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To: All Peers

My Lords,

Second Reading of the Environment Bill

I am very grateful to noble Lords for their passionate and knowledgeable contributions to the Second Reading of the Environment Bill which took place on 7 June. In my closing speech, I explained that due to time pressures, I could not address all the points raised in the chamber. This letter responds to points that I could not address at the time.

Environmental Governance

Office for Environmental Protection (OEP)

OEP Independence

Lord Cameron of Dillington, Baroness Boycott, the Bishop of Oxford, Baroness Jones of Moulsecoomb, Lord Anderson of Ipswich, Lord Rooker, Lord Duncan of Springbank, the Bishop of Salisbury, Baroness McIntosh of Pickering, Lord Smith of Finsbury and others raised the issue of the independence of the OEP.

As set out in Schedule 1, the OEP will be operationally independent from government, governed by non-executive members appointed through the appropriate public appointments process as regulated by Her Majesty's Commissioner for Public Appointments. The first non-executive members of the new Office for Environmental Protection were announced on 7 June. The new members are: Dr Paul Leinster CBE, Professor Richard Macrory, Professor Dan Laffoley and Julie Hill MBE. They will join chair Dame Glenys Stacey in advising Government and holding public authorities to account for their implementation of environmental law.

Clause 22 also requires the OEP to act objectively and impartially and have regard to the need to act transparently. Parliament will be able to hold Ministers to account for the OEP through usual processes, including parliamentary questions, select committee hearings and consideration of the OEP's statutory reports.

There will also be a multiannual indicative budget (ring-fenced within any given spending review period), as well as a duty in Schedule 1 on the OEP to provide an independent annual assessment of whether it is receiving sufficient funding from the Government. This must be laid before Parliament.

Baroness Boycott raised a question as to why the OEP cannot be an independent body along the same lines as the National Audit Office. The OEP has been established constitutionally as

a non-departmental public body, in line with wider independent public bodies, for example the Committee on Climate Change. As such, it will be accountable to Parliament via Defra's Secretary of State for its overall functions and use of public money, as per long established practice.

Setting up the OEP as a non-departmental public body delivers value for money, independence and ministerial accountability. As a non-departmental public body, the OEP will be legally separate from the Crown, without which it would be unable to take enforcement action against Crown bodies such as Government Departments - this is because the Crown cannot take enforcement action against itself.

The Environment Bill requires that the OEP reports to Parliament (Schedule 1) and provides Parliament with oversight powers in respect of the OEP's key financial and strategic documents. Under the Bill, the OEP will be required to lay before Parliament: its strategy, certified statement of accounts, corporate annual report, annual progress report on the environmental improvement plan and targets, and any reports it has written on the implementation of environmental law.

OEP guidance power

Lord Smith of Finsbury asked why the Government should give the OEP guidance. We have always been clear that the OEP should focus on the most serious, strategic cases, and this guidance power (Clause 24) is not intended to change that. For example, if the OEP were failing to be strategic and not taking action in relation to systemic issues, the Secretary of State could use the guidance power to suggest ways in which the OEP could more effectively use its resources to benefit people and the environment.

Although the Secretary of State may issue guidance to the OEP on its enforcement policy, they will need to exercise this power consistently with their duty to have regard to the need to protect the OEP's independence. Furthermore, the OEP does not have to follow the guidance where it has clear reasons not to do so. All guidance must also be laid before the House.

As I mentioned on the floor of the House, the Bill does not provide ministers with any powers of direction over the OEP and requires ministers to have regard to the need to protect the OEP's independence. Ministers cannot set its programme of activity or improperly influence its decision-making.

OEP Enforcement

Lord Anderson of Ipswich, Lord Khan of Burnley, the Earl of Caithness, Lord Whitty, Lord Berkeley, Baroness Altmann, Lord Redesdale, Lord Sheikh and Lord Duncan of Springbank, drew comparisons to the EU, including asking why the Bill was amended in the House of Commons to limit urgent cases to the OEP's power to bring judicial review proceedings (Clause 38). The noble Lord Anderson of Ipswich also asked for confirmation that OEP investigation and environmental review will not be advanced by Defra as alternative remedies to justify the refusal of individuals' permission to apply for judicial review. Lord Rooker argued that the OEP does not enforce the rule of law through Clause 37(7).

