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Public Bill Committee

LEVELLING-UP AND REGENERATION BILL

Twenty First Sitting

Thursday 8 September 2022

(Afternoon)

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not later than

Monday 12 September 2022

The Committee consisted of the following Members:

Chairs: Sir Mark Hendrick, † Mr Philip Hollobone, Mrs Sheryll Murray, Ian Paisley

† Atherton, Sarah *(Wrexham)* (Con)
† Benton, Scott *(Blackpool South)* (Con)
Farron, Tim *(Westmorland and Lonsdale)* (LD)
† Fletcher, Colleen *(Coventry North East)* (Lab)
Gibson, Patricia *(North Ayrshire and Arran)* (SNP)
† Henry, Darren *(Broxtowe)* (Con)
† Johnson, Gareth *(Dartford)* (Con)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† Maskell, Rachael *(York Central)* (Lab/Co-op)
† Moore, Robbie *(Keighley)* (Con)
Mortimer, Jill *(Hartlepool)* (Con)
† Nici, Lia *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Scully, Paul *(Minister of State, Department for Levelling Up, Housing and Communities)*
† Smith, Greg *(Buckingham)* (Con)
† Vickers, Matt *(Stockton South)* (Con)

Bethan Harding, Kevin Maddison, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 8 September 2022

(Afternoon)

[Mr Philip Hollobone *in the Chair*]

Levelling-up and Regeneration Bill

2 pm

The Chair: I have a few preliminary reminders for the Committee that Mr Speaker has asked me to read out. Please switch electronic devices to silent. No food or drink is permitted during sittings, except for the water provided. Hansard colleagues would be grateful if Members could email their speaking notes to hansardnotes @parliament.uk.

Clause 115 ordered to stand part of the Bill.

Clause 116

Power to specify environmental outcomes

Matthew Pennycook (Greenwich and Woolwich) (Lab): I beg to move amendment 173, in clause 116, page 133, leave out lines 13 to 20 and insert—

"(a) protection of the natural environment, cultural heritage and the landscape from the effects of human activity;

(b) maintenance, restoration or enhancement of the natural environment, cultural heritage or the landscape;

(c) protection of people and their long-term health, safety and wellbeing from the effects of human activity on the natural environment, cultural heritage and the landscape;

(d) protection of the climate from the effects of human activity;

(e) monitoring, assessing, considering, advising or reporting on anything in paragraphs (a) to (d)."

This amendment would broaden the definition of environmental protection to allow the Secretary of State to specify outcomes relating to climate change obligations and public health objectives.

It is a pleasure to serve under your chairmanship, Mr Hollobone. Part 5 of the Bill concerns the Government's proposed new approach to assessing the potential environmental effects of relevant plans and major projects —namely, environmental outcomes reports. The reports are intended to replace the partly European Union-derived systems of strategic environmental assessment, including sustainability appraisals, and environmental impact assessments.

The Government's rationale for the change in approach—this is gleaned not only from reading the Bill and its accompanying documents, but from the 2020 White Paper—is that the SEA and EIA systems can lead to duplication of effort and overly long reports, which inhibit transparency and add unnecessary delays to the planning process, and that the EOR framework will provide for clearer, simpler and presumably shorter assessments, with designated environmental outcomes that are easier to understand and monitor, and therefore to mitigate, remedy and compensate for, and will ensure that strategic and project scale assessments are properly joined up.

The Government's critique significantly overstates the weaknesses of the SEA and EIA systems. That is not to suggest that they are perfect; for example, they can rightly be criticised for too often producing assessments that are too complex and cumbersome to be used effectively. However, the Government already have the necessary powers to improve many aspects of the SEA and EIA systems, if they chose to exercise them. Overall, the existing systems have made an enormous difference to how the environmental impact of development is considered. They are well established and understood, and when used correctly, they provide for rigorous, evidence-based, comprehensive assessments of the direct and indirect effects of projects and their mitigation in a way that involves the public.

As things stand, we really have no idea whether the proposed system of environmental outcomes reports provided for by part 5 will ultimately improve the process of assessing the potential environmental effects of relevant plans and major consents, because, as with so much of the Bill, the detail required to understand how EORs will operate in practice is simply not available. For example, we have no idea what range of factors the EORs can consider, or when EORs will be mandated. These and a wide range of other questions will be answered only when the regulations that set outcomes emerge in due course. Given the wide-ranging powers provided for in this part of the Bill, that is a cause of real concern.

When it comes to the basic EOR framework provided for by clauses 116 to 130, we take the view that an outcomes-based system could be an improvement on the present systems, given that they assess on the basis of the significance of effects on all relevant environmental receptors—although, again, it is impossible to arrive at a considered judgment on how much practical difference the EOR system will make when we have no idea how detailed or ambitious those outcomes will ultimately be, or what timeframe they will involve.

However, while we recognise the potential for an outcomes-based approach to establish an improved system of environmental protection, we are extremely concerned that part 5 is likely to lead to an approach that is too limited in scope, is insufficiently aligned with important obligations and requirements in environmental and climate legislation, and—for all the assurances to the contrary—provides an opportunity for environmental regression in the future.

It is essential that we have confidence that the new environmental outcomes report system will maintain the robustness and scope of the strategic environmental assessment and environmental impact assessment frameworks, and will lead to tangible improvements in our natural environment, as well as helping to fight climate change. If we are to build that confidence and provide reassurance that the new system will deliver improved outcomes, the EOR framework provided for in clauses 116 to 130 needs strengthening in a number of important respects. Amendment 173, and others that will be debated later, are designed to achieve that aim.

Clause 116 gives the Secretary of State the power to make regulations that set out specific environmental protection outcomes against which relevant plans and

consents will be assessed, and sets out what the Secretary of State must have regard to when making those regulations. Subsection (2) sets out the definition of environmental protection for the purposes of the Bill. The Committee will note that it includes

"protection of the natural environment, cultural heritage and the landscape from the effects of human activity",

as well as protection of people from the effects of human activity on each of those, and their maintenance, restoration or enhancement.

We take no issue whatsoever with any of the definitions in subsection (2). Indeed, the Government's decision to explicitly include references to cultural heritage and the landscape in what is meant by "environmental protection" is welcome; but we still believe that the definition is too limited. Specifically, protection of the climate, and protection of people's long-term health, safety and wellbeing from the effects of human activity, should be explicitly included in the Bill's definition of environmental protection. Amendment 173 provides for that broader definition, and would enable the Secretary of State, when making regulations under part 5 of the Bill, to specify environmental outcomes relating to both climate change obligations and public health objectives.

In short, the amendment would expand the range of possible environmental outcomes that Ministers could, if they chose, specify by regulation in the future, and therefore expand the range of things that assessments under the EOR regime could encompass. It would allow the Secretary of State to, for example, specify as a desired outcome the long-term flood-proofing of key infrastructure, so that it is climate resilient; or measures to promote walkability and urban cooling, so that development promotes key public health objectives. This is a sensible and proportionate amendment, and I hope that the Minister will consider accepting it.

The Minister of State, Department for Levelling Up, Housing and Communities (Paul Scully): It is a pleasure to serve under your chairmanship, Mr Hollobone. As we have heard, the amendment seeks to expand the definition of "environmental protection" in clause 116 to include explicit reference to public health and climate change. Before I turn to the detail of the clause and the introduction of the new environmental outcomes reports, I should say that the Government have been clear that the new system is intended to improve the assessment of projects' environmental impacts, and to place environmental matters—including climate change and public health—at the centre of decision making.

In line with that ambition and the commitment to non-regression, the definitions in clause 116 reflect and build on the definitions in the Environment Act 2021. Many of the terms used in the EU system of strategic environmental assessment and environmental impact assessment duplicate existing processes, or are poorly understood. Our broader approach to defining what outcomes may be covered will allow the Secretary of State greater flexibility to consider all relevant matters, including those that form part of the current assessment regime, such as human health and climate change.

As set out in subsection (2)(b) of the clause, the definition of environmental protection includes the protection of people, which would allow the Secretary of State to consider matters relating to health when setting outcomes. Subsections (2)(a) and (b) refer to protection from the effects of human activity, which would include protection from the impacts of climate change. Further, the definition of environmental protection is covered by the definition of the natural environment in subsection (3). This definition includes natural systems, cycles and processes, to ensure that matters such as climate change are properly built into consideration of outcomes under the new system.

While climate change and human health will undoubtedly be important considerations in setting outcomes, it is not necessary to make more explicit reference to them in primary legislation; doing so would risk limiting the range of outcomes that can be set, and risk our suggesting that climate change and health will be considered above other environmental topics that may, in individual cases, be equally important.

It is right that environmental outcomes reports focus on the full range of environmental issues. Developing the detail of what outcomes will be covered in secondary legislation will allow us to consult stakeholders, so that we can ensure that climate change and public health commitments, as well as other environmental matters, are captured. Outcomes will also draw on the extensive commitments made across Government, including the requirement in subsection (5) for the Secretary of State to have regard to the latest environmental improvement plan when setting outcomes. Setting out details around climate change and public health in secondary legislation will also enable us to minimise the risk of duplication and ensure alignment, as these are important considerations across other policy areas in the planning and consenting systems. In the light of these assurances, I hope that the hon. Member for Greenwich and Woolwich is able to withdraw his amendment.

