. If we are trying to help biodiversity and conservation, we must be allowed to carry out sensible, controlled research to try to get to the right answer. If he is going to use—it is probably the wrong word—political bias against a particular aspect and say, "You cannot do research into that area", then we are not being of any benefit to conservation or land management.

Lord Goldsmith of Richmond Park (Con): My Lords, on the first question, I felt that I answered the noble Lord, Lord Krebs, in some detail—indeed, in more detail than any other point raised—and I do not want to have to repeat what I said on non-regression. On my noble friend's question about the precautionary principle, the principles have significant case law and history, as I said. Their meaning and application are clearly understood and defined, and none of them represents a leap into the unknown. The Government's approach to the precautionary principle includes a proportionate and risk-focused application, respecting the balance with social, economic and other considerations. This was provided for in the draft policy statement which noble Lords will have seen. In response to my noble friend's question, I say that our view is that the principle should not hinder innovation due to novelty but should instead support innovative policy approaches by providing policy-makers with the tools that they need in order to balance risk.

Baroness McIntosh of Pickering (Con): My Lords, given all the respect and affection in which I hold him, I am slightly dismayed that my noble friend actually played back at me that "having regard to" worked perfectly well in equalities policy. I actually quoted case law at him. If I may, I would like to submit the case law I have to him so that his legal team can look at it. But I just make a plea: we are about to come on to the office for environmental protection. We are hoping to replicate at national level, throughout the whole of the United Kingdom, very stringent penalties for infringement of environmental policy or principles, such as a chemical spillage or other contamination of water. That is why—I am sure he would agree—we want the fewest referrals possible to any court under a judicial review, we want to be absolutely clear and we need to ensure compliance and have the possibility of financial penalties being imposed, rather than just a very mealy-mouthed "have regard to".

Lord Goldsmith of Richmond Park (Con): I thank my noble friend. I think she offered to submit other examples in case law, and I look forward to seeing what she has to say. I am also willing, if she is willing to speak to me, to talk details in due course.

Baroness Jones of Moulsecoomb (GP): My Lords, I thank all noble Lords who have taken part in this debate, even the ones who have disagreed broadly because, although it is not good for my temper, it is good to see just how far the Government will go in trying to block all these common-sense amendments. I thank noble Lords for their valuable contributions to that.

The noble Baroness, Lady Parminter, was excellent on her amendment, and I hope that we can do something more on Report. The noble Baroness, Lady Bakewell, sort of implied a threat, which is completely contrary to her gentle nature—but, obviously, a threat is what the Government will understand. The noble Baroness, Lady Parminter, also talked about too many caveats and too many exceptions, and of course that is absolutely right. We have to make sure that the MoD does not do things such as cutting up hundreds of trees that were planted in honour of the Queen or putting pylons in muddy rivers where they are not needed. This is exactly the sort of organisation that needs some environmental principles. I thank the noble Baroness, Lady McIntosh, for her support; it is always good to have her support across the Chamber. The noble Lord, Lord Wigley, and the noble and learned Lord, Lord Hope of Craighead, talked about the other Governments, and I support what they said completely. I thank the noble Baroness, Lady Boycott, for her support and for signing the amendment. It is incredibly important that we work across the Chamber and cross-party, so I look forward to working with her on this in the future.

It is always good to hear from my noble friend Lady Bennett, who is much more clinical and knowledgeable than I am. She wields a scimitar much better than I do; I am far too friendly for your Lordships, really. She made a point about security and the environment being linked, and we see this in almost every area. There are places in the world that have been growing our pineapples and bananas that will not be able to in the future, when they have droughts and all sorts of intemperate weather. This means they will be under threat, so we may have to move around. We cannot divorce these things—in fact, you cannot divorce any topic—from the environment.

I did not quite pick up what the noble Duke, the Duke of Wellington, was saying, but I think he was supporting us and I thank him. If I got that wrong, he can see me afterwards. Of course, I am always grateful for the support of the noble Baroness, Lady Young of Old Scone.

I say to the noble Baroness, Lady Neville-Rolfe, yes, of course there will be things we cannot do because of the precautionary principle. This goes for the noble Earl, Lord Caithness, as well: if it is bad for the environment, it is probably not a good idea to do it. We can use lots of other areas for innovation, and Greens love innovation. We love using technology where it fits—if it fits all the criteria we are talking about, for the well-being of humanity and of the planet.

I did not agree with anything said by the noble Viscount, Lord Trenchard, but that is the norm.

I thank the noble Baroness, Lady Quin; that was a calm exposition agreeing with Amendments 73 and 76, which is very valuable. Of course, it is fantastic to have the support of the noble Lord, Lord Krebs, on anything. He pointed out that this was meant to be a non-regression Bill but, quite honestly, when the Minister said that it is, I choked. I started coughing because it is so patently untrue.

The noble Baroness, Lady Hayman, sounds so reasonable. I wish I had some of her reasonableness when, at the same time, she is very tough. That is fantastic.

In dismissing this list, the Minister talked about how the current principles are based on case law and so on. The Government have already lost so many cases because they do not understand environmental principles. In fact, the stronger the basket, the structure, we can have around every single government department, the better it will be for all of us. I am sure we will fight over that many times.

Are the exclusions of the Ministry of Defence and the Treasury necessary for agility? I do not think so. That sounds like the sort of argument that could easily be dismissed, so I would be interested to see where the Minister got it from. It does not risk confusion if we have more; in fact, it clarifies things to have better and clearer principles. I argue that the amendments in this group are vital and that the Government will have a tough job to convince us otherwise. I beg leave to withdraw the amendment.

Amendment 73 withdrawn.

Amendments 74 to 75A not moved.

Clause 16 agreed.

Clause 17 agreed.

Clause 18: Policy statement on environmental principles: effect

Amendments 76 to 79 not moved.

4.15 pm

Amendment 80

Moved by ***Lord Goldsmith of Richmond Park***

80: Clause 18, page 11, line 26, at end insert—

"(4) Subsection (1) applies to policy relating to Scotland only so far as relating to reserved matters.

(5) Section 14(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) (UK Ministers must have regard to guiding principles on the environment in making policies extending to Scotland) does not apply to policies so far as relating to reserved matters.

(6) In this section "reserved matters" has the same meaning as in the Scotland Act 1998."

Member's explanatory statement

This amendment and Lord Goldsmith's amendment to Clause 138, page 123, line 22, apply the provisions about the policy statement on environmental principles to reserved matters in Scotland, and provide that section 14(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 does not apply to such matters.

Lord Goldsmith of Richmond Park (Con): I beg to move.

Lord Hope of Craighead (CB) [V]: My Lords—

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): I shall take that intervention as inadvertent—although the noble and learned Lord, Lord Hope, has reappeared.

Lord Hope of Craighead (CB) [V]: I am not quite sure whether I am audible or not. I just want to thank the Minister for his kind remarks about my support for Amendment 80. As far as my Amendment 80A is concerned, I hope he will reflect carefully on what I said and perhaps come back with something on Report but, for the time being, that amendment is not moved.

Amendment 80A (to Amendment 80) not moved.

Amendment 80 agreed.

Amendment 81 not moved.

Clause 18, as amended, agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we come now to the group consisting of Amendment 81A. Anyone wishing to press this to a Division must make that clear in debate.

Clause 19: Statements about Bills containing new environmental law

Amendment 81A

Moved by ***Lord Hope of Craighead***

81A: Clause 19, page 11, line 31, at end insert—

"(1A) The purpose of this section is to ensure that the effects of the provision on the level of environmental protection under existing environmental law are considered before the Bill is introduced."

Lord Hope of Craighead (CB) [V]: My Lords, I hope I can be heard. Amendment 81A is a probing amendment, for reasons that I hope to explain. Clause 19 provides for the making of statements about Bills containing new environment law before the Bill's Second Reading. According to paragraph 22 of the Explanatory Notes, these are to be statements setting out "the effect" of the new primary environmental law on existing levels of environmental protection provided for by environmental law, but the wording of the clause does not quite say that. All it requires is a statement by the Minister that the Bill contains a provision which, if enacted, would be environmental law and would not have the effect of reducing the level of protection provided for under existing environmental law, or that the Minister is unable to make that statement. There the matter lies. How great the reduction would be and in what respects, if he or she is unable to make the statement, is another matter, which the clause does not mention or require to be considered.

A requirement of the limited kind that this clause describes seems to be breaking new ground, although something similar is to be found in Section 19 of the Human Rights Act 1998, which requires Ministers to make a statement of compatibility. That provision was seen, when the Human Rights Bill was introduced, to serve three purposes. First, it would have the salutary effect of focusing the Government's mind on the question of whether the proposed legislation would be compatible with the European Convention on Human Rights. Secondly, it would provide information to Members of Parliament which might be relevant to their debates and discussions. Thirdly, it might affect the judicial interpretation of any legislation that was passed.

The third purpose was soon negatived when the Law Lords sitting in this House made it clear that it was for the courts and not a Minister to say whether the legislation would be compatible with the convention. The second does not seem to have been borne out in practice, as I cannot recall any case where the significance or otherwise of the Minister's statement has been debated in this House. That may be because it has no legal significance. I hope that the first salutary purpose is still there, and that these statements, which appear without fail in every Bill, are not a mere formality because the matter has been considered.

So the question is: what is the purpose of the requirement in Clause 19? It cannot bind the courts, as it is for them and not the Minister to say whether the provision would be environmental law, should that issue ever arise in legal proceedings. I can see some prospect of its having the salutary effect of requiring the Government to address the question, focused on in Clause 19(3), of whether the level of environmental protection provided by existing environmental law would be reduced. That would be a good thing and very welcome, but do we need a provision in this Bill for that to happen? What would happen if, as it turns out, the statement the Minister made was wrong, if the Bill is amended in a way that might affect what the Minister said or if the Minister is unable to make the statement? The clause does not address these issues at all.

If, on the other hand, the making of a statement of the kind referred to in Clause 19(4) is to provide an opportunity for debate, what purpose would that debate have if the Government nevertheless wish the House to proceed with the Bill and will enforce their wish? The clause does not provide for any kind of sanction or remedy. It can be said that there is some value in drawing the matter to the attention of the House, but does it really add anything to what would be likely to happen anyway when the Bill came under scrutiny?

There is one other point worth mentioning. The phrase "existing environmental law" is defined in Clause 19(8), in relation to a statement under the clause, as meaning

"environmental law existing at the time that the Bill … is introduced into the House".

However, that definition does not say what it is or where it is to be found. For that purpose, one has to go to Clause 45. The very broad definition that this clause provides is

"any legislative provision … that … is mainly concerned with environmental protection"—

which, for this purpose, includes devolved legislative provisions as well.

This is quite a package. It is unlike Section 19 of the Human Rights Act, where the convention itself and its precisely grouped surrounding case law is the point of reference. Given the extensive legislative background against which the Bill is likely to have been drafted, it may be quite difficult for a Minister to make such a statement with any conviction that everything has been turned over correctly and would stand up to scrutiny. That is why it might be wiser, to avoid any misunderstanding and any potential mishaps due to the difficulty of searching the ever-expanding reach of legislation in this field, to make it clear that the purpose of the clause is limited to what is indicated in my amendment.

In any event, it would be helpful if the Minister were to make it clear, for the assistance of all those to whose functions it is directed, what exactly the purpose is of this clause. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to support Amendment 81A, which I have co-signed. I support entirely the comments made by the noble and learned Lord, Lord Hope of Craighead, in moving it.

I want to raise a very narrow point with my noble friend the Minister. It relates to the second part of Clause 19(8). Subsection (8) states:

"'Existing environmental law', in relation to a statement under this section, means environmental law existing at the time that the Bill to which the statement relates is introduced into the House in question, whether or not the environmental law is in force."

This posed quite a question at the time of the withdrawal Act and the subsequent statutory instruments on retained EU law, particularly as the water framework directive was being considered and revised. Unfortunately, we had an empty-chair policy at the time, so were not at the council meetings when this was discussed, but it begs the question of which water framework directive, for example, is now enshrined in UK law. Is it the one that we previously agreed to or is it the one that was subsequently revised at the time of our departure from the European Union?

The second and last question that I have for my noble friend the Minister relates to a jolly good read which I commend to him: the 22nd and final report of the European Union Committee, *Beyond Brexit: Food, Environment, Energy and Health*. It was adopted by the European Union Sub-Committee, on which I was privileged to serve. In paragraph 148, the report sets out that the trade and co-operation agreement

"negotiated by the Government will affect the policy choices available to devolved administrations and legislatures in areas of devolved competence including the environment."

That perhaps relates more to the previous amendment, Amendment 80A, but also to the amendment before us now.

The report goes on:

"There are already diverging environment and climate change goals across the UK, which could indicate challenges ahead. We urge the Government to address any concerns raised by the devolved administrations regarding the TCA's environment and climate change provisions—via the Common Frameworks programme or other routes—as fully and promptly as possible."

Scotland has now set up its equivalent to the office for environmental protection, the name of which escapes me completely—I think it is Environment Services Scotland—so it has an operation that is already up and running. We will not have ours in place until July. Have any issues already arisen in this regard, as we are slightly later in our programme than we would have hoped to be? Also, have any of these issues been identified and raised under the common frameworks programme? That is in addition to my earlier question about, for example, the water framework directive.

With those few remarks, I am delighted to lend my support to Amendment 81A.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I understood that the noble Baroness, Lady Bennett, had withdrawn from this debate—but she is shaking her head at me, so I assume that she wishes to speak. I think I should make it clear that her name is listed as having withdrawn; however, I will call her now.

Baroness Bennett of Manor Castle (GP): Thank you. There was an administrative snafu, which I understood had been sorted out. I apologise. I did not mean to withdraw from this debate and thought that it had been fixed.

I will be very brief anyway. It is a great pleasure to follow the noble Baroness, Lady McIntosh of Pickering, and to thank the noble and learned Lord, Lord Hope of Craighead, for this amendment. I wish to speak to it briefly to highlight the way in which it helps to stress and shows the interaction between this Bill and so many other Bills, and the fact that the environment is now part of everything we do and there will be environmental impacts on all legislation.

What we are talking about here is a way of finding joined-up government, so that we do not have the siloed thinking that says, "This is environment and this is security and this is education". My understanding of what the noble Lords who tabled this amendment are trying to do is get a functional way to do this—and it is very important that we do, so I thank them for their efforts. We need to make sure that Clause 19 really works for the future operation of the law and of government.

Baroness Neville-Rolfe (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Bennett, and to agree with her on this occasion—at least in some respects.

I have much sympathy with this amendment, for an important reason. The noble and learned Lord, Lord Hope of Craighead, and my noble friend Lady McIntosh of Pickering seem to be asking that Her Majesty's Government ensure that the effects of this provision on environmental protection under existing environmental law are considered before any Bill is introduced, rather than rushed out for Second Reading. If this new vetting procedure for all our Bills can be justified and agreed, I support the noble and learned Lord, Lord Hope, in thinking that it would be better to have it done earlier, so that it informs policy on the Bill in question and can be studied before Second Reading. Indeed, I would like to see the same for other impact assessments.

Following on from earlier questions, could I also understand—simply, if possible—how the system will work? Does my noble friend see a parallel with human rights statements? As I recall from my time on the Front Bench, the relevant policy Minister studies these, talking to his or her legal team, then signs and deposits them in Parliament, where they can be considered by the relevant committees. It would be good to understand whether that is what is envisaged and possible here.

4.30 pm

Baroness Parminter (LD): My Lords, I will be brief. After what was a fruitcake of amendments, we are now on a fairly simple Madeira cake—but it is no less welcome. I am grateful to be noble and learned Lord, Lord Hope of Craighead, for his forensic approach and for tabling this probing amendment. We need to be absolutely clear what is the purpose of this clause if we are to ensure that the Bill helps parliamentarians in future—including Select Committees, as the noble Baroness, Lady Neville-Rolfe, mentioned—properly to scrutinise the effects of proposed legislation to ensure that it is compatible with the Government's environmental goals. So we welcome the approach of this probing amendment.

Baroness Jones of Whitchurch (Lab): My Lords, I, too, shall be quite brief. I am grateful to the noble and learned Lord, Lord Hope, for tabling this amendment. As he says, it is probing and, as ever, he set out very eloquently the reason why it is important. I have listened carefully to his analysis and very much agree with what he said.

As we discussed in the previous group, throughout consideration of the EU withdrawal Bill, we were reassured that environmental protection would be at least as good as that which we enjoyed in the EU. However, it is already clear that the wording in this Bill on environmental principles is a weakened version of what has gone before, particularly in the need to have only "due regard" to the policy statement. The academic experts giving evidence on the pre-legislative scrutiny of the previous version of the Bill concluded that

"the Bill does not maintain the legal status of environmental principles as they have come to apply through EU law."

Now the noble and learned Lord, Lord Hope, is rightly raising the issue of making new environmental law, as set out in Clause 19. His amendment would require that the level of environmental protection under existing environmental law should be clearly spelled out before it is possible to say, in Clause 19(3), that any new legislation will not reduce the level of environmental protection under existing law. It would remove any ambiguity and provide a double lock on protections for future environmental legislation.

At the same time, we should acknowledge that regression often happens by stealth, and can occur at a number of levels, not just in primary legislation. For example, it could appear in secondary legislation or in the detailed policy proposals that precede it. Therefore, ideally, the scope of this provision should include secondary legislation as well. It would also make sense for a statement of this nature to be published at a much earlier stage, as part of any consultation or before a new Bill was introduced. As we have discussed in other contexts, we need accurate baseline evidence, including about the impact of existing legislation, before we can assess the effectiveness of any measures proposed in any new legislation.

So we share the concerns that the noble and learned Lord has raised in this amendment and very much hope that the Minister will feel able to take these issues on board and give a positive response.

Lord Goldsmith of Richmond Park (Con): I thank the noble and learned Lord, Lord Hope of Craighead, for his Amendment 81A. It summarises in many respects the purpose behind Clause 19 very well. The clause is aimed at delivering accountability through transparency. It guarantees that effects on the level of environmental protection are considered before a Bill is introduced and will ensure that the environment will receive the close attention and appropriate consideration it deserves in the policy-making process.

I should like to provide some more detail how it will work in practice, in response also to questions raised by my noble friend Lady Neville-Rolfe. The statement under Clause 19 will take the form of a short, written statement in any new Bill that contains a provision that, if enacted, would be environmental law. The statement would confirm that the Minister was of the view that the Bill contains an environmental provision, and would set out that the Minister believed that the existing levels of environmental protection would not be reduced.

Bills are accompanied by a range of documentation to aid Parliament in its scrutiny of legislation, including the Explanatory Notes and Delegated Powers Memorandum. These are produced by convention, rather than being required by legislation. Clause 19 is designed to ensure that Parliament has the necessary information so that it can properly scrutinise legislation that affects the environment. The Government will consider what arrangements may be appropriate for specific Bills. I assure noble Lords that we will engage with the authorities in both Houses prior to implementation. As Clause 19 is straightforward in its purpose and current wording, I do not think it is necessary to reiterate it in the Bill.

I should also like to take this time to respond to colleagues in the devolved Administrations who have requested some reassurances on the implementation of this clause. Incidentally, the organisation that my noble friend Lady McIntosh referenced is called Environment Standards Scotland. The statement under Clause 19 will take into account the extensive discussions held with the devolved Administrations throughout the development of any new Bill that includes provisions with implications for them. Engagement with the devolved Administrations will be in accordance with the memorandum of understanding on devolution, or any arrangement that replaces it, and the practices outlined in the devolution guidance notes. My noble friend also asked about working with the devolved Administrations, and I hope I have addressed her concerns.

Once again, I thank the noble and learned Lord for his amendment and beg him to withdraw it.

Lord Hope of Craighead (CB) [V]: My Lords, I am very grateful to all noble Lords who have spoken in this short debate. I must thank the Minister for his very helpful remarks, which have reassured me and, I hope, other noble Lords, that there is real purpose behind the clause. As the noble Baroness, Lady Bennett of Manor Castle, said, the clause really must be made to work, and I think he has explained how, given the information that will be revealed, it will indeed achieve that purpose.

Part of my concern was that perhaps the Government are taking on too much, because one should not underestimate the increasing reach of environmental law, but it is very important that the reach should be carefully considered. As the noble Baroness, Lady Neville-Rolfe, said, we want to be really sure that the matter is carefully thought about before the Bill is introduced, and I am reassured by the Minister saying that that indeed is the purpose of the clause and that the clause will achieve it.

For those reasons, I am happy to withdraw the amendment.

Amendment 81A withdrawn.

Clause 19 agreed.

Clause 20 agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We now come to the group beginning with Amendment 82. Anyone wishing to press this or anything else in the group to a Division must make that clear in debate.

Amendment 82

Moved by ***Lord Cameron of Dillington***

82: Before Clause 21, insert the following new Clause—

"Office of Commissioner for Environmental Protection

(1) The office of Commissioner for Environmental Protection is established.

(2) It is for Her Majesty by Letters Patent to appoint a person to be Commissioner for Environmental Protection.

(3) Her Majesty's power is exercisable on an address of the House of Commons.

(4) It is for the Prime Minister to move the motion for the address.

(5) To do so the Prime Minister must have the agreement of the person who chairs the Environment Audit Committee.

(6) The person appointed holds office for 10 years, and may not be appointed again.

(7) The Commissioner for Environmental Protection is by that name to be a corporation sole.

(8) The Commissioner for Environmental Protection is to be an officer of the House of Commons.

(9) But section 4(4) of the House of Commons (Administration) Act 1978 (which provides for the application of provisions of that Act to staff employed in or for the purposes of the House of Commons) does not apply in relation to the office of Commissioner for Environmental Protection.

(10) The person who is Commissioner for Environmental Protection may not be a member of the House of Lords.

(11) The Commissioner for Environmental Protection is not to be regarded—

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

(12) The person who is Commissioner for Environmental Protection may not hold any other office or position to which a person may be appointed, or recommended for appointment, by or on behalf of the Crown.

(13) Before a person is appointed as Commissioner for Environmental Protection, remuneration arrangements are to be made in relation to the person jointly by the Prime Minister and the person who chairs the Committee of Public Accounts.

(14) The Commissioner for Environmental Protection may resign from office by giving written notice to the Prime Minister.

(15) Her Majesty may remove the Commissioner for Environmental Protection from office on an address of both Houses of Parliament."

Member's explanatory statement

This amendment is to help secure the independence of the OEP by making its chief executive a separate office holder appointed by the House of Commons. It is modelled on provision made for the Comptroller and Auditor General under the Budget Responsibility and National Audit Act 2011.

Lord Cameron of Dillington (CB) [V]: My Lords, I know this group of amendments is unlikely to find favour with Defra. While I normally contribute to our debates in this House in what I hope is a dispassionate, calm manner, I have to say that on this occasion, I feel quite passionate about this issue. I am what I would describe as "a very cross Bencher".

In the early days of Brexit planning, we were promised that we would have as near a replication of the EU environmental oversight of our organisations as is possible. At the time, Michael Gove, the then Secretary of State, was reported as saying that he thought that putting Defra in charge of the OEP would not be suitable. As ever, he was right.

The OEP will be at the centre of our country's new environmental future post Brexit. We all have great hopes and expectations for it—some, I suspect, possibly too high. But within all our ambitions to secure a cleaner, more sustainable and more biodiverse future, I cannot stress how important it is that we get the OEP right—and at the moment it looks as though it will be a mere tool of the very body it should be overseeing.

[LORD CAMERON OF DILLINGTON]

I know that the EU regime we are leaving could not possibly be the same as any domestic arrangement we might replace it with, but, as I say, in the early days we were promised "an equally effective regime". So it is worth reiterating what various ex-Ministers have said: namely, that in the past, the mere threat of the EU Commission taking action against the Government had departmental Ministers and Secretaries of State quaking in their shoes. And you can understand why. As an example of the punishments doled out by the ECJ, at the behest of the Commission, in 2014 Italy was fined €40 million, with an additional fine of €42.8 million every six months that the issue of dumping illegal waste remained unresolved—as I believe it did for at least one six-month period. Again, in 2015, Italy was fined €20 million and a further €120,000 each and every day that the region of Campania failed to resolve its waste-management problems.

The interesting thing about that last case is that it was the Italian Government who were fined, not the regional council of Campania, which was at fault. I say this because when Professor Macrory—who I see has now joined the shadow OEP board—gave evidence to our Lords environment committee last year or the year before, he emphasised that the Commission infringement proceedings were always directed at Governments, even if the breach was by another public body. He argued that, if possible, this should be replicated post Brexit, with the OEP's enforcement powers being directed solely against Secretaries of State. But of course, that would be impossible under the current proposed arrangements, because it would mean the Defra Secretary of State taking himself to court.

In this context, it is worth remembering that the EU Commission took the UK to court for infringement 34 times in total and won 30 times. There is no reason to suppose that the frequency of infringements by UK public bodies will not continue into the future. Why would that change? Our institutions remain as fallible and, dare I say it, as underfunded as ever. But now, the Secretary of State will stand between the OEP and the infringing body, rather than taking the hit, as he or she should.