It is important to assess the OEP's enforcement framework holistically, and in relation to its intended role and remit. It is designed as an additional means to address serious instances of non-compliance with environmental law and is not intended to replace the role of other domestic procedures and mechanisms, including judicial review, which serve a different purpose.

The OEP's enforcement function, through its investigatory powers and notice procedures (Clauses 32-36), is designed to resolve cases as quickly as possible, without the need for time-consuming litigation in most cases. Nonetheless, following the issuing of notices, there may be cases where matters cannot be resolved through dialogue. In those cases, the OEP will have recourse to legal challenge, in the form of an environmental review in the High Court. This strikes the right balance between allowing the OEP the space it needs to resolve issues with public authorities, and the powers to take legal action where necessary.

Environmental review (Clause 37) is a bespoke, and additional, jurisdiction for the court to hear claims outside the usual time limit for a judicial review/statutory review. The court retains all available remedies where decisions are challenged by way of judicial review/statutory review within existing time limits, including by the OEP. The OEP can apply for judicial review (Clause 38) remedies, such as mandatory and quashing orders, subject to appropriate safeguards, that will work to ensure compliance with environmental law. The Court of Justice of the EU cannot issue these kinds of remedies to Member States.

OEP comparison to the EU framework

The OEP's enforcement powers are different from, and will operate more effectively, than those of the European Commission. The OEP will be able to liaise directly with the public body in question to investigate and resolve alleged serious breaches of environmental law in a more targeted and timely manner. It is of course worth noting that the OEP will have a wider remit than the Commission ever did – including all domestic environmental legislation, not just that from the EU, and working across all public authorities in its enforcement function.

Power to apply for urgent judicial review

In urgent cases, the OEP may need to act quickly in order to prevent serious damage to the natural environment or human health. In such circumstances, the OEP may also apply directly for a judicial review, rather than issuing notices. Where the OEP brings a judicial review in urgent cases, all remedies will be available at the discretion of the court.

The urgency condition in Clause 38(1)(b) is for the OEP to consider in line with 38(2). This sets out that the condition is based on whether it is necessary for the OEP to bring a judicial review, rather than proceeding according to its normal enforcement procedures. This would be where serious damage to the natural environment or human health would otherwise occur before the OEP could resolve the case through its core enforcement mechanism.

The power for the OEP to apply directly for judicial review in urgent cases is an important provision, which has always been intended to supplement the OEP's core enforcement function. It has always been the case that the OEP's ability to apply for judicial review under this clause was linked to the necessity of taking that route in order to prevent or mitigate serious damage to the natural environment or to human health. The amendments made in the House of Commons were intended simply to clarify the conditions that should be met before the OEP may apply for judicial review, now referred to as 'the urgency condition'. The clause was also restructured so that this condition is an objective, rather than subjective, test which must be passed for the OEP to bring such proceedings, again with the intention of bringing greater clarity to the test.

We consider that the Bill provides the OEP with appropriate powers to deal with serious breaches of environmental law and strikes the right balance between ensuring that serious matters that cannot be resolved by the notice processes can go before the court; but also ensuring that there is not an open-ended ability to overturn decisions, potentially years after

they are made, in a way which would cause substantial hardship, substantial prejudice and detriment to good administration.

Environmental review

The environmental review process will allow the OEP to bring legal proceedings outside the normal judicial review timescales. This is an important feature of an environmental review, as it allows the OEP time to resolve issues through its information and decision notices, rather than rushing to legal action.

In recognition of the longer timescales involved, environmental review therefore necessarily provides greater protection for third parties, who could be impacted by legal remedies at a later stage.

Impacts on the right to bring judicial review

It is the Government's view that the OEP complaints and enforcement functions would not affect the rights of other persons to bring legal challenges against public authorities by way of judicial review. However, it is within the court's jurisdiction to hear and decide cases as it sees fit.

OEP and fines

Baroness Parminter highlighted the lack of powers to fine within the OEP. In the domestic context, the clear requirements under the legal framework to comply with court judgments make a system of fines unnecessary. If a public authority failed to comply with a court order the OEP would be able to bring contempt of court proceedings.

Fines at the EU level are only needed to provide an incentive for Member States to ensure compliance with court judgements, as no alternative compliance mechanism exists. Domestically, this is not the case. The threat of being found to be in contempt of court, and the potential sanctions this could involve, ensure that public authorities do comply with court judgments.

There are also clear requirements in the Ministerial Code for Ministers to comply with the law, including court orders.