Matthew Pennycook: I appreciate that response, but I do not think it addresses the concern raised by the amendment. I very much welcome what the Minister said about the Government's intention to put public health and climate at the centre of decision making. The concern, though, is that although the clause gives a comprehensive list of what "environmental protection" means, it does not explicitly reference public health—human health—or climate, and I cannot for the life of me understand how inserting those things in the Bill explicitly would in any way limit the outcomes that could be set. We would merely be specifying and clarifying that outcomes relating to those two objectives were caught under the powers in the Bill.

I note what the Minister says about forthcoming secondary legislation capturing those objectives, but this issue speaks to our concern that there is a real gap in how the Bill addresses climate and public health. We feel that while opportunities to reinforce the Government's commitments are woven through the fabric of the Bill, those issues are often neglected or left out.

I will not press the amendment, but we shall come back to the issue of public health and climate, because they need to have a much more central role in this legislation, and to be written into the Bill in many important respects, including in clause 116. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Matthew Pennycook: I beg to move amendment 174, in clause 116, page 133, line 29, leave out subsection (5) and insert—

"(5) Before making any EOR regulations which contain provision about what the specified environmental outcomes are to be, the Secretary of State must ensure they are in accordance with—

(a) the current environmental improvement plan (within the meaning of Part 1 of the Environment Act 2021),

(b) biodiversity targets including those required under sections 1 and 3 of the Environment Act 2021,

(c) the duty to conserve biodiversity as required under section 40 of the Natural Environment and Rural Communities Act 2006,

(d) local nature recovery strategies as required under section 104 of the Environment Act 2021, and

(e) lowering the net UK carbon account as required under section 1 of the Climate Change Act 2008."

This amendment would ensure that when using EOR regulations to specify environmental outcomes the Secretary of State would have to ensure they are in accordance with the current environmental improvement plan and additional criteria.

The Chair: With this it will be convenient to discuss new clause 52—*Super-affirmative procedure for major regulations made under Part 5*—

"(1) If the Secretary of State proposes to make EOR regulations which fall under section 192(5), the Secretary of State must lay before Parliament a document that—

(a) explains the proposal, and

(b) sets it out in the form of draft EOR regulations.

(2) During the period of 60 days beginning with the day on which the document was laid under subsection (1) ('the 60-day period'), the Secretary of State may not lay before Parliament draft regulations to give effect to the proposal (with or without modifications).

(3) In preparing draft regulations under this Part to give effect to the proposal, the Secretary of State must have regard to any of the following that are made with regard to the draft regulations during the 60-day period—

(a) any representations, and

(b) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations.

(4) When laying before Parliament draft regulations to give effect to the proposal (with or without modifications), the Secretary of State must also lay a document that explains any changes made to the proposal contained in the document laid before Parliament under subsection (1).

(5) In calculating the 60-day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days."

This new clause would require major EOR regulations made under Part 5 to be subject to the super-affirmative procedure.

Matthew Pennycook: Clause 116(5) simply states that before making any EOR regulations that contain provision about what the specified environmental outcomes are to be, the Secretary of State must have regard to the current environmental improvement plan within the meaning of part 1 of the Environment Act 2021. At present, that environmental improvement plan is the 25-year environment plan, which was published in 2018 and is due to be reviewed next year. We welcome the fact that the Bill makes it clear that when making EOR regulations, the Secretary of State will have to have regard to that 25-year environment plan, although I encourage the Minister and his departmental colleagues and officials to do what they can to ensure that its review is completed before this Bill receives Royal Assent, so that the measures in the plan are fully aligned with the now operable Environment Act 2021, and so that the nature of the safeguard provided for in subsection (5) of this clause is clear and unambiguous.

However, while the explanatory notes to the Bill make it clear that the Secretary of State can draw on other relevant material when developing outcomes, there is nothing in the Bill to ensure that the Secretary of State must have regard to other important obligations and requirements set out in environmental and climate legislation beyond the environmental improvement plan.

Rachael Maskell (York Central) (Lab/Co-op): I am grateful for the work that my hon. Friend is doing on the environment, and to try to ensure that the climate is front and centre in the Bill. Commitments were made at COP26 and COP15. We need the application of those commitments to come through in planning; there is nowhere else that they can come through. Is it not important that the determinations reached at those summits be brought into the planning process?

2.15 pm

Matthew Pennycook: It absolutely is. The amendment seeks to ensure that the obligations we have made, and the way that they are written into domestic legislation, is accounted for in the framework that part 5 provides for. After all, we are talking about how to assess the environmental impact of development. It stands to reason that requirements and obligations that flow from things such as the Climate Act 2008 should be written into the Bill explicitly. Leaving them out is problematic because it would lead to important EOR regulations being made without there being sufficient regard to significant relevant targets, duties, strategies and obligations, which, we should remember, the Government themselves legislated for.

Amendment 174 seeks to replace subsection (5) of clause 116 with a subsection containing a more comprehensive list of requirements that the Secretary of State should have regard to—it is only "should have regard to"—before making any EOR regulations that make provision about specified environmental outcomes. In addition to the environmental improvement plan, the Secretary of State would have to have regard to: biodiversity targets, including those under sections 1 and 3 of the Environment Act 2021; the duty to conserve biodiversity, as is required under section 40 of the Natural Environment and Rural Communities Act 2006; local nature recovery strategies, as is required under section 104 of the Environment Act 2021; and lowering the net UK carbon account, as is required under section 1 of the Climate Change Act 2008.

Putting that expanded list of requirements in the Bill would strengthen the EOR framework by making it perfectly clear that the Secretary of State has to take into account those important legislative commitments when making EOR regulations.

In addition to expanding the list of requirements that the Secretary of State must have regard to before making any EOR regulations relating to specified environmental outcomes, we also believe there is a compelling case for greater parliamentary oversight of any such regulations that are proposed. The explanatory notes to the Bill make it clear that set outcomes will be subject only to

public consultation and the affirmative parliamentary procedure. I will not detain the Committee with a digression on the limitations of the affirmative procedure as a means of effective parliamentary scrutiny—we are all familiar with them, and have discussed them in the context of the Bill previously.

Clause 116 and the other clauses in part 5 provide the Secretary of State with expansive powers allowing them to pass, by regulation, as yet unspecified, and potentially far-reaching, measures affecting the environment and environmental law, so we strongly believe that any such regulations should be subject to the super-affirmative procedure. New clause 52 would provide for use of that procedure for regulations made under part 5. I hope the Minister will give the new clause consideration, along with amendment 174.

Paul Scully: I understand the hon. Member's concerns, but I hope to explain why the approach that we have taken in the Bill is sufficient. Amendment 174 would require environmental outcomes to be set in accordance with the environmental improvement plan, biodiversity targets, local nature recovery strategies and the Climate Change Act 2008. The environmental improvement plan, the current iteration of which is the 25-year environment plan, is where the Government set out how we aim to leave the environment in a better state than we found it. The Government have made it clear that an outcomes-based approach will be developed to support our environmental ambitions. For the purposes of this legislation, the environmental improvement plan is the most relevant document in informing the setting of outcomes. It is where the breadth of the ambitions are captured, and it is itself informed by a wide range of commitments and matters from other sources.

The Environment Act 2021 created a duty on the Government to prepare annual reports on the implementation of the environmental improvement plan, and to review and, if necessary, reissue the plan every five years. As such, it is a dynamic document that will evolve over time and reflect the most up-to-date position on the Government's efforts to support the environment.

The environmental improvement plan also sets interim targets in respect of each of the key matters for which the Government have applied legally binding environmental targets, which will be reviewed regularly. That includes the biodiversity target mentioned in the amendment. Other more general duties and local strategies will also be informed by this overarching plan.

The amendment would also introduce a duty to act in accordance with a range of existing legislative provisions, and therefore risks creating potential conflict and unnecessary confusion. It is unclear how, for example, a national outcome could be set in accordance with a local nature recovery strategy, which is by definition spatial and site-specific.

Outcomes will cover a broad range of topics. The intention is not to create an exhaustive list of everything that will be considered when they are being set; rather, it is to recognise that the environmental improvement plan is at the heart of the Government's agenda. Other duties will of course be reflected in outcomes at the moment they are set, but the duty to have regard to the current environmental improvement plan is the clearest way of ensuring that outcomes reflect the Government's environmental ambitions.

With that in mind, it is important to note that the environmental improvement plan and commitments such as those under the Climate Change Act 2008 were not conceived as a way of informing outcomes for the EOR. As such, it would not be appropriate to set a hard requirement that EOR outcomes be set in accordance with those commitments.

The purpose of environmental outcome reporting, as is true of the existing system, will be to ensure that the right information is gathered to inform the right decisions, not to prioritise any one particular policy over another. Not everything in the environmental improvement plan will be relevant to development and environmental assessment, and there will be ambiguity as to how the plan should best be translated into outcomes for individual plans and developments. Equally, we will want to set outcomes in respect of landscape and cultural heritage, which are not in the scope of the plan.