I must repeat what I said at Second Reading: this has nothing at all to do with our trust in the present Ministers, in whom I recognise a total commitment to the environment, but we have to think what will happen if, in the future, we find ourselves with a disinterested, or maybe just incompetent, Secretary of State and an overcontrolling department. The decisions that we make in this Bill could still be affecting the governance of our environment in 40, 50 or even 60 years' time. So I say again: the auditing and bringing to book for environmental rule-breaking by our relevant public bodies, the most important of whom are within the Defra family, is unlikely to happen when Defra gives the guidance to, and controls the budget of, the OEP.

Let me tell you a story. I had a friend who was a regional director of MAFF in the 1980s. He had a farming neighbour who had a grouch about some MAFF policy—I am afraid I cannot quite remember exactly what it was—and he asked my friend to help him write a letter to the Secretary of State. Of course, in those days he was called not the Secretary of State but the Minister of Agriculture. Anyway, in due course the Minister, having received the letter—largely written by my friend—sent it down to my friend, the regional director, and asked him to draft a reply to him, refuting the farmer's complaint. So my friend, no doubt employing his best departmental penmanship, wrote the reply for the Minister to send to the farmer. And then, of course, the farmer brought the Minister's letter to my friend, asking him to help draft a further response for him to send back to the Minister. And so he did. Rather like someone playing chess against himself, he ended up having quite a long, rather enjoyable, correspondence with himself over several months, writing letters for both sides of the argument.

You can see where this is going, because that is precisely what will happen when, for instance, the OEP is threatening the Environment Agency with proceedings. The Secretary of State may not be actually writing the correspondence, but you can bet that he will be monitoring it and ensuring that, in whatever is said by either side, no blame could possibly fall on either him or his department. We know for sure that many of the current failings of the Environment Agency and Natural England are a direct result of them being starved of funds by Defra—and, also, incidentally, being subtly indirectly controlled by that department. So much for Professor Macrory's wish that the buck should always stop with the Secretary of State.

Just last week, I was talking to an organisation about our rivers, and it was saying that it is lawlessness out there, because no one is monitoring, inspecting or enforcing the rules on our rivers, since the Environment Agency has been starved of funds in this respect. That is what it said, and when you read the evidence given to the Environmental Audit Committee last month, it is clear that it is right. The buck should stop with the Secretary of State, or at least his department, and he should definitely not be the one controlling the buck.

That brings me to the Minister's claim, in his admirably full letter to us all last week—for which I thank him very much—that the OEP will be a non-departmental body. I am afraid that, in my view, the phrase "non-departmental body" is widely overused and wrongly applied in today's political world. As an ex-chair of the Countryside Agency, I can say that it was not always thus—at least, it was not when I reported to the Department of the Environment, before we came under the control of Defra—but in the modern political climate of total control from the centre, free-speaking bodies within Government are no longer tolerated.

4.45 pm

There is no doubt in my mind that, like the Environment Agency and Natural England, the OEP in its present guise will be very much a departmental body. I should say that this is a phenomenon not unique to Defra: at DCMS, for instance, the Secretary of State went ahead and appointed a new chair of the Charity Commission in spite of the DCMS Select Committee voting unanimously against his choice. That could happen with the next OEP chair, although again I state that the current chair has universal support,

including mine, for her appointment. My main point is that the OEP must not only always be independent of Defra, but it must be seen to be independent of Defra, and at the moment it is neither. I find that very worrying.

Our amendments are based on both the National Audit Act 1983 and, as the explanation says, the more recent Budget Responsibility and National Audit Act 2011, and what they say about the National Audit Office and the Comptroller and Auditor-General. I must confess that, in spite of the consummate skill of the Public Bill Office—my particular thanks go to Theo Pembroke for his advice—in a few necessarily brief amendments in Committee it is not possible to replicate, with all the necessary and complicated detail, what should probably be a Bill in itself, or, at least, a full chapter in this Bill. It is a principle that we are trying to get across here, so please do not pick us up too much on any perceived gaps and omissions.

The main point is that the NAO can take any department or public body to task for its financial controls and performance. It reports to the Public Accounts Commission, which also sets its budget. The NAO is a well-established part of the checks and balances in our governmental system, dating back to the time of Gladstone. So you see how long these institutions last; that is why we have to get this right. Everybody knows and understands that businesses, public companies and, indeed, public bodies need their finances audited by an independent body—I stress that word "independent". We are saying that, while the OEP's budget should also be set and monitored by the Public Accounts Commission, it should report to the Environmental Audit Committee. We need those same checks and balances now in our environmental governance as well as our financial governance. We cannot afford to let Defra just mark its own homework.

With the focus on climate change and the environment in this year's COP 15 and COP 26, the environment will predominate in the minds of the public. I believe our businesses will emerge from Covid riding on a wave of new environmental enthusiasm. The young are very supportive of the green agenda and are mostly happy to put their money and, sometimes, their careers, behind it, and they will never forgive us if we let them down. Meanwhile, businesses, both large and small, are beginning to investigate the need to have an independent environmental audit to report to their shareholders as well as their statutory financial audit—note again that word "independent". Governments, especially, should also have an independent environmental audit. The future of our rivers, air, climate and the biodiversity of our flora and fauna all depend on it, but at the moment that is not what is planned.

I know that many noble Lords will think that these amendments are a step too far, and "Why don't we just fiddle at the edges of what we have been presented with?" But I really do not think that that is good enough. I realise that the art of the possible is the byword of most politicians, but there comes a time when you have to stand up and try to move "the possible" in the right direction—in the direction of what we all know is the public interest—and not kowtow to a department trying to overcontrol its own agenda. I beg to move.

Baroness Boycott (CB): It is a great pleasure to follow my noble friend Lord Cameron. Like him, I am very much a "cross"-Bencher in this case. I have been looking through the Second Reading document and would say that there are many cross Lords, all across this Chamber and wherever they are beaming in from, who also completely agree with what he says about the necessary independence of the OEP.

It is extremely chilling to read Defra's power under Clause 24 to issue guidance on how the OEP should behave and what it should do. At the end of the day, it is the department for the environment but also agriculture and food. Those two areas make up such a massive part of the climate change agenda, how we use our land and how we will reclaim our biodiversity for the future of this whole country. The thought that advice on the levels of control should be given in that department seems quite absurd but also very sinister. Either this is really cowardly or it is an agenda that wants to conceal.

My noble friend Lord Cameron pointed out various cases in which big fines have been able to be issued. Will the Government really be able to fine themselves for transgressions relating to chemicals, the use of neonicotinoids and all the things the EU can cope with at the moment?

Earlier this afternoon I spoke about the grubbing up of trees at the barracks near Grantham. When the Minister answered us, he said that neither he nor his colleagues wanted to see any of these grubbed up. I have used the intervening time to look up the remit of Homes England. This is what its website says—it is such a good quote:

> "We're the government's housing accelerator. We have the appetite, influence, expertise and resources to drive positive market change."

If you scroll down to look at what it is responsible for and its priorities, there is not one mention of the word "environment", climate change or care and attention to how we live. I wonder how this will work out if a case is brought by those children—by Callum McLelland, the 15 year-old who planted a tree when he was seven. If he decides to bring a case, will Defra say, "We don't want this case"?

I also point out that, like my noble friend Lord Cameron, I do not doubt for a second the authenticity and sincerity of the current holders of the office, both in this Chamber and in the other place. I know they mean what they say and do their best, but this is statute that has to stand for ever. It will probably stand when we are all dead.

For instance, I would like to bring to noble Lords' attention the situation with the recent Australian trade deal. As I understand it, Defra did not approve of it, but it was overridden by the department for trade. We will accept animals into this country such as sheep that have been subjected to the practice of mulesing. If any noble Lords do not know what that is, it is the process of ripping the skin off a lamb's backside so that it forms scar tissue and then is not vulnerable to flies. The department for trade won.

Government is complicated and messy. There are lobbyists, and a lot of money is being thrown around. The Tory council of Horsham, where Knepp is threatened by 3,500 houses—this was in the *Sunday Times* eight

[BARONESS BOYCOTT]
days ago—has received £600,000 from these developers. There is much going on like this. We need an agency that can stand up to it, act quickly and with independence and that does not have to run to the Minister and say, "Is it okay if I do it?" Please support my noble friend Lord Cameron's excellent amendment.

Baroness McIntosh of Pickering (Con): I am delighted to support and speak to the amendments in this group. As we are considering in detail a number of amendments relating to both the independence of the OEP and its budget, resources and staffing, I will keep my comments on this group limited to parliamentary oversight and scrutiny.

The noble Lord, Lord Cameron, and I served together on the EU Environment Sub-Committee, and I think he is the sole survivor of that committee to now be on the Environment and Climate Change Committee. He carries the candle for us all in that regard. I am grateful to him for tabling these amendments and agree entirely that we were promised oversight as near as possible equivalent to and as effective as that which pertained through our membership of the European Union, and that my right honourable friend Michael Gove, in the other place, said that it would be inappropriate for Defra to be in charge in the way that, it has now become apparent, it will be.

On balance, I prefer the amendment in the name of the noble Baroness, Lady Jones of Whitchurch, supported by the noble Baroness, Lady Young of Old Scone, which would ensure that appointments would not be made without the consent of the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee. On a number of occasions during my tenure as chair of the EFRA Committee, we conducted pre-appointment hearings. I do not know whether there was a pre-appointment hearing in this case, but we know that Dame Glenys Stacey is now in place. My first question to my noble friend is: was there such a pre-appointment hearing? Was it carried out by one, the other or both of those committees? I think I am right in saying that Amendment 85 breaks new ground in suggesting that the other non-executive members of the OEP would also face a pre-appointment hearing. I do not know whether that has ever happened before.

The reason why the amendments are so welcome, particularly Amendment 85, is that it gives us the opportunity to ask my noble friend to set out precisely what the parliamentary oversight of the OEP will be. I argue very forcefully not just for a pre-appointment hearing by the two committees in the other place but for opportunities to have the chair of the OEP, Dame Glenys Stacey, in annually for a full review of its work.

It is important to ask my noble friend one last question. When we were preparing the report to which I referred earlier, *Beyond Brexit: Food, Environment, Energy and Health*, the Secretary of State told the EU sub-committee—he is quoted at paragraph 162 of the report—the following:

> "It is important to note that the chair of the OEP, Dame Glenys Stacey, has already been appointed and is in post … It is already able to receive complaints. Until it has its full legal powers, there is a limit to what it can do to act on those complaints. If the European Union wanted to have dialogue with the OEP for the purposes of that part of the agreement, which really is only about cooperating and sharing, there would be nothing to prevent that from happening in this early stage."

I would go further and press my noble friend to ensure that there is an obligation, particularly in the early stages while the OEP is being set up and finding its feet, to have regular contacts with the European Commission to find out its exact approach. It may take a different view, but it would be helpful to have at least some background in this regard. It is my certain understanding that Environmental Standards Scotland has already had such contact. It would be highly regressive and retrograde if the OEP, representing England, did not replicate that.

I am also concerned—I hope my noble friend will put my mind at rest—that it should not be in any shape or form admissible or possible for the Secretary of State for Environment, Food and Rural Affairs to lean on the independent chair of the OEP and suggest that she not take up a complaint, were she minded to do so. According to my current understanding of the OEP's composition and independence, the situation in that regard is by no means certain. I commend these amendments, and in particular I have great sympathy with Amendment 85.

Baroness Jones of Moulsecoomb (GP): My Lords, the noble Lord, Lord Cameron of Dillington, introduced his amendments extremely well. There is not much I can add except to say that it is widely recognised across the House that the office for environmental protection is not currently fit for purpose—it is too weak and easily ignored. It is therefore pretty much a done deal that your Lordships' House will amend this Bill to strengthen the OEP. I hope that when we do, we can come up with the strongest possible options.

The OEP needs status as well, which the noble Lord, Lord Cameron, pointed out. The amendments would give it that status and, more importantly, they would help to ensure the independence of the office, establishing the commissioner by letters patent from the head of state, which would prevent the Government meddling. That is the sort of level of ambition that we should be setting for our environmental watchdog. Parliament is also the proper place for the OEP to be accountable to. The point made by the noble Baroness, Lady McIntosh, about exactly how that will happen was quite useful.

5 pm

Getting the appointments process right is a key step towards ensuring the strength of the OEP. Its members cannot be hobbled by the Government, cherry-picked by Ministers, or be friendly with the Government. I therefore look forward to discussions over the coming weeks to get this right, and I hope that the Minister will work co-operatively with noble Lords from across the House. Anything less would be to consign future generations to a poorer, dirtier, sadder life, and none of us wants that.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Lord, Lord Inglewood, has withdrawn, so I call the noble Lord, Lord Krebs.

Lord Krebs (CB): My Lords, before I turn to the amendments in this grouping, I refer to a comment that the noble Earl, Lord Caithness, made in relation to the grouping including Amendment 73 when he pointed out that the Minister had not actually answered my question. In his reply the Minister said he had answered it, but I will just repeat the question which he did not answer—I do not expect him to answer it right now but I hope he will at some point. I said: "Can the Minister explain why he considers the introduction of proportionality necessary, when the precautionary principle, according to the High Court, already includes proportionality?" I then went on to quote in detail the judgment of 28 May 2021 from the High Court. I therefore hope that at some point the Minister will respond to that question.

I support all the amendments in the group including Amendment 82 and I am especially grateful to my noble friends Lord Cameron of Dillington and Lady Boycott for leading us into what is perhaps the core debate of the Bill: the role and nature of the office for environmental protection. As has already been said, this is the first of a series of amendment groupings that we will discuss in the coming hours which deal with the independence and enforcement role of the OEP.

The Government promised us a strong and independent OEP and, as we have already heard, many of us feel that we have been short-changed. I remind your Lordships of a score line: 25-0. This is not the forecast for the England-Germany game tomorrow but the number of speakers at Second Reading who expressed concerns about the OEP not having enough independence or teeth—25—versus those who thought it had too much of both: zero. There is no doubt about the strength of feeling across the House on this matter. As others have already spoken with great force and clarity on the issues, I wish to add only one personal anecdote, relating to ministerial involvement in appointments. This is particularly relevant to Amendment 85 in the names of the noble Baroness, Lady Jones of Whitchurch, and the noble Baroness, Lady Young of Old Scone.

A few years ago, when I was chair of the Adaptation Committee of the Climate Change Committee, I went through the standard appointments procedure to select two new committee members. The selection panel was chaired by a Defra senior civil servant and included the requisite independent member. The panel unanimously agreed on the two best candidates. The then Secretary of State rejected both candidates because she did not think they had the right profile to serve on the committee.

If we are to have confidence in the genuine independence of the office for environmental protection, there has to be some transparency and independence about the recruitment, not just of the chair but of board members, as proposed in Amendment 85. I therefore hope that the Minister will take that amendment and the other amendments in this grouping seriously and that he will respond appropriately.

Lord Hope of Craighead (CB) [V]: My Lords, while I do not support every detail of Amendment 82 and tend to prefer Amendment 85, the amendment in the name of my noble friend Lord Cameron of Dillington makes a very important point of principle, which I support. The independence of the office for environmental protection is crucial if it is to have public confidence. As the Constitution Committee, of which I am a member, said in its report on the Bill:

"It is essential that such an important public body be independent of the government."

It is true that paragraph 17 of Schedule 1 states:

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

The question is whether the provision in Schedule 1 is sufficient and appropriate to ensure that independence. I very much doubt that it is sufficient, which is why I said what I said at the beginning of this intervention.

The amendment, which provides for the appointment of a commissioner who is to be the chief executive of the OEP, would be well worth considering as an additional safeguard for the composition of this very important body, as indeed the alternative suggestion in Amendment 85 would be.

The provisions of Clause 24 about guidance by the Secretary of State to which the OEP must have regard in

"preparing its enforcement policy, and … exercising its enforcement functions"

are worth bearing in mind, because they show how important it is that it should be seen to be independent when, as will so often happen, a government proposal raises environmental concerns. The words "have regard to" are not the same as "must follow". They leave room for independent thought and judgment. It is that aspect of independence which is so important, and why the amendment in the name of my noble friend Lord Cameron is so well worth considering carefully in this debate.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): My Lords, the noble Baroness, Lady Young of Old Scone has withdrawn, as she is listed twice on this list and will not be speaking in either place, so I call the noble Lord, Lord Cormack.

Lord Cormack (Con): A few moments ago the noble Lord, Lord Krebs, referred to this as the core amendment of the Bill. In many ways it is, because the success of the Bill depends upon having a totally independent, vigorous, courageous person who can stand up to any Minister and who has the authority to call the Government properly to account for infringements of an environmental nature. One thinks of the debate we had last week about the pollution of rivers and the ability to fine—the noble Lord, Lord Cameron, in his admirable introduction to his amendment talked about the swingeing fines that have been imposed upon Italy, among other countries.

If the Bill is truly to become a landmark Act of Parliament—again I use those words, which have been used so often—it has to stand the test of time. We are not legislating for the next five years or even for the next 25 years—a figure that has cropped up before. We are legislating to lay the foundations for an environmental system that our grandchildren—in the case of some of us, our great-grandchildren—will depend upon. We cannot be fobbed off with the answer that this is more or less another function of the Secretary of State. The noble Lord, Lord Cameron of Dillington, has spelled out many things—I do not agree with all of them—which are of great importance to us all.

[LORD CORMACK]

I have some doubts about appointing a person for 10 years; I would prefer the electoral cycle of five years, although emphatically not to coincide with a general election. I would be entirely happy with an appointment for five years, to be renewed for another five years, but not longer. So I agree with the noble Lord, Lord Cameron of Dillington, on the overall length, but we have to be a little cautious about appointing any individual for a 10-year period. Things can go wrong, and it can be very difficult to get rid of people who are not fulfilling their function.

This is a minor point, but I also think we should not rule out Members of your Lordships' House. We have a number of people who are highly accomplished and who could fulfil such a role. Of course it would be necessary to stand down from active membership of the House, as the noble Lord, Lord Smith of Finsbury, did, but we have provision for that. It is possible to take leave of absence, and if anybody is appointed to a very important position, as the noble Baronesses, Lady Ashton and Lady Amos, were, they do not function as a Member of the House during that period. To rule out somebody by virtue of his or her membership of the House is wrong and unnecessary.

The noble Lord, Lord Cameron, hit on many other important points. There has to be a degree of independence. He talked about the Comptroller and Auditor-General as an example on which he has drawn. There has to be independence and vigour and strength—it is crucial.

The noble Baroness, Lady Jones, in her inimitable way, talked about Report. I say to my noble friend, not in any spirit of threat, that there must be meetings with Members of your Lordships' House between now and Report, otherwise the Government will get a lot of egg on their face and the possibility of a 1 November deadline will vanish. I do not say that in a threatening spirit and, in particular, I say it in no spirit of animosity towards any of the Ministers concerned, either my noble friend or those in the other place. A number of people, including the noble Lords, Lord Cameron and Lord Krebs, have made that point this afternoon. We are not expressing doubt in their sincerity or wisdom, but we are saying that if they are creating something for generations to come, they have to bear certain things in mind. We do not need recent examples to remind us that Ministers do not always end in a blaze of glory.

This is a core amendment. It is something that I, and I am sure others, would like to sit down and discuss with my noble friend before Report. If we can reach agreement by compromise or discussion, it is always better than dividing the House, because if any Bill deserves—needs—the support of Members in all parts of your Lordships' House, it is this one. The environment we are talking about is ours and, far more important than that, we are legislating for the environment of our children, grandchildren, great-grandchildren and beyond, otherwise there is that fear of extinction, about which we talked the other day.

I support the spirit of all these amendments and very much hope that we will be able to come to a collective decision that will enhance the Bill and make it a Bill that has real teeth, with a body created by it that has real teeth and can deal with real problems in a vigorous way.

5.15 pm

Lord Framlingham (Con) [V]: My Lords, I am very happy to support Amendment 82. I thank the noble Lord, Lord Cameron, for dealing with it so comprehensively that I feel there is little more for me to say.

I speak to support the view that the office of environmental protection must not only have teeth but must be totally independent from all strands of government. There are many good reasons for this. Independence is, in a way, self-explanatory and a good thing in itself, but it is even more important to spell out that it must be independent of government when the judgments it will have to make may well be on cases in which a government department is involved. Additionally, I suspect there may be environmental transgressions, such as on effluent disposal, where much tougher punishments are required, and in some cases present legislation may be adequate but it is simply not being enforced correctly. The culprits may well have links to the Government, or the Government may, for various reasons, not be prepared to take as strong a line as they should.

In summary, it has been described as a core part of the Bill. I am not too sure what significant difference to the protection of our environment the creation of this office will have. I suspect much will depend on the approach and, more importantly, the resolve of the person appointed to the task. By giving it true independence, we can at least give it the best possible start.

The Earl of Caithness (Con): My Lords, when the office of environmental protection was mooted, I hoped it would be on the same basis as the Climate Change Committee, and be totally independent of government. When that was not the case, I hoped that the structure of the Bill would be that advocated by the noble Lord, Lord Teverson, and that that part of the Bill should be within the remit of the Climate Change Committee, which is sufficiently independent.

I remember when I was a Minister, and that was many blue moons ago now, being quite irritated at times by the interference of Brussels. We had perhaps some of the best civil servants in the whole of the EU then; my advice was excellent, and I thought that what we were doing was right. But on reflection, perhaps we were not that right. I remember I once lost a Division and went to the Leader, the late Lord Whitelaw, and said to him, "Willie, I'm terribly sorry, I lost that amendment". He looked at me and said, "Malcolm, perhaps they were right". Perhaps the Government are wrong on this occasion. As I see it, the problem is that Defra will remain judge and jury, and there is a route for disaster.

I shall give two examples. One example is the water authorities, which I helped to privatise in the mid-1980s. My friend, the late Lord Ridley of Liddesdale, made a revolutionary change in policy by taking control of pollution away from the water authorities and handing it to the National Rivers Authority. The water authorities were outraged, but it was right. What went wrong was that the NRA was amalgamated into the Environment

Agency, and the money for the Environment Agency was reduced so that the controller of the polluting companies did not exercise the brake that was needed. We talked about that a couple of days ago.

The other government department that is a classic example of judge and jury is the Forestry Commission. I know that my noble friend on the Front Bench agrees that the Forestry Commission has been an utter disaster for this country. It has cost the taxpayer a huge amount of money and planted the wrong trees in the wrong places with the wrong policy. I hope that that is beginning to change. I have been banging on in this House on that for more than 50 years, but at long last I am being proved right.

I would really like the OEP to be seen to be independent. Not only does it have to be independent, which it is not under the Bill—as the noble and learned Lord, Lord Hope of Craighead, said, the schedule is not strong enough—it has to be seen to be independent. My noble friend Lord Cormack was right: this is better done by negotiation. The Government will get defeated on Report on this, but it would be far better if we got an amendment that we could all sign up to, because that would send a message to everybody who will be affected by the Bill—which is the whole of the country—that there is unanimity in Parliament that that is the right way forward. At the moment, as I said to my noble friend when he was kind enough to have a meeting with me, I am unhappy with the OEP. I am not quite certain what the right amendment is, but I know that there is one out there if we all make an effort to get it right.

Lord Whitty (Lab) [V]: My Lords, there has been near unanimity in condemnation of what is currently in the schedule to deliver a really independent body of the kind we want. As the noble Lord, Lord Cameron, said in a formidable opening address on the group, we want to create the same degree of fear, almost, in public bodies that the possibility of the European Commission intervening and fining this country provided before Brexit. What is envisaged in the Bill goes nowhere near that.

Frankly, we know that there are precedents for what happens to so-called independent bodies. I had expected to speak after my noble friend Lady Young and just before my noble friend Lord Rooker. It is instructive that one was the chief executive of the Environment Agency and the other the chair of the Food Standards Agency. When the Environment Agency was first set up in the 1990s, to which the noble Earl, Lord Caithness, just referred, there was a lot of talk about independence, but in fact it became part of the Defra family. Its independence was limited by successive Governments over the whole of that period. Under the coalition Government, it was restricted from briefing parliamentarians or engaging in anything that amounted to a campaign in the eyes of the then Government. Subsequently, of course, its funding has been seriously cut. The Environment Agency is doing an effective job on limited resources, but it is not independent of government.

The other example is the Food Standards Agency. The FSA is a non-departmental body, but as soon as it started straying into areas of interest to the Department of Health on diet, health advice and well-being, those functions were taken off it and ploughed back into the Department of Health. It was right to take it out of its origins in MAFF, but in practice it was never completely independent of government, much though the efforts of my noble friend Lord Rooker and others tried to make it so.

