GREENER UK

Wildlife and Countryside LINK

Environment Bill: briefing on Report stage amendments

January 2021

Priority amendments supported by Greener UK and Link

New Clause 1 and amendment 1 – environmental principles

The bill sets out five important environmental principles in law: integration, prevention, precaution, rectification and 'polluter pays'. These must function as important guiding principles for the government. The integration principle should require environmental protection requirements to be built into policy development, including at early stages, leading to more holistic policy making. The precautionary principle must require policy makers to assess environmental risk through a science based approach and to take appropriate action depending on the level of uncertainty. Rectification requires environmental damage to be addressed at source to reduce the impact of damage by delaying remediation, while prevention requires action to avoid environmental damage before it occurs. Finally, the principle that the polluter must pay should ensure that policy makers factor pollution costs into their thinking. **The bill does not yet provide an adequate route to ensuring that these important legal principles fully function to achieve these aims.**

The clauses on environmental principles are largely unchanged from the draft Environment (Principles and Governance) Bill, despite very clear evidence that emerged during pre-legislative scrutiny, including from leading academic experts, on the need for these clauses to be strengthened. These experts concluded that the bill does not maintain the legal status of environmental principles as they have come to apply through EU law and that the "almost total relegation of the role of environmental principles to the Policy Statement … undermines their legal influence to the greatest extent possible … To fail to articulate their legal effect in any substantive way in the draft Bill is to fail to give environmental principles the kind of overarching legal role [that they currently have]".

Despite listing the principles on its face, the bill constitutes a significant weakening of the legal effect of the principles because there is no duty on government ministers or public authorities to act in accordance with the principles, only a duty to have "due regard" to an, as yet, unpublished policy statement.

Strengthening the wording of the duty to "act in accordance" was recommended by the Natural Capital Committee. This would ensure that the principles are actively incorporated into policy and decision making. Instead, the proposed "due regard" duty explicitly allows the government to redefine these principles through policy and to choose to introduce specific legislation which does not apply relevant principles, with the justification that due consideration had been given to the policy statement. We are concerned that the bill is, therefore, relegating these vitally important legal principles to little more than creatures of policy.

Up to this point, environmental principles have been binding on all public authorities including in individual administrative decisions. This legal obligation on all public authorities to apply the principles, whenever relevant, will be undermined through the bill.

Clause 16 requires the Secretary of State to prepare a policy statement on environmental principles. Only ministers, not public authorities, must have "due regard" to this statement when making policy and the requirement does not apply to decision making and is subject to wide ranging exemptions in Clause 18(2) and (3). These seem to absolve HM Treasury, the Ministry of Defence and, indeed, those "spending…resources within government" from considering the principles at all.

The bill also states that the policy statement need only be applied "proportionately" when making policy. This may allow the government to trade off environmental principles against socio economic considerations, thus weakening environmental protections.

We therefore support **New Clause 1** which would require public authorities to apply the environmental principles rather than to have "due regard" to an as yet unpublished policy statement and remove the sweeping exemptions for defence and spending. We note that Clause 10 of the Scottish Continuity Bill places a direct duty on Scottish ministers in relation to the environmental principles in developing policies, including proposals for legislation. Public authorities are also bound by this duty in relation to their functions on environmental assessment.

Amendment 5 – binding interim targets

Clause 4 places a duty on the Secretary of State to ensure that targets are met. This is very welcome. However, there is nothing to compel governments, including future ones, to start taking action now required to meet targets, or to take remedial action where targets are missed. We, therefore, support **Amendment 5** which would place a duty on the Secretary of State to meet the interim targets they set. This matters, given the number of voluntary government targets that have been missed or abandoned.

The government has previously suggested that non-binding interim targets were necessary because the environment "…is an ever-changing, flexible scene". However, while we recognise that change towards long term goals, and progress towards meeting them, does not always happen in a linear way, that is not an argument not to make the interim targets legally binding. It is an argument for the government to apply some flexibility in the type of interim targets they might set.