When making EOR regulations that specify outcomes, we will have regard to the environmental improvement plan and other relevant considerations. Just as importantly, we will use the process of public consultation to ensure that we are capturing the outcomes that will best support the delivery of our environmental priorities. The amendment therefore risks both confusing and limiting the process by which outcomes are set. Given that explanation, I hope that the hon. Member for Greenwich and Woolwich will be able to withdraw the amendment.

New clause 52 seeks to make the EOR regulations subject to the super-affirmative procedure—something comparatively new to me. We have sought to take a proportionate approach to parliamentary scrutiny and consultation, placing the strongest requirements on the core elements of the new system. Clearly, we want to ensure that we have the best debates, consultations and discussion on such incredibly important issues. The use of powers in this particular part of the Bill, however, is tightly constrained with broad use of the affirmative procedure to ensure that Parliament gets the opportunity to scrutinise regulations properly in detail.

In addition to requiring the affirmative procedure, clause 125 ensures that EOR regulations that cover the most significant aspects of the new regime—for example, those that specify outcomes—will also require public consultation or consultation with stakeholders. That will provide stakeholders and parliamentarians with the opportunity to consider the details of the proposed regulations in advance of their being laid. Regulations requiring public consultation will be followed up by an official Government response on how those views have been taken into account in setting the detailed policy.

Before engaging formally on the detailed regulations, after the Bill achieves Royal Assent we plan to launch a high-level consultation on the core elements of the new system—for example, on the outcomes-based approach to assessment and the use of the mitigation hierarchy in assessing reasonable alternatives. That will be combined with conceptual roundtables and expert policy forums to inform the design of the new regulations and wider implementation.

As such, the super-affirmative procedure would duplicate the consultation and the approval requirements, so we do not deem it necessary. It would only serve to slow down the process of bringing forward necessary reforms that we believe will help to improve the environment in the long run. Given that explanation, I hope that the hon. Member will agree not to press new clause 52.

Matthew Pennycook: I am somewhat reassured by that response from the Minister. However, I take issue with it in a number of respects. I appreciate fully that the 25-year environment plan is the current environmental improvement plan. It may be the most relevant document, but it is limited. I note the point about biodiversity targets, but the document does not contain all the other requirements in the legislation listed in the amendment. The environment plan may be informed by those other requirements, but it does not contain them and does not operate in the same way.

If I am honest, I struggle to understand the issue with the insertion of language relating to legislation the Government have passed, which one would hope has been aligned and made compliant with other bits of legislation that could create potential conflicts during the process of passing it. We remain concerned that the reference in subsection (5) is too limited and we would like to see a wider set of requirements written into the Bill, but I do not intend to press amendment 174 to a vote.

On new clause 52, I welcome the Minister's comments on the processes that the Government intend to follow when it comes to designing EOR regulations. That measure of public involvement is welcome and will be an important part of the process, but we are still concerned that, overall, the safeguards are insufficient—I will come on to talk about the other safeguards provided in part 5. We do not believe that they tightly constrain the use of the powers; in fact, we think they do the opposite, and there are a number of loopholes that need to be closed.

I cannot for the life of me understand how a public consultation would duplicate the parliamentary oversight that would be afforded to this place by the super-affirmative procedure. I go back to the point I made on a previous amendment. These are broad, expansive powers, which are as yet unspecified. There is a need for greater parliamentary oversight, as well as other stronger safeguards. I am not going to press the new clause to a vote at this point, but we will come back to this and other matters on this part. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Paul Scully: I have said already that we are committed to delivering a modern system of environmental assessment that properly reflects the nation's environmental priorities. The Bill allows us to introduce a new framework to replace the EU's systems, while recognising the important role that environmental assessment plays. The previous regime could be overly bureaucratic and disproportionate. Expanding case law has led to a situation where unnecessary elements are being assessed for fear of legal challenges. The costs for big projects run into hundreds of thousands of pounds on occasions; yet, despite the lengthy reports, they often prove ineffective at securing better environmental outcomes or encouraging development to support the country's most important environmental priorities.

The 25-year environment plan acknowledges that the UK is one of the most nature-depleted countries of Europe. The 2019 "State of Nature" report led by conservation research organisations found that 41% of UK species are declining and one in 10 is threatened with extinction. Given the urgency with which we need to restore the environment to leave it in a better place for future generations, we desperately need a new approach.

The powers in the Bill will extend to all regimes currently covered by the EU system, to ensure the best approach for the interoperability between regimes, particularly for projects that are often in the scope of more than one regime, such as planning and marine. The new approach will be centred around the creation of environmental outcomes reports, which will directly set out how consents and plans should support the delivery of environmental priorities by assessing the extent to which they support the delivery of better environmental outcomes. That moves us away from the uncertainty of assessing likely significant effects to a more tangible framework that provides more clarity on what should be assessed and when.

Assessing consents and plans directly against those outcomes will ensure that reporting is focused on those matters that will make a real difference to environmental protection. In turn, that will support more effective decision making and make reports more accessible to the public.

The outcomes will be fairly high level and user-friendly, simply setting out environmental priorities. It will be the job of indicators underpinning those outcomes to measure the delivery towards the outcomes. Indicators will be created and outlined in guidance for the different types of plans and projects and for different spatial scales. For example, indicators could set out which air pollutants should be measured and against which limits to measure the contribution towards an air-quality outcome seeking to reduce emissions.

2.30 pm

To implement that, clause 116 provides the Secretary of State with the power to set specified environmental outcomes. The second of those outcomes is essential to that more active approach to environmental assessment, drawing a strong link between assessment and the delivery of positive outcomes for the environment. The core outcomes against which consents and plans will be assessed will be set in regulations and will assure that the ambitions of the Government's landmark Environment Act 2021 and the 25-year environment plan are reflected in the consenting process and truly inform decision making.

Setting out those three regulations also provides scope for the Government to add more ambitious outcomes in response to developments in technology and to keep in step with increasing societal expectations. It is important that outcomes are created collaboratively with sector experts and, therefore, regulations will be subject to the affirmative procedure, as we have discussed, and the setting of outcomes will be informed by public consultation. By being up front about what needs to be assessed, the outcomes-based approach will strip away unnecessary bureaucracy and focus resources to where they can most effectively deliver for the environment. They are outcomes that will be for the purpose of environmental protection, which covers the protection of the natural environment and cultural heritage, and the natural processes and systems that affect our environment, such as climate change.

The definitions align with the landmark Environment Act 2021, reflecting that holistic cross-Government approach. Our approach to the definitions, which also include cultural heritage, provides the necessary flexibility to ensure all relevant aspects of the environment can be

captured when drafting outcomes. Despite the different approach to definitions, outcomes will cover the same topics that are assessed currently—for example, air, biodiversity, climate and health. It is a key part to the clause and to meeting the Government's ambitions on the climate. It allows us to make the necessary regulations to set those outcomes, signalling their importance at the heart of a new system, and I commend the clause to the Committee.

Question put and agreed to.

Clause 116 accordingly ordered to stand part of the Bill.

Clause 117

ENVIRONMENTAL OUTCOMES REPORTS FOR RELEVANT CONSENTS AND RELEVANT PLANS

Matthew Pennycook: I beg to move amendment 175, clause 117, page 134, line 26, at end insert

"relative to the current status of the environment as assessed in a prepared baseline study".

This amendment would ensure that the preparation of a baseline study which sets the context for assessing the environmental effects of a proposed project remains a core requirement of producing an EOR.

This amendment relates to a technical matter, but still an important one. Clause 117 gives the Secretary of State the power to make regulations requiring the preparation of an environmental outcomes report for relevant plans and relevant consents, the criteria for which will be set out in due course in regulation. It is this provision that establishes the outcomes-based approach to assessment, which the Minister has just described, wherein anticipated environmental effects are to be measured against the specified environmental outcomes, which clause 116 provides the power for the Secretary of State to specify.

Clause 117 ensures that where an EOR is required, it must be taken into account when considering whether to grant planning consent and the terms on which it is given, or to bring a plan into effect. The core requirements of what an EOR should contain are set out in subsection (4). It specifies that an EOR

"means a written report which assesses—

(a) the extent to which the proposed relevant consent or proposed relevant plan would, or is likely to, impact on the delivery of specified environmental outcomes".

Paragraph (b) specifies any steps that may be proposed in terms of mitigation, remediation or compensation, and paragraph (c) discusses any proposals about how paragraphs (a) or (b) should be monitored or secured.

It would therefore appear that, when it comes to EORs, the Government have in mind, essentially, a simplified environmental assessment report—one, as the explanatory notes make clear, based on the mandatory information required in the reporting stages of the environmental impact assessment directive and the strategic environmental assessment directive. However, in setting out the core requirements of what an EOR should contain, subsection (4) contains no reference to the need for an environmental baseline assessment to have been prepared. We believe that oversight needs to be addressed.