We want a truly independent body on the environment to face up to the immense challenge of climate change and biodiversity diminution. This is not it. I agreed with pretty much every word that the noble Lord, Lord Cameron, said. I do not entirely agree with his amendment—like others, I prefer the amendment in the name of my noble friend Lady Jones of Whitchurch—but, as recent speakers said, the Government really do need to take notice of the overwhelming view of the Committee that this will not do. To be truly independent, the OEP needs not just a formal position and designation as a non-departmental body; it needs powers, which are insufficient in the Bill; it needs provision for how its composition is established, which is not fully in this Bill; and it needs powers of enforcement, which we will consider later in Committee and which are, at the moment, clearly completely inadequate to the task.

This is the central part of the Bill. The Government have to think again. If they can come up with a better proposition then let us seriously consider it, but what is in the Bill at the moment is not adequate. None of us believes that it is, and I doubt whether the Government themselves—and the Minister in particular, if I may say so—really believe that it is. Let us think again and try to get something better before the Bill completes its course.

Lord Rooker (Lab): My Lords, I agree on the importance of this part of the Bill. Indeed, it is the only part of the Bill that I dealt with at Second Reading, on governance issues. The noble Lord, Lord Cameron, introduced Amendment 82 very well. We might argue, but as the noble Lord, Lord Cormack, said, somewhere there is an alternative to what is in the Bill. We just have to find it, because the Minister and his advisers will appreciate that this will not get through the House.

I sat on the environment sub-committee of the Lords EU Committee for a few years. The early promises about the governance gap are not being filled with this Bill. I will not quote again the article that Michael Gove wrote in November 2017, when he was Defra Secretary of State, accepting the fact that there is a gap, but I will refer to what the noble Lord, Lord Cameron, referred to, which is the 30 out of 34 wins by the European Court of Justice on environmental issues. You have to ask yourself about this: it won on 30 out of 34 cases. That meant that the UK Government were refusing to do something that caused them to be taken to court. Both parties were involved, by the way. The UK Government did not want to do something—whether it was cleaning up the beaches, making water safer, it does not matter: they did not want to do it. But the European Court of Justice and the Commission took the case to the court, and the court decided, "Yes, you will", in 30 cases out of 34. When I checked, the other four were undecided.

[LORD ROOKER]
I know from my own experience inside the department that the threat of infraction meant that you got cracking, talked to the Treasury and said, "Look, we ought to do this. Can we have a few more quid or move some budgets around to satisfy this? Otherwise, we'll be penalised with a bigger fine than what this will cost us." That is what actually happened in some cases. I know from experience that this is the way that it works.

I also know, of course, that Defra loves control. In my first two years as a Minister, from 1997 to 1999, I was at MAFF. I was then at Defra from 2006 to 2008—the same department, basically. The point that I am making is that the culture was the same; it was about control. This probably would not happen, but it would be very interesting to have some interviews—exit interviews would be the wrong thing—with people who are no longer serving on some of the bodies, particularly Natural England and the Environment Agency, as to what happened. I know to my certain knowledge that Defra leant on Natural England.

When we were setting up the Food Standards Agency in 1998 and 1999—I might add that my noble friend Lord Whitty was wrong on this, as it is a non-ministerial department with a different structure from a non-departmental public body—I discovered, because of the capacity and willingness of Defra civil servants to adhere to the policy of the Government, that there was an attempt at the highest levels in Defra to convert that agency to an executive agency of MAFF. The department wanted to keep control, even with all the problems we had in setting up the agency. Despite the report from Philip James and the manifesto commitments, they still thought at the last minute that they could keep it as an executive agency. It would have been the ultimate control, if you like, of having an executive agency compared to a non-ministerial department.

5.30 pm

As a non-ministerial department, it was therefore part of government. I accepted that and had no problem with it. The coalition Government who came in during 2010 decided to have some machinery-of-government changes. Because the noble Lord, Lord Lansley, wanted to abolish us, the price of that was to remove certain issues from the FSA and take them back to health, so they are now dealt with behind closed doors and we have lost a few years in health.

The fact of the matter is that the OEP cannot be truly independent; think about the C&AG and the only Select Committee that I ever served on in 27 years in the other place, the Public Accounts Committee. I know the value of that and there is a degree of independence there, because of statutes that go back a long time. There was a massive cross-party willingness, including from St John-Stevas and Joel Barnett, as they were in those days, to get the legislation through when the NAO was set up and modernised out of what there was. That has worked incredibly well.

One noble Lord—it may have been the noble Lord, Lord Krebs—referred to Homes England. There is an issue there. We might look at what happened to Homes England, as it recently lost its CEO. Think about that.

I do not want to have a row with the noble Lord, Lord Cormack, but he cited two very poor examples: my noble friends Lady Amos and Lady Ashton. They both went to work for overseas bodies, one as an ambassador and the other as an ambassador within the EU. It is not the same as in this place. We have a Member of this House who has recently had a very high and important job inside the NHS but keeping the party whip and still voting on a daily basis.

The idea in Amendment 82 is to keep the OEP independent. Perception is pretty crucial and it would ensure that nobody in this place had a role. I am not saying that Amendment 82 is perfect but I can certainly live with it. Amendment 85 is excellent, of course.

I would prefer not to have any lectures from the Minister about the incumbents operating in the OEP. I have worked with those people in government. I know they are very good, so I need no lectures saying, "We have got so-and-so and therefore", and so on. I know their quality, but that is for today and this year. As several people have said, we are legislating for the future so we have to make this legislation future-proof, and it is not at the moment.

I am sure there are some solutions. There are plenty of opportunities to have a discussion about how this could be seen as the perception of independence. We are otherwise going to end up with lots of court cases and have lots of lawyers—probably Members of this place—earning their corn by arguing that decisions have been made in a non-independent way. I can see it now, with court case after court case; why should we set ourselves up for that? There is an opportunity here, if we go back to first principles and think about what the job is. I could live with it going to the Climate Change Committee, by the way. That has been extremely successful and operated in a different way, because there was no such body previously. We have had enough warnings from the past.

Finally, I realise that this is probably one of the most difficult aspects of Brexit because we are trying to legislate for a function that we cannot possibly replicate: to fine the British Government. When we were in the EU and subject to infraction and court proceedings, this was different. There was a sanction on the Government made externally from the UK Parliament. We might have complained about it and did not like all the decisions—even as a Minister, I did not. But that was not the issue, as the sanction had been made by an independent, outside body. We cannot possibly replicate that exact situation here and now, as no body which we can set up could have the power to fine the Government. But we can set up a body that works independently from government, to ensure that the parts of government and the private sector do what they should. It can be done without financial penalties being necessary—there are other ways of doing it—but that power is not in the Bill. That is the point; the power is not there, and unless it is the Bill will fail.

Lord Oates (LD): My Lords, I am pleased to speak from these Benches in favour of the amendments in this group and to commend the noble Lord, Lord Cameron of Dillington, and the noble Baroness, Lady Boycott, for their excellent and powerful introduction

of them. If I may paraphrase Oscar Wilde, I say to the Minister that for the Government to provoke the crossness of one Cross-Bencher is in itself careless, but to provoke the crossness of two is surely dangerous, particularly if those Cross-Benchers are as reasonable and thoughtful as the noble Lord and the noble Baroness. It is not just the Cross-Benchers who are cross; noble Lords have heard from across the House a rejection of the approach that the Government have taken.

One of the reasons for the crossness is that, as the noble Lord, Lord Krebs, and many others have said, we were promised a strong and independent office for environmental protection. The then Secretary for State for Defra, Michael Gove, said in a speech on 16 July 2019,

"we have to create … a new Office for Environmental Responsibility to hold government to account."

He went on to say:

"There is obvious merit in their argument that any body which is designed to hold the Government to account is independent of ministerial interference."

He promised:

"An Act that combines … comprehensive objectives with strong enforcement powers",

but the OEP currently has no such independence. It has no strong enforcement powers; its members will be appointed, and its budget set, by the Government. It will be subject to the guidance from the Secretary of State on enforcement—the Secretary of State who should be subject to that enforcement—and its effectiveness will be undermined by the constraints placed on judicial enforcement.

As the noble Lord, Lord Cameron of Dillington, said at Second Reading, the office for environmental protection

"has not only to be independent but to be seen to be independent. As currently set up, it is neither".—[*Official Report*, 7/6/21; col. 1206.]

That is why the amendments in his name and that of the noble Baronesses, Lady Boycott, Lady Jones of Whitchurch and Lady Young of Old Scone, are so important. As we have heard, Amendment 82 puts it beyond doubt that the OEP would be accountable to Parliament, rather than to the very Minister and Government who may be subject to its enforcement powers. It would do so by making it clear that the CEO is to be the commissioner of environmental protection.

Amendment 85, in the names of the noble Baronesses, Lady Jones and Lady Young of Old Scone, seeks to provide a greater degree of scrutiny and independent involvement in appointments to the OEP through the Defra committee and the Environmental Audit Committee. I may have misunderstood, but I did not see a conflict between the amendment of the noble Lord, Lord Cameron, and that of the noble Baroness, Lady Jones, because my understanding is that hers relates specifically to non-executive members, whereas the noble Lord's first amendment relates to the chief executive in the role of commissioner of environmental protection.

Amendment 91 would provide a means of securing financial independence for the OEP through a role for the Public Accounts Committee. We have heard how important that is. The noble Lord, Lord Cameron, cited the experience of the Environment Agency and how significantly its budget has been cut; as a result, its enforcement powers in many regards have disappeared.

Together, these amendments seek to tackle many of the deficiencies in the Bill as it stands and which, at the moment, fatally undermine the independence of the OEP. I hope the Government will consider them carefully, but I fear that, at the moment, they simply do not understand the concept of independence. In Committee in the other place, Leo Docherty, who was then the assistant Government Whip speaking for the Government, had this to say:

"The operational independence of the OEP … should not impede the"

ability of the

"Secretary of State in exercising appropriate scrutiny and oversight of the OEP."

But it is the OEP that should be exercising scrutiny and accountability over the Minister, so that in itself undermines the case. He went on to say:

"Requiring the Secretary of State to actively protect the OEP's independence at all times would be incompatible with … ministerial accountability".—[*Official Report*, Commons, Environment Bill Committee, 5/11/20; col. 316.]

I hope the Minister can explain those two rather extraordinary statements. If that is the Government's position then it is quite clear that there is no independence for this office at all.

The noble Lord, Lord Cameron, impressed upon us the need for bold action rather than settling for politics as the art of the possible. To me, politics is the art of making possible what seems impossible. If this seems impossible in Committee, I hope that, by the time we get to Report, it will seem not only eminently possible but absolutely necessary.

I ask the Minister to put aside his ministerial brief and endorse independence of mind both for himself and for the OEP, possibly by backing these amendments, or another form of them if they need to be improved, but certainly by backing the principles behind them and by supporting the arguments that have been made by noble Lords with such cogency and passion.

Baroness Jones of Whitchurch (Lab): My Lords, we have had an excellent debate. I feel as if I have had a master class from some very experienced practitioners on how government really works and what it is like to be on the inside of some of these decisions.

I shall speak to Amendment 85 in my name. I am grateful to the noble Lord, Lord Cameron, for setting out so comprehensively the case for enhancing the status and autonomy of the CEO of the OEP. As the noble Lord, Lord Oates, has said, those of us who know the noble Lord, Lord Cameron, know it is very unusual for him to be a cross Cross-Bencher, and it is a sign that we should sit up and take notice when he shows so much passion about the issue.

This is the beginning of a debate about the OEP's lack of true independence which we will have in different forms over the next few groups of amendments. It has been hugely informative to have had insight from previous Ministers and chairs of NDPBs, who know how Ministers' powers are really exercised behind the public face.

[Baroness Jones of Whitchurch]

Our amendment is simple but important. It would amend Schedule 1, which sets out the detailed appointment arrangements for the OEP. I very much welcome the support for the amendment from the noble Lord, Lord Krebs, the noble and learned Lord, Lord Hope, and other noble Lords. It would require the chair and other non-executive members of the OEP to be appointed by the Secretary of State only with the consent of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee of the House of Commons. That would prevent in years to come the Secretary of State having complete control over non-executive appointments to the OEP. As Schedule 1 stands, there is a worrying cascade of power from the top. The Secretary of State appoints the chair, and then the Secretary of State and the chair appoint the remainder of the non-executives. So in a future scenario, the Secretary of State would only have to appoint a compliant chair to exert undue influence over all the other appointments to the board.

5.45 pm

Meanwhile, noble Lords will know that it is a regular occurrence for Select Committees to scrutinise and discuss appointments to other major arm's-length bodies. Indeed, in response to the noble Baroness, Lady McIntosh, our amendment reflects the practices that I understood took place in the appointment of Dame Glenys Stacey, where the EFRA Committee and the Environmental Audit Committee carried out pre-appointment scrutiny of the preferred candidate. Sadly, that good practice, and that for other such appointments, has not been carried over into Schedule 1 of the Bill.

I am sure the Minister will say that our fears are unwarranted. He will of course point to the current appointments of Dame Glenys and her team as evidence that the Government can be trusted, and that therefore this measure does not need to be in the Bill. Of course we welcome those appointees, and have absolute faith that they will carry out a good job, but their appointments were made under a huge spotlight, when there was a clear necessity to send the right signals about the OEP's independence of mind. Future appointments by a future Government may not be so publicly scrutinised, and the opportunity for an easier life may be all too tempting for a future Minister. I hope noble Lords will take our amendment seriously, and I hope the Minister will see the sense of it.

Meanwhile, the proposals from the noble Lord, Lord Cameron, go one step further. They would create a powerful commissioner with the powerful independent authority that the role demands, and we believe they would be an excellent solution. He beautifully illustrated what can go wrong when the Secretary of State has too much control over the OEP. As he and other noble Lords have said, we are legislating not for the present but for 50 or 60 years' time. Both he and the noble Baroness, Lady Boycott, illustrated the potential farce of Defra fining itself; as the noble Earl, Lord Caithness, said, you cannot be judge and jury. Without guaranteed independence, the threat of political interference will always hang over the CEO and the organisation.

As noble Lords have said, it is not just about being independent but about being seen to be independent. That is the only way in which the OEP's decisions will be trusted and respected, however controversial they might seem at the time. If it is going to do its job properly, there will always be times when it incurs the displeasure, frustration and even anger of Ministers and the Government. Defending the environment, our natural landscapes and our biodiversity is always going to be a huge responsibility that will, on occasion, require courage to make the right decisions. As the noble Lord, Lord Cormack, says, we require a vigorous, courageous person to stand up to the Government in those circumstances.

The OEP needs to be protected from the consequences of strong leadership and strong actions, otherwise it will be all too easy for the organisation to be sidelined, ignored, starved of funds or even shut down. I am sure the Minister will seek to reassure us that that would not happen on his watch, but, as we have said, we are making legislation for the long term, when future Governments might have different priorities. We have only to look at what happened to the Electoral Commission, which had the temerity to fine Vote Leave for overspending in the Brexit referendum and is now threatened with curbs on its power to take court action, to see how easy it is for an established and respected watchdog to be neutered. Other noble Lords have shared experiences of how Ministers have sought to undermine the organisations that they are part of.

The amendment of the noble Lord, Lord Cameron, would provide a firewall from political interference, by having a commissioner for environmental protection appointed by the Queen through Letters Patent. We believe that this is an excellent proposal. It is the ultimate solution to the concerns about independence that we will be debating today, and I am pleased to hear noble Lords giving full support to these amendments. I hope the Minister is listening to the strength of feeling today. This issue will not go away and, in order to avoid a messy battle, I hope he will feel able to embrace these proposals and come back with some government amendments to satisfy the House before Report. I look forward to hearing that he is indeed prepared to do so.

Lord Goldsmith of Richmond Park (Con): I thank noble Lords for this important debate. Before I get into the points raised, I thank the noble Baroness, Lady Taylor of Bolton, and all members of the Constitution Committee for their recent report on the Bill's measures. My officials and I will review their recommendations and will issue an official government response in due course.

In the coming days, we will debate the OEP in detail in numerous groupings, including those on guidance—an issue raised by the noble Baroness, Lady Boycott, and the noble and learned Lord, Lord Hope—and on fines, which were raised by the noble Baroness, Lady Jones, and the noble Lords, Lord Cameron and Lord Whitty. We will also debate it in the group on finance and the group on enforcement, led by Amendment 104. All these issues will be covered in detail.

I will make one or two points on comparisons with the EU. The OEP will be able to liaise directly with the public body in question to investigate and resolve alleged breaches of environmental law. The EU cannot liaise directly with public bodies; only member state Governments can. It can take years for cases to reach resolution through the EU infractions system; our framework will resolve issues more quickly. The OEP can apply for a range of judicial review remedies, such as mandatory and quashing orders, subject to the safeguards we have already discussed. The Court of Justice of the European Union cannot issue these remedies to member states; the only mechanism available to it to ensure compliance with its judgments is the threat of fines several years later. We have the vastly stronger mechanism of mandatory court judgments.

The OEP is being established with a dedicated purpose to monitor the implementation of, and enforce compliance with, environmental law, holding public authorities to account. It is designed specifically for our domestic context, as a non-departmental public body, following the constitutional framework of other public bodies with a watchdog function over government, such as the Committee on Climate Change, which I think most noble Lords who have discussed it would agree has been enormously effective and actually lacks the kind of teeth that the OEP is being given.

Therefore, I reiterate our commitment to delivering an independent body to hold government and other bodies to account. As announced on 7 June, the first non-executive board members have been appointed by the Secretary of State after consultation with the chair designate, Dame Glenys Stacey, and they will soon be available to be involved in activities to support the OEP and any interim arrangements. Notwithstanding the warning that I received from the noble Lord, Lord Rooker, I thoroughly recommend looking at this list of appointees because noble Lords will see the depth of expertise that is already forming within the OEP. This demonstrates a commitment to ensuring that it will be a formidable independent organisation, with environmental protection at its heart.

Turning to the point made by the noble Baroness, Lady Boycott, the Bill grants the Secretary of State no power to interfere in the OEP's decision-making on specific or individual cases. The Secretary of State cannot tell the OEP what to do in a way that undermines its discretion and obligation to reach its own decisions. There is of course plenty of room for legitimate debate around the measures that may or not be required to improve the OEP in various ways, but I think that even its sharpest critics would balk at the idea that it is merely another function of the Secretary of State, as one noble Lord put it. This is far removed from the reality, and I encourage noble Lords to really go through the detail of the Bill relating to the OEP. Nor can it reasonably be said that, as currently proposed and structured, it will be anything like judge and jury—a point made by my noble friend Lord Caithness said. Again, I encourage noble Lords to actually examine the Bill in relation to the formation of the OEP.

Turning to specific amendments, I begin with Amendment 85 tabled by the noble Baroness, Lady Jones of Whitchurch. I reassure her that there is already a proper role for Parliament in the public appointments process for significant posts, which is to scrutinise the actions of Ministers in making appointments. She will know—as does my noble friend Lady McIntosh—that the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee jointly carried out a pre-appointment hearing with the Secretary of State's preferred candidate for the OEP chair and confirmed her suitability for the role. We would of course similarly expect the Secretary of State to duly consider any recommendations made by the committees in relation to the appointment of future chairs.

The Government do not believe it necessary to prescribe a particular role for Parliament in scrutinising the appointments of other non-executive members. The OEP chair has been and will in future be consulted on this, as required by paragraph 2 of Schedule 1 to the Bill. Ultimately, Ministers are accountable and responsible to Parliament for public appointments and they should retain the ability to make the final choice. The amendment would reverse this and is unnecessary, given the important role that Parliament already plays.

I turn to the amendments of noble Lord, Lord Cameron of Dillington. I assure him that the Government are committed to establishing the OEP as an independent body, and the provisions in the Bill allow us to do this. The OEP will be established as a non-departmental public body, and we believe that this is the best model to achieve a balance of independence, value for money and accountability. For example, the Climate Change Committee is also a non-departmental public body, as is the Equality and Human Rights Commission, but, in the case of the former, I do not believe that there is any requirement on the Secretary of State to have due regard for its independence.

The OEP will be governed by non-executive members, who will appoint the chief executive as per long-established practice. These members will go through the appropriate appointments process, which is regulated by Her Majesty's Commissioner for Public Appointments.

My concern is that the amendments of the noble Lord, Lord Cameron of Dillington, could create significant confusion regarding what is a well-established model, leading to a significant delay in getting the OEP up and running. For instance, the chief executive, if there were one, would be subject to a completely different appointment process from the rest of the board and, crucially, the chair, blurring accountability structures both within and outside the organisation.

I assure the noble Lord, Lord Cameron, on his Amendment 91, that several provisions in the Bill already ensure that the funding of the OEP is safeguarded. First, paragraph 12 of Schedule 1 states that the Secretary of State must provide such funding as is considered "reasonably sufficient". This is a novel provision, intended to work in conjunction with the duty on the OEP to provide to Parliament an assessment of whether it received sufficient funding. Ministers will be held to account if it is deemed that the funding is not sufficient. The OEP may also submit to a Select Committee any evidence that it believes makes a case for additional funding.

[LORD GOLDSMITH OF RICHMOND PARK]

The Government have committed to a ring-fenced multiannual funding envelope within the remits of the spending review, which will be regularly reviewed. For added transparency and to enable further parliamentary scrutiny, the OEP's budget will be set out as a separate line in Defra's supply estimate.

I hope that this is not outside protocol, but I will answer the question of the noble Lord, Lord Krebs, that I did not answer in the previous debate. He is right that proportionality is an element of the precautionary principle; nevertheless, it is important that proportionality be also applied across all of the five other wider principles in the Bill, not just the precautionary principle. I apologise for not having made that clearer earlier.

I hope that this extensive package reassures the noble Lord, and that he withdraws his amendment.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): I have received a request to speak after the Minister from the noble Lord, Lord Teverson.

Lord Teverson (LD): My Lords, I get the impression from that short reply that the Minister does not understand the gravity of what was said around the Chamber. I understand that we are coming back to this issue and Clause 24 on another occasion, but in his description of the OEP's relationship to the Secretary of State he asked Members to "examine the Bill". I am looking at Clause 24, which says:

"The Secretary of State may issue guidance to the OEP on the matters listed in section 22(6) (OEP's enforcement policy)."

If that were not bad enough, the next sentence is:

"The OEP must have regard to the guidance in … preparing its enforcement policy, and ... exercising its enforcement functions."

That drives a coach and horses through what he has said.

I come back to his point about the Climate Change Committee. Whatever the arguments are about it—and we all believe it is a hugely fantastic organisation for this country—it does not have an enforcement role in terms of the Government; the OEP does, and that is the big difference. Perhaps he could give those items more attention.

Lord Goldsmith of Richmond Park (Con): I thank the noble Lord for this question, which relates to ministerial interference in the OEP. Ministers cannot set its programme of activity or in any way improperly influence its decision-making. The Bill does not provide Ministers with powers of direction over the OEP; it requires the OEP to act objectively and impartially and to have regard to the need to act transparently. If it does not, it is breaking the law. The OEP will be free to consider and highlight any instances where is a suspicion of any kind of improper ministerial interference in its decisions.

I know that we will be coming to the issue of ministerial guidance—although I forget which group of amendments it is in—but I will say that the OEP is under no duty to follow guidance if it feels that the guidance is in any sense improper. Indeed, it would be illegal for a Minister to suggest guidance that undermines the independence of the OEP. As I say, we will be coming to this later on and I hope that I will able to address some of the noble Lord's concerns more completely then.

6 pm

Lord Cameron of Dillington (CB) [V]: My Lords, I thank all noble Lords who have taken part in this debate—this core debate as the noble Lord, Lord Krebs, described it. Noble Lords from all sides of the Committee seem to support the principle of what our amendment proposes. It was not quite 25-0 as the noble Lord, Lord Krebs, put it, but I think it was 13-0. This is clearly a matter of passion for a lot of people. I am sorry that we could hear the passion of the noble Baroness, Lady Young of Old Scone, because I know that she has had to go to the dentist, which is why she has excused herself. I am sure that we all wish her a very comfortable evening.

I am also quite glad that some noble Lords—the noble Lords, Lord Cormack and Lord Whitty, to be specific—spoke about the details contained in my amendments, and quite right too. As I explained, the words come directly from the Budget Responsibility and National Audit Act 2011. With the Bill Office, we decided not to change any of the words. I wish that we could have been discussing the technical detail of my amendment in the form of further amendments to my amendment—that would have been nice. If we did that, we would have got past the first hurdle of getting the principle of these amendments and gone on to, as it were, the Government's playing field.

As the noble Lord, Lord Rooker, said in what I thought was a very powerful speech, we cannot replicate what we had in the EU. Maybe my amendments are not precisely what we need, but we do need a body that can hold the Government to account, as the noble Lord, Lord Oates, said and, in particular, hold the family of Defra to account. I note the Minister's point about the speed of rectification under the OEP compared with the EU, but that is not what we are discussing; it is the OEP's perceived and actual independence that is the crucial factor.