Binding interim targets can provide near term certainty for businesses, creating the sort of stable environment which encourages investment in their workforce, and in green products and services. They would focus businesses on planning the trajectory towards the long term targets and help drive innovation in their business model.

New Clause 5 – state of nature

At this year's Conference of the Parties to the Convention on Biodiversity (CBD COP15) in Kunming, China, the international community is expected to agree a new set of global goals for nature for 2030. By committing in the Environment Bill to a binding target to halt and begin to reverse the decline in the state of nature at home, the government can show domestic leadership that could help to secure a global deal. Without this explicit target in domestic law, there is a risk that the government's international rhetoric will not ring true.

As a driving force of the Leaders' Pledge for Nature which commits to reversing biodiversity loss by 2030, the UK should be a key advocate for translating this into fully accountable and measurable targets in the post-2020 global biodiversity framework.

Signalling the intention to set a target in domestic legislation that reflects international commitments in advance of the Conference would strengthen the UK's hand in negotiations and help drive global ambition.

The bill contains a framework for setting long term legally binding targets, but the timeframe does not align neatly with the 2030 commitment that will emerge from CBD negotiations.

Therefore, we support **New Clause 5** which would require the setting of a state of nature target that takes account of the appropriate domestic effort to contribute to improving the global state of nature.

It would also ensure that this headline target to reverse the decline in the state of nature is underpinned by measurement of the significant components of biodiversity, namely species abundance, species extinction risk and the extent and condition of habitats.

Amendment 23 – independence of the Office for Environmental Protection

We support **amendment 23** which would remove the power that the government introduced during committee to enable the Secretary of State to issue guidance to the Office for Environmental Protection (OEP).

The OEP will only be effective if it is sufficiently independent from government. The government has accepted this and there has been strong support in parliament for the principle of the OEP's independence, including in the second reading debate in October 2019 on the first version of the bill and during the pre-legislative scrutiny of the draft bill. This is also anticipated by the provision in the 2018 EU Withdrawal Act (section 16) which required ministers to publish a draft bill addressing the governance gap, when it refers to a public authority with power to take enforcement action against a minister of the crown.

The EFRA Committee concluded that it is essential that "every step is taken to ensure the Office for Environmental Protection is as independent from the Government as possible, to give the public confidence that the Government will be properly held to account on its duty to protect the environment".

However, just saying that a body will be independent will not necessarily make it so and while the government has included some safeguards in the bill, several further changes are needed to ensure enduring independence for the OEP and to meet the government's aim of a world leading watchdog.

These include providing a greater role for Parliament in the appointment of the Chair and the other board members and giving a legal basis to the commitment to provide the OEP with a multi annual budget ring fenced for each spending review. The Institute for Government and the Environmental Audit Committee have recommended that the OEP should have the same appointments process as the Office for Budget Responsibility, where the Chair and members are appointed by the Chancellor, but must have the consent of the Treasury Select Committee.

Clause 24 provides that the Secretary of State may issue guidance to the OEP on certain matters that must be included in the OEP's enforcement policy (which will sit within its strategy). The OEP "must" have regard to this guidance.

The government has provided little clarity on why it believes this power is necessary. However, the Secretary of State told the Today programme on 28 October that the government does not want "unaccountable regulators" who "make it up as they go along", "change their remit" or "change their approach entirely", suggesting that the government wanted to shift the balance between executive control and independence for the OEP.

No matter what the government claims, there can be no doubt such a broadly cast power will undermine the OEP's independence and render the government's ambition for a world leading watchdog impossible to achieve.

The Secretary of State has said that this is a "normal, standard clause" that applies to other public bodies with independent regulatory roles. While the government does have a similar power in relation to some existing public bodies, **ministers do not have a similar power to issue guidance in relation to bodies charged principally or partly with enforcing potential breaches of the law by other public bodies**. For example, the Equality and Human Rights Commission and the Information Commissioner which enforce breaches of the law on human rights, equality and data protection respectively are not bound by a similar such power in relation to their enforcement functions.