A baseline study is an essential part of preparing an EIA because it is necessary to assess the current status of any given environment prior to development taking place. It covers, for example, what habitats exist within the environment and how they are changing, or the type and number of species present, in order to accurately judge the expected impact of development on the outcomes previously specified. Indeed, because baseline studies are an integral part of the existing SEA and EIA systems, we believe their removal could well contravene the non-regression safeguard provided for by clause 120, which we will debate in due course.

When it comes to EORs, it is difficult to conceive of how they will operate in practice without some kind of baseline study taking place, because quantifying the impact of development on any given outcome requires that the precise characteristics of the locality in question are known.

By amending subsection (4)(a) of clause 117, amendment 175 simply seeks to ensure that the preparation of a baseline study, which would set the context for assessing the environmental effects of a proposed plan or consent, remains a core requirement of producing an EOR. I look forward to hearing from the Minister that the Government are content to accept the amendment or, if not, an explanation as to why the Government believe that baseline studies are no longer required when it comes to assessing the environmental impact of any given development.

Paul Scully: As we have discussed, amendment 175 would give an explicit requirement for the impact of a consent or plan to be set up relative to a baseline study on the current environmental state. Subsection (4)(a) of clause 117 explains that an environmental outcomes report must demonstrate how the plan or consent would affect the delivery of specified environmental outcomes. The environmental baseline is a reference point against which the assessment is carried out. It will remain part of the process of demonstrating how a plan or project supports the delivery of environmental outcomes.

While outcomes will reflect national priorities, it is important that they can be translated to the regional or local level, given that that is the level at which the plans and projects, which will require EORs, will normally take place. As such, outcomes will be underpinned by a set of specific indicators, which will measure the contribution of a plan or project towards outcomes. Those indicators will be relevant to the geography of an area and will change over time to reflect the latest scientific understanding. Indicators will outline how a plan or project shows whether they are contributing to outcomes, and will be tailored to the needs and characteristics of different outcomes.

The details of outcomes and indicators will be developed, as I have said, through consultation with relevant stakeholders, and we will work with experts to gain insights on how best to utilise baseline data to inform them and ensure that overall environmental protections are maintained. Following that, clear guidance will be provided setting out how a plan or project should use indicators to demonstrate that they are supporting outcomes.

I do not think that we are that far apart in this, and I hope that the hon. Member for Greenwich and Woolwich will accept my explanation that although the baseline data is clearly important in measuring those outcomes and using those indicators, we do not need the duplicative nature of having it in the Bill. I therefore hope the hon. Member will withdraw his amendment.

Matthew Pennycook: I appreciate that response from the Minister. I think we would still like something to be written into the Bill regarding baseline studies. However, I very much welcome the clarification that he has just provided—that they will "remain part of the process", and that they will be translated and tailored to the regional and the local level. I think that is very important and, on that basis, I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Paul Scully: The outcomes-based approach to assessment will ensure that the Government's environmental commitments and priorities are placed right at the centre of the consenting process, in a system that is streamlined, transparent, accessible and clear. As outlined in the previous clause, we would want to make reports user-friendly and concise, enabling communities to understand what forms part of the assessment and how impacts are measured via indicators. We also want to improve the accessibility of reports and the data that underpins them by improving their format and avoiding multiple PDFs of tens of thousands of pages, for example.

In order to introduce the new outcomes-based approach to environmental assessment, the Government need the power to require the production of an environmental outcomes report for relevant proposed contents and plans. In taking that power, the Government are able to ensure that, where a report is required for a relevant consent or plan, the report must be completed before consent is granted or a plan is adopted.

Furthermore, the clause ensures that where an environmental outcomes report is produced, it must be considered by the relevant decision maker, which means that decisions are informed by quality information that fully considers the environmental effect of the plan or consent. It also sets out what the content of the reports should be. They will primarily assess how the proposed consent or plan would impact on specified environmental outcomes, supporting our ambition to move towards an outcomes-based system.

In structuring the clause, we recognised the need to provide powers to support the reform of a wide range of environmental assessment regimes across Government, but we have sought to ensure that core requirements are brought to the fore. For example, reports must consider reasonable alternatives to the proposed consent or plan and assess any steps taken in line with the mitigation hierarchy. This is the first time that explicit consideration of the mitigation hierarchy has been included in environmental legislation. Importantly, that hierarchy recognises that prevention is better than cure. In every consideration, plans and projects should first seek to avoid the impact happening in the first place, before considering mitigation and finally compensation, which should be absolutely the last resort. That sequential approach will finally be enshrined in law.

Having the powers to set out specifics in regulations rather than on the face of the Bill will ensure that the new system is more dynamic, allowing for updates to our approach to be considered and consulted on as our understanding of the environment deepens. It will also allow the differences between regimes to be accommodated. The clause sets out crucial provisions required to implement environmental outcomes reports and ensures that reports have sufficient weight and status in the decision-making process. I commend the clause to the Committee.

Question put and agreed to.

Clause 117 accordingly ordered to stand part of the Bill.

Clause 118

Power to define "relevant consent" and "relevant plan" etc

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

The Chair: With this it will be convenient to discuss clause 119 stand part.

Paul Scully: Clause 118 gives the Government a constrained power to set what plans and consents require an environmental outcomes report. The Government want to be clear about which consents and plans require assessment, and we will use subsequent regulations—bounded by the commitment to non-regression—to provide clarity on when an EOR is required. By clearly setting out the different categories for consent and the types of plan that require assessment, we will be able to address the key issue with the current system, where debate about whether assessment is required acts as a block to moving forward with meaningful assessment.

We want to avoid unnecessary screening work, so it is more likely that more plans and projects will automatically be subject to a proportionate report and only in borderline cases must a criteria approach be followed. Developers will know where they stand up front, and local planning authorities can save the time and resources that are usually taken on screening of opinions.

Let me reassure the Committee that the clause will be used to reduce uncertainty, not assessment. The Government remain committed to ensuring that all plans and projects assessed in the current system will continue to be assessed, while removing troublesome uncertainty. The Government will also consult on which projects and plans should be subject to EORs. Parliament will have the opportunity to debate and approve the regulations that set that out. I commend the clause to the Committee.

Moving on to clause 119, the Government have made it clear that the protection and enhancement of the natural environment is a policy priority, and the measures designed to achieve that should be consistent and long term. The existing system does little to follow through on the commitments made during the assessment process—for example, whether the mitigation measures actually work or are implemented in the first place. Environmental statements are often created at great length, only for the follow-up monitoring and reporting of the impacts on the ground to be inconsistent at best.

Our proposed reforms to environmental assessment therefore provide a renewed and stronger emphasis on monitoring, to ensure that stated outcomes are delivered and that remedial action is taken where required throughout all stages of the development process. That means that achieving environmental outcomes does not stop once a consent is granted or a plan adopted. Importantly, clause 119 enables the Secretary of State to make regulations

requiring action to be taken when monitoring or assessment processes have highlighted that a given outcome is not being delivered.

Those actions align with the mitigation hierarchy and the principles of avoidance, mitigation and compensation being built into that process to ensure accountability and to address fully any unanticipated or cumulative adverse effects on the environment.

Rachael Maskell: I have been listening carefully to the Minister. My concern about what he has been saying is that the process does not have sufficient teeth in the event that the EOR is not delivered. Can he clarify whether planning permission would be granted if the EOR requirement is not adhered to? Should that not be a condition for planning?

2.45 pm

Paul Scully: The point is that some of that is to be looked at now. At the moment, an environmental assessment is effectively prose that may or may not be adhered to, whereas an environmental outcome is far more data driven, so it can be measured and mitigated, as I have said. That will happen in the lead-up to planning, but a lot will clearly be about how it is followed up after planning permission is given. As we have just been discussing, that effectively sets a baseline, saying, "That is the report; that is what you said you are going to do. You must now adhere to that, and we can follow up afterwards." This is clearly a framework, and the teeth that the hon. Lady describes will need to be set out through enforcement teams and so on, but the measures provide a far more evidence-based approach to be able to follow up afterwards.

That is the point, because we will then have a dynamic monitoring process, which will account for any changes in conditions and available data to inform mitigation strategies. That is a significant benefit of the new system: it ensures that we take an ongoing approach to environmental protection rather than having just a snapshot in time. Monitoring the impacts over a longer period will allow for the collection of more high-quality data that can be used to drive better decision making and improve environmental outcomes.

We do not want an EOR to be an extra burden; we see it more as a rebalancing of resource and effort. We want a streamlined pre-consent process that provides up-front requirements and guidance, allowing more time to be spent on post-consent monitoring, which will be of far more value to the system in terms of both securing positive outcomes and making better use of the data produced so that we can learn from it.

Capturing that data also links to the digital powers in the Bill, and will ensure that the rich source of environmental data is put to use to inform future interventions and give a deeper and far wider understanding of the environment. It will be easier to form best practice and avoid making the same mistake twice. The clause is integral to ensuring that the environmental assessment process considers potential long-term environmental impacts, ensuring accountability and the delivery of outcomes, and ensuring that mitigation is working as it should. For all the reasons I have mentioned, I commend the clause to the Committee.