In answer to the Minister, we have examined the Bill and we have found it wanting in that respect. He spoke very fast and I have to say that I did not catch every point that he made. I will examine what he said in detail later, but there was nothing that, on the surface, I found very convincing. I still think that leaving the OEP within the control of Defra—the ultimate control, as the noble Lord, Lord Rooker, described it—is the equivalent of a batsman being in charge of their own LBW decision. There will be times when the decision is so obvious that, if they were not to walk, there would be riots in the stands. But there would be many more times when the batsman would stand obdurately at the crease because it suits the interests of their own team. I still believe that the OEP, like cricket umpires, should be independent. In the meantime, I beg leave to withdraw my amendment.

Amendment 82 withdrawn.

Clause 21 agreed.

Schedule 1: The Office for Environmental Protection

Amendments 83 to 88 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we come now to the group beginning with Amendment 89. Anyone wishing to press this or anything else in the group to a Division must make that clear in debate.

Amendment 89

Moved by ***Baroness McIntosh of Pickering***

89: Schedule 1, page 130, line 36, at end insert—

"(7) A person is to be considered unable or unfit to carry out the member's functions under sub-paragraph (6) if the Secretary of State is satisfied as regards any of the following matters—

(a) that he member has becomes insolvent;

(b) that he member has been convicted of a criminal offence;

(c) that the member is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member."

Member's explanatory statement

The effect of this amendment is to define the meaning of "unable or unfit" in Schedule 1, sub-paragraph 5(6).

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to move Amendment 89 and speak to Amendment 90. I am grateful to the noble Lord, Lord Bruce of Bennachie, for his support. I also thank the Law Society of Scotland for suggesting that this was worthy of probing by way of an amendment at this stage. It follows on from the little debate we have just had.

As my noble friend the Minister said in summing up the last group of amendments—and as Schedule 1 very clearly sets out—the appointment of a chief executive is to be by non-executive members of the OEP and the other executive members are to be appointed by the OEP. There are regrettably, and unusually, a couple of typos in the amendment on the Marshalled List. Clearly, it should not state that "he member" but "the member" has become insolvent or has been convicted of a criminal offence. I just mention that in the rare event that the Committee might want to adopt the two amendments, which—I hasten to add—I do not intend to press at this stage.

I have tabled these two amendments to introduce a definition for being unable or unfit to remain a member. This would give greater legal certainty as to the circumstances in which a person may be removed from office as a non-executive member of the OEP. As present, the Bill does not provide further detail as to the basis for determining whether a member is unable or unfit to carry out their functions. The amendment specifies that this would be the case when a member becomes insolvent or has been convicted of a criminal offence. The amendment is intended to bring greater specificity to the provisions of the Bill while still providing sufficiently wide scope to take account of other circumstances where the individual is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member. I understand that there are similar appointee-removal processes in relation to other bodies, such as the Scottish Police Services Authority, set up under the Police, Public Order and Criminal Justice (Scotland) Act 2006, and the Scottish Legal Complaints Commission, set up under the Legal Profession and Legal Aid (Scotland) Act 2007.

On Amendment 90, where prior notice should be given for the removal of such a person, it is intended that the Secretary of State would consult with the chair of the OEP in this regard. This would impose a duty, which I understand is currently not in the Bill, on the Secretary of State to consult with the chair of the OEP prior to giving notice to remove a non-executive member from office. The reason for this is that the consultation provides for an additional layer of scrutiny; the requirement for the Secretary of State to consult with the chair of the OEP will help to ensure openness and transparency regarding the Secretary of State's actions.

Does any procedure exist that I am not currently aware of whereby such a person deemed unfit can be disqualified from holding office in these arrangements? What procedure is intended other than what I have set out in Amendments 89 and 90? With those few words, I beg to move.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I had thought that the noble Baroness, Lady Jones of Moulsecoomb, intended to speak, but she is not in her place. The noble Duke, the Duke of Wellington, has withdrawn, so I call the next speaker, the noble Viscount, Lord Trenchard.

Viscount Trenchard (Con): My Lords, I thought I understood the intention of my noble friend Lady McIntosh in these amendments and I tried hard to understand her explanation, but I am not certain that I fully understood and I too look forward to hearing what my noble friend the Minister will have to say.

Some discretion should be given to the Secretary of State, even in the case of a person who may have been insolvent or convicted of a criminal offence possibly decades ago. As noble Lords are aware, many of those who have been convicted of a criminal offence and punished for it have often gone on to make a positive contribution to society years later. It would set a bad precedent to legislate that they should be for ever denied opportunities for which they might otherwise be considered.

Regarding Amendment 90, I cannot conceive of any circumstances in which the Secretary of State would not consult with the chairman of the OEP prior to removing a non-executive member from the board. If the Secretary of State does not have the kind of relationship with the chairman where they are in regular contact on the operations of the OEP and the composition of the board, it would surely follow that either the chairman or the Secretary of State was in the wrong job. I do not think that such prescriptive details as my noble friend proposes should be included in the Bill.

Lord Whitty (Lab) [V]: My Lords, mine is a very brief point which goes in the opposite direction to the noble Viscount's. On the previous amendment, we discussed the method of appointment of non-executive directors and the role of parliamentary committees. Surely, at least in respect of the final version, if the Secretary of State considers a non-executive director

[Lord Whitty]
to be unfit there should at least be a consultation with the chairs of the parliamentary and Commons committees who were party to his or her original selection.

It seems lopsided that we have more or less agreed in principle for parliamentary engagement in the appointment, but that the Secretary of State could on the face of it, taking sub-paragraph (6)(c) as it stands, make a decision against a member of the OEP because they thought they were not doing the job properly. When we have parliamentary scrutiny, that judgment should at least be shared by the chair of the appropriate committee. That is my sole point on this group of amendments.

Lord Bruce of Bennachie (LD) [V]: My Lords, I was very happy to support and sign this amendment, which has been explained by the noble Baroness, Lady McIntosh. It is a specific proposal and has been brought to our attention by the Law Society of Scotland as something it feels is consistent with similar circumstances in other public bodies, such as those she mentioned. Trying to define what makes a person unfit gives some clarity and specificity to such a situation, in contrast to a general catch-all that is left to some extent to the discretion of the Minister.

The noble Viscount, Lord Trenchard, said that he thought a conviction was not necessarily appropriate as a disqualification. This is stretching a point, but it seems to me that the Secretary of State still has discretion and what the amendment seeks to do is to say that in normal circumstances, and probably in most circumstances, a conviction, whether it happens while the member is in office—especially if it happens in office—or prior and has not been disclosed, would be a valid reason to remove someone. Similarly, becoming insolvent while being a member of the board is another reason that is clear and understood.

The purpose of the amendment is to add some clarity, without in any way preventing the Secretary of State from arguing other reasons as to why a member has become unfit. It is not suggesting these are the only two definitions, but they are generally accepted as significant ones that have been identified in other bodies—particularly in Scotland, which is why the Law Society of Scotland has recommended it.

6.15 pm

On the other amendment, the noble Viscount, Lord Trenchard, almost argued against himself. The requirement for consultation between the Secretary of State and the chair is because I think we would all agree that it would be astonishing as an indication of poor relations if there were not consultation. That being so, there seems no reason on earth why it should not be specifically put on the face of the Bill that

"the Secretary of State must consult with the Chair".

This is a specific amendment and, following on the back of the very interesting debate on the last group of amendments, it is all about trying to put specific determinates on the relationship between the Secretary of State, the chair and the board to ensure that a degree of independence is secured. Spelling out in detail specific mechanisms for qualification and the requirement to consult in the context of removing someone from office seems to me, and to us, to be a perfectly legitimate and reasonable amendment. I look forward to the Minister's response on why he feels it cannot be reasonably incorporated into the Bill.

Baroness Hayman of Ullock (Lab): My Lords, it is interesting to hear the noble Baroness, Lady McIntosh of Pickering, introduce her amendments because at present the Bill does not give detail on what happens if a member becomes unfit, is found unsuitable or is simply not satisfactory as a member of the committee. It strikes me that we need proper clarity in this, as the noble Lord, Lord Bruce of Bennachie, said.

It was interesting to hear what the noble Viscount, Lord Trenchard, said about the amendment preventing anyone who had ever been found guilty of a criminal offence at any time in their life being on the committee. I agree that it is harsh but I am not sure, having looked at the amendments, if that is their intention. As the noble Lord, Lord Bruce of Bennachie, said, the Secretary of State would still have discretion over that. If that means that situation could be avoided, I see no issues with it, but I agree that we would not want to have a blanket ban on anyone who maybe had a small conviction many years ago when they were young but had been a perfectly good citizen since.

It is also interesting how this fits with the Government's *Code of Conduct for Board Members of Public Bodies,* which clearly

"expects all holders of public office to work to the highest personal and professional standards."

We know that there are clear codes of conduct set out for all members of such boards to adhere to. Section 5.8 of that code says:

"You must inform the sponsor department of the body of any bankruptcy, current police investigation, unspent criminal conviction or disqualification as a company director in advance of appointment, or should any such instances occur during your appointment."

This completely ties in with what the noble Lord, Lord Bruce of Bennachie, was saying: that the issue would be if you had not declared such a thing at the time of your appointment. On that basis, it would be helpful to hear the Minister's thoughts on this area because, now I have listened to the noble Baroness, Lady McIntosh of Pickering, and the noble Lord, Lord Bruce of Bennachie, I think that we need some clarity.

Lord Goldsmith of Richmond Park (Con): I hope I went some way at least towards reassuring noble Lords about the robust process for appointing the chair, board members and non-executive directors of the OEP earlier. I would like to provide additional assurance in relation to Amendments 89 and 90 from my noble friend Lady McIntosh of Pickering.

We have carefully designed the OEP for it to effectively deliver its functions in England and over reserved matters. We have designed the appointment and removal processes of OEP members to retain the right balance between ministerial accountability and operational independence. Should it become apparent that a non-executive member of the OEP were unable or unfit to carry out their duties as a member of the OEP board, we would expect this important development to be a subject of significant discussion between the Secretary of State and the OEP chair. As such, it is not necessary to prescribe this on the face of the Bill.

Additionally, in answer to the noble Baroness, Lady Hayman, Schedule 1 already sets out the grounds for the removal of a non-executive board member in the unlikely event of them being unable or unfit to carry out their functions. Greater detail on these matters is better dealt with in the terms of appointment for individual non-executive members rather than on the face of the Bill. Should the Secretary of State act disproportionately in the termination of a non-executive member, they will be held to account and scrutinised by Parliament.

I hope that this reassures my noble friend, and I beg her to withdraw the amendments.

Baroness McIntosh of Pickering (Con): My Lords, I am very grateful for the opportunity to have this little debate and to all those who have contributed. Obviously, I am disappointed that I was not clear enough for my noble friend Lord Trenchard, but I am delighted that, in some way, the noble Lord, Lord Bruce of Bennachie, addressed his concerns ably and effectively. The noble Baroness, Lady Hayman of Ullock, put it very well by saying that there is a need for greater clarity, and it was a professional body—the Law Society of Scotland—that first proposed these amendments.

I take my noble friend's point that this level of detail was perhaps never intended to be on the face of the Bill, but it would be interesting to know what sort of template there was and, for example, how "disproportionately" would be considered. Clearly, common sense will dictate what disqualifies one from office. Because of some historic misdemeanour that is not of any great consequence, it would be unfortunate to lose a person who would be a good member of the board.

I am grateful to have had the opportunity to raise this, and I am grateful to my noble friend for putting my mind at rest in summing up. I beg leave to withdraw my amendment.

Amendment 89 withdrawn.

Amendments 90 and 91 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we come now to the group beginning with Amendment 92. Anyone wishing to press this or anything else in the group to a Division should make that clear in debate.

Amendment 92

Moved by ***Baroness McIntosh of Pickering***

92: Schedule 1, page 132, line 41, at end insert—

"(3) The OEP must as soon as practicable prepare a budget for the following five financial years, and then a budget every five financial years thereafter.

(4) The OEP must—

(a) arrange for the budget to be laid before Parliament, and

(b) publish it.

(5) The budget must—

(a) include—

(i) an estimate as respects resource requirements;

(ii) the proposed amount of funding required;

(b) be accompanied by information as to the OEP's projected work plan for the next five financial years.

(6) The OEP may revise the budget at any time (and sub-paragraph (4) applies to any revised budget).

(7) Before preparing or revising the budget, the OEP must consult the Secretary of State and such persons as it considers appropriate.

Member's explanatory statement

This amendment has the effect of introducing a requirement for the OEP to prepare a five-year budget which is subject to consultation.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful again to have the opportunity to press and probe my noble friend further on the matter of the OEP's budget. I have followed his advice and read the relevant paragraphs in Schedule 1, which is the relevant schedule here. I would just like to make the case for why I believe that a requirement to prepare a five-year budget, which is subject to consultation and review, is needed.

We spoke earlier of what level of parliamentary scrutiny there would be, and it would be opportune, perhaps when there is an annual hearing of the two Select Committees—the Environmental Audit Committee and the EFRA Committee—to take evidence from the chairman of the OEP. But if there was a five-year rolling budget, there would be much more meat on the bones, and it would show what direction, focus and priorities the OEP was going to have.

The reason that this is such a key part of the Bill, and why I seek to probe through Amendment 92—which Amendment 93, in the names of the noble Baronesses, Lady Jones of Whitchurch and Lady Young of Old Scone, is not dissimilar to—is that, if the OEP is going to do its job effectively, it needs to be properly funded to carry out its role. I remember the arguments that we put passionately and consistently through the course of the Trade Bill, as it then was, that the Trade and Agriculture Commission should have a proper budget, be properly resourced and have an office and staff independent of the department. Where the Bill says that

"The Secretary of State must pay to the OEP such sums as the Secretary of State considers are reasonably sufficient",

each of us would have a view as to what "reasonably sufficient" might be.

On the need for a wider budget, I know that research grants—for example, in other aspects of agriculture—run for some three years, and after the end of the first and second years, the whole of the next year is spent wondering whether the same level of budget will be available. I believe that a five-year period is ideal, as it is neither too short nor too long. It will help to ensure that the resource requirements are adequately met with sufficient advance notice and that the proposed funding is clearly identified and published as we go through each five-year period. It can only help Defra when we come, such as in this year, to the strategic spending review, to know precisely what the commitments will be.

The purpose of Amendment 92 is to ensure that there will be a five-year budget that is subject to consultation, and it will go some way to ensuring that the OEP is sufficiently funded and resourced to carry out the work that we all hope it will do. I beg to move.

Lord Bruce of Bennachie (LD) [V]: My Lords, I am happy to be a co-signatory of Amendment 92, and I am pleased to support the case that the noble Baroness, Lady McIntosh, has just made. However, I can certainly also support the case for a provision for budget review, as incorporated into the otherwise similar Amendment 93. But that is the specific difference that I think adds something to what is proposed.

As the debate on the independence of the OEP progresses, its resources and budgetary process will be significant to both how independent and how effective it is going to be. These amendments are trying to probe, in some detail, what the budgetary process could and should be because, to be effective, the OEP needs the necessary resources to carry out functions and to respond to the dynamics of what is an inevitably changing situation with environmental issues. Members have been talking about us legislating for 40, 50 or 60 years ahead, yet the dynamic of rapid change on the environment means that we need to be rapid in our responses, and the mechanism needs to be able to adopt that.

It is also important to reinforce the fact that the OEP's job is to support Parliament and, though it is based in Defra, to be as independent as possible. So, again, these amendments are designed to try and ensure that it is able to do that. As the noble Lord, Lord Rooker, said, it takes over EU responsibilities in this respect but, obviously, not in a way that was possible when we were in the EU, because its impact is entirely domestic. It is clearly distinct from the Environment Agency, but there is likely to be an interaction between the two organisations. Again, it is important that both sides are aware of the resources, the budgets and the responsibilities that they have.

These amendments set out the framework, and it would be helpful if the Minister could give some indication of what the Government believe the budget is likely to be and what staffing and resources are envisaged for the OEP. The interim board is up and running so, presumably, some serious discussions and proposals are emerging at this stage. It is proposed in these amendments that there should be a five-year budget that addresses the resource requirements and the funding and also sets out a work plan for that five-year period so that both Parliament and those who will be impacted by the work will be aware of how the OEP is going about its business and how effective its reach is likely to be.

There is absolutely a sensible reason why there should be reviews as necessary, but there should be at least one review during a five-year period. Five years is a long time when we are facing the environmental changes that are bearing down on us.

6.30 pm

Given the need for it to be autonomous and given that the schedule says that the OEP and the Secretary of State must give those resources to make it possible, there clearly must be engagement between the board and the Secretary of State that leads—one hopes—to a common understanding and agreement rather than tension and tussle between a board that says it wants resources and a Secretary of State who withholds them. So it would be helpful if the Minister could indicate how things are taking shape as the interim board is operating and the extent to which agreement can and will be reached that will deliver what is expected—that is, sufficient resources to do the job and a guarantee of its independence.

So, even if the Government do not accept the detail of these amendments—although they seem sensible and consistent to me—I hope they will accept that the principle of having a clear, agreed five-year budget with a review and a work programme set out is desirable. If the Minister can give us any insight into how that is emerging, I think the House would be very pleased to hear it. I am happy to support these amendments.

Lord Rooker (Lab): My Lords, very briefly, the Bill does not require the Secretary of State to pay. Subsection (1) requires him to pay what he thinks is reasonable, which is not altered by this. I see the benefit of a five-year budget, but the key point is to have it published. That way, the Select Committees and the National Audit Office can check on performance. Looking at proposed new subsection (5) and its detail about the work pattern, if they do not deliver an effective framework that is economic, they will be called to account by the Public Accounts Committee. The NAO needs to know what their plan for the budget was to start with.

So the key issue in this amendment is for the budget to be laid before Parliament and published. Publishing the budget is unusual for non-departmental public bodies. Non-ministerial departments are different, because their budget is separated out, and outsiders can check whether the funds are being cut. It is not always possible to do that with executive bodies and non-departmental public bodies. Publishing it means that the NAO and the Select Committees in the other place can check whether or not the Secretary of State paid them what they thought was necessary to do the work they planned to do. If the work is not done, someone needs to find out why; it is much easier to do that if you had a published budget to start with.

Lord Krebs (CB): My Lords, in speaking briefly in support of this group of amendments, I refer back to the budget of Natural England. I seek absolute assurance from the Minister that the OEP will not suffer the same fate as Natural England has.

Between 2010 and 2020, Natural England's budget was cut by almost two-thirds. In a letter to the chair of the Environmental Audit Committee in another place, dated 2 November 2020, the chair of Natural England, Tony Juniper, wrote:

> "Natural England's current funding is below the level required to deliver all of our statutory duties to a good standard. That in itself presents several key risks including increased legal challenge, lost opportunities for environmental enhancement and the wider effect that presents on wellbeing."

He went on to list the areas of work that had been curtailed or reduced as a result of the funding cuts. These included land use planning, species recovery, wildlife licensing, national nature reserves, SSSIs, landscapes, agri-environment, evidence gathering and partnership funding, for instance for community-based initiatives with parish councils.

The Secretary of State acknowledged to the Environmental Audit Committee that the cuts had been severe and, in May this year, Natural England had an increase of 47% in its budget. In spite of this increase, Natural England's budget for 2020-21 of £198 million is still below the £265 million it received in 2008-09. In going into this example in some detail, my point is that we certainly do not want to find the OEP, in five or 10 years' time, in the same state as Natural England has found itself, with the consequent damage to our environment.

To repeat what I started with, I very much hope, therefore, that the Minister will confirm that the OEP, with a long-term settlement, will have sufficient resources to carry out its job; and, importantly, that when there are cuts to government expenditure across the board, which there will no doubt have to be to pay the huge bill that we have racked up as a result of the Covid pandemic, the OEP will be one of the protected areas and will not just take a salami slice along with everybody else.

Lord Cameron of Dillington (CB) [V]: My Lords, after my remarks a moment ago on the independence of the OEP, it will come as no surprise to your Lordships that I strongly support the principle that the OEP should have as much financial independence as possible and that I therefore support these amendments.

Funding is vital. I note that the correspondence from Natural England that the noble Lord, Lord Krebs, just read out could equally be replicated in correspondence from, I suspect, the Environment Agency to Defra, because the same incredible cut—up to 70%, I believe—has happened to the Environment Agency. So funding is absolutely vital for the proper operation of all these NDPBs. In my view, the OEP's budget should not be at the discretion of the Secretary of State for Defra.

I believe that the public at large will take a great deal of interest in the work of the OEP—if not, they certainly should do—so anything that makes the OEP's finances more transparent to the public, more long-term and more the business of Parliament rather than at the whim of the department gets my approval.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): The noble Baroness, Lady Boycott, has withdrawn, so I call the noble Baroness, Lady Ritchie of Downpatrick.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Cameron of Dillington.

I support the amendments in this group. It is worthy of note that the Government have agreed that,

"to ensure its financial independence, the OEP will be provided with a five year indicative budget which is formally ring fenced by HM Treasury within any given Spending Review period."

However, it needs to be much more concrete than that.

This is comparable with how some other bodies are given long-term financial certainty; for example, the Treasury has made a similar commitment for the OBR. In its letter to the OBR setting out a multiannual funding commitment, the Treasury noted that this approach

"supports the OBR's independence and ability to manage its resources effectively in the medium term. This approach for independent fiscal institutions is consistent with international best practice, strengthening institutional independence through delegated budgetary autonomy."

The Government have said that they will make this commitment on the OEP in Parliament; I would like to see the Minister make it to your Lordships' House today in his response to this group of amendments.

It would also be helpful if the Minister could clarify that the Government's position remains as set out in their response to the EFRA Committee's pre-legislative scrutiny, which stated:

"In order to ensure its financial independence, the OEP will be provided with a five year indicative budget which is formally ring fenced by HM Treasury within any given Spending Review period."

This was repeated in the Government's *Environmental Governance Factsheet*, which was published in March 2020. However, since that time, the Government appear to have wavered on the commitment for the long-term budget to be for five years, leaving such matters to political rather than legislative commitments.

As per Amendment 93, I urge the Minister to confirm that the Government remain committed to providing the OEP with a five-year indicative budget. That must be enshrined in legislation. In such circumstances, I support Amendments 93 and 92, which would require the OEP to prepare a five-year indicative budget that would be subject to public consultation, and allow it to request in-budget increases.

If the OEP is to work strategically, it will require financial security enshrined in legislation. A binding commitment to provide a multi-annual budget would help to avoid the slow but significant funding decline that many of Defra's arm's-length bodies have suffered over recent years and provide certainty of ongoing funding levels.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): The noble Baroness, Lady Young of Old Scone, has withdrawn, so I call the noble Baroness, Lady Parminter.

Baroness Parminter (LD): My Lords, we on these Benches support both amendments. The noble Baroness, Lady McIntosh of Pickering, has indicated that hers is a probing amendment. We support the need for a clear statement of the financial independence of the OEP because, by that means, we can be clear that it has sufficient funds for its function.

I very much support the comments of the noble Lord, Lord Rooker, about the need for its budgeting to be published. Parliamentarians have often had to rely on other opportunities, such as that referred to by the noble Lord, Lord Krebs, when the chair of Natural England made public comments at a Select Committee down the other end, or charities getting information by FoI about the funding shortfalls of the Environment Agency. That should not be the way we have to find out about the budgets of these important bodies. That information should be available to parliamentarians; it should be published and we should all be able to see it clearly.

I echo my colleague, my noble friend Lord Bruce of Bennachie. In his remarks at the end, I hope the Minister will say more about the current budget for the OEP. I know it is in its interim phase, and I

[Baroness Parminter]
understand that its first board meeting will be this week. It has been suggested that, in its initial year, staffing levels will be around 25 members. Clearly, that will not be its final staff resource level, but if the Minister could indicate the scale of OEP staffing next year, that would give us a clearer idea of the capacity of this critical body to deliver the functions we all need. I hope he will say a few words about scaling up the budget of the body for next year.

In closing, I agree with other Members on the principle that a five-year budget associated with a work plan be published and put in the Bill.

Lord Khan of Burnley (Lab): My Lords, I rise to speak to Amendment 92 in the name of the noble Baroness, Lady McIntosh of Pickering, and Amendment 93 in the name of my noble friend Lady Jones of Whitchurch. Both are similar in nature and one could assume that we, on the Labour Benches, and the noble Baroness, Lady McIntosh, have been sharing our homework. I thank the noble Baroness for moving her amendment so eloquently and reiterate the case she made for the OEP to have flexibility and longevity when setting budgets.

In June 2018, the Government recognised the value of multi-annual budgets. In announcing a five-year settlement for the NHS, the Government emphasised that this long-term funding commitment means the NHS has the financial security to develop a 10-year plan. If the OEP is to work strategically, it too will require a similar level of security. The noble Baroness, Lady Ritchie of Downpatrick, made the same point, looking at comparable bodies and the way they have operated in taking a long-term approach.

6.45 pm

As the noble Lord, Lord Cameron of Dillington, pointed out in an earlier debate, the OEP will have its budget set by the Secretary of State. Although this is not unusual for a non-departmental public body, and while we do not necessarily agree with the Government's decision to establish the OEP in such a manner, we do understand why they made that decision. However, it is necessary to highlight that the OEP has a number of important roles to fulfil and it will need to be properly resourced to do the job properly—a point made by a number noble Lords, including, in particular, the noble Baroness, Lady McIntosh of Pickering—in order to ensure that it can be forward thinking and has direction.