We believe that there are more appropriate routes to address what we understand to be the government's policy intention of ensuring accountability and strategic purpose. As a non-departmental public body the OEP will be subject to a tailored review every three to five years. Such reviews provide an opportunity for the government to ensure public bodies remain fit for purpose, well governed and properly accountable for what they do.

The government has said that "any guidance from the Secretary of State will be subject to scrutiny, as it must be laid before Parliament". However, Clause 24 does not require any scrutiny of the guidance prior to it being provided to the OEP or before it is published. There is a difference between publication and scrutiny: the act of laying the guidance in Parliament will ensure that it is published at that point, but the bill does not provide for the guidance to be available for either parliamentary or public scrutiny before it is issued to the OEP, neither is there any requirement for public consultation.

It is clear that the new power will further constrain the OEP's ability to act independently because the notion of "serious" breach on which the Secretary of State will give guidance applies (and therefore potentially constrains) the enforcement powers of the OEP throughout the bill. Furthermore, this will be statutory guidance which typically carries greater weight, or at least is treated in this way by public bodies. The bill would create a duty that public bodies will follow guidance which relates to their functions (the so-called law of legitimate expectation). **This guidance power inverts the intended hierarchy (in which the OEP oversees ministers) and gives ministers the role of overseeing the OEP.**

Amendment 29 – Local Nature Recovery Strategies

We support amendment 29 which aims to strengthen the duty to use Local Nature Recovery Strategies and further embed biodiversity in all public authority decision making. Local Nature Recovery Strategies have the potential to be an extremely effective tool for targeting investment in nature, but as drafted this potential will not be realised because of the very weak duty to apply the strategies in decision making. This is an essential amendment to ensure that Local Nature Recovery Strategies actively influence the important day to day decisions that affect nature.

At the moment, the duty to actually use Local Nature Recovery Strategies is very weak – it is a duty to "have regard" to the strategies in complying with the duty to "have regard" to the need to enhance nature. This risks creating obligations to develop Local Nature Recovery Strategies, expending precious local resources, only to see this effort wasted by failing to give the strategies any influence on real decision making.

Amendment 29 would require all public authorities to act in accordance with any relevant Local Nature Recovery Strategy in the exercise of their duties, including statutorily required planning and spending decisions. Local Nature Recovery Strategies are intended to coordinate the actions of multiple stakeholders including directing the locality-wide use of biodiversity gains from the planning system, Environmental Land Management systems and other sources, helping to build and maintain ecologically coherent networks of nature recovery sites. **Placing Local Nature Recovery Strategies at the heart of all public authority strategic planning and decision making will help them to fulfil this central, strategic purpose.**

Comments on other amendments

New Clause 4 – protection for hedgehogs

New Clause 4 would extend the protections afforded to hedgehogs, making it an offence to intentionally or recklessly damage or destroy any place hedgehogs use for shelter or protection.

Currently hedgehogs are only protected under Schedule 6 of the Wildlife & Countryside Act 1981, which prohibits killing by listed methods. Hedgehogs are also listed as a species of "principal importance" under the Natural Environment and Rural Communities Act 2006, which confers upon authorities a duty to protect them. Neither of these current protections explicitly prohibit the intentional or reckless destruction of hedgehog habitats.

Action to address the destruction and fragmentation of hedgehog habitats is both necessary and feasible.

Hedgehog numbers have fallen by 50% over the past two decades, with habitat loss from development cited in the 2018 'State of Britain's Hedgehogs' report as a key contributing factor in this decline. In 2020 hedgehogs were added to the International Union for the Conservation of Nature's Red List for British Mammals, classifying them as being "vulnerable to extinction".