Matthew Pennycook: I welcome the detail provided by the Minister, but I will push him a little further on both clauses. Again, in the circumstances, I am more than happy for him to write to me to elaborate on his answers if he feels he needs to.

As the Minister said, clause 118(2) enables the Secretary of State to make regulations setting out those consents that should be considered category 2. Although category 1 consents will always require an EOR, category 2 consents will be required to produce one only where they meet criteria set through regulations made under the provision. I would be grateful if the Minister gave the Committee an idea of the criteria likely to be set through regulations under this provision that will require a category 2 consent, and of the rationale behind those criteria.

Clause 118(4) allows the Secretary of State to make regulations imposing a requirement for a consent in relation to a project. The requirement will be used, as in the current environmental impact assessment agriculture regime, where no other consenting mechanism exists. The Bill simply states that

> "EOR regulations may impose a requirement for a consent in relation to project, which is to be a category 1 consent or a category 2 consent".

Can the Minister explain the rationale for not specifying that the Secretary of State may impose a requirement for a consent in relation to a project only where no other consenting mechanism exists?

Clause 119(1) enables the Secretary of State to make regulations setting out how the delivery of specified environmental outcomes should be assessed or monitored. Can the Minister tell us whether the Government have a general sense of how outcomes will be assessed and monitored under this new framework and, if so, will he share it with the Committee?

Finally, clause 119(3) states that EOR regulations may make provision requiring action to be taken, if an assessment or monitoring under subsection (1) or (2) determines that is appropriate for the purposes of compensating for a specified environmental outcome not being delivered to any extent. Will the Minister explain the thinking behind the penalties and remedies available in the new EOR system when it comes to environmental outcomes not being delivered, and will he tell us whether the Department has undertaken any work to research the impact of introducing an outcomes-based approach on rates of delivery and non-delivery of environmental targets in development projects?

Paul Scully: Let me try to answer some of those points, and I will happily write with extra detail should I fail in my objective. We will clearly be consulting on which developments require an EOR when certain criteria are met, and we will publish those following Royal Assent. In line with our commitment to non-regression, we will ensure that any plan or project requiring assessment under the current regime because of its potential impact on the environment will continue to do so under the new framework. We want to avoid unnecessary screening work, so it is likely that more plans and projects will automatically be subject to a proportionate report, but only in borderline cases. As I said, we will work towards that through a consultation process on the criteria approach.

[Paul Scully]

The regulations will determine the process for considering whether the plans or projects meet the criteria for a full environmental outcomes report, and clearly we will work with stakeholders to inform our approach to the criteria, and the processes for determining whether those criteria have been met. We want to ensure that the development management system continues to determine projects. We want the EOR to reform the process, but we do not want to replace it. The majority of consenting regimes base the consenting decision on a range of different factors. They will need to make a subsequent decision following assessment, but we want to ensure that the Secretary of State effectively has a light touch on this because, having done the consultation with stakeholders, this should be done at a local level as best we can.

The hon. Member for Greenwich and Woolwich talked about monitoring. The detail of monitoring regimes, including how long monitoring should be carried out for, will be set out in regulations to reflect the different approaches required for each assessment regime. It is not a one-size-fits-all system, because that is unlikely to be optimal, but the intention is that, with a more streamlined pre-consent process, more time and resource can be put into post-consent monitoring, which will likely be of far more value both in terms of securing positive outcomes and gathering useful environmental data to feed back into the system.

One thing that I am not sure I brought out enough in my speech is that the data that the exercise provides, being more data driven rather than the prose that I was talking about, will not only be useful for permissions and monitoring but have a far wider effect on our understanding of the environment in general, because some really interesting data will be brought out that cannot be captured in the analogue system that we have at the moment. I cannot answer the hon. Gentleman's question about the research to date, so I will write to him on that, and other points that I have not covered.

Question put and agreed to.

Clause 118 accordingly ordered to stand part of the Bill.

Clause 119 ordered to stand part of the Bill.

Clause 120

Safeguards: non-regression, international obligations and public engagement

Matthew Pennycook: I beg to move amendment 176, in clause 120, page 137, line 21, leave out subsection (1) and insert—

"(1) The Secretary of State may only make EOR regulations if doing so will result in no diminution of environmental protection as provided for by environmental law at the time this Act is passed."

This amendment would ensure that the new system of environmental assessment would not reduce existing environmental protections in any way rather than merely maintaining overall existing levels of environmental protection.

The Chair: With this it will be convenient to discuss amendment 177, in clause 120, page 137, line 26, leave out from "Kingdom" to end of line 28.

This amendment would ensure that for the purposes of making EOR regulations international obligations are not limited to those that regulate the process for environmental impact assessment.

Matthew Pennycook: The clause provides for a series of safeguards premised on a commitment to non-regression of environmental protection, suitable opportunity for public engagement and international obligations. While we welcome the inclusion of these safeguards in the EOR framework set out in part 5, we feel strongly that they are insufficiently robust. When it comes to public engagement, we note that subsection (3) of the clause specifies that

"the public will be informed of any proposed relevant consent or proposed relevant plan",

and should have an opportunity to engage in the process, as per the requirements of the Aarhus convention. We are concerned the force of the provision is undermined by the fact that "adequate public engagement" is defined in subsection (4) as whatever the Secretary of State "considers appropriate".

When it comes to international obligations, it is welcome that subsection (2) specifies EOR regulations

"may not contain provision that is inconsistent with the implementation of the international obligations of the United Kingdom",

but we are concerned that in qualifying this constraint by specifying it only applies to those international obligations

"relating to the assessment of the environmental impact of relevant plans and relevant consents",

the Bill could restrict applicable international obligations to those that simply regulate the process for environmental impact assessment. The Minister may say it is entirely appropriate that they do so, but we feel qualifying the constraint in this way could have the effect of ensuring that international obligations relating to air or water quality standards, for example, need not be considered because they would not form part of the actual "assessment" of environmental impacts. We believe the constraint provided for by subsection (2) should be less ambiguous, so as to close a potential loophole. Amendment 177 would achieve that objective by deleting the relevant qualification to make clear that EOR regulations may not contain provision that is inconsistent with the implementation of any international obligations that apply to the UK.

Finally, we welcome the inclusion of a non-regression clause in the Bill, on the grounds that any additional safeguard that constrains the use of the regulation-making powers in this part of the Bill is beneficial. However, we have three serious concerns about the effect of the non-regression provision set out in clause 120(1). Firstly, its application is entirely at the discretion of the Secretary of State; it is they who have to be satisfied that making the regulations will not result in environmental regression. As such, it is an entirely subjective constraint, and one that is unlikely to ever be challenged in the courts. Secondly, we are extremely concerned about the practical implications of specifying the Government's non-regression commitment applies only to the

"overall level of environmental protection".

In failing to make clear that the principle of non-regression, as it relates to the EOR framework, applies to specific aspects of environmental protection, we fear the new system will engender, as the CEO of Wildlife and Countryside Link, Richard Benwell, put it to the Committee in the oral evidence he provided many weeks ago,

"a runaway offsetting mentality where the assurance that things will be better overall can be taken to obscure a lot of harm to the natural environment at the local level."—[*Official Report, Levelling-up and Regeneration Public Bill Committee,* 23 June 2022; c. 117, Q146.]

Thirdly, we are also concerned about the definition of "environmental law", cited in subsection (1) and set out in subsection (4) of the clause. In limiting the non-regression constraint in the Bill to environmental law as defined in the Environment Act 2021, a number of relevant considerations would not be covered—including some of those set out on the face of the Bill in clause 116, such as cultural heritage and landscape—as they fall outside of the definition used in the 2021 Act. Section 46 of the Environment Act 2021 defines environmental law as "any legislative provision" that is "concerned with environmental protection". A literal interpretation of environmental law, so defined, would cover only UK law. The Minister may argue that is unproblematic, given the commitments relating to "international obligations" set out in subsection (2), but for the reasons I have addressed we are concerned they are defined on the face of the Bill in an overly restrictive manner that will limit how much protection they provide against potential future regression.

We therefore believe that subsection (1) should be replaced with a new subsection specifying that the Secretary of State may make EOR regulations only if doing so will result in no diminution of environmental protection as provided for by environmental law at the time that the Act is passed, as provided for by amendment 176. The amendment would significantly strengthen the non-regression constraint provided for in the clause, so that Ministers cannot determine to make EOR regulations that increase environmental harm in some areas if they judge they are somehow offset in others, but must ensure there is no diminution of environmental protection whatsoever. I look forward to hearing the Minister's response to these two important amendments.

3 pm

Paul Scully: The new system that we have been discussing is all about improving environmental assessment, not weakening environmental protection. Moving to the outcomes-based approach that I have outlined will allow the Government to set ambitious outcomes, building on the Environment Act 2021 and other environmental commitments.

I understand the spirit and reasoning behind amendment 176, which proposes to amend the wording of the non-regression provision in clause 120 so that regulations must "result in no diminution of environmental protection". However, in drafting the Bill, we recognised the need to provide assurance that the new system will continue to support the protection of the environment, and the clause was drafted specifically to mirror the provisions of the EU-UK trade and co-operation agreement. That ensures that these reforms live up to our commitment to non-regression with our partners in that area. If we are to meet the complex environmental challenges that we face, we need to take a holistic approach and focus on how well the system delivers for the environment overall. We will concentrate on the aspects of the system that deliver real, positive outcomes for the environment, rather than on bureaucracy.