Many noble Lords outlined during Second Reading and in recent days that this is a landmark Bill. It is hugely important that the OEP have the means and ability to fulfil an essential role and is fit for purpose. It is therefore important that the OEP have a degree of influence in the budget-setting process, beyond the normal minimum consultation by the Secretary of State. As well as monitoring implementation in general terms and taking enforcement action against public authorities, the OEP will be tasked with speaking truth to power at the highest levels of government. We must not find ourselves in a situation where the OEP's output is influenced by politics around its next budget.

At the start of my response, I pointed to the similarity between Amendments 92 and 93, due to great minds thinking alike. The only difference between the amendment tabled by the noble Baroness, Lady McIntosh, and Labour's Amendment 93 is the inclusion of an extra subsection that would allow the OEP to amend its budget at any time, which we feel is needed to ensure that it is ready to face changing circumstances. Such flexibility is important, as the Government may introduce new policies or sign new international pledges that expand the OEP's remit, or there may be an unforeseen need for additional resources due to environmental events. There can be no bigger example of that than the current pandemic.

Throughout the progress of the Bill, we have been talking about climate and ecological emergency. In emergencies such as we are witnessing now, swift and robust responses are needed. The ability to amend its budgets will further strengthen the OEP, enabling it to be fit for purpose and deal with unexpected events. If the public, charities and international partners are to have confidence in the OEP and the UK's enforcement regime, we need to ensure the correct relationship between the department and the OEP. This debate reaches far beyond budgets but ensuring that the OEP has a voice in financial matters will be a very important part of its independence. The comments of the noble Lord, Lord Krebs, are really important: we saw what happened to Natural England and we do not want the OEP to have the same fate. If Natural England cannot fulfil its statutory duty, that is a sad state of affairs.

I finish by turning to the point made by the noble Lord, Lord Cameron of Dillington. We have talked about environmental independence but this is also about financial independence, and we have to have a long-term approach. My final message to the Minister is this. The noble Lord, Lord Krebs, mentioned 25-0 and the noble Lord, Lord Cameron of Dillington, mentioned 30-0. I think this debate has said, 7-0 to the amendments. That is a reasonable scoreline, and perhaps England can achieve it tomorrow.

Lord Goldsmith of Richmond Park (Con): My Lords, I very much hope so. I thank my noble friend Lady McIntosh and the noble Baroness, Lady Jones of Whitchurch, for tabling Amendments 92 and 93. I agree, of course, that it is important for the OEP to have certainty regarding its level of funding on a multi-annual basis That is why the Government have committed to providing a multi-annual indicative budget for the OEP, ring-fenced within each spending review period. For transparency, the OEP's budget will also be given a separate line in Defra's supply estimate, which will be laid before Parliament to allow for parliamentary scrutiny. This is, nevertheless, an administrative matter, so it is not appropriate to put it on the face of the Bill.

There is also a need to retain flexibility, both initially in light of delays to the Bill due to the Covid-19 pandemic, and should the process for allocating public body budgets ever be reformed at a future date. It is worth pointing out that other bodies with multi-annual funding commitments—the Office for Budget Responsibility, for example—do not have this set out in legislation. The Bill does provide several safeguards

on OEP funding. These include a duty on the Secretary of State to fund the OEP sufficiently; in conjunction, the OEP will provide an annual assessment to Parliament of whether it has received sufficient funding. In answer to the noble Baroness, Lady Parminter, the OEP has been given £8 million for its interim stage for this business year.

I hope that this reassures noble Lords and ask them to withdraw the amendment.

Baroness McIntosh of Pickering (Con): I am grateful to all who have spoken, and I am particularly grateful to the noble Lord, Lord Bruce of Bennachie, for lending his support in co-signing the amendment.

I entirely agree with the noble Lord, Lord Rooker; if you look at paragraph 12 of Schedule 1, it really is not very forthcoming. It just talks about paying

"such sums as the Secretary of State considers … reasonably sufficient to enable the OEP to carry out its functions",

and then talks of

"subject to such conditions as the Secretary of State may determine"

if there is further assistance by way of grants or loans. I say to the noble Lord, Lord Khan, that both amendments deal with a potential revision; I think the difference in Amendment 93 is if any additional funds are required. To a certain extent, I think that is already addressed in the schedule.

The noble Lord, Lord Bruce of Bennachie, is right that we need to equip the OEP to be in a position to respond rapidly to what we are asking it to do. I am not in a position to say whether £8 million seems low. It does not seem particularly high for its first year, but it depends on whether it is for half a year, assuming that the organisation really only comes into swing properly on 1 July, this week. Perhaps my noble friend could confirm whether it is six, nine or 12 months—I think we are going to have a penalty fine for anybody whose mobile phone goes off in the Chamber, as that one has just done.

The noble Baroness, Lady Ritchie, is absolutely right. I am grateful that my noble friend confirmed that it is an indicative budget, but we do need greater clarity to enable the OEP to do its work, for all the reasons that the noble Lord, Lord Krebs, gave about how out of kilter the Natural England budget is. Obviously, that has not been a blow to Tony Juniper in making these points, because he has gone from strength to strength. I do not think people should be shy of criticising the funding—not the Government themselves—where that is due.

The noble Lord, Lord Cameron of Dillington, said, both in this debate and the previous one, that it is not just the OEP and Natural England that are being kept short of funds. What worries me very much is the fact that the Environment Agency is on the record as saying that it does not have sufficient funds to inspect the rivers. If we are not inspecting the rivers, how is the OEP going to impose the penalties that we wish it to?

I believe this has been a very useful debate. We might want to consider how to address this, if it is necessary, going forward. However, for the moment, I beg leave to withdraw the amendment.

Amendment 92 withdrawn.

Amendment 93 not moved.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): We come now to the group beginning with Amendment 94. Anyone wishing to press this or anything else in the group to a Division must make that clear in debate.

Amendment 94

Moved by ***Lord Krebs***

94: Schedule 1, page 134, line 3, leave out "have regard to the need to"

Member's explanatory statement

This amendment makes the independence of the OEP an absolute requirement.

Lord Krebs (CB): My Lords, with the leave of the House, I will move Amendment 94 on behalf of the noble Baroness, Lady Jones of Whitchurch, who will speak later in the group. I will speak also to Amendments 98 and 99, in the names of the noble Baroness, Lady Jones of Whitchurch, and myself; Amendment 100, in the names of the noble Baroness, Lady McIntosh of Pickering, and the noble Lord, Lord Teverson; and Clause 24 stand part, in my name and those of the noble Baronesses, Lady Jones of Whitchurch, Lady McIntosh of Pickering and Lady Parminter.

All these amendments concern the independence of the OEP, a topic we have already debated at some length, in particular in relation to the group beginning with Amendment 82 in the name of the noble Lord, Lord Cameron of Dillington, and the noble Baroness, Lady Boycott. Amendment 94 in this group would make the independence of the OEP an absolute requirement, rather than something that the Secretary of State merely has to "have regard to". Amendment 98 would remove the requirement for the OEP to have regard to the Secretary of State's guidance, and Amendment 99 would require the OEP to explain why it did not follow the guidance. Amendment 100 and the opposition to Clause 24 standing part both aim, in different ways, to ensure that the OEP is as fully independent as possible, exactly in the spirit of the group beginning with Amendment 82.

I will focus on the contention that Clause 24 should not stand part, which is at the heart of many of the concerns expressed in these amendments. In some ways, Amendments 94, 98 and 99 could be seen as important sticking plaster, but a more comprehensive way of dealing with the concerns expressed in these amendments would be to remove Clause 24 altogether. Clause 24 empowers the Secretary of State to issue guidance to the office for environmental protection on its enforcement policy, including how it should determine whether a failure to comply with the law is serious. However, the clause does not define what constitutes serious, nor the areas in which the Secretary of State should not give guidance to the OEP. It does not say whether the Secretary of State should issue guidance on a specific case, for instance the development of a new nuclear power station, or on general principles, such as the transparent use of evidence, and it does not say when and how often the Secretary of State may issue guidance. Therefore, it is hard to

[LORD KREBS]
judge how wide-ranging the guidance will be, how often it will be given and whether it will be used to constrain the independence of the OEP.

After Second Reading, the letter from the Minister attempted to reassure us that the guidance powers would not compromise the independence of the OEP, and I thought I heard him say earlier this afternoon—but I may be wrong—that there would be no need for the OEP to follow the guidance. In that case, how do the Government justify the inclusion of Clause 24 at all? Well, according to the Secretary of State in a recent radio interview, it is to avoid the OEP becoming an "unaccountable regulator" or "making it up as it goes along". If this is the case, it suggests to me a lack of trust in the OEP chair and board, as well as a wish to control the way it operates.

The Government may well argue that this is a fairly standard clause, and although it is true that similar powers to issue guidance do exist for some public bodies, including Natural England and the Climate Change Committee, there is a crucial difference between these bodies and the office for environmental protection—because, as we have heard many times today, the OEP has responsibility for enforcing potential breaches of the law by public bodies, including Ministers, which most other non-departmental public bodies do not have.

A better comparison might be with the Information Commissioner's Office, which is not subject to similar guidance in its enforcement function. Another comparison is the Food Standards Agency, which, as the noble Lord, Lord Rooker, explained, is a non-ministerial government department accountable to Parliament through the Secretary of State for Health and Social Care. By coincidence, Section 24—the same number—of the Food Standards Act 1999 covers the situation in which the FSA is deemed to have gone off the rails. It allows the Secretary of State to intervene only if the Food Standards Agency has seriously failed to fulfil its duties or international obligations. The Secretary of State may then give direction for remedying the failure. Otherwise, the Food Standards Agency is not subject to ministerial guidance.

As noble Lords will be aware, I was the first chair of the Food Standards Agency, and in a later period the noble Lord, Lord Rooker, was also chair. During my five and a half years Health Ministers considered invoking Section 24 on one occasion: when the manufacturers of natural sausage casings made from sheep's intestines claimed incorrectly that we had not given them the statutory notice period before introducing a ban on their use because of the potential risk that they might contain the infected agent that causes BSE. So, in five and a half years, there was one use of it, which was very rapidly resolved, and the Secretary of State did not need to issue any instruction.

7 pm

Between 2015 and 2019, I had the privilege of serving under the excellent chairmanship of the noble Lord, Lord Teverson, as a member of the EU Energy and Environment Sub-Committee. In our report of February 2017 we said:

"The evidence we have heard strongly suggests that an effective and independent domestic enforcement mechanism will be necessary, in order to fill the vacuum left by the European Commission in ensuring the compliance of the Government and public authorities with environmental obligations. Such enforcement will need to be underpinned by effective judicial oversight".

We also heard repeatedly from Ministers at the time that they did not think any new mechanism was necessary or appropriate. Minister Coffey told us that

"it is the role of Parliament to hold the Government to account".

Minister Norman told us:

"What I think is a good guide is the flexibility with which British Governments over the years have created standards for themselves and been able to hold themselves to account".

The Secretary of State, Andrea Leadsom, told the Environmental Audit Committee in another place that

"UK courts will be perfectly well able to deal with matters of enforcement … We won't be needing to replace European courts."

The fact is that the Government never wanted an OEP, nor did they think it was necessary. Ministers, as Jesse Norman told us, wanted to mark their own homework. The proposal to set up an OEP was rejected more than once during the debates on the EU withdrawal Bill in your Lordships' House.

Noble Lords may think that I am suspicious or unduly paranoid, but I wonder whether Clause 24 is a continuing manifestation of the Government's reluctance to create a truly independent office for environmental protection. I hope that I am incorrect in my suspicions and worries, and I look forward to the Minister's explanation of why the clause is necessary. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, continuing the theme of great minds thinking alike, apparently the requests for a clause stand part debate landed at exactly the same moment and there was the equivalent of tossing a coin to see whose name would appear. I am delighted to support the clause stand part debate and to go a little further in my Amendment 100.

My question to my noble friend at the outset is this: does he not accept that, for the OEP to do all that I am sure he, the Government and all of us would wish it to do, it must be seen to be independent, not just of the Government but of other organisations, such as Natural England and, to a certain extent, the Environment Agency? I am still not entirely clear what the relationship of the OEP and the Environment Agency and these other bodies will be. The question I keep asking, to which I hope one day to get an answer, is this: to who would a farmer, whether a landowner, a tenant or an owner-occupier, go to seek advice? Would it be Natural England, the Environment Agency or the OEP? That is not entirely clear.

I could never be cross with my noble friend, so I would not like to be described as a cross Back-Bencher, but I find it inappropriate that Clause 24 appears in the terms that it does. It is discretionary. It simply states that:

"The Secretary of State may issue guidance to the OEP on the matters listed in section 22(6) (OEP's enforcement policy)."

It then goes on:

"The OEP must have regard to the guidance in … preparing its enforcement policy, and … exercising its enforcement functions."

This reverts to the point I made earlier, when I set out my concern that it might be the case that a Secretary

of State—or, heaven forfend, a junior Minister—might lean on members of the OEP to ensure that a particular enforcement does not go ahead. That would be utterly inappropriate. It then goes on to say that

"The Secretary of State may revise the guidance at any time"

but

"must lay before Parliament, and publish, the guidance (and any revised guidance)."

I am not quite sure which body would be scrutinising that in that situation. Later, it sets out the OEP's enforcement functions.

At this point, I just say that I do not believe there is a place for Clause 24 in the Bill, and I look forward to some very strong justification or proposed changes that my noble friend might make when he sums up this little debate.

Just before I address my Amendment 100, I want to support the amendments in this group in the name of the noble Baroness, Lady Ritchie of Downpatrick. They also go to the heart of parliamentary scrutiny, which we discussed a little earlier. I endorse those amendments; they are entirely appropriate.

Amendment 100 would go a little further than just leaving out Clause 24 and would insert a new clause specifically stating that

"In performing its functions, the OEP is not subject to the direction or control of the Secretary of State or any member of Her Majesty's Government."

I cannot put it in any stronger terms than that it would be entirely inappropriate for that to happen. This debate is a good opportunity to cast beyond doubt the independence of the OEP, not just, as I said, from government but in its dealing with other bodies which have a role to play in the environment. We want to give it the greatest authority we possibly can. I would argue that we leave out Clause 24 but insert my wording in Amendment 100.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a delight to follow the noble Baroness, Lady McIntosh of Pickering. I support the amendments in this group and wish to speak in particular to the amendments in my name: Amendments 117 and 118, relating to Northern Ireland.

Schedule 3 makes provision for the functions of the office of environmental protection in its activities in Northern Ireland. Along with many organisations, including Greener UK, I support the inclusion of Northern Ireland within the remit of the office of environmental protection. These provisions are broadly parallel to those in Part 1 and Schedule 1 that relate to England. I raised this specific point during Second Reading, some three weeks ago.

Extensive regulatory dysfunction and unacceptable levels of disregard for environmental law have resulted in substantial degradation of the environment in Northern Ireland, with significant economic and social costs. The independence of the OEP in Northern Ireland is therefore vital. The lack of an independent environmental regulator, despite the fact that it was first recommended in 1992 by a House of Commons Environment Select Committee report—nothing has ever happened in that regard—has meant historically weak environmental governance, which means that the OEP must have a cast-iron constitution and culture of independence from the outset. The need for independent oversight is exemplified in the case of designated sites, such as protected sites. In some cases, it is quite dismal in our areas of special scientific interest and areas of outstanding natural beauty.

In this context I have a concern about a broad power for DAERA, the department in Northern Ireland, to issue guidance to the OEP that it must have regard to when preparing its enforcement policy or exercising its enforcement functions in Northern Ireland. This will affect the OEP's ability to perform its role independently and does not take sufficient account of the particular political circumstances and context of Northern Ireland, including the mandatory power-sharing nature of the Northern Ireland Executive—hence Amendment 117.

There is concern about the timetable for appointing the Northern Ireland member of the OEP board. There must be no further delay in appointing that member, and the appointment process should be progressed as quickly as possible. I hope the Minister will pursue that with his equivalent colleague in the Northern Ireland Executive.

Those problems concerning the guidance power for DAERA should be removed from the Bill, and Amendment 117 would do that. There are three particular areas of concern. In line with the Ministerial Code, cross-cutting and controversial matters must be brought to the Northern Ireland Executive—and guidance from the DAERA Minister to the OEP on its enforcement policy and functions would qualify as both cross-cutting and controversial. Therefore, what is the procedure for bringing this guidance to the Executive before it is issued by DAERA? As a former Minister in the Northern Ireland Executive, about 13 years ago, I knew what that meant, but I just want to clarify that.

Secondly, ministerial appointments in Northern Ireland are managed through the d'Hondt system, under which the largest parties are allocated multiple departments. What mechanisms will be put in place to minimise the risk that a current or future DAERA Minister could use the guidance power to advise the OEP in relation to enforcement or potential non-compliance on environmental law relating to either a department of a similar affiliation or one allocated to an opposing party? Given its wide scope and the lack of transparency in how it will be prepared, the guidance could in theory be used for political benefit—a risk that does not appear to be considered by Defra or DAERA in designing this power.

As a public authority, the Northern Ireland Environment Agency will fall within the remit of the OEP. If DAERA exercised its power to issue guidance in relation to enforcement matters involving the Northern Ireland Environment Agency, that would further cloud Northern Ireland's already difficult environmental governance and could result in blurred areas of accountability.

Amendment 118 would require the appointment of the Northern Ireland board to be made with the consent of the Committee for Agriculture, Environment and Rural Affairs of the Northern Ireland Assembly. To engender the greatest level of stakeholder trust and buy-in to the OEP, Northern Ireland must be—and must be perceived to be—embedded within it from the

[Baroness Ritchie of Downpatrick]
start. The appointment of a dedicated Northern Ireland board member will help ensure that Northern Ireland's nuances, including geopolitical, biogeographic and societal, are properly accounted for in the OEP's policies and activities. It will also establish trust and credibility.

In this context, can the Minister ask DAERA to clarify the timescale for the appointment process? I note that the first interim board meeting of the OEP is expected to be held this Thursday, 1 July.

Baroness Neville-Rolfe (Con): My Lords, I am glad to follow the noble Baroness, Lady Ritchie of Downpatrick, and to hear from her about the situation in Northern Ireland, with its beauty and diversity of flora and fauna. These amendments relate to the issue of the independence of the office for environmental protection, which was much debated at Second Reading. I have listened to the noble Lord, Lord Krebs, and, like him, I hope the Minister can reassure us.

7.15 pm

I am with the Government on this, and I thank the Minister for the helpful and comprehensive letter that he sent us after Second Reading, which was something of a model of its kind. Having read that, I think the level of independence granted in the Bill is adequate. Public policy requires Ministers, whatever the party in power—the Opposition will be on our Benches again one day—to take decisions. Agencies can become unwieldy and undemocratic, particularly after the dynamism of the first round of the appointments phase. Parliament needs to be able to hold Ministers to account, and not be persuaded to give yet more power to an unelected agency.

I do not think the parallel with the National Audit Office—suggested, I think, by the noble Baroness, Lady Boycott, who is not in her place—quite works. The NAO judges departmental actions in retrospect and tells us what, in the words of the prayer book, was left undone or ought not to have been done. As such it fulfils a vital function, but it is not a proactive organisation; it does not in general tell us what to do or how to go about things. The analogy drawn by the noble Baroness is therefore, to my mind, invalid. We also have the Climate Change Committee, led by my noble friend Lord Deben, and the Environment Agency, both of which play an important part in this area. In the context of the independence issue, it would be good to hear from the Minister how the three will complement one another.

We can also take some reassurance from the fact that Dame Glenys Stacey, the newly-appointed chair of the office for environmental protection, is very independent-minded and that a multiannual budget has been promised. Indeed, my concern is that the new body will be so independent and keen on the environment from which its status derives that it will neglect other equally important aspects of life, notably the economic dimension, particularly as we emerge from the unprecedented crisis of Covid.

Baroness Parminter (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Neville-Rolfe. We often agree but on this occasion I have to say that we do not. I shall speak briefly because the noble Lord, Lord Krebs, introduced so eloquently the amendment to which I put my name, concerning Clause 24 stand part. It would remove this clause, which would give the Secretary of State the right to give guidance to the OEP that it must have regard to in preparing its enforcement policy.

I do not want to repeat points that have already been made, so I shall merely congratulate the Select Committee on the Constitution, which is very ably chaired by the noble Baroness, Lady Taylor of Bolton, and refer to two points that it made. The committee said that:

"Guidance is a poor substitute for clear rules",

and it is correct in saying so. That goes very much to the point made by the noble Lord, Lord Krebs: when it is guidance, it is hard for us to judge how wide-ranging or how constricting it will be to the independence of the OEP, but it could be very wide-ranging and that is one of the reasons why I am concerned.

The Constitution Committee also said:

"The power to issue guidance on the OEP's enforcement powers could call into question how independent it will be."

For me, that is the nub of the issue: it is about the public perception of how independent this new watchdog will be. At a time when there is increasing concern about public confidence in public institutions and indeed in politicians, we need to ensure that this new body is seen to be not just as independent as we would wish it to be but as independent as it needs to be.

It is not acceptable for the Minister to say, "Oh, we'd only use this guidance as a last resort". As the noble Baroness, Lady Neville-Rolfe, said, we have a very independent-minded interim chair of the OEP at the moment; however, that may not be the case in future. Irrespective of that, we need to be clear that it has to be set down in statute that this is an independent body with the power to set its own enforcement policy. I am afraid that any indication that the Government can somehow meddle by looking into matters in other bodies within the Defra family just does not cut the mustard. I therefore feel very strongly that Clause 24 needs to be removed.

Lord Rooker (Lab): My Lords, briefly, the Minister would be well advised to pay attention to what the noble Baroness, Lady Ritchie of Downpatrick, said. The Northern Ireland situation is not a coalition; it is a power-sharing Executive. The parties carve up the ministries. I had one year as a Minister when there was direct rule. I had planning and the environment among other responsibilities and duties. I discovered that most of the political parties there do not believe in planning. They would like a bungalow in every field. That is the situation: if you fly over Northern Ireland, have a look at it. Imagine a bungalow in every field, with the waste and everything else. "If you own land, you can do what you want with it": that is what I was told. So it is a really sensitive issue to get the wrong person at the wrong time. It would be terrible to meet without someone representing Northern Ireland, but we should be aware of the way the d'Hondt system allows the parties to control the ministries.

Like the noble Lord, Lord Krebs, I heard the Minister say that there is no requirement to follow the guidance. I wrote it down at the time. That is interesting.

I would love to be a fly on the wall the day the department's lawyer goes to see the Minister and says, "Well, Minister, it only says you 'must have regard'. You want to do this, that and the other and do your own thing, but it actually says you 'must have regard'. Here's all the reasons why you have to have regard to what the Secretary of State says." Before you know it, there will be a threat of malfeasance on the office, because it has gone against having regard to a sufficient extent of what the Minister said.

How do you measure "have regard"? I realise that I will be followed by lawyers; I am not a lawyer, but I have been there when the lawyers have come in and said, "You can't do this because you've got to take account of this, that and the other." That is the pattern: it is the way advice to Ministers from the department's lawyers works. I am not criticising or complaining about it; I am just saying that that is the way it works. So, if it is not clear in the legislation to start with, we are building up trouble. There are therefore good grounds for taking Clause 24 out of the Bill.

The noble Lord, Lord Krebs, reminded me that in February 2017 I too had the privilege of being on the EU sub-committee, chaired by the noble Lord, Lord Teverson, when we arrived at this. I remember doing fringe meetings at the Labour Party conference the year before when the sector was waking up to the fact of the governance gap. As I said at Second Reading—I will not read it all out—Michael Gove had woken up to it by 13 November 2017, when he said that there has to be mechanism to replace what we are losing because of Brexit. He went on to say we would have

"a new, world-leading body to … hold the powerful to account. It will be independent of government, able to speak its mind freely."

That was not a speech; that was a published article, authored on GOV.UK.

My final point is this. I know that it is easy and people will say that we have unaccountable agencies and this, that and the other, but sometimes they are a comfort blanket to Ministers. Situations arise in society where the public do not believe what they are told by Ministers. Going back to the time before I entered government, that was the situation regarding food safety: a collapse in confidence in what people were told by Ministers. That is one of the reasons a semi-independent body was set up, so that Ministers do not have to go on telly and say, "The food's safe—please eat it". People did not believe them. The technical people, the scientists and those who are qualified to have a view go on when there is such a situation—the noble Lord, Lord Krebs, is aware of that, having set up the agency.

I was originally partly responsible for some of the legislation that set it up; I certainly never forecast that I would be the chair. However, the fact is that these bodies are useful in certain circumstances because the public have a trust in them. It is important that the public have that trust; I will not start to imagine what kind of environmental problems there would be where there is public uproar and where Ministers find it very useful to have an expert body that is able to speak to the public and engender their confidence. Believe you me, I am giving this away for free. It can be a bonus for Ministers, and they ought to wake up to that fact.