By adding hedgehogs to Schedule 5 of the Wildlife and Countryside Act, **New Clause 4** would require developers to undertake surveys to search for hedgehogs in the development area, and to undertake appropriate mitigation to protect hedgehogs and their habitat. These steps are currently optional, however many developers already undertake them as a matter of course, recognising the value that hedgehog conservation brings to community relations. High quality guidance on how developers can search and mitigate for hedgehogs is already available and could be readily adopted across the development sector once a legal imperative to do so was in place.

We support New Clause 4 as a measure that will tackle a key driver of falling hedgehog numbers, without imposing a disproportionate burden on business. Measures to protect hedgehogs enjoy strong public support – a petition calling for hedgehogs to be added to Schedule 5 attracted over 50,000 signatures in 2018. The bill represents an excellent opportunity to put this necessary, practical and popular measure into law.

New Clause 7 – Duty to prepare a tree strategy for England

We welcome **New Clause 7** which would require the government to prepare a tree strategy for England. This provides a welcome opportunity for the government to clarify the timescale for publishing the tree strategy as well as the other natural environment strategies to which it has committed but which are yet to be published, for example on nature and peat.

New Clause 8 – Waste hierarchy

While the waste hierarchy is already enshrined in various pieces of legislation, **New Clause 8** provides a welcome opportunity to quiz the government on the implementation of the hierarchy. This has, to date, focused on the lower echelons resulting in a focus on removing waste from landfill, a likely overinvestment in incineration and a lack of action on waste prevention.

The government is committed to decreasing levels of residual waste and the Environment Bill, alongside the Resources and Waste Strategy for England, are intended to stimulate the move towards a circular, resource efficient economy. However, the bill's provisions are not yet sufficient to achieve this or to address the serious shortcomings that are evident in the approach to prevention to date.

According to a review of the government's previous waste prevention plan, government activity between 2013 and 2019 prevented just 103,000 tonnes of waste. Organisations working with the government may have prevented, at most, another 900,000 tonnes over those six years. To put that in context, England generated an estimated 188 million tonnes of waste in 2016 alone, the latest year for which comprehensive figures are available.

Broadening the power proposed in Clause 54 of the bill to charge for single use plastic items so that it covers all single use items and removing the exclusion of energy related products from the resource efficiency powers in the bill would also help ensure that it provides a workable and durable framework.

The government should also "pick up the pace" on implementation of the resource and waste related powers and measures in the bill as the National Audit Office recommended in its report on the achievement of the government's long term environmental goals. This should include swift rollout of an 'all in' deposit return scheme in England and early progress on the various delayed consultations from the resources and waste strategy.

New Clauses 14 to 16 – housing targets; the OEP; planning conditions

Net zero and biodiversity protection must be important considerations in and outcomes of the planning process. We welcome the intention behind NC15 and NC16, although we think they are better suited to a planning bill and we encourage the government to consider how they might be taken forward in that context.

New Clause 14 proposes a power for the OEP to consider appeals on housing targets. We are concerned that this would give the OEP a technical and political operational function that would be outside its area of expertise and reduce its capacity to monitor and improve compliance with environmental law in a detached and objective way. The OEP can already look at housing targets if these are going to have an impact on progress towards Environmental Improvement Plans or targets set under the bill, or on the implementation of environmental law or because they lead to a failure to comply with environmental law.

Amendments 21 and 28 – people's enjoyment of the natural environment

Amendment 21 is designed to require the government to set legally binding, long-term targets to increase public access to, and enjoyment of the natural environment.

The mental and physical benefits of accessing nature are well documented, as demonstrated by the important role that nature has played in people's lives during the Covid-19 pandemic. Connection to nature also helps us to better understand our role in its protection and improvement.

Research by Natural England and others has shown how important spending time in nature is for our wellbeing and the People and Nature Survey for England reveals that large numbers of people recognise this.

In September 2020, the Ramblers highlighted the sharp disparity between those who have easy access to green space and those who do not, with significantly less access to nature for people in poorer communities and for black, Asian or minority ethnic communities.

