

Environment Bill: briefing for Commons Committee

November 2020

Interpretation of Part 1

Clause 41 – meaning of natural environment (amendments 125 + 193)

The definition of the natural environment in Clause 41 risks excluding significant elements of the natural world. The extent to which the marine environment is provided for in the bill is unclear. In addition to the need for the marine environment to be included within the scope of the target setting framework, Clause 41 should be amended to make it explicitly clear that the meaning of the natural environment includes the marine environment.

We support **amendment 125** which would clarify that the natural environment includes a reference to the marine environment and is not confined to inland waters.

Paragraph 61 of the Explanatory Notes indicates that the definition does extend to the marine environment, as well as the terrestrial and water environments, but **for legal clarity this should be stated on the face of the bill.**

The government has determined that such clarity in relation to the marine environment is necessary in other environmental legislation, for example please see [reg 3](#), Conservation of Habitats and Species Regulations 2017 and sections [16\(12\)](#) and [27](#) of the Wildlife and Countryside Act 1981.

Earlier in Committee during a discussion on **amendment 183** in relation to the significant improvement test, the Minister [said](#) that:

“In line with that, the significant improvement test—a legal requirement in the Bill—is intended to consider both the breadth and the amount of improvement, with the aim of assessing whether England’s natural environment as a whole would significantly improve. It is a holistic approach, and the Bill’s definition of the natural environment is drafted to be broad enough to encompass all its elements, including the marine environment, which we discussed earlier. I believe the shadow Minister and I are thinking along the same lines, as I think he was intimating that he wants this all-encompassing approach, which is explicitly highlighted in the Bill’s explanatory notes.

The Secretary of State will consider expected environmental improvement across all aspects of England’s natural environment, both terrestrial and marine, when conducting the significant improvement test. The test involves assessing whether England’s natural environment would significantly improve as a result of collectively meeting the long-term targets, which are legally binding, under the Bill, alongside any other relevant legislative environmental targets to which we are also adhering. I hope that reassures the shadow Minister, and I ask him to withdraw amendment 183.”

There is therefore no policy difference on this matter, as both the government, opposition MPs and stakeholders agree on the need for a holistic approach in which the marine and terrestrial environments are embraced fully by the relevant measures in the bill. We urge the government to accept amendment 125 for the sake of legal clarity.

Clause 42 – meaning of environmental protection

“Environmental protection” is too narrowly defined in Clause 42. Key areas of law with potential environmental impacts may fall outside the scope including, for instance, many pieces of planning law, as explained in Paragraph 366 of the Explanatory Notes. This is concerning, as the planning system has the potential for significant effects on the environment.

In addition, specific areas of law are carved out. Concerning exclusions include those relating to the disclosure of, and access to, environmental information as well as taxation, spending and the allocation of resources within government. These exclusions could hinder the OEP’s ability to assess whether compliance with environmental law is being adequately prioritised.

Clause 43 – meaning of environmental law (amendments 127, 115, 116)

Environmental law is defined in Clause 43 as any legislative provision which is mainly concerned with environmental protection. **The term “mainly concerned” is ambiguous with no clear legal meaning.** “Related to” is a clearer and more easily understood alternative. It acknowledges that law is often concerned with many matters, and that the environment is affected by many areas of law.

Dr David Wolfe QC, drew attention to this issue in his [written evidence](#) to the pre-legislative scrutiny of the draft bill.

“And, even then, there is no basis for a “mainly concerned with” test. If any provision of any Act or regulation is concerned with an environmental matter, then it is “environmental law”.”

In its pre-legislative scrutiny [report](#) on the draft bill, the Environmental Audit Committee recommended that:

“103, Clause 31(1)(a) on environmental law should be changed from ‘is mainly concerned with’ to ‘relating to’. The Government should consider using existing definitions, such as those in the Natural Environment and Rural Communities Act 2006, the Environmental Protection Act 1990 and the Aarhus Convention.”

In its pre-legislative scrutiny [report](#) on the draft bill, the EFRA Committee concluded that:

“122. The definitions of natural environment and environmental law are of central importance as they will guide future Secretaries of State in their creation of Environmental Improvement Plans and frame the remit in which the new Office for Environmental Protection will operate. They must therefore cover all the necessary aspects of environmental law and the wider environment”.

The Committee recommended that:

“123. The definitions in Clauses 30 and 31 need to be expanded in scope and clarified in application and interpretation. We recommend that the Bill be redrafted to provide for a more holistic definition of the environment, with explicit reference made to the historic environment. Given the UK’s departure from the wider framework of EU environmental law, international law should be included within the definition of environmental law, so that the OEP can factor international law into its enforcement and wider advisory functions. The Bill should also be redrafted to ensure that the OEP has the power to review all aspects of the Environmental Improvement Plans in its monitoring role.”

We support **amendment 127** which would ensure that any legislative provision that concerns environmental protection is included within the definition of environmental law.

We also support **amendments 115 and 116** which would remove the exceptions for legislative provisions relating to armed forces, national security matters, tax, spending and the allocation of resources within government from the definition of environmental law for the purposes of the scope of the functions of the Office for Environmental Protection.

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