Lord Anderson of Ipswich (CB): My Lords, I shall speak to Amendment 100, in the name of the noble Baroness, Lady McIntosh; Amendment 117, in the name of the noble Baroness, Lady Ritchie of Downpatrick; and the stand part debate in the name of my noble friend Lord Krebs, which would restore the position as it was when the Bill entered the Commons, with Clause 24 not standing part.

The conflict of interest which I shall suggest is presented by Clause 24 arises in the specific context of the OEP's enforcement functions in Clauses 31 to 40, on which I have a number of amendments and on which I will focus now. Each of those functions, from starting an investigation, to issuing information notices and decision notices, to applying to the courts for environmental or judicial review, depends on an assessment by the OEP that a failure to comply with environmental law is serious, and, in the case of an application for judicial review, that it must be necessary to prevent or mitigate serious damage to the natural environment or to human health.

While those assessments may be for the OEP, Clause 24, read with Clause 22(6), allows Defra to frame the processes by which the OEP assesses the seriousness of environmental damage, the seriousness of damage to human health and the seriousness of law breaking for which Defra and other public authorities are responsible. As if those instruments were not blunt enough, Defra is given a further power to guide the OEP on how it prioritises cases. This guidance will presumably be additional to and more prescriptive than the guidance that we are asked to endorse in Clause 22(7). To the response that ministerial guidance will not impinge on the independence of the OEP, I would say: what is the point of guidance, if not influence? Why should the OEP not be trusted to work out its own priorities? And why should Defra have influence over the preparation of enforcement policy and the "exercise of enforcement functions", to quote the Bill, that are specifically designed to be used against it?

As a former independent reviewer, although in a small way and in a very different field, I have reflected quite a bit on the risk of regulatory capture. This is usually thought of as a subtle and insidious process. It does not require the express approval of the legislature: the fertile soil of insufficient institutional independence, on which your Lordships have heard so much already, may be all that is needed for regulatory capture to germinate and to take hold. That is why Clause 24 is so unusual in the context of a body charged with enforcement. It actually signals regulatory capture on the face of the Bill.

The compromise Amendments 98 and 99—sticking plasters, as my noble friend Lord Krebs described them—would reduce the strength of that signal but would still leave the guidance power in place against a background of less than total institutional independence. For that reason, and with respect to those who put them forward, my enthusiasm for these compromises is limited. The Government's first thoughts were best: the Bill is better without Clause 24.

7.30 pm

Sitting suspended.

8 pm

The Deputy Chairman of Committees (Baroness Barker) (LD): We appear not to have the noble Baroness, Lady Bennett of Manor Castle, so I call the noble Lord, Lord Cameron of Dillington.

Lord Cameron of Dillington (CB) [V]: My Lords, I strongly support the messages being delivered in this group of amendments. Above all, I support the stand part question opposing Clause 24, to which I would have added my name if there had been room. I strongly support the powerful speeches given on it by the noble Lord, Lord Krebs, the noble Baroness, Lady McIntosh, the noble Lord, Lord Anderson, and—as ever—the noble Lord, Lord Rooker, with his great experience on this matter.

My basic position is that I would support any amendment which reduced the influence of Defra and its Secretary of State on the workings of the OEP. I know that sounds harsh, and I repeat my point that this does not denote any mistrust of the current officials in Defra, and certainly not its Secretary of State or Ministers. However, we have to ensure that the workings of the OEP over decades to come, as stressed by many, are completely independent of the bodies on which it is supposed to keep a watchful eye. That definitely includes Defra and its wider family. It must be independent and be seen to be independent, so the idea that the Secretary of State of Defra should be giving guidance to the OEP on how it exercises its enforcement policies must be wrong. I have yet to meet anyone who, in their heart of hearts, does not agree with that statement, with the perhaps unique exception of the noble Baroness, Lady Neville-Rolfe, who gave the impression of not having listened very closely to the previous debates.

Our whole constitution is based on checks and balances, yet what we have here is the equivalent of the potential accused being able to influence the operation of the Crown Prosecution Service. This must be very wrong. It would be a travesty of proper governance if Clause 24 were to remain in the Bill.

The Deputy Chairman of Committees (Baroness Barker) (LD): I call the noble Baroness, Lady Bennett of Manor Castle.

Baroness Bennett of Manor Castle (GP): Thank you, Deputy Chairman. My Lords, I offer support for all these amendments, but particularly on whether Clause 24 should stand part. Opposing it is the obvious way forward here. I want to pick up on the points made by the noble Baroness, Lady Neville-Rolfe, who was not entirely consistent in suggesting that we should not worry about how the Bill was structured because there is a strong person as the first head of the OEP, Dame Glenys Stacey. However, then she said, "But we don't want it too independent because then it might get too strong and dynamic, and take too much control". That really highlighted the issue.

Many people are saying "Isn't it great that we have that person as the first chair of the OEP?", but structures should not depend on individuals. Those individuals change; they go to different places as roles change over time. Often when we talk about what is in the Bill the Government tell us, "Trust us, we don't have any ill intentions", but the point is not who the current Minister is or what the Government of the moment's intentions are. We are setting up something new and important here, which is likely to continue for decades. We are talking here about the environmental review process and the OEP being able to state what the remedies for that are. There has been a lot of talk about carrots and sticks, and soft and hard powers. These things are really quite subtle and need to be used with great independence to have real force over long periods.

We have heard a lot of comparisons with other government bodies, such as the National Audit Office, the Electoral Commission and the Office for Budget Responsibility, all of which have stronger levels of independence. They have real independence from Ministers and departmental structures. It is quite telling that two of them are financial structures. When we talk about spending money, we have to have some independent oversight of that; but when we talk about the environment, somehow it is good enough to leave it with Ministers and the Government. It is a question of what we regard as important and what we really value and guard. That is what we are looking for.

I think it may have been the noble Lord, Lord Krebs, who quoted the Secretary of State as saying, "If we do not have these controls, there is a risk of making it up as it goes along." Surely that is the point. The OEP needs to create new structures, not to be directed by the Minister in those structures.

The noble Lord, Lord Curry, speaking just before the break, asked a very important question: what is the point of having guidance if there is no impact? We are being told that the Minister can provide some advice, some offering, but if that is not going to have an impact, why does it need to be in the Bill and why does it need to be given? We think about spending government money very carefully with real independent oversight. When we are looking after our environment, our natural world, and tackling the climate emergency, we need that same kind of independent oversight.

Lord Hope of Craighead (CB) [V]: My Lords, I cannot help feeling that there is an air of unreality about this debate. Everyone on all sides agrees about the need to preserve the independence of the OEP. The Government's position is set out quite clearly in paragraph 17 of Schedule 1, to which I referred earlier today. The phrase is "must have regard:

"the Secretary of State must have regard to the need to protect its independence."

As my noble friend Lord Anderson of Ipswich said, there is much to be said for the view that it is no business of the Secretary of State to give guidance on these matters and that Clause 24 should not be there so that the OEP can make up its own mind about the policies it needs to follow. Much depends on the meaning and choice of words, so let us reflect for a moment on that.

Is it really being suggested, as I think someone mentioned earlier, that Clause 24 can live with paragraph 17 of Schedule 1 because there is no requirement to follow the guidance that has been talked about in Clause 24? Do the words of Clause 24 really have that meaning? Does the phrase "must have

regard" change its meaning according to the context in which those words are found? As I have mentioned, paragraph 17 contains the same formula. Are we really to read it as imposing no requirement to have regard to protect the independence of the OEP? That would be an astonishing position to take and I am sure the Minister will not be taking it, but if it means what it appears to mean, the word "must" imposing an obligation that must be fulfilled, why not so in Clause 24?

I hope that the Minister was listening very carefully to what I said in the debate about Section 14(2) of the Scottish continuity Act. It is difficult for me, far away, looking through a lens, as I am, to observe closely what the Minister is doing to know whether he really was listening very carefully. I very much hope he was, and his closing words suggest that he was, and I am glad of that. He will have noticed that the reason why I was supporting him was because of the meaning that I gave to the phrase

> "Ministers of the Crown must … have due regard"

in Section 14 of the Scottish Act to Scottish environmental policies. I made it clear in my remarks that it was because I read those words as giving a direction to UK Ministers, imposing an obligation on them, that I felt that Amendment 80 had to be supported because it was correcting a mistake in the Scottish legislation. If I had been told that there was no requirement on UK Ministers to follow these policies, the position would have been quite different. One cannot pick and choose. The words in each context are perfectly clear and they must have the same meaning.

The noble Lord, Lord Teverson, said that, as worded, Clause 24 "drives a coach and horses" through paragraph 17. I must confess that, taking the words according to their ordinary meaning, that seems to be absolutely right. So I agree with my noble friend Lord Anderson that the Bill would be much better without Clause 24, but, if it is to remain, its wording must surely be adjusted so as to preserve the independence of the OEP, which the Secretary of State is, I suggest, under an obligation—in terms of paragraph 17—to do.

Lord Randall of Uxbridge (Con) [V]: My Lords, I have not taken part directly in these important debates around the OEP, mainly because of the fear of repetition. There are many noble Lords far wiser and more eloquent than me to discuss this. However, I share many of the concerns that we have heard around the funding and, as we are now discussing, the independence of the OEP. I hope that my noble friend the Minister will take on board the serious concerns of many around the Committee, including myself. I hope that he and his officials will consult with noble Lords before coming back with the Bill on Report. If he does not, he may find himself in rather more difficulties than I would like. There are lingering doubts about this.

There have been some very wise words. The noble Baroness, Lady Parminter, said that it was important for the OEP to be seen to be independent. The problem is that there is distrust on both sides. The Government's position will be that they are distrustful, fearing that a strongly independent OEP will run riot and cause many problems—although we would probably argue that, if that is what is necessary, that is what will have to happen. Others think that the Government's intentions are to make sure that that does not happen and so are curtailing the power of the OEP.

As I have often discovered since I arrived in this House, I take on board the very wise words of the noble Lord, Lord Rooker. I say to the Government that it is just possible that having a strongly independent OEP could help, because the public will not necessarily believe a government Minister. If the OEP were not seen to be independent enough, when it made a decision that the public did not like and went against them, they would consider it a government stitch-up. However, if there were a strongly independent OEP, they would have to accept that it was an independent decision.

I hope that this can be resolved because this is a very important part of the Bill. If we are to have faith in how the legislation works, we need that strongly independent OEP.

Lord Teverson (LD): My Lords, I start by quoting the noble Baroness, Lady Neville-Rolfe, who said that the OEP was "adequate". Remembering that word, I will quote Michael Gove, who said in July 2019, when he was Environment Secretary and the Bill started its oh-so-slow process—procession, we should say—through Parliament:

> "The measures in our Environment Bill will position the UK as a world leader, ensuring that after EU Exit environmental ambition and accountability are placed more clearly than ever before at the heart of government."

Is that a description of "adequate"? I think not.

8.15 pm

Today we have heard about the powers. The noble Lord, Lord Krebs, whom I have huge regard for, said that even as it is written, the Secretary of State's powers are vague. They are not precise; they can be extended in any way. I particularly agree with and have put my name to Amendment 100 in the name of the noble Baroness, Lady McIntosh, because it states beyond doubt that the OEP must be independent.

I certainly agree with the abolition of Clause 24. As the noble and learned Lord, Lord Hope, said, this Bill has a contradiction right at the heart of its most important area. You cannot have a government Bill going all the way through Parliament that, at the end, reaches Royal Assent and disagrees with itself. How can you do that? As I understand it, Clause 24 was put in as a government amendment later in the Bill's proceedings in the other place. I suggest to the Minister, just from that point of view, that we should leave it out.

I am particularly thankful to the noble Baroness, Lady Ritchie of Downpatrick, for reminding us that the OEP is not just an English organisation, but also potentially has a vital role in Northern Ireland where these issues are particularly sensitive. I liked the noble Lord, Lord Rooker, referring to buildings being built everywhere. We have a saying in Cornwall, particularly north Cornwall, that the rotation is sheep, maize, barley, bungalows. That is how it used to work when planning permissions did not work quite so well in some of the district authorities we used to have.

[LORD TEVERSON]

I was particularly struck by the noble Lord, Lord Anderson—I am sure he is noble and learned; he shakes his head, but I am sure he is really learned—when he said that guidance is influence. Those who are legally qualified may say I am slightly wrong in saying that this is a quasi-judicial body, if only an intermediate one in that it passes other things to the courts. Surely there needs to be a separation of those responsibilities, just as there is a separation of the Government and the judiciary—or the pre-judiciary in this case.

The core of this Bill to a large degree is that this is not short term. I am sure the Minister will agree. It is to set up an institution that is to last for decades and to build up its reputation, strength and its equivalent of casework. It is responsible to the public directly to make sure that our environment is truly and properly protected for an even longer term.

We might say that the intentions of current Ministers and Secretaries of State are good—I hope we would—but that is not necessarily the case for future Administrations. There is a huge need and a responsibility for Parliament and government to make sure that this body is strong, lasting, and authoritative in the long term, not just for the period of this government. That is why the easy thing is to take Clause 24 out of this Bill. I would prefer the independence to be even more clear, but maybe the earlier part of the Bill does that.

If I may mention just one other thing, although it may not be that popular, environmental protection and the judicial side of that—the replacement for the Commission—is a role that is mentioned in the treaty between the EU and the UK; it has an important role in determining level playing fields and so on in the EU-UK trade and co-operation agreement. So, again, I would think that the Commission, the European Court of Justice or whatever would look at this clause and say, "Come off it, this doesn't do what we were promised during the negotiations." As it stands, it is nowhere near having an equal standing.

I have two last points to make. I had the great privilege of being a non-executive director of the Marine Management Organisation for over six years, which is something I really enjoyed. It was a really important organisation that worked hard. It had its budget cut hugely over that period, but its lords and masters at Defra determined that it would be part of the Defra family; that is how it was described. As I have said on the Floor of this House before, Defra is far more jealous of the loyalty of its organisations and executive non-departmental public bodies than any other department that I have come across. To me, that in reality is not just to do with Ministers but with a Civil Service culture, and this body will not survive in the way that it needs to with this clause being there.

I do not know Dame Glenys Stacey that well—I have spoken to her on a couple of occasions—but, whoever the chair of the OEP is in the future, I am sure that if the Government were to intervene, they would find that the chair would resign almost straightaway. That would be a huge embarrassment to the Government of the time. Let us avoid that and make sure that this body is independent, strong and what Michael Gove said it should be: a world beacon for government accountability on the environment.

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Lord, Lord Krebs, for introducing this suite of amendments—including Amendments 94, 98 and 99 in my name—and the question on Clause 24 stand part, to which I have added my name.

Continuing the theme from the earlier grouping, all of these amendments focus on the need for the OEP to have guaranteed independence and not to be under the direction of the Secretary of State in how it carries out its enforcement policy. I was really disappointed in the Minister's response to the earlier debate. It did not feel to me as though he had listened to the strength and weight of the arguments or, indeed, answered many of the points put to him. I hope that he will engage more in the arguments that have been put forward in the debate today, if not now then certainly before Report.

I am very grateful to everyone who has added to the chorus of concern about the wording of Clause 24, which is really what we are talking about today. Of course, this clause has history. It was added only as an afterthought to the Bill at the Commons Committee Stage; it is almost as if the Government got cold feet. We got a flavour of why that might be—indeed, the noble Lord, Lord Krebs, quoted the Secretary of State on the *Today* programme last year when he said that the Government did not want "unaccountable regulators" who

"make it up as they go along",

"change their remit" or "change their approach entirely". So, a huge suspicion hangs over this body. As the noble Lord said, it is as if Clause 24 is a continuing manifestation of the Government's reluctance to create the OEP in the first place.

This, of course, was before Dame Glenys and her team were appointed. I hope that the Government have relaxed a little since then but, given their obvious competence, why do we still need Clause 24? The Minister will claim that there are other precedents for the Secretary of State to issue guidance to public bodies, and it is true that there are examples where this is the case. However, it is not the case with, for example, the Committee on Climate Change; the Climate Change Act specifically says that the Secretary of State cannot

"direct the Committee as to the content of any advice or report".

The critical issue with the OEP is that it has enforcement powers against public bodies, including government, who are potentially breaching the law, and with the power to take government to court. A better comparison would be with the Equality and Human Rights Commission, which enforces breaches of the law on human rights and equality—and cannot be directed by Ministers.

We can swap different examples of precedents, but it is more important that we do the right thing for what is a new and relatively unique organisation. Of course, one reason that it has special status is that it is taking over powers of enforcement previously carried out by the European Commission, which certainly would not have tolerated direction from the Government and did a huge amount to maintain environmental standards across the EU. As noble Lords have said, we were promised during the lengthy debates on the EU withdrawal Bill that we would have a UK body with equivalent powers to the Commission. To allow Clause 24

to remain would be a serious breach of those promises. We believe that it represents a fundamental undermining of the independence of the OEP.

Like the noble Baroness, Lady Neville-Rolfe, I welcomed the Minister's letter, but unlike her, I did not find it quite so enlightening. In his letter of 10 June, the Minister said:

"Although the Secretary of State may issue guidance to the OEP on its enforcement policy, they will need to exercise this power consistently with their duty to have regard to the need to protect the OEP's independence."

As the noble Lord, Lord Teverson, said, it seems that these two requirements represent a contradiction at the heart of the Bill. This was echoed by the noble Lord, Lord Anderson, and the noble and learned Lord, Lord Hope. You cannot have it both ways: being able to give direction while respecting its independence. One might say it would be a lawyer's dream to try to sort it out. My noble friend Lord Rooker said he would like to hear the legal argument about the meaning of "having regard to" the Minister's guidance and sit in as a fly on the wall. How do you measure "have regard to"? As the noble Lord, Lord Anderson, quite rightly said, what is the point of having guidance if not to exert influence?

We believe that it would send a strong signal to Parliament and stakeholders if the Government agreed to remove this clause. It is ultimately a matter of trust; it would demonstrate the Government's confidence in the new leadership of the OEP, and I therefore hope the Minister will agree to reconsider this wording and remove this clause.

My Amendment 94 would have the effect of making the independence of the OEP an absolute requirement, rather than one that Ministers are merely required to have regard to. Amendments 98 and 99 would make any guidance from the Secretary of State discretionary. But to return to the main point: we do not believe the guidance should be there in the first place. The helpful Amendment 100 from the noble Baroness, Lady McIntosh, approaches the need for OEP independence in a separate but equally valid way, continuing to underline the main point at issue.

Finally, I welcome the amendments in the name of the noble Baroness, Lady Ritchie of Downpatrick. Her Amendment 117 mirrors our concern to ensure OEP independence. It would remove the wide-ranging power for the Department of Agriculture, Environment and Rural Affairs in Northern Ireland to issue guidance to the OEP. Amendment 118 revisits the question that she has posed before about how and when the appointment of the dedicated Northern Ireland board member will be made. I hope the Minister can answer this point today. Quite rightly, her amendment requires it to be made with the consent of the Committee for Agriculture, Environment and Rural Affairs of the Northern Ireland Assembly. This is a similar point to our Amendment 85, which we debated in an earlier group.

I hope that the Minister has carefully listened to this debate. There are important principles in these amendments, and they will not go away, as noble Lords have stressed on a number of occasions. I hope that he will feel able to take these issues away and give some assurance that we will not be back repeating these debates on Report, as he can probably predict what the outcome of that would be.

Lord Goldsmith of Richmond Park (Con): I thank noble Lords for their contributions. I will begin by addressing the amendments tabled by the noble Baroness, Lady Jones of Whitchurch.

On Amendment 94, the Government are committed to ensuring the OEP's operational independence. This is precisely why we have included in paragraph 17 of Schedule 1 the duty on the Secretary of State to have regard to the need to protect the OEP's independence. The actions of the Secretary of State in exercising functions in relation to the OEP will be subject to parliamentary scrutiny in the usual way.

However, the OEP itself is not an elected body. It is the Secretary of State, as an elected representative of the Government, who is ultimately accountable to Parliament for the OEP's use of public money. Ministerial accountability is one of the Government's key principles of good corporate governance. Ensuring the OEP's operational independence must therefore be balanced with allowing appropriate levels of scrutiny. The amendment suggested by the noble Baroness would prevent Defra, as the OEP's parent department, exercising vital functions of public accountability, including carrying out accounting officer responsibilities.

8.30 pm

On Amendment 99, as I mentioned earlier, the OEP does not have to follow the guidance where it has clear reasons not to do so. It would therefore be an excessive and very unusual administrative burden to expect the OEP to publish its rationale for not following the guidance, as suggested by this amendment.

On Amendment 98, the Government are committed to establishing the OEP as a body that will contribute effectively to its statutory objective of environmental protection and the improvement of the natural environment. We would not issue guidance contrary to that principle.

I would like to give the rationale for Clause 24. The OEP will have a vast environmental remit, as many noble Lords have made clear. It will cover all domestic environmental law and all public authorities, from local councils to central government departments. Given this exceptionally broad remit, we have always been clear that the OEP should focus on the most serious, most strategic cases.

The guidance power is therefore designed to provide a safeguard for accountability, providing the Secretary of State with the tools to ensure that the OEP functions as has always been intended. Though the Government anticipate that the OEP will develop an effective and proportionate enforcement policy, as the Minister ultimately responsible to Parliament for the OEP, the Secretary of State may need to encourage the OEP to exercise its functions effectively to deliver the greatest benefit for the public and the environment. For example, if the OEP were failing to be strategic and not taking action in relation to serious, systemic issues, the Government could use this power to suggest ways in which the OEP could more effectively use its resources to benefit people and the environment.

[Lord Goldsmith of Richmond Park]

I have heard the concerns of many noble Lords about this provision and understand the argument that many noble Lords have made—in particular the noble Baroness, Lady Parminter, and the noble Lord, Lord Randall—that the organisation needs not just to be independent but to be seen to be independent. The noble Lord, Lord Teverson, made the point very clearly, in the context of the ever-elusive but necessary concept of trust between people and power.

I want to be crystal clear that this clause does not provide the Secretary of State with any power to direct the OEP or to intervene in decision-making about specific or individual enforcement cases. The guidance can cover only matters listed under Clause 22(6) of the Bill. Although this includes the OEP's approach to prioritising cases, this will be at a strategic level rather than in relation to specific decisions. Clearly, that is a key distinction.

Several safeguards are also in place to ensure that a Secretary of State could not use this power inappropriately. First, the power must be exercised consistently with the provision I mentioned earlier, which requires the Secretary of State to have regard to the need to protect the OEP's independence. Furthermore, the OEP does not have to follow any guidance issued by the Government where it has clear reasons not to do so. The OEP must prepare its own enforcement policy. It will set out its own approach to determining what technically constitutes a "serious failure" and other aspects of its enforcement policy, having had regard to any guidance. Finally, any guidance must be published and laid before Parliament, meaning that the process will be transparent and that Parliament will be able to hold the Secretary of State to account for any improper guidance.

To conclude, this is a provision to ensure that the Secretary of State has the tools to ensure the OEP functions as has always been intended, without impinging on its operational independence—so Clause 24 should stand part of the Bill.

On Amendment 100, as already mentioned, Clause 24 does not provide the Secretary of State with any power to direct the OEP or to intervene in decision-making about specific or individual cases. The OEP itself has a statutory duty under Clause 22(2) to act objectively and impartially, which will ensure it operates independently. As such, the additional provision proposed is unnecessary.

Finally, regarding Amendments 117 and 118, the environment is almost entirely a devolved matter in Northern Ireland. It is important to ensure that, as far as practicable, the legislation relating to the environmental oversight body is consistent across both jurisdictions should the Assembly choose to extend the OEP. Paragraph 24 of Schedule 3 mirrors Clause 24; it gives a power to the Department of Agriculture, Environment and Rural Affairs—DAERA—to issue guidance to the OEP in relation to its devolved enforcement functions, including on how it intends to prioritise cases. For the benefit of the noble Baroness, Lady Ritchie, I add that, like Defra's Secretary of State, this would be advisory and not binding.

This provision also respects the devolution settlement. Any guidance given by the Secretary of State following Clause 24 would not apply to the OEP's devolved enforcement functions under Schedule 3. Furthermore, the appointment of an effective Northern Ireland member of the OEP is clearly extremely important, as the noble Baroness emphasised. As befits that importance, a rigorous selection process, regulated by the Commissioner for Public Appointments for Northern Ireland, will be employed. The chair-designate of the OEP, Dame Glenys, is fully involved in the selection process, and we do not believe that adding a further layer of bureaucracy to the process is either helpful or necessary for the OEP.

I hope that this goes some way towards reassuring noble Lords, and I ask that the amendment be withdrawn.

Lord Krebs (CB): My Lords, I thank all noble Lords for their excellent contributions to this debate; it is the second major debate we have had today about the independence of the OEP. I emphasise again to the Minister the strength of feeling around the Committee, not just among the cross Cross-Benchers, in which I join my noble friends Lord Cameron of Dillington and Lady Boycott, but from all groups.