The Environment Bill provides a power for the Secretary of State to create targets in respect of the natural environment and people's enjoyment of the natural environment.

In August 2020, Defra published a policy paper on the development of targets under the Environment Bill, which made no mention of a people engagement target. **The discussion of this amendment provides an opportunity for the government to explain how it intends to progress a target to improve people's access to nature, including what consultation will be undertaken, what evidence gathering is underway and the timescale for this.** The government should also explain how this work will link to the post 2020 international biodiversity framework, which includes proposals for bringing people closer to nature and a target on the contribution of biodiversity and ecosystems to people.

Amendment 28 would require the government to include steps to improve people's enjoyment of the natural environment in its Environmental Improvement Plan. While we have sympathy for the intention that lies behind the amendment, we believe that the primary focus of Environmental Improvement Plans should remain on driving environmental improvements.

Amendment 2 – World Health Organization guidelines for $PM_{2.5}$

The bill rightly recognises the need for a new binding target for fine particulate matter ($PM_{2.5}$) pollution. However, as it stands, the bill does not set out a minimum level of ambition and would allow the government until October 2022 to establish this new target. This risks delaying any substantial decisions to tackle this harmful pollutant for almost two years. **A government that is serious about protecting people's health must commit now to meeting World Health Organization guideline levels of $PM_{2.5}$ by 2030 at the very latest. We therefore support amendment 2 which would achieve this.** In line with the government's approach, rather than setting the actual target on the face of the bill, **amendment 2** would instead set the minimum parameters for the new $PM_{2.5}$ target to help speed up its adoption in subsequent secondary legislation. This is necessary to ensure a basic minimum standard of protection for all people across the country from one of the most harmful types of air pollutant.

For further information about why a commitment to achieving World Health Organization guidelines is needed, please see this briefing from the Healthy Air Campaign.

Amendment 39 – parliamentary scrutiny of banned plant protection products

The recent decision by the government to grant an emergency derogation allowing sugar beet producers to use seeds treated with the bee-toxic neonicotinoid thiamethoxam has caused widespread concern. **Amendment 39** is a welcome attempt to address the lack of transparency in the decision making process. Currently, stakeholders, including independent scientists and civil society, are unable to scrutinise decisions on neonicotinoids properly. Important evidence is not in the public domain, including expert advice from the Health and Safety Executive, expert advice from the Defra chief scientist and the advice from the Expert Committee on Pesticides to ministers.

The government must commit to publishing this information in future to ensure that evidence of the impacts and details of the application are made public ahead of decisions. Ministers have continually asserted that environmental standards will be protected and enhanced now that we have left the EU; improving transparency of the decision making process on pesticides would be a good way to demonstrate this.

Government amendment 31 – disapplication of Section 31(2A) of the Senior Courts Act 1981 on an environmental review

The intention of this amendment appears to be that a restriction on the granting of remedies in certain circumstances provided for in Section 31(2A) of the Senior Courts Act 1981 does not apply on an environmental review. While we welcome this clarification, it is entirely undermined by the continued existence of the condition in Clause 37(8) on the grant of remedies, which places much wider constraints on the OEP and the court and will limit their effectiveness in ensuring that breaches of environmental law are addressed.

Amendments 3 and 30 – damage from low flows and water abstraction

Our understanding of **amendment 3** is that it is seeking to ensure that damage to watercourses, including chalk streams and other key sites of biodiversity importance, is tackled. England has 85 per cent of the world's chalk streams. These precious and unique freshwater ecosystems are at risk. They are, quite simply dying from a lack of water; low flows and chronic over abstraction are significant contributors to this**. Further detail in the bill, including confirmation that low flows should be considered as environmentally damaging, would be helpful to ensure that the government's proposed abstraction reforms address this problem with sufficient priority, for example bringing forward the 2028 timescale for revoking or varying damaging abstraction licences without compensation.**

Amendment 30 would be helpful to maintain a focus on the impacts of abstraction, including upon our globally rare chalk streams.