Where needed, we will seek to streamline the system, for example in areas where there is duplication of other existing processes, thereby allowing resources to be better focused elsewhere. However, along with the commitment to non-regression, we have also included significant duties to consult with the public and relevant stakeholders. We are also giving Parliament the opportunity to scrutinise subsequent regulations through the affirmative procedure, which is entirely appropriate. In the light of those reassurances on our commitment to maintaining environmental protections, I hope that the hon. Member for Greenwich and Woolwich will withdraw amendment 176.

Amendment 177 provides that EOR regulations must not be inconsistent with any international obligations, rather than specifying consistency with international obligations relating to environmental assessment. The inclusion of clause 120(2) demonstrates the Government's commitment to legislating in a manner that is consistent with our international obligations. The clause seeks to provide explicit assurance of the importance of international obligations in respect of environmental assessments, and those commitments will be at the foundation of the new process of environmental outcomes reports, which builds on the core principles at the heart of the current practice.

Ultimately, the focus of EORs is the assessment of the environmental impact of relevant plans and relevant consents, which is why clause 120 refers to our international obligations relating to the assessment of the environmental impact of relevant plans and relevant consents. That ensures that relevant international obligations, such as those under the Espoo and Aarhus conventions, are properly reflected. To make the provision broader would sacrifice clarity and risk introducing confusion as to which areas of international law are particularly relevant and pertinent in such cases. With that explanation, I hope that the hon. Member for Greenwich and Woolwich will also consider withdrawing amendment 177.

Matthew Pennycook: I welcome the Minister's clarification. Particularly on amendment 176, it is extremely useful to hear that the wording was chosen specifically to mirror that in the EU-UK trade and co-operation agreement. I do not want to digress into that agreement in any way—no one on the Committee would thank me for doing so—but it is a useful clarification.

I take what the Minister said about amendment 177; I do not intend to press it to a vote. However, we strongly feel that, international obligations aside, when it comes to safeguards the Bill still contains too many loopholes, many of which I mentioned when I was speaking to the amendment. In particular, what concerns us about the non-regression provision in clause 120 is the reference to only

"providing an overall level of environmental protection".

We are extremely concerned that that might mean that environmental harm could take place at a local level because the Government could say, "Overall, we are satisfied that the level of protection has been maintained." For that reason, and to make very clear how strongly we feel about the point, I am minded to push amendment 176 to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 14]

AYES

Fletcher, Colleen	Norris, Alex
Lewell-Buck, Mrs Emma	
Maskell, Rachael	Pennycook, Matthew

NOES

Atherton, Sarah	Moore, Robbie
Benton, Scott	Scully, Paul
Henry, Darren	Smith, Greg
Johnson, Gareth	Vickers, Matt

Question accordingly negatived.

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

Paul Scully: As I have said, we are committed to ensuring that the new system of environmental assessment will provide at least the same level of overall environmental protection as the existing system. The clause enshrines that commitment, building on the landmark Environment Act 2021, and is in line with our commitments in the EU-UK trade and co-operation agreement.

It is a vital commitment, and it will ensure that EORs support the Government's objective to be the first generation to leave the environment in a better state than we found it. We want to make it clear that, in introducing these reports, we are not trying to lower standards or bypass important environmental protections, and so it is important that we enshrine in legislation this commitment to non-regression.

We have also ensured that the Secretary of State's powers are tightly constrained when considering whether overall levels of protection have been maintained. We have provided significant commitments to consultation and secondary regulations, which will be laid under the affirmative procedure and will thereby enable parliamentary scrutiny on this issue.

This clause also sets out that regulations made may not be inconsistent with the implementation of the relevant international obligations of the UK. As in other parts of the planning system, public engagement is a crucial feature of environmental assessment, and the clause sets out our commitment to maintaining opportunities for public engagement to take place. This will ensure that the public can be involved in the process of preparing an environmental outcomes report, in line with the requirements of the Aarhus convention, which includes provision on public participation in decision making on environmental matters. The clause provides a strong commitment to non-regression and to maintaining opportunities for public engagement, as we move to that new system, and so I commend the clause to the Committee.

Question put and agreed to.

Clause 120 accordingly ordered to stand part of the Bill.

Clause 121

Requirements to consult devolved administrations

Matthew Pennycook: I beg to move amendment 178, in clause 121, page 138, line 3, leave out "after consulting" and insert "with the consent of".

This amendment, along with Amendments 179 and 180, would ensure that EOR regulations which contain provision within devolved competence can only be made with the consent of the relevant devolved administration.

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

Amendment 179, in clause 121, page 138, line 16, leave out "after consulting" and insert "with the consent of".

See explanatory statement to Amendment 178.

Amendment 180, in clause 121, page 138, line 34, leave out "after consulting" and insert "with the consent of".

See explanatory statement to Amendment 178.

Matthew Pennycook: Clause 121 specifies that, where EOR regulations contain provisions within devolved competence, the Secretary of State must consult the relevant devolved Ministers. Our concern is that this is an unduly weak requirement that could see EORs imposed in Scotland, Wales and Northern Ireland without the consent of their respective devolved Administrations. Because the requirement is only to consult with the relevant devolved Ministers about EOR regulations containing provision within devolved competence, we could see EORs imposed without consent. We fear this could lead, advertently or inadvertently, to environmental regression if an EOR specified weaker outcomes than that sought by the relevant devolved Administration.

These three amendments simply seek to ensure that the consent of the relevant devolved Minister is obtained when EOR regulations contain provision within devolved competence to safeguard against that particular scenario. I look forward to hearing the Minister's response to them and the concerns they are designed to address.

The Chair: It really is "The Matthew Pennycook Show" this afternoon, is it not?

Paul Scully: It is a delight to hear the one-man show. In bringing forward the EOR system, we are absolutely committed to respecting the devolution settlements. We are currently in active discussions with the devolved Administrations as to how the powers should operate across the UK, including whether there is any scope to extend them to provide a shared framework of powers across the UK.

The provisions in the Bill are focused on the environmental assessment regimes in areas reserved to the UK Government, but there are limited circumstances in which the UK Government have historically legislated in areas of devolved competence, such as between the inshore and offshore regimes for marine works. As such, to maintain the current position, the clauses as introduced include a limited power for the UK Government to legislate in areas of devolved competence where the relevant devolved Administration has been consulted. A failure to include that power risks introducing a legislative gap that could undermine the delivery of certain types of development, which is clearly not something we want to happen.

When the discussions with the devolved Administrations have concluded, the Government will bring forward any necessary amendments to implement what is agreed with them. Rather than doing that here and now in Westminster, we want to do it in full consultation with the devolved Administrations: we want them to be absolutely at the heart of those discussions. I hope that on the basis of that explanation, the hon. Gentleman will agree to withdraw his amendment.

Matthew Pennycook: I accept those assurances, and on that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Paul Scully: I will be brief, because I think my previous remarks addressed the point about transposition of the EU directive leading to the creation of a range of environmental assessment regimes that have different territorial extents and applications. As I have already explained, discussions are ongoing with the devolved Governments regarding how best to work together to ensure a consistent and coherent approach to environmental assessment across the UK. We are hopeful that we can work closely with devolved Governments to extend the powers in the Bill to place all the nations on an even footing. For those reasons, I commend the clause to the Committee.

Question put and agreed to.

Clause 121 accordingly ordered to stand part of the Bill.

Clause 122

EXEMPTIONS FOR NATIONAL DEFENCE AND CIVIL EMERGENCY ETC

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

The Chair: With this it will be convenient to discuss clauses 123 to 126 stand part.

Paul Scully: In some rare cases, particularly those relating to national defence or responding to a civil emergency, it may be necessary for the Secretary of State to direct a project to progress without an environmental outcomes report when the production of one would usually be required. The provisions in clause 122 enable that. The clause does not aim to bypass environmental protections, which are important for all the reasons I have set out; it simply accounts for those rare instances in which there is an urgent need to progress with development. Clause 122 replicates a similar provision in the existing regulations, and would only be used in the most extreme circumstances.

In addition to the civil and defence needs, the clause also provides powers via regulations for the Secretary of State to be able to direct that no environmental outcomes report is required in other circumstances. Such directions will, of course, be presented in regulations subject to the affirmative procedure, and will be consulted on and constrained accordingly.

Rachael Maskell: I appreciate the Minister highlighting that there could be extenuating circumstances in which the measures could be suspended, but he has not set out what mitigations will be put in to address that, either in close proximity to that or elsewhere. Could he say a bit more about that?

Paul Scully: Good question! As well as the non-regression clause that I talked about earlier, we have a built-in power under these clauses that allows aspects of the regulation to apply even if a project can initially progress without an EOR. That is a good way to manage those high-risk needs with environmental protection and get that balance right. It allows a project to progress without a report, but still requires certain aspects of the regulations to be adhered to, such as monitoring and remediating effects once the plan or project is in operation. I again highlight the fact that that would only relate to the plans and projects in greatest need, relating to matters of national importance.