The Minister did a valiant job in trying to defend the position of leaving Clause 24 in the Bill and in rejecting the other amendments, but it felt rather less than convincing and I do not think that we have yet fully dealt with some of the key points that were raised by contributions. For example, my noble and learned friend Lord Hope of Craighead and my noble friend Lord Anderson of Ipswich made important points. My noble and learned friend Lord Hope talked about the fundamental contradiction in the Bill and how the words are really important, and my noble friend Lord Anderson asked what the point of guidance is if not to influence. So I really do not think that we are out of the mire yet on this issue.

I will not go through all the contributions, because there were so many important points made in the excellent summing up by the noble Lord, Lord Teverson, and the noble Baroness, Lady Jones of Whitchurch. But I want to reflect on something that the noble Lord, Lord Rooker, said, which was sort of, "Be careful what you wish for"—if you are a Minister and you want to have influence and control over a supposedly independent body, it may come back to bite you. I will give a personal anecdote. When I started to set up the Food Standards Agency, the then Secretary of State for Health said to me, "John, I am in a nightmare situation. I have no control over you, but I have to take responsibility for you in accounting to Parliament", to which I said, "No, you have the dream scenario: if things go well, you take the credit; if things go badly, you blame me". So it is not all downsides to give the OEP greater independence, although the Minister seemed to feel that it would be.

Without delaying your Lordships further, because the hour is late, I again thank all those who have contributed, and the Minister for his response. I am sure that we have not resolved this and that we will come back to the matter of OEP independence when we come to consider the Bill at the next stage. But, as in earlier debates, a number of noble Lords, including the noble Lord, Lord Cormack, emphasised that we ought to be able to find a compromise. I hope that, between now and Report, we can have further

conversations and find out whether there is a way of avoiding confrontation at a later stage. Having said that, I beg leave to withdraw my amendment.

Amendment 94 withdrawn.

Schedule 1 agreed.

The Deputy Chairman of Committees (Baroness Barker) (LD): We now come to the group beginning with Amendment 95. Anyone wishing to press this or anything else in the group to a Division must make that clear in the debate.

Clause 22: Principal objective of the OEP and exercise of its functions

Amendment 95

Moved by ***Lord Goldsmith of Richmond Park***

95: Clause 22, page 13, line 25, at end insert ", and

(b) how the OEP intends to co-operate with devolved environmental governance bodies."

Member's explanatory statement

This amendment provides that the OEP's strategy must set out how the OEP intends to co-operate with devolved environmental governance bodies (as defined in Clause 46 of the Bill).

Lord Goldsmith of Richmond Park (Con): Amendment 95 creates a duty for the OEP to set out in its strategy how it intends to interact with devolved environmental governance bodies, as defined in the Bill. It will promote co-operation between the OEP and devolved environmental governance bodies, and respect the devolution settlements by imposing this duty on the OEP only. Government Amendment 95 complements other measures in this Bill that enable the OEP to share relevant information with equivalent bodies and require it to consult them on any matters relevant to their functions.

The noble and learned Lord, Lord Hope of Craighead, has outlined the importance of consultation with devolved counterparts in previous debates, and I hope that this government amendment will therefore be welcomed by him, in particular. This is a crucial addition to these other measures, which together will ensure that the OEP and devolved bodies can co-ordinate their functions effectively for the benefit of our environment across the union.

Lord Lucas (Con) [V]: My Lords, Amendment 96 in my name has nothing to do with Amendment 95 but, for the convenience of the Whips' Office, has been grouped with it.

In this legislation and many other policies, we aim to accomplish substantial changes in people's behaviour. Particularly when it comes to keeping the heat down, we are faced with immediate disbenefits—things we are asking of people to make their lives worse or different. Therefore, we need to find a way of taking people with us, of explaining to and sharing decisions with them, to have their confidence and mean that they, with us, will take the decisions we need to take. The fundamentals of this are that we should be telling the truth, being transparent and trusting the public. Those are the virtues that I would like to see inculcated into the OEP.

The amendment asks that we gather research and information, because it is hard to find what you want if you are an ordinary member of the public or someone trying to put together an understanding that would allow them to critique government policy, to end up as an informed supporter or to offer helpful suggestions. Secondly, we should make it open, because far too much vital information is hidden behind paywalls. Thirdly, we should make it clear how the evidence supports government policies because, that way, people can see why they should be lining up behind the Government.

Absent that, we will get a lot of policies that sound nice but whose outcomes are suboptimal, and we will lose public support. Take an easy example: recycling. We all sort of want to do it but, when the council turns up outside my door, it smashes the glass into the paper. How is that recycled? Is it recycled or does it just go off to the incinerator? What is the truth? What is actually happening to justify all the effort that I have put in to separating one lot of rubbish from another? I cannot find the answer to that, but it ought to be easy.

Take another example: plant-based diets. We are told they save lives, alleviate hunger, reduce climate change, save water and minimise land use. That makes sense; there are obvious reasons to cut out the middle cow, go straight to the source of the energy and process it ourselves. That way, we ought to have much less impact on the planet. I have been indulging in an experiment, because my daughter went vegan at Christmas, and I record my thanks to Yotam Ottolenghi for making that a process that I have been able to endure.

However, you soon come to notice that milk from a cow is 90p a litre and milk from an oat is £1.80 a litre. If the plant-based diet arguments were right, it ought to be 45p a litre. Some of the difference may be down to rapacious Swedish capitalists outfoxing socially minded British supermarkets, but not that much. The problem is that we are not being offered information on the whole system costs; we are being offered information that cherry-picks things and leads us to make suboptimal decisions.

8.45 pm

I rather suspect that it costs more to produce oat milk than it does cows' milk. Generally, costs equate to energy and resources used. Based on the information I have, it seems very possible that oat milk is worse for the climate and environment than cows' milk. Cows use the whole plant and process it at the point of consumption, rather than having to drag it to factories around the planet. The inefficiencies of the production of oat milk are magicked away by the rhetoric. After all, it is a cow-based economy that has been chosen by Knepp as the basis for its rewilding. A cow-based economy, run right, is strongly pro-wildlife. Going vegan has certainly resulted in a big uplift in the weekly bill. If we want people to go in that direction, that must not be the case. Indeed, it ought not to be the case on the basis of the arguments.

So I am not sure about that, but I am sure that I am not being given the real data and the whole picture. I am not being taken into the confidence of the decision-makers. We need to alter that. We need to empower the public so that we make choices that are effective in getting to the goals that we are all agreed on achieving.

The Duke of Montrose (Con) [V]: My Lords, in addressing the amendment put forward by my noble friend the Minister, the Committee has today listened to some skilful analysis of the devolution situation from the noble and learned Lord, Lord Hope. I await his comments on this amendment with some interest.

I want to probe my noble friend the Minister a little more on one aspect of what he sees as the content of his amendment, which refers to

"how the OEP intends to co-operate with devolved environmental governance bodies."

Like some of your Lordships, I sat in the House as we debated Schedule 5 to the Scotland Act in 1998. The argument ended up being not to reserve the environment to Westminster, but there was still the oversight of all the EU's environmental legislation to fall back on. That is the situation we face at the moment.

The Government are working on the problems that this now presents. I understand that they have hopes of a legislative consent Motion for their ideas. We foresaw some of this when we debated the Trade Bill in January. The Government were prepared to admit that one route to achieving agreements was to have a number of framework agreements. How many frameworks do the Government expect to have in relation to the environment, and what mechanism are they using to reach agreement on any of them? Are they working on any of these? If so, what stage have they reached? I wonder whether my noble friend could give us some details either now or in writing.

Lord Krebs (CB): My Lords, I will make a couple of brief points in relation to Amendment 96 in the name of the noble Lord, Lord Lucas. First, a system exists that I think would meet what the noble Lord is asking for: I refer, of course, to the guidelines developed by Lord May of Oxford when he was the Government's Chief Scientific Adviser. These guidelines have three core principles governing the use of evidence in policy-making, which is partly what the noble Lord, Lord Lucas, was talking about. They are: first, seek a wide range of expert opinion; secondly, recognise uncertainties in the evidence; and thirdly, openness and transparency in the use of evidence. These guidelines will be especially important for the OEP because many, if not most, of the environmental issues that it will deal with will be ones where the evidence is contested. People will have strongly held opposing views, or they will claim that the evidence is incomplete or that there is uncertainty.

The answer to the request from the noble Lord, Lord Lucas, is for the OEP to follow the Government Chief Scientific Adviser's guidelines. At the same time, the OEP may wish to follow the example of many other public bodies in conducting as much of its business as possible in public meetings so that the decision-making processes can be directly observed and the evidence, as it is being evaluated, can be studied by the public. Does the Minister agree that it would be valuable if the OEP operated under the guidelines set out by the Chief Scientific Adviser?

Baroness Bennett of Manor Castle (GP): My Lords, it is a great pleasure to follow the noble Lord, Lord Krebs. As always, his contribution has made a useful addition to the debate and he has put down a useful specific question.

I rise to speak in favour of the ideas and aims behind the amendment in the name of the noble Lord, Lord Lucas, although I come at this from a somewhat different direction. The noble Lord suggested that this was the way the Government, or the OEP, could lead the public; I suggest that we look at it from the other way around. On many environmental issues, whether you look at the climate strikers or last year's people's assembly on the climate, the public have in fact been leading and pushing companies and the Government to act. It is very helpful to the public to have available the information and published material, but rather than thinking about this as us leading the public, let us see it in other terms: as more of a partnership.

This amendment also takes us back to some of our debates on the Agriculture Bill, when we talked about the lack of agricultural extension and of independent advice to farmers. Indeed, a group of farmers I talked to last week were bemoaning the lack of independent advice available to farmers. A great deal of the information that might be collected and put together by the office for environmental protection would also be of great use to farmers. I think here of what the noble Lord, Lord Curry, said on the last group of amendments about regulatory capture. We want this to be available.

As the noble Lord, Lord Lucas, said, a lot of research is behind paywalls. We are lucky enough in your Lordships' House to have the wonderful Library; we can ask it to get anything we want, but that is not available to the public. It is a great pity that far too much publicly funded research is still hidden behind paywalls. The research that guides the OEP should be publicly available.

Finally, I turn to the questions from the noble Lord, Lord Lucas, about oat milk. I remind him that the practical reality of our economy is that a great many externalised costs are not paid by the producers or sellers of a product and are therefore not reflected in the price tag. Many farmers are barely being paid, or not being paid, the production costs of their milk, reflecting the economic power of the supermarkets. I also point out that you can of course make your own oat milk, which would cut out the middle person, save you a great deal of money and cut out a great deal of packaging as well.

Lord Hope of Craighead (CB) [V]: My Lords, the Minister invited me to welcome government amendment 95, which of course I do and I imagine that, if he were here, the noble Lord, Lord Wigley, would do the same. It is particularly encouraging, if I may say so, that this amendment comes from the Government. It has not been necessary for me or the noble Lord, Lord Wigley, to struggle to get an amendment in these terms through the House. It is an example of a welcome and increasing recognition throughout government at Westminster that the devolved Administrations really do matter and need to be respected as equal partners in the various endeavours we are engaged in to maintain the integrity and standing of our country. That is particularly so in relation to the environment, where we are so dependent upon each other.

I am grateful to the Government for taking the initiative. This is a welcome amendment and it has my full support.

Baroness Boycott (CB): My Lords, it is a great pleasure to follow the noble and learned Lord, Lord Hope.

I want to make a couple of points about information. Before I was into food, I was a journalist all my life, and I am very aware of how information gets into newspapers; probably 50% of the stories in the press at the moment come from PR companies. Meanwhile, a great many of our APPGs are sponsored by corporate interests that want to tell a particular story. About two years ago I was invited to sit on an obesity taskforce that was set up by an APPG. It was not until we were at the last meeting that we realised the whole thing had in fact been sponsored by Danone. A bunch of us took our names off the report at that point because you do not want to be associated with someone who is actually causing the problem.

I come back to what has been debated in the main today: the independence of the OEP and the type of information that it agrees to have. The issue of the oat milk tells the entire story. This is a company that wants to sell a lot and make a lot, so it tells a story. Whose information are we going to believe? It is incredibly important to remember that the situation with climate change is changing all the time, so all sorts of voices can get pre-eminence and the ones with a lot of money and deep pockets can buy their way into influence and buy and sponsor research. We all know the stories of what happened with the tobacco industry, and the same has been true of the fossil fuel industry. To have unbiased, genuine information from a setup like the OEP, which is genuinely independent, is vital because otherwise, we will always be prey to the types of commercial interests that got us into this problem in the first place.

Lord Khan of Burnley (Lab): I shall speak to government Amendment 95 and Amendment 96 in the name of the noble Lord, Lord Lucas.

We welcome Amendment 95, which will require the OEP to set out a clear strategy of co-operation between itself and the devolved governance bodies. The 2021 Scottish continuity Act established Environmental Standards Scotland to carry out oversight functions in Scotland broadly similar to those of the OEP. Furthermore, the Welsh Government have committed to establishing a commission for the environment, independent from the Welsh Government, which will oversee the implementation of environment law in Wales.

Devolution is one of the UK's greatest strengths but it also presents some practical challenges, which is no doubt one of the reasons why noble Lords have tabled devolution-focused amendments throughout the Bill. Partnership and collective working in matters of common interest has to be the way forward. The Minister outlined the rationale behind Amendment 95 and spoke to some wider devolution considerations in his introduction, but what other steps does his department plan to take to ensure that we strike the right balance between respecting devolved competence and ensuring a joined-up approach to tackling the climate and ecological emergency?

Amendment 96 in the name of the noble Lord, Lord Lucas, requests the inclusion of a truth and openness policy in the OEP's overarching strategy, and the noble Lord used the words "taking people with us". Several colleagues have referenced the need for evidence-based policy-making in other debates on the Bill, and this amendment offers an interesting approach to ensuring that high-quality data, research and information is available not only to decision-makers in Whitehall but also to the public. The noble Lord, Lord Krebs, looked at this issue; he mentioned evidence in policy-making and considered a policy of the OEP using the guidelines established by the Government Chief Scientific Adviser.

We are all alive to the fact that addressing climate change is going to require changes and sacrifices in our lifestyles, but if we are to achieve the level of buy-in that we need, the public must be able to have confidence in the policy-making process and the decisions taken by Ministers. While this goes slightly beyond the scope of Amendment 96, I wonder if the Minister could confirm whether he has had any conversations with counterparts at DCMS regarding their efforts, through the Online Safety Bill and other initiatives, to target disinformation on climate change?

9 pm

Lord Goldsmith of Richmond Park (Con): I thank noble Lords for their contributions.

Although I welcome the commitment to transparency of my noble friend Lord Lucas, Amendment 96 would effectively cause the OEP to become a data bank. This would weaken its ability to focus on its principal objective of contributing to environmental protection and to the improvement of the natural environment. The OEP cannot simply publish commercially held data, nor can it ignore the sensitivity and confidentiality of certain data which may inform policy-making and make it public. It will be subject to clear requirements set out in existing law, such as the Data Protection Act 2018, which govern access to and protection of information. I highlight that the Bill explicitly sets out that the OEP must have regard to the need to act transparently. However, there may be occasions when the OEP cannot be transparent and make information publicly available, such as during the investigation of a complaint.

The Government support making environmental data open and public where possible: for instance, through DATA.GOV.UK. Defra is also developing a new interactive dashboard to improve access to the open data used in the 25-year environment plan outcome indicator framework. Defra published an update on 11 June which I encourage any noble Lords interested in this area to view.

My noble friend questioned the discrepancy in cost between cows' milk and oat milk. Although I cannot pretend to know the absolute details, I can remind him that the thesis of the Dasgupta review was reconciling our economy with nature, learning to value valuable things and adding costs to pollution, waste and plunder. That is not the case today, as the noble Baroness, Lady Bennett, made very clear in her speech earlier; unfortunately, the consumer often pays twice, over the counter and then through their taxes, or perhaps through a damaged environment. If products reflected the true costs of production, I suspect that the price system would be very different across most products today.

[LORD GOLDSMITH OF RICHMOND PARK]

I was asked by my noble friend the Duke of Montrose to write to him about—I have to remind myself what I promised; I am now promising to write him about something and I cannot remember what it was. Yes, it was about the framework agreements that we have made with the devolved Administrations. I will take him up on that offer and I will write to him as soon as possible.

The noble Lord, Lord Krebs, asked whether I believed that the OEP should follow the guidelines and guidance of the chief scientific adviser. It is certainly the case that the two should be working very closely together. Whether that relationship should be formalised is a different issue—I suspect probably not. However, I would expect that relationship to be a close one.

Finally, I thank the noble and learned Lord, Lord Hope, for his kind comments about this amendment.

So I hope I have reassured the noble Lord and I ask him to withdraw his amendment.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): I have had one request to speak after the Minister, from the noble Lord, Lord Lucas.

Lord Lucas (Con) [V]: My Lords, I am very grateful to my noble friend for his explanation of the reasons why he cannot go down the road that I would like him to go down. I suspect that, after I have studied them, I will fully accept them. However, it seems to me that, one way or another, we have to find a way to empower ordinary people to make these decisions and not leave this as something which is happening to them—particularly if, at the end of the day, we will be asking them to pay more for things or to not have things that they have at the moment.

Lord Goldsmith of Richmond Park (Con): I simply say that I very strongly agree, and that will remain a focus of the Government.

Amendment 95 agreed.

Amendment 96 not moved.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): We now come to the group beginning with Amendment 97. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Amendment 97

Moved by ***Baroness Hayman of Ullock***

97: Clause 22, page 13, line 32, at end insert—

"(ba) how the OEP intends to determine whether the protected provisions of the REACH Regulation set out in Schedule 20 are being upheld,

(bb) how the OEP intends to exercise its enforcement functions where a breach of obligation is found to have occurred under paragraph (ba),"

Member's explanatory statement

This amendment would require the OEP's strategy to consider (a) how it will ensure that protected provisions of the REACH Regulation (including the principle that animal testing should only be used as a last resort) are being upheld, and (b) how its enforcement functions may be applied in the case of breaches of protected provisions.

Baroness Hayman of Ullock (Lab): My Lords, I rise to propose Amendment 97, which—like Amendment 289, which I will also speak to—is in my name and that of my noble friend Lady Jones of Whitchurch. I also give our strong support to the amendments in the name of the noble Baroness, Lady Bakewell of Hardington Mandeville.

Environmental groups, animal rights charities, health campaigners and the chemicals industry all remain concerned that the Government's plans for UK REACH put the environment, human and animal health and business interests at risk. The CHEM Trust has specific concerns about whether the Government accept industry proposals for deregulating UK REACH, on which I understand a decision is imminent. Are the Government looking to amend the Environment Bill to allow this, and does the Minister agree that this would effectively make it harder to prevent the chemical pollution of our water, air and the wider environment?

I turn to our Amendment 97. Schedule 20 of the Bill protects the principle of animal testing "as a last resort" and the principle of the promotion of non-animal alternatives. Our Amendment 97 would require the OEP's strategy to consider, first, how it will ensure that the protected provisions of the REACH regulation, including the principle that animal testing should be used only "as a last resort", are being upheld—and, secondly, how its enforcement functions may be applied in the case of breaches of protected provisions.

EU REACH requires companies to share data and thus avoid unnecessary animal testing. Under it, animal testing is to be avoided in favour of alternative methods, and tests involving the use of animals can be carried out only "as a last resort". However, a major challenge in making sure that animal testing has only been used as a last resort and that the promotion of alternatives is applied in EU REACH has been the failure of oversight and enforcement. The European Chemicals Agency, responsible for the EU chemicals testing legislation, has been judged in the past, by the independent EU ombudsman, to be lacking in appropriate action to ensure that the number of animal tests carried out is minimised. This judgment has been acknowledged, as was the agency's duty to review and prohibit animal tests more effectively in the future. This amendment seeks to ensure that oversight and enforcement of these important principles are included in the remit of the OEP, thus strengthening UK REACH by applying the lessons learned from EU REACH.

However, EU REACH has also minimised animal tests through data sharing and other measures—something that was heavily promoted by the British delegation when REACH was initially created. According to Home Office figures, in 2019, 3.4 million procedures involving living animals were carried out in Great Britain—all, by statutory definition, with the potential to cause

"pain, suffering, distress or lasting harm".

Importantly, the 2019 figures show a decrease of 3% on the previous year, which is also the lowest number since 2007. So we must not jeopardise this progress.

Many people are deeply concerned about the use of animals in experiments, with 74% of the public agreeing that more needs to be done to find alternatives. Therefore, the regulation of animal research and testing is a

significant issue for the UK. The Government must ensure that the public can have confidence that legislation governing the use of animals in science is applied rigorously.

I have talked previously in your Lordships' House about my concerns that, under UK REACH, the HSE's lack of access to the full chemical safety data currently held by EU REACH could lead to duplicate animal testing. The Chemical Business Association has said that British businesses do not normally own the testing data required for registrations under UK REACH; it is held by a consortium of European countries. To reuse the data, companies may need to obtain permission from the consortium and would likely have to pay for the extension of rights. If this cannot be obtained, tests may have to be redone to establish safety information, which could involve repeat animal testing.

In the case of new animal tests, a testing proposal must first be submitted and approved, but we have yet to discover what stance the UK authorities, led by the HSE, will take in interpreting the principle of using animal testing only as a last resort. Now that we have left the EU, it is important that domestic accountability is strengthened. We should be seeking to ensure that our standards are the best in the world, while working to influence the EU and other trading partners to raise animal welfare standards.

Amendment 289 would establish a mechanism for reviewing the performance of the HSE in relation to its expanded responsibilities under UK REACH. We have tabled this amendment because the Government have so far failed to demonstrate that the HSE, as the chemical regulator in the UK, will be equipped with the necessary skills and capabilities that at least match what has been provided by the European Chemicals Agency. It is worth reminding your Lordships' House that the UK chemicals industry has a turnover of £32 billion and represents a workforce of 102,000, so it is imperative that this highly skilled industry is protected. In creating the new UK REACH, the Government have shown insufficient understanding of how chemicals are managed in complex supply chains, with analysis of neither the cost of setting up the new regime nor the additional cost to business. As currently set up, we will worryingly not have the same level of protection from harmful chemicals that we currently enjoy.

Can the Minister set out how the new system will be staffed and resourced to ensure current levels of protection continue, and how that system will be reviewed on its performance and capabilities? Assuming that it will be reviewed, how often will this take place? Who will carry out the review, what will it cover and what action will be taken to remedy any failings or concerns? We need a regulatory system that provides the same levels of protection for human health and the environment that we enjoyed under EU REACH, otherwise critical decisions on chemicals will be made by a body with little experience and with layers of accountability and scientific expertise stripped away.

In a previous debate on this issue, the Minister said he agreed with me that the Health and Safety Executive's ability to take on the task of the agency is essential to the success of UK REACH, so does he also agree that there needs to be a mechanism to review the agency's performance to ensure that it is taking on the task to the required standard in order to have confidence that its responsibilities are being properly discharged? There must not be any repeat animal tests, so what guarantees can the Minister give—he is a strong supporter of animal welfare—and how confident is he that this can be ensured and will not just be an undeliverable promise?

The last time I raised this issue with the Minister, he recognised that there are concerns about the duplication of animal testing and, as reassurance, he gave the fact that the last resort principle is enshrined in the Bill as a protective provision. I do not believe that it is a cast-iron guarantee against unnecessary duplicate testing, but if he genuinely believes that the Bill is strong enough and that UK REACH will be capable of working effectively in this area, can he explain exactly how these protective provisions will be upheld and what will happen if any breaches of these provisions are found to have taken place? I beg to move.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, it is a pleasure to follow the noble Baroness, Lady Hayman of Ullock. I support Amendments 97 and 289, to which she spoke so comprehensively. I shall speak also to Amendments 277, 281, 282, 294, 295, 296 and 297 in my name.

These amendments are all about REACH—the registration, evaluation, authorisation and restriction of chemicals. REACH was introduced in the EU in 2006 and was not carried over into UK law at the point of Brexit, as were a large number of other EU laws. By mid-2019, some 24,660 animal tests had been performed for EU REACH purposes, equating to an estimated 6 million animals. While it has in the past been necessary to test chemicals on animals, it is not necessary to repeatedly duplicate tests for the same or very similar chemicals over and again. Testing should be kept to an absolute minimum, as the noble Baroness, Lady Hayman, said.

9.15 pm

The Government have come forward with a new UK REACH system, which should be better, leading the way to a full transition to using non-animal approaches to safely test chemicals. Next week we will debate the animal sentience Bill. Surely the Government want the ethos of that Bill to be extended to this Bill.

Amendment 277 relates to REACH Articles 26, 27 and 30, and is designed to prevent duplication of testing on animals and increase the sharing of data, which would make it unnecessary to duplicate tests on animals. The last set of EU statistics on animal experiments showed that more animals were used for testing in the UK than in any other EU country. This leads us to the need to move at a pace to adopt methods other than animal testing. NAMs—new approach methodologies—include technologies, methodologies, approaches, or a combination of all three to provide information on chemical hazards. They can be extensive and achieve equal or greater biological predictability than current animal models. Amendments 281 and 282 would set REACH targets to replace testing on animals and to increase data sharing to prevent unnecessary testing.