Government amendment 6 – the significant improvement test

With the UK failing to meet 11 out of 15 indicators for healthy seas in 2019, improvement is urgently needed in the marine environment. **Government amendment 6** helpfully clarifies that the significant improvement test applies to the marine environment as well as the terrestrial environment. This means that, in assessing the proposed set of long term targets alongside existing targets, the Secretary of State must be satisfied that their achievement would constitute significant improvement for the land and sea.

However, because of the subjective nature of the significant improvement test, there remains a risk that the marine environment could continue to be degraded. If elements of the terrestrial environment are improved, it may be possible for a future Secretary of State to claim that significant improvement had been achieved across land and sea together.

We would welcome reassurance that significant improvement must be achieved for the marine environment and separately for the terrestrial environment in order for the test to be met. This should be achieved by clarifying that the test cannot be met by setting targets for improvement in only a few areas; instead it must cover all the main ecological systems on land and at sea, taking into account the advice of independent experts and the OEP.

Amendment 22 – maintaining biodiversity net gain habitats in perpetuity

Done well, biodiversity gain could help contribute to the restoration of biodiversity, deliver the ambitions of the 25 Year Environment Plan and help respond to the climate and ecological emergencies, if it operates and is assessed against a national plan to restore nature and ecosystems.

We are concerned that newly created habitat, as part of developers' biodiversity gain requirements, could be destroyed after 30 years and key types of development are currently out of scope.

We welcome **amendment 22** which would require habitats secured under biodiversity gain to be maintained in perpetuity, rather than the 30 years currently specified in the bill. It would also ensure that the habitat secured under biodiversity gain should be secured in its target condition.

These amendments are vital. The bill as currently written would allow gain sites to be degraded or destroyed after 30 years, destroying ecological gains and carbon storage benefits – and any prospect of these gains and benefits making a long term impact. If delivery of biodiversity gain is to contribute to the 25 Year Environment Plan commitment to a Nature Recovery Network, and to provide carbon sequestration which could support the net zero target, these areas must be secured and maintained for the long term. This will ensure that they can be enjoyed by future generations, secure nature's recovery for the long term, and play a role in assisting nature to adapt to climate change.

Amendments 26, 27, 36, 37 and 38 – use of forest risk commodities in commercial activity

Since the bill was introduced to Parliament, the government has undertaken a consultation on whether the UK government should introduce a new law designed to prevent forests and other important natural areas from being converted illegally to agricultural land. The consultation revealed strong public support for action.

90% of respondents also stressed that the proposal could go further, with significant numbers of responses highlighting that relevant local laws may not be as strong as international or industry standards and that the proposal should be expanded to other ecosystems and take an integrated approach to the impact of supply chains on the environment and human rights more widely.

The Global Resource Initiative (GRI) Taskforce recommended in March 2020 that the government should urgently introduce a mandatory due diligence obligation on companies that place commodities and derived products that contribute to deforestation (whether legal or illegal under local laws) on the UK market. The GRI also called on the government to take action to ensure similar principles are applied to the finance industry.

The GRI also recommended that since not all businesses have begun to commit to and implement sustainable supply chains, a legally binding target to end deforestation in UK supply chains would provide the necessary signal for a shift in behaviour across the entire industry.

Schedule 16 of the bill now includes a new prohibition on the use of certain commodities associated with illegal deforestation and requirements for large companies to undertake due diligence and reporting.

Due diligence legislation is only part of the comprehensive approach that will be needed to deliver deforestation free supply chains. A mandatory due diligence framework should formalise and obligate responsible practices throughout UK market related supply chains and finance, to ensure comprehensive accountability and help prevent deforestation and other global environmental damage.