3.15 pm

If a development had been exempted from an EOR, the Government could still impose post-consent monitoring and management of environmental effects. That is a valuable element of the clause because it allows the flexibility to respond where needed while still requiring aspects of the regulations to be adhered to. Furthermore, the Secretary of State would have the power to modify and revoke any exemption they have made under the provisions, ensuring that when the emergency situation is resolved, the regulations go back to operating as normal. That ensures that the Government can respond to important and urgent issues where needed.

Turning to clause 123, a key focus for the Government is to ensure that better environmental outcomes are delivered and that assessment has real and quantifiable benefits. The Bill, particularly in clause 123, strengthens the powers and sanctions available to decision makers, including local planning authorities, to deal with individuals who do not abide by the rules and processes of the system, for example, by failing to implement important mitigation measures to lessen the environmental effects. That raises the importance of environmental issues and action will be taken if legislation is not adhered to.

An increased focus on monitoring will be central to the new system. It will not only provide an important source of environmental data, but ensure that what is committed to in the EOR is actually carried out in practice. To make increased monitoring provisions more than an academic exercise, we need to have enforcement powers to ensure steps can be taken when an individual does not accord with the legislation. Those enforcement powers benefit from broader strengthening of the planning enforcement regime under chapter 5 of part 3. Subsection (2) of clause 123 sets out the range of enforcement provisions that the Secretary of State may introduce through regulations for that purpose. The Secretary of State is under a duty to consult relevant public authorities when making any regulations in respect of enforcement.

Given the importance of enforcement provisions for the functioning of the new system, and for those affected, the Government believe they merit close parliamentary scrutiny and time for debate and, therefore, have proposed that regulations made under the provisions be subject to the affirmative resolution procedure. The powers include the ability to create criminal offences and civil sanctions under the new system, but also to grant powers to public authorities for inspection and power of entry. Any new enforcement mechanism will have the aim of protecting the environment by ensuring that the new system is being followed. The purpose of the system is to improve environmental outcomes on the ground and there cannot be any compromise here. We will use all the necessary powers to make sure the system is not undermined.

As mentioned in respective earlier clauses, environmental statements have become far too lengthy and do little to follow up on monitoring and reporting the impacts on

the ground. To address that problem, clause 124 will enable the Secretary of State to implement a more consistent reporting process, allowing the Government to better understand the extent to which outcomes are being delivered. That will require public authorities to report or provide information on the delivery of outcomes. That is a significant step that will also allow the Government and relevant experts to understand the impact of what is happening on the ground. In doing so, the reports will also inform the ongoing evolution of the system. Clause 124 is essentially making sure delivery against outcomes is documented clearly to enable a variety of stakeholders to keep track of environmental impacts at a local and national level.

Clause 125 is, I trust, straightforward and sets out the Government's approach to consultation for subsequent regulations for environmental outcome reports. We have sought to take a proportionate approach to consultation, placing the strongest duty to consult with the core elements of the new system. For example, due to the importance of outcomes in the new approach, they require public consultation before regulations can be laid before and debated in Parliament.

For certain other aspects of the reforms, the Secretary of State would be under a duty to consult such persons as they consider appropriate, including public bodies such as statutory consultees. That will cover, for example, consideration of which plans and projects should be covered, regulations providing the exemptions and the interaction with existing environmental assessment legislation. We recognise the value of bringing in appropriate bodies and experts when determining the technical aspects of the system and we want to capture the input of those who will use and contribute to it. In addition to the legislative requirements to consult on regulations, we understand the importance of early up-front engagement to inform the direction of travel. That is why we plan to consult early on how we could use the powers in regulations, with a more detailed consultation on the draft regulations following Royal Assent.

Clause 126 has been designed to ensure that those involved in the assessment process are provided with clear and comprehensive guidance that can be used to demonstrate how a plan or consent contributes to the delivery of outcomes. The ability to provide guidance is vital to ensuring that best practice is embedded across the assessment process and reflects the latest scientific understanding. The greater certainty and consistency achieved through the guidance will, for example, allow the Government to work with the relevant experts and arm's length bodies to ensure that the delivery of outcomes reflects the very latest best practice. The guidance will act as a living document, aiding transition to the new system, reflecting the most up-to-date scientific knowledge and methodologies, and placing decision makers in the best possible position to make informed judgments. That is why it is important that any guidance provided for EORs will be subject to public consultation to ensure that all stakeholders have their chance to comment and have input. This clause is integral in ensuring that EORs reflect best practice, remove uncertainty and reduce the risk of legal challenge in the system.

For those reasons, I commend all these clauses—I have forgotten the numbers once again.

The Chair: Clauses 122 to 126.

Paul Scully: Exactly. This is why you get paid the big bucks, Mr Hollobone. Thank you very much.

Matthew Pennycook: The Minister touched on a number of the issues that I wanted to raise. This is a series of important clauses and therefore I have a couple of questions for him. I hope that I can draw out a little more detail, but as ever, he is more than welcome to write to me if he requires to do so.

Clause 122(1) states:

"The Secretary of State may direct that no environmental outcomes report is required to be prepared in relation to a proposed relevant consent which is solely for the purposes of national defence or preventing or responding to civil emergency."

Subsection (2) of that clause further states:

"EOR regulations may provide for further circumstances in which the Secretary of State is to be able to direct that no environmental outcomes report is required to be prepared."

Can the Minister give the Committee some examples of the "further circumstances" in which no environmental outcomes report may be required as per subsection (2), given that civil emergencies and national defence, as he said, are already covered by subsection (1)?

Clause 123 is a new provision that sets out the enforcement provisions that can be made in respect of EORs. The Minister touched on a few, I believe, but I would be grateful if he could provide any further detail as to how enforcement of EORs will operate and how they will operate compared with the current SEA and EIA systems.

Clause 125(2) specifies that the Secretary of State, as the Minister has also said, may consult only

"such persons as the Secretary of State considers appropriate"

before making certain EOR regulations, or issuing, modifying or withdrawing certain guidance. Can the Minister give us some idea of which persons or bodies the Secretary of State would be likely to approach before making or modifying regulations and guidance? Specifically when it comes to statutory consultees, which he spoke about, is there any rationale for not specifying statutory consultees in the Bill?

Paul Scully: I thank the hon. Gentleman for that contribution. On the formal consultation, I cannot yet give him details as to whom specifically we will speak to, barring the fact that, as I said earlier, we will clearly seek to speak to all the key stakeholders that we work with really closely. Indeed, we have worked with a number of those in the lead-up to the Bill. We want to ensure that we get the expert advice of people not only who can contribute to our knowledge, but who will be using the system, so that we can get the benefit of that on-the-ground experience, because what we do not want to have is unintended consequences.

On enforcement, the Bill amends and strengthens the powers and sanctions available to decision makers. We want to ensure that the new system is effective at delivering on the outcomes, so it will be necessary for the regime to have enforcement mechanisms. The exact details of the new system are in the process of being developed. We will be working with the same stakeholders on the design of the new system, in terms of enforcement as well as exemptions, and we want to ensure that we have a full consultation.

In addition to consultation, there will be parliamentary debate. I hope that reassures the hon. Member for Greenwich and Woolwich that we are prepared to work collaboratively to ensure that this regime—the framework that we are talking about now—works well in practice, and that that coherent approach makes it easier to understand and enforce. Enforcement is no good if we just have a bit of prose that means nothing; we need to make sure we enforce that as well.

Question put and agreed to.

Clause 122 accordingly ordered to stand part of the Bill.

Clauses 123 to 126 ordered to stand part of the Bill.

Clause 127

INTERACTION WITH EXISTING ENVIRONMENTAL ASSESSMENT LEGISLATION AND THE HABITATS REGULATIONS

Matthew Pennycook: I beg to move amendment 181, in clause 127, page 141, line 32, leave out "in particular" and insert "not".

This amendment would ensure that any specified environmental outcomes arising from EOR regulations made would augment not substitute those arising from existing environmental assessment legislation and the Habitats Regulations.

The Chair: With this it will be convenient to discuss amendment 182, in clause 127, page 142, leave out lines 12 and 13.

This amendment would ensure that EOR regulations cannot be used to amend, repeal or revoke existing environmental assessment legislation.

Matthew Pennycook: Clause 127 enables the Secretary of State to make regulations on how the EOR framework provided for by part 5 interacts with existing environmental assessment legislation and the habitats regulations. The explanatory notes accompanying the Bill state:

"This is necessary to ensure that where an Environmental Outcomes Report is prepared, where appropriate, this is capable of meeting the requirements of existing environmental assessment so as to avoid duplication."

It would be recognised as meeting both.