[Baroness Bakewell of Hardington Mandeville]

Amendments 294 to 297 intend to ensure that the Government attach full weight to evolving scientific progress when considering animal testing, thereby reducing the need for animal testing except in very rare cases or, as the noble Baroness, Lady Hayman, says in Amendment 97, as a last resort. Too often in the past it has been seen as acceptable to test cosmetics on animals. Those days are gone. It is no longer acceptable.

I fully support Amendment 289 from the noble Baroness, Lady Hayman, to ensure that there is monitoring of the Health and Safety Executive's performance in the execution of its duties under the UK REACH responsibilities.

The impact of UK REACH is extensive and may often be less visible than we would wish. Animals are sentient beings and deserve to be treated with compassion and respect. I look forward to the Minister's comments on these amendments, especially bearing in mind the animal sentience Bill, which is going into Committee next week.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): The noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Rooker, have indicated that they do not wish to speak on this group of amendments. I therefore call the noble Baroness, Lady Jones of Moulsecoomb.

Baroness Jones of Moulsecoomb (GP): My Lords, this is an interesting group. I will stick to talking about Amendment 281 in the name of the noble Baroness, Lady Bakewell of Hardington Mandeville.

Nowadays, there is widespread recognition that animal testing is wrong and should be avoided. The expansion and development of human society has had huge impacts on all sorts of other species. Disruption to their lifestyles has been accidental and deliberate, and has resulted in suffering, death, and even extinction. Millions of animals are still abused every year in experiments that cause great pain and suffering. This is despite significant differences between the physiology of animals and humans, which can mean these experiments are ineffective or even pointless. I am sure that noble Lords know that biomedical researchers have often excluded women from clinical trials, even for drugs only for women, so how much worse to try to model on animals. A lot of non-animal technologies can be used instead, as can human tissue.

We must also not forget the harmful use of animals in education, where millions more animals are killed specifically for dissection and other educational experiments. Just as we would never think of killing a human so that trainee doctors can learn about anatomy, we should not be killing animals for people to learn. Again, technology can replace much of the need for using real animal specimens in education, but where dead animals are necessary, they can be sourced from animals that have died naturally or have been euthanised for humane reasons.

This is all about shining a light on our exploitation of other species and choosing a different course for our future. Hopefully, we are advanced enough to move beyond these barbaric practices and move positively forwards as stewards of the natural world.

Baroness Fox of Buckley (Non-Afl): My Lords, it is a pleasure to follow the noble Baroness, Lady Jones of Moulsecoomb. Guess what—I am going to argue the opposite.

Dame Sarah Gilbert received a well-deserved standing ovation at Wimbledon today for her pioneering work on vaccines. I echo those cheers and that standing ovation, but I note that that achievement required experimentation on monkeys and mice. I oppose these amendments—a whole range from Amendments 97 to 297 and in between—because, in one way or another, they seek to make animal testing ever more regulated. There is even an inference, by positing it in an animal welfare context and with this emphasis on the last resort, that this vital part of scientific research is somehow a necessary evil that should be abolished and is morally dubious.

The UK system of regulating animal testing and experiments is already the tightest in the world, and researchers complain that they can obtain licences only if they clearly demonstrate that there are no alternatives. Some have to wait so long to secure approval for small amendments to research licences that the research becomes outdated and has to be abandoned. The whole field is too heavily bureaucratised; certainly, no more bureaucracy is needed. I am worried already about the Bill, without it being tightened up by these amendments.

I have long felt queasy about the "reduce" and "replace" elements of the three Rs. Endless attempts at placing restrictions on the types or numbers of animals used in experiments can, I fear, only stifle medical and human safety progress, with their positive benefits for humanity. For the record, and I know this is medical research but I want to remind people of the kind of benefits we mean, the use of dogs to extract insulin to treat diabetes, the experiments on armadillos that helped develop a cure for leprosy, and the wonder drug levodopa used on people with Parkinson's—if you know anyone who has had that disease and taken that drug, you will know what a wonderful gain it is—would not have been developed without the insights gained from research involving animals. Think of a world without pacemakers, heart transplants, open-heart surgery, safe anaesthetics, polio vaccines and cancer treatments that mean survival rates have doubled over the last 40 years. So many people alive today—in fact, so many in this Chamber—are here only because of the role of animal research in the battle against nature and natural diseases. That is even before we talk about Covid vaccines.

Reducing the use of animals in testing or medical science would be a backwards step. The truth is that, if we are to fully understand and find more treatments for Covid-19, we will need to do more animal research, not less—not reduce the number of animals, but use multiple species. There will be lots of failed experiments, which some will say is a waste, but that is what will eventually mean that we find answers and cures. As outlined in *Nature* magazine recently:

> "Monkeys and mice tell researchers different things about infection, shedding light on factors such as … the immune system or how the virus spreads."

Whatever the testing is for, we have to say that this is one result of human ingenuity, of life-saving problem-solvers, and it should be celebrated and encouraged.

Instead, there is a faintly misanthropic whiff to this constant demand to reduce animal research, as well as a focus on animal welfare rather than human welfare. We all know how animal rights activists have adopted anthropomorphic language to discredit animal research: mice are "tortured", pigs are "sacrificed" and dogs are "mutilated"—we have heard about "barbarity" today. This leads to a narrative of scientists portrayed as though they get perverse pleasure from sadistically experimenting on animals.

I am not trying to sugar-coat vivisection or this kind of testing. I know that it involves gore and, ultimately, destroying animals. But this is not wanton animal cruelty; it is driven by a desire to save human life and have a safer society. That is why I have so objected over the years to the way that these scientists and researchers, and the research institutions and the chemical and pharmaceutical companies, whether private or public, have been vilified and harassed—named and shamed in a culture of fear. These scientists and researchers should have nothing to be ashamed of; indeed, I want not only to reject these amendments but to go on the offensive about the moral good of research on animals. If Sarah Gilbert deserves a standing ovation, so do they. I rather feel as if these amendments are a bit of a dispiriting slow handclap.

Let us not get muddled up here. We should not allow rhetoric about animal welfare to stand in the way of human welfare and the alleviation of human suffering or making the world safer. Some may think this human-centric and unsympathetic to animals but, rather, I am rather worried about affording a moral equivalence between animals and humans. I refute the caricature that this equates to indifference to animals.

As it pays attention to wildlife and with its focus on biodiversity, the Bill inevitably also has a focus on animal protection policies. That means our gaze is on animals, but we must resist seeing issues through an animal rights framework that upgrades and exaggerates the capacity of animals, while logically and philosophically downgrading and diminishing the agency and consciousness of humans—capacities that animals do not possess. This careless interchangeability between human and animal rights and capacities has been raised as a problem in relation to the Animal Welfare (Sentience) Bill by a number of noble Lords.

I hope that the Minister and the Government will reject these amendments and, without rehearsing Cartesian dualism, note that it is precisely human consciousness that allows us to legislate for how we should better organise our relationship with the natural world. It also allows us so much progress and scientific innovation, so necessary to much in the Bill and vital to post-Covid prosperity and health.

Lord Teverson (LD): My Lords, I listened to that speech by the noble Baroness, Lady Fox of Buckley, with great interest. It was a Second Reading speech for the animal sentience Bill, but I do not know that it argues against any of these amendments, which are just about avoiding the use of animal testing except as a last resort. I do not see that contribution as entirely relevant to the Bill, but I am sure it will be repeated in that other Second Reading later in the year.

I take a particular interest in UK REACH because, when I had the privilege of chairing the EU Environment Sub-Committee, we did a number of reports on REACH. Of course, it is not UK REACH at all; it is called that, but it is actually "GB REACH" because Northern Ireland is still part of the single market. UK REACH does not apply to the Province.

With that clarification, I welcome the speeches of all the noble Baronesses and was very pleased to add my name to the first amendment. However, I want to come to something a little deeper and test the Minister on it. We can talk about animal testing being a last resort but also change the bar of where that last resort is. That is probably far more important than this amendment, although I support it absolutely. Duplication of this testing is necessary because of the existence of UK REACH. Given the hard Brexit that we had and the decision to come out of the single market, we had no alternative. Even if we had wanted it, the EU Commission and Mr Barnier would not have liked or allowed it. However, that will cost British business—this is undisputed by the Government—£10 billion, or something like that.

9.30 pm

Defra was totally unprepared. The Secretary of State in front of that sub-committee was unaware of Defra's responsibilities in this area until quite late, hence the good questions about the preparedness of the HSE, its staffing and ability to make the right choices.

Another thing that did not work out through the trade and co-operation agreement was that there was no agreement within it, at that time, to share information that was confidential between companies so that UK REACH could fill its database and operate effectively. This meant de facto that reregistration had to happen not just for UK businesses but for EU and non-EU third country imports.

As this is fundamental to avoid ever getting to a last resort, can the Minister say how far the Government have gone towards agreeing with the Commission and EU REACH about sharing the information on the databases between the two systems? If we solve that, we do not have such a problem in terms of animal welfare.

There is another issue, which is not often raised, around divergence. Clearly, when we left the single market regime entirely at the beginning of this year, we had similar regulations for chemicals. There was not an issue of divergence. But as soon as we start to diverge, it is not just UK companies that will have to reregister chemicals and test them—the 27 member states of the European Union will have to start complying with UK REACH to register their products here. That may cause animal testing of these chemicals again.

Can the Minister tell me where we are on government policy on divergence between UK REACH and EU REACH? How do the Government intend to mitigate the risk that there will be additional testing, let alone the huge costs to the chemical supply chains of that divergence? Those are fundamental to changing the bar in terms of the problem of last resort.

It is obvious that we need to have a last resort. I do not disagree with some of what the noble Baroness, Lady Fox, says, but we are trying to minimise the incidences of animal testing there are now and will be

[LORD TEVERSON]
in the future. I look forward to hearing from the Minister, particularly about how we can make this situation far better through how we diverge—if we still intend to diverge—and how we share information between the two systems to makes second tests unnecessary.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, this debate was always going to raise great passions and I understand the different views on each side of the debate. I thank noble Lords for their contributions, and reassure the noble Baronesses, Lady Hayman of Ullock and Lady Jones of Whitchurch, that the Government agree that the operation of UK REACH should be transparent and accountable.

This is why under Clause 29(3) the OEP may give advice to a Minister on any proposed changes to environmental law, including any relevant amendments to the REACH regulation. This advice would be published and the OEP could comment if it thought the Government were seeking to inappropriately amend a protected provision. The Bill protects key provisions relating to the fundamental principles of REACH. I urge noble Lords to look at the very long list in Schedule 20 on page 250 of the Bill. I am sure they have done; this is explicitly outlined.

The Government will not change what REACH sets out to achieve, including a high level of protection of human health and the environment, which is set out in Article 1. Any breach of these provisions' protected status could be subject to legal challenge, including by the OEP. In addition, any proposed amendment to the REACH regulation must be consulted on, ensuring transparency in the process. Therefore, the Government do not consider this amendment to be necessary.

I turn to Amendment 289, also tabled by the noble Baroness, Lady Jones of Whitchurch. I hope it reassures the noble Baroness to know that the aims of this amendment are already achieved in Article 117 of REACH, which sets up a rolling programme of reports. Although it is not a protected provision, it is part of UK REACH and it requires reports from the Health and Safety Executive and the Secretary of State in the operation of REACH every five years, starting in 2022 and 2023 respectively. The Health and Safety Executive must publish a report on the operation of UK REACH by April 2022. The Secretary of State must then publish a general report by April 2023. These duties then recur every five years. The Secretary of State's report must cover the Health and Safety Executive, as the UK agency, and progress towards the development of alternative test methods, including funding provided for that purpose.

The noble Baroness, Lady Hayman, asked about the duplication of testing—as indeed did a number of noble Lords. The Government are very keen to avoid the need for duplication or repeats of animal tests carried out for the purposes of EU REACH. That is why we will recognise the validity of data generated by any animal testing already done. Industry and the Health and Safety Executive must follow the "last resort" principle, so any proposal to carry out an animal test must be given rigorous scrutiny before it goes ahead. Before developing a new alternative for testing for a particular hazard, it is necessary to see whether one is even feasible. An alternative then needs to be developed and scientifically validated. This is done through the OECD to encourage the widest adoption.

On the amendments tabled by the noble Baroness, Lady Bakewell of Hardington Mandeville, the Government share her aim of avoiding unnecessary animal testing, which is why we have enshrined the "last resort" principle as a protected provision in Schedule 20 to the Bill.

On Amendments 277 and 282 specifically, the concept of "read across" from one chemical to a similar one is already encouraged and widely practised in REACH, but it needs to be considered in each case whether it is appropriate and not applied in a blanket manner. For example, reading across from a less to a more dangerous chemical could result in risks to human health or the environment going unidentified. The Bill ensures that amendments to UK REACH are carefully considered through consultation, drawing on the scientific expertise in the Health and Safety Executive and acting with the consent of the devolved Administrations on devolved matters. The Government believe that we should follow those good practices right from the beginning.

On Amendment 281, the powers in Schedule 20 to the Bill to amend UK REACH would enable such targets to be built if that was felt to be appropriate. Any amendments would have to be consulted on and consistent with the aims and principles of UK REACH, as set out in Article 1. The Government consider that this would be the better route if we concluded that targets were desirable.

There is also an important practical issue. There is an accepted scientific process for developing new test methods. Before developing a new alternative for testing of a particular hazard, as I said, it is necessary to see whether one is even feasible. The alternative then needs to be developed and scientifically validated. This process is done through the OECD to encourage the widest adoption.

On Amendment 296, the Government agree that the HSE, as the UK REACH agency, must operate in a transparent manner, including on matters connected to animal welfare. That is why the general duty in Article 109 to adopt rules about transparency has been included among the protected provisions listed in this schedule. But the Government do not believe it would be appropriate to use the protected provisions to freeze the detailed processes that REACH lays down, such as the publication and consultation arrangements contained in Article 40(2).

Similarly, on Amendment 294, Article 13 already contains the powers we need to amend the REACH annexes to replace animal tests with alternatives where appropriate, and the Government do not think it would be sensible to freeze those processes by fixing them in primary legislation.

On Amendment 295, the Government agree with the aim that companies should share data on chemicals to avoid duplicate animal testing and to reduce costs. However, the articles affected by this amendment contain prescriptive detail, such as the speed at which companies should pass information to each other. Again, the Government believe we should continue to be flexible and not remove that possibility by including them as protected provisions.

Finally, regarding Amendment 297, while it may be appropriate to amend the REACH annexes in the future to follow evolving scientific consensus on animal testing, the power to amend them is already contained within REACH itself. It is therefore unnecessary to add an overlapping power in the Bill.

The noble Baroness, Lady Hayman, asked me about the resource adequacy of the HSE. It has 130 extra staff and the Environment Agency has had considerable increases in its resources. Defra continues to add resources to both. Probably one demonstration that that resource is adequate is that 9,000 grandfathered registrations have already been notified on to the UK system and 5,000 chemical substances are on it so far. The next deadline is 300 days, which is 28 October, when chemicals not manufactured in Great Britain would come on to the system. I think the consensus is that progress has been even better than we expected.

On enforcement and oversight, UK members of the European Chemicals Agency's committees frequently pressed the agency to be more rigorous in avoiding the use of animal tests, and we shall work with the Health and Safety Executive to ensure good enforcement of that principle within UK REACH. I add that the use of cell cultures has grown hugely in the past few years and taken over some of the primary testing of animals. Most animal testing is now restricted to medical research and, as the noble Baroness, Lady Fox, stated, it is a strongly regulated market; you no longer see beagles forced to smoke cigarettes. Also, the cost of keeping animals, fortunately, makes keeping them for testing almost prohibitive, in many circumstances.

It always makes me anxious coming to the questions of the noble Lord, Lord Teverson, because I know what a specialist he is in this field and have read a number of his contributions to SI debates in the past. On his first point, although EU REACH still applies to Northern Ireland, and he is absolutely right that the domestic REACH system regulates the Great Britain market, it also contains some provisions that apply to Northern Ireland businesses to facilitate their access to Great Britain.

On chemicals and the EU trade and co-operation agreement, the Government welcome the friendly co-operation the EU and UK have had on chemicals regulation, which the chemicals annexe will support. The UK's proposal for a chemicals annexe included an arrangement to share REACH registration data. We worked closely with industry in the UK and EU in developing this proposal but, unfortunately, it was not possible to reach agreement in this area. As the noble Lord will understand, the EU was not prepared to discuss the UK's data-sharing ask.

UK REACH will retain the fundamental approach and key principles of EU REACH, and the Government are keeping the transition as simple as possible. We have extended the deadlines for businesses to provide all the registration data needed to comply with UK REACH. In trying to minimise the costs and burdens on chemicals businesses, we have developed these grace-period provisions, grandfathering and downstream user import notifications to minimise disruption to businesses and supply chains. We will keep all these timeframes under review. On the TCA, we asked to share information between companies, but this was not included, as the noble Lord will know. On that basis, I ask noble Lords to withdraw or not move their amendments.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): I have received one request to speak after the Minister from the noble Lord, Lord Teverson.

Lord Teverson (LD): I thank the noble Baroness for that excellent reply and information but, as we are in Committee, I would like to press the Government on their current view of divergence in regulation, because it has a huge effect on this industry. I also want to take this time to correct myself, in that the cost to the industry is £1 billion and not £10 billion—so we have already saved £9 billion this evening.

Baroness Bloomfield of Hinton Waldrist (Con): I think the current estimate of costs is actually significantly less than £1 billion. I have come to the exhaustive end of my notes on that specific question so, if the noble Lord does not mind, I will write to him.

9.45 pm

Baroness Hayman of Ullock (Lab): I thank all noble Lords who have taken the trouble to take part in this debate. I thank the noble Baroness, Lady Bakewell, and the noble Lord, Lord Teverson, for their support for our amendment and stress again our support for theirs. This is an important issue and it is good that we have been able to work together on it. I was pleased that the noble Baroness, Lady Jones of Moulsecoomb, mentioned the importance of non-animal technologies and those that are in development; we need to push further on this issue.

As the noble Lord, Lord Teverson, said, the contribution of the noble Baroness, Lady Fox, was in many ways not particularly relevant to the amendments, but I want to say a few things about it. I do not understand why it is wrong to have strict regulation of animal testing and I cannot believe that anybody would support unnecessary duplicate testing, whatever their position on the issue; I agree with her that we do not need unnecessary bureaucracy. The amendment talks about enforcement if protected provisions are seen to have been breached. Why would you want to vote against that? Why is it not right that breaches of protected provisions should be enforced?

It is not a binary decision to be for animal welfare or for human welfare. I am for both, and I hope that everybody would be for both. Let us not get into an argument that you cannot have animal welfare if you are going to have human health; that is just a nonsense.

I thank the Minister for her very thorough response on what is quite a complicated issue. I also feel for her in responding to the noble Lord, Lord Teverson, as he has so much knowledge in this area. However, there are still some questions to be answered and I would like time to consider her quite detailed reassurances on this matter. For now, I beg leave to withdraw the amendment.

Amendment 97 withdrawn.

Clause 22, as amended, agreed.

Clause 23 agreed.

Clause 24: Guidance on the OEP's enforcement policy and functions

Amendments 98 to 100 not moved.

Clause 24 agreed.

Clauses 25 and 26 agreed.

Clause 27: Monitoring and reporting on environmental improvement plans and targets

Amendment 101

Moved by ***Lord Goldsmith of Richmond Park***

101: Clause 27, page 15, line 32, leave out "and 2" and insert "to (Environmental targets: species abundance)"

Member's explanatory statement

See the explanatory statement for new Clause (Environmental targets: species abundance).

Amendment 101 agreed.

Amendment 102 not moved.

Clause 27, as amended, agreed.

Clause 28 agreed.

The Deputy Chairman of Committees (Baroness Finlay of Llandaff) (CB): My Lords, we now come to the group beginning with Amendment 103. Anyone wishing to press this or anything else in this group to a Division must make that clear in debate.

Clause 29: Advising on changes to environmental law etc

Amendment 103

Moved by ***Baroness Parminter***

103: Clause 29, page 17, line 7, at end insert "and any other matters relating to the natural environment."

Member's explanatory statement

This amendment seeks to ensure the OEP can offer advice to Ministers on matters they consider relevant to their remit.

Baroness Parminter (LD): My Lords, I shall try to be brief but I have two amendments in this group, Amendments 103 and 104, which relate to the Bill's definition of "environmental law". I am grateful for the support of my noble friend Lord Teverson.

Amendment 103 is about the matters on which the OEP can give advice to the Government, unasked. It is clear in the Bill that the Secretary of State can ask the OEP for advice about

"any proposed change to environmental law, or … any other matter relating to the natural environment"

but, conversely, the OEP can give advice only on

"any changes to environmental law"

and does not have the additional option to provide advice unasked on other matters relating to the natural environment.

This is important because of the definition of "environmental law" in the Bill. Indeed, it is important to look at what the Explanatory Notes say about what constitutes environmental law in Clause 45, because they seem to exclude some issues that I think most noble Lords would wish the OEP to be able to advise the Secretary of State on, unasked. Paragraph 381 of the Explanatory Notes—I think it is 381; I am getting to the stage where I need glasses at this time of the evening—on the definition of "environmental law", states:

"Another example is planning legislation. Whilst provisions concerning environmental impact assessment and strategic environmental assessment are clearly concerned with environmental protection as set out in clause 42 … most other areas of planning legislation are not mainly concerned with environmental protection, and therefore will not fall within the definition."

So, according to the Explanatory Notes, environmental law does not include the majority of planning legislation. That is really significant because we are expecting shortly what will no doubt be a very controversial new Bill on planning. According to the Explanatory Notes, the OEP can give advice only on environmental law, and planning is excluded from the definition of "environmental law".

Equally—I have raised this in past sessions with the Minister, for which I am grateful—the Climate Change Committee can give advice on planning matters freely and without being asked, as it did so well in the case of the impact of the Cumbrian coal mine in driving a coach and horses through our net-zero targets. Again, as I read it, the definition in the Explanatory Notes seems to suggest that the OEP could not give such advice unasked. However, the Minister confirmed to me in those meetings, through his civil servants, that I am wrong in making that presumption. I have therefore tabled this amendment to give him the chance to put on the record tonight—I would like this to be said specifically—that the OEP can give advice, unasked for, on environmental law matters, including planning provisions and major planning applications. This needs to go on the record because, if it does not, there is a worrying lacuna and the only way to get around it is to accept my amendment, which basically would give the OEP the right to advise the Secretary of State on

"environmental law, or … any other matter relating to the natural environment"—

a replica of the Secretary of State's position in terms of asking the OEP for advice.

My second, slightly shorter, amendment also concerns the definition of "environmental law", which is absolutely key in governing the OEP's functions. This matters in the context of Amendment 114, which would remove some broad carve-outs for disclosing information—including the old chestnuts of defence and spending.

I have three issues with the definition of environmental law, which my Amendment 114 seeks to address. The current definition removes legislative provisions dealing with funding and resource allocation from the OEP. That means that the OEP cannot offer advice to the Government on these matters. We know that, in the past, there have been significant concerns over environmental health indicators flatlining due to funding. Indeed, in December last year, the issue was exposed in relation to funding cuts to the EA of 80%. But, as it stands, this definition removes those provisions of information about funding and resource allocation from the ambit of the OEP.

Secondly, again, the Armed Forces are outwith the ambit of the OEP and, as I made clear in the debate on Amendment 78, this is a worrying gap. It is not just about the enforcement of the law; we know that the CCC was able to offer advice to the Armed Forces on meeting climate goals and, again, the OEP would be unable to do this under the current definition in the Bill of environmental law.

Thirdly, the way the clause is drafted suggests that the OEP goes beyond matters overlapping with the Information Commissioner's Office, which oversees and enforces public authorities' compliance with the Environmental Information Regulations. It seems to me that that clause excludes from the remit of the OEP important obligations such as the disclosure duties of keeping registers and record keeping to uphold environmental law. An example of such an obligation is those under the Control of Pesticides Regulations, whereby users have to keep records of pesticides they use for five years and make them available to relevant authorities upon request.

In summing up, I would be grateful if the Minister could confirm whether obligations such as those would, under this clause's definition, fall outwith the OEP's scope. If there are genuine concerns about the overlap between the OEP and the ICO, why is there not a memorandum of understanding in the same way as has been proposed for the OEP and the CCC? That would seem to be a reasonable response, whereas what we have here is almost a sort of belt-and-braces approach, which goes beyond what is appropriate. So I hope that, in responding, the Minister will clarify the matters I raise in regard to Amendment 103 and ensuring that planning can be something on which free advice can be given, and that on Amendment 114 he will give some clarity about why the definition is as it is.

Debate on Amendment 103 adjourned.

House resumed.

House adjourned at 9.58 pm.