We support amendments 26 and 27 which would strengthen these new provisions by ensuring the due diligence requirements cover the finance industry and by providing stronger protection for local communities and indigenous people. We also support **amendments 36 to 38** which would strengthen the enforcement of these provisions.

As the government has its sights set on a world leading new law, its ambition should be strengthened and other measures, such as a binding target to end deforestation in UK supply chains (as recommended by the GRI) should be pursued.

Amendment 24 – maintaining the protections of REACH

Now that the transition period has ended, the UK should stay as close as possible to EU REACH, in order to achieve our ambitions of protecting the environment, human health and animal welfare. A worst case scenario of significant divergence could result in the UK becoming a dumping ground for hazardous chemicals banned or restricted in the EU, at the same time as businesses incur significant costs to duplicate registrations and safety dossiers already held by the EU. **We therefore support amendment 24 which would help maintain parity with EU REACH and ensure the retention of robust chemical regulation.**

Amendments we do not support

Government amendment 20 – Guidance on the OEP's Northern Ireland enforcement policy and functions

This amendment would give DAERA a power to issue guidance to the OEP on certain matters that must be included in the OEP's enforcement policy (which will sit within its strategy). The OEP "must" have regard to this guidance. Crucially, this means that DAERA can issue guidance on how the OEP ought to determine whether failures to comply with environmental law are "serious", how the OEP ought to determine whether damage to the natural environment or to human health are "serious" and how the OEP ought to prioritise cases. The meaning attributed to "serious" matters – it will fundamentally shape the OEP's remit, work and approach.

The government amended the bill during committee to introduce Clause 24, which provides a comparable guidance power for the Secretary of State.

There can be no doubt such a broadly cast power will undermine the OEP's independence and render the government's ambition for a world leading watchdog impossible to achieve.

We have previously commented on why this power is inappropriate. Further to these concerns, the exercising of any such power raises an additional matter that is specific to Northern Ireland, in view of the unique circumstances of Northern Ireland and the executive approval process which involves different political parties.

It does not appear that sufficient consideration has been given to this important issue and further discussion is urgently needed with Northern Ireland stakeholders on this.

New Clause 2 – assessment of plans

New Clause 2 would amend the Conservation of Habitats and Species Regulations 2017 to end the specific duties it contains, including the requirement for authorities to assess the potential impacts of a plan or project likely to affect a European protected site. The new clause would also end the duty to only give permission for a plan or project after ascertainment that it would not have an adverse impact on the European protected site.

These duties would be replaced by giving authorities the option to carry out an assessment of a plan or project likely to affect a European protected site, with any assessment being an optional rather than required element in decisions.

The ending of legal requirements to assess and take into account potential effects on European protected sites would not only represent a major change to our planning system, but would also be in noncompliance with international law. It would also be a regression of current environmental requirements, which the government has pledged to avoid, and undermine the recent government commitment to effectively manage 30% of land for nature by 2030. The duties have been in place since the EU Habitats Directive 1992 formally established the requirements for a protected sites network. The removal of these duties would expose the network to damaging decisions, opening large swathes of precious, and in many cases irreplaceable, habitat to development. Special Areas of Conservation alone protect 0.6 million hectares in England. These important areas and other protections (including SPA and Ramsar designations) would all be significantly weakened by the new clause.

With 41% of UK species in decline, England needs further protections for crucial species and habitats, not a weakening of the few protections currently in place. **We strongly oppose New Clause 2, as it would have a damaging effect on nature, make the 30x30 pledge impossible to achieve and undermine the conservation aims of this bill.**

New Clause 3 – phosphates levels

New Clause 3 appears designed to partially evade the consequences of a recent European Court of Justice ruling concerning the impact of water pollution on European protected sites.

The case ruling, known as Dutch N, requires authorities to assess the impact of phosphates and nitrates on protected sites. This ruling has meant that UK authorities have had to make assessments of how major developments could increase phosphate and nitrate levels in waters that run into protected sites, as part of their duties under the Conservation of Habitats and Species Regulations 2017.
New Clause 3 would allow authorities to disregard evidence showing phosphate impact on protected sites.