Our serious concern is that by providing for requirements undertaken in relation to an EOR to satisfy the requirements under the habitats regulations, this clause could allow the Secretary of State to substitute the protections afforded by those regulations with weaker requirements that had undergone only limited parliamentary scrutiny under the affirmative procedure. In our view, this is deeply problematic because the habitats regulations provide for an extremely high level of environmental protection for our most precious and vulnerable habitats and species, indeed for greater protection than the SEA and EIA systems, requiring as they do applications proposing a development that will affect a site to first prove that mitigation is in place to avoid significant harm, or that there is an overriding public interest reason to proceed and compensatory measures are necessary. In revising subsection (2) of the clause, amendment 181 would address that concern by ensuring that any specified environmental outcomes arising from EOR regulations made would augment, not substitute, those arising from existing environmental assessment legislation and the habitats regulations.

An additional concern with this clause comes in the form of subsection (3), on page 142 of the Bill, which provides for EOR regulations under the clause to

"amend, repeal or revoke existing environmental assessment legislation".

Even with the list of what constitutes "existing environmental assessment legislation" set out on the face of the Bill in clause 130(1), we believe this provision is unnecessarily broad. Amendment 182 therefore seeks to remove clause 127(3) to ensure that EOR regulations cannot be used to amend, repeal or revoke existing environmental assessment legislation.

It is essential, as the Minister himself accepted during debate about an earlier clause, that we recover nature and that we do so quickly, or we risk irreparable damage to the natural world upon which life depends. To that end, proven, effective laws should be maintained and strengthened rather than undermined in any way. For that reason, I hope the Minister will appreciate the concerns we raise and give both of these amendments serious consideration.

Paul Scully: Given the scale of the underpinning legislation, as we transition from the current complex system of environmental assessment to the new framework of EORs, the Government require powers to manage the interaction between the old and new systems.

The interaction provisions in clause 127 are designed to ensure that when an EOR is prepared, it is capable of meeting the requirements of existing environmental assessment legislation where appropriate. That allows the Government to guard against duplication while the various assessment regime owners bring forward regulations to introduce environmental outcomes for their regimes. It also allows existing environmental assessment legislation to meet the requirements of an EOR, which is to avoid duplication and manage co-ordination across the different assessment regimes. We all know that it takes time to consolidate the complex legislation covering a number of Departments and agencies, and we want to make sure there are no gaps in the process.

3.30 pm

Clause 127 also replicates the current ability to allow for co-ordination between environmental assessment regimes and habitats regulations. Those provisions are necessary to ensure we are able to manage the transition to the new system without introducing multiple requirements and costly duplication. As with all the provisions under this part, the use of these powers will be bound by our commitment to non-regression and our duty to consult on new regulations. That means that, in managing the transition, EOR regulations that interact with the habitats regime or other listed environmental legislation cannot reduce the overall level of the environmental protection. The requirements of the existing habitats regulations assessment legislation will continue to need to be met. Given the need to manage the effective transition to the new system while honouring our commitment to non-regression, I hope the hon. Member for Greenwich and Woolwich will consider withdrawing amendment 181.

In addition to the interaction between the old and the new systems, EORs will replace the existing EU-derived systems of environmental impact assessments and strategic environmental assessments. Given the breadth of

environmental assessment regimes, the Government intend to take a phased approach to the introduction of environmental outcome reports. The powers in clause 127 are necessary to manage that phased introduction. As we introduce regulations to implement the new system, it is important that legislation for the old system ceases to apply and is properly removed from the statute book. Clause 127 provides the necessary powers to achieve that, which means that the new system will be able to fully replace the old system and operate effectively.

Amendment 182 would limit our ability to remove the old legislation as the new system comes online. The current system would be frozen in time, and there would be no capacity to update its provisions to better reflect current pressures on the environment and the UK's changing needs. In effect, it could lead to there being multiple overlapping systems of environmental impact assessments and strategic environmental assessments operating at the same time, leading to confusion, additional bureaucracy and wasteful duplication. With that in mind, I hope the hon. Gentleman will agree to withdraw amendment 182.

Matthew Pennycook: I thank the Minister for that response. I note and accept what he said about amendment 182, although I will go back and satisfy myself that the concerns raised in that regard are fully addressed.

We continue to have concerns about the issues raised by amendment 181. I heard what the Minister said about the Government's intention for these provisions to avoid duplications and enable co-ordination, but I remain concerned that, as drafted, they could lead to the powers substituting rather than augmenting the protections provided for by the habitats regulations, in particular. The Minister's defence was that we are protected in that regard by the safeguards in clause 120, but he has heard our concerns about their robustness. Along with our concerns about clause 120, that is one of the fundamental weaknesses of part 5 that we would like to see addressed. For that reason, I will press amendment 181 to a Division. This will be the final one today.

The Committee divided: Ayes 5, Noes 8.

Division No. 15]

AYES

Fletcher, Colleen	Norris, Alex
Lewell-Buck, Mrs Emma	
Maskell, Rachael	Pennycook, Matthew

NOES

Atherton, Sarah	Moore, Robbie
Benton, Scott	Scully, Paul
Henry, Darren	Smith, Greg
Johnson, Gareth	Vickers, Matt

Question accordingly negatived.

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

Paul Scully: As we have already heard concerns about clause 127, let me use this opportunity to clarify its intention and to provide the reassurance that it is does not allow any amendments to the habitats regulations.

The clause serves two purposes. First, it enables us to make sure that assessments under the new EOR system will be interoperable with those required by existing environmental assessment and habitats legislation. Secondly, it gives the Government the power to repeal, revoke or amend the current SEA and EIA regulations in each of the relevant regimes once the new framework for an environmental outcomes report is in place.

The provision is about providing powers in relation to the interaction between the new system and existing environmental assessment legislation and the habitats regulations. It does not remove the need to comply with the habitats regulations. It is an ancillary power. Any regulations must relate to the purpose of the clause, which is about interaction between processes. Regulations can set out how an EOR report can meet the requirements of existing environmental assessment legislation or the habitats regulations, but only in so far as the processes interact.

There has been some misinterpretation, or a difference in opinion, about subsection (3), which allows regulations to

"amend, repeal or revoke existing environmental assessment legislation."

The habitats regulations are specifically excluded from that power, meaning that it is not possible to make any changes to the habitats regulations under it. This is simply about streamlining within the constraints of the legislation. We want to avoid overlaps, such as, for example, repetitions in evidence, while optimising the synergies—for example, the effects identified in the habitats regulations assessment that could help to inform the contribution to outcomes in the EOR. This is about how the two are co-ordinated and how they work together. The clause must also accord with our commitments to non-regression under clause 120, so any interaction between assessments must maintain overall environmental protections.

In parallel, the Government have indicated our intention to improve the habitats regulations regime, while maintaining or enhancing the level of protection it provides. DEFRA has recently consulted on that via the consultation on the "Nature Recovery" Green Paper, which the Government will respond to in due course. There are real opportunities to improve processes across the piece, and the clause allows for that interaction between processes and for the benefits of efficiencies and streamlining. I hope the Committee is reassured on the purpose of the clause, which is heavily constrained and seeks no powers to make any changes to the habitats regulations. I commend the clause to the Committee.

Question put and agreed to.

Clause 127 accordingly ordered to stand part of the Bill.

Clause 128

CONSEQUENTIAL REPEAL OF POWER TO MAKE PROVISION FOR ENVIRONMENTAL ASSESSMENT

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

The Chair: With this it will be convenient to discuss clauses 129 and 130 stand part.

Paul Scully: Clause 128 is a straightforward provision to remove what will become an obsolete regulation-making power, along with references to that power, after the

powers contained in the Bill come into effect. It was a broad power, allowing the Secretary of State to make regulations for consideration to be given to environmental effects. It will no longer be required, as the new powers will cover the consideration of the environmental effects of development. The provision simply aims to clear it from the statute book.

Clause 129 gives power to make regulations on a variety of procedural and technical matters relating to environmental outcomes reports. Those include, for example, setting out who should prepare reports, to whom completed reports should be given and how information should be collected and provided. It also makes provision for regulations to state the level of assistance required from local authorities in the production of those reports, when reports that fail to meet various requirements can be declined, and how appeals and reviews of decisions should work. The clause also makes provision for the collection of fees. We intend to keep fees to a minimum, but we will seek views from stakeholders in future consultations.

While those matters are generally procedural or technical in nature, they are all important and necessary for the successful implementation of environmental outcomes reports. Setting those out in regulations allows for those matters to be decided following consultation, and allows for flexibility in the system. That means that the specific technical ways that the system works can be more easily updated in the future, and it will allow the difference between regimes to be accommodated.

Finally, clause 30(1) is a straightforward provision that simply lists all the current regulations that implement the EIA and SEA regimes. As such, those are the regulations that the powers in this part will allow the Secretary of State to replace with EOR regulations. They implement the assessment regime in a similar way across a broad range of sectors, from transport to energy production to town and country planning. It is our intention that this remains the case for the regulations implementing the new system.

Subsection (2) is primarily a reference list, bringing together the various definitions used in this part. It also introduces some straightforward definitions such as "public authority" and "relevant document".

Question put and agreed to.

Clause 128 accordingly ordered to stand part of the Bill.

Clauses 129 and 130 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Gareth Johnson.)*

3.41 pm

Adjourned till Tuesday 13 September at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

LRB58 London Councils
LRB59 Guide Dogs