We oppose New Clause 3, as assessments of nitrate and phosphate impacts on protected sites are both necessary and feasible.

The assessments are necessary to respond to the worsening pollution of our waters. Figures released by the Environment Agency in September showed that none of England's rivers, lakes and streams are in good health. When figures were last published in 2016, 16% of waters were classed as good. Nitrate and phosphate pollution are contributors to this worsening pollution, with evidence showing that increasing quantities of both pollutants in southern English waters is resulting in significant oxygen depletion. Allowing authorities to disregard such evidence would further exacerbate this situation, damaging protected sites and harming the species that rely on them.

Assessments of nitrate and phosphate impacts are feasible. Since the Dutch N ruling, Natural England has worked to prepare assessment guidance for authorities, along with mitigation options (see for example here). Indeed, legal underpinning for Protected Sites Strategies, introduced into the Environment Bill at Committee stage by the government, has been proposed in part to facilitate such mitigation. A mitigation package to address nitrates in the Solent has been cited by Natural England as an example of how Protected Sites Strategies can be used in practice.

New Clause 3 seeks to partially address an issue that is already being effectively resolved, in a way that would further damage water quality. **We oppose New Clause 3 as an unnecessary and harmful amendment**. However, while the amendment as written would be damaging if enacted, we understand it has been put forward for the purpose of raising awareness about the need to deliver solutions on the issue of phosphate pollution in watercourses, which is a significant contributor to the poor state of health of the water environment.

Amendment 4 – the precautionary principle

We oppose this amendment which would undermine and qualify the application of the precautionary principle. This amendment should be rejected.

The amendment proposes that the policy statement should comply with 'the regulator's code'. We assume this means the Regulators' Code issued under the Legislative and Regulatory Reform Act 2006, which is concerned with how regulators exercise their responsibilities, whereas the policy statement is concerned with the substance of ministerial policy making.

The Regulators' Code is not designed to apply to ministerial policy and the amendment's reliance on it is misplaced. Linking the precautionary principle to the Regulators' Code, which seeks to reduce regulatory burdens on those they regulate, risks undermining this vital principle.

Subsection (3A)(b) makes no reference to environmental impacts, which should be the most prominent concern in the application of an environmental principle. Instead, it seeks to introduce a limit on the application of the precautionary principle, which is already caught by the existing proportionality limit on having due regard to the principles policy statement in Clause 18(2).

Subsection (3B)(a) is concerning, particularly as this provision is to apply to the statement as a whole. This appears to be seeking to ensure that individual activities with relatively small environmental harms are not prevented by an application of the policy statement. This could prevent assessment of cumulative harms in an area of land use, which is highly relevant to environmental issues such as air pollution, biodiversity loss and climate change.

Subsection (3B)(b) introduces non-environmental considerations into the process, within a statement that is meant to be about environmental principles. Of course there will be many times when "social, economic and cultural impacts" do indeed need to be taken into account, but the correct application of the precautionary principle should entail the identification of all potential environmental risks. Economic considerations should only be factored in at a later stage once risks have been identified.

Subsection (3C) would limit the application of the precautionary principle to only "serious and irreversible" risks, instead of allowing all potential risks to be identified and considered. In addition, there is no definition of what is meant by risks that are "hypothetical in nature". This concept appears to be at direct odds with the underpinnings of the precautionary principle (i.e. that lack of scientific evidence should not be a barrier to taking preventative action for environmental protection).

Finally, the amendment appears to have no regard for the government's obligations under the EU-UK Trade and Cooperation Agreement . The Agreement requires the government to "respect" the precautionary approach and this amendment would undermine this. The government's international law obligations require it to reject the amendment.

This amendment would introduce an immediate regression from current environmental standards and should be rejected.

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On behalf of Greener UK and Wildlife and Countryside Link

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