OEP and the Committee on Climate Change

Lord Teverson suggested that the OEP should focus on enforcement and not monitoring, especially on biodiversity in as similar way to the Committee on Climate Change. Given that the OEP and the Committee on Climate Change may have a common interest regarding climate change legislation, it will be mutually beneficial for them to cooperate, and I would like to assure him that the Government has made provision to facilitate this, ensuring both bodies are able to effectively undertake their separate and important roles.

Clause 25 requires that the OEP and the Committee on Climate Change must prepare a memorandum of understanding and this memorandum must set out how the two bodies will cooperate and avoid overlaps in the exercise of their functions. To ensure there is no overlap between the functions of the two bodies, the Bill also carves out certain parts of the Climate Change Act, including carbon budgets, from the OEP's scrutiny functions, as they already fall within the remit of the Committee on Climate Change (see clauses 28(3) and (4)).

OEP and Devolved Administrations

Baroness Ritchie of Downpatrick asked what the timescale would be for appointing the first Northern Ireland member to the board of the OEP, and Lord Browne of Ladyton asked for clarity on the reserved functions of the OEP.

The Department of Agriculture, Environment and Rural Affairs (DAERA) is currently exploring the possibility of appointing a Northern Ireland member-designate to the Interim OEP, with the intention of formally appointing that person to the OEP as soon as it is practicable to do so.

The devolution settlements determine which matters are reserved and devolved. The environment is a devolved matter, subject to a small number of areas which remain within reserved competence. It is therefore for each devolved administration to determine its own governance arrangements for devolved environmental matters.

We have sought to limit the OEP's remit to England and reserved matters, while avoiding any devolved matters that would appropriately be dealt with by the devolved governance bodies being separately established by the Scottish and Welsh Governments. The Environment Bill also makes provision for the OEP to extend to devolved matters in Northern Ireland, should the Assembly decide to commence these provisions.

Environmental Targets

Interim targets

Baroness Parminter, Lord Oates, Lord Harries of Pentregarth, Baroness Jones of Whitchurch, and Baroness Altmann, argued that interim targets should be made legally-binding. Interim targets will help the Government stay on track and avoid the longer-term targets being considered too far off to worry about. The robust statutory cycle of monitoring, planning and reporting, combined with regular OEP and Parliamentary scrutiny, ensures that meeting interim targets is taken seriously.

The statutory cycle creates a "triple lock" to drive short term progress:

- 1) The Government must have an environmental improvement plan (EIP) which sets out the steps it intends to take to improve the environment, and review it at least every 5 years (Clause 9);
- 2) the Government must report on progress towards achieving targets every year (Clause 8); and
- 3) the OEP (Clause 27) will hold the Government to account on progress towards achieving targets and every year can recommend how better progress can be made.

It is critical to achieve these long-term targets to deliver significant environmental improvement, and this framework provides strong assurance that we will do so. The government has an explicit duty under the Bill to ensure long-term targets are met.

Plastic reduction and circular economy target

Baroness Jenkin of Kennington asked whether government is developing indicators for a circular economy, and whether government would set a long-term target for how circular we want it to become. Viscount Colville of Culross also asked whether a target should be used to drive down the culture of single use.

I would like to reassure Noble Lords that the Bill already requires government to set at least one long-term, legally binding target for Resource Efficiency and Waste Reduction. This will

be a holistic target that will cover plastic and other materials. In August 2020, we published [a policy paper](#) which provides further detail of the scope of targets that government is considering.

Water targets

Lord Randall of Uxbridge asked that the forthcoming water targets, to be set under the Bill, are ambitious. The Government is currently considering water targets on reducing pollution from agriculture, wastewater and abandoned metal mines, and a target to reduce water demand. Setting targets will provide a strong mechanism to deliver long-term environmental outcomes. [The policy paper](#) we published in August 2020 provides further detail of the scope of targets that government is considering.

Tree target

Lord Vaux of Harrowden and Lord Carrington asked what the Government's plans are for a tree target. As noted in the policy paper on environmental targets published in August 2020, the Government is exploring whether a statutory target for trees in England would be appropriate. The Government plans to consult on a long-term tree target within a public consultation on Environment Bill targets, expected in early 2022, to help meet commitments on climate change and biodiversity.

Additionally, the Government has committed to increasing tree planting across the UK to 30,000 hectares per year by the end of this Parliament, and we announced a Nature for Climate Fund to increase planting in England.

Environmental targets and Devolved Administrations

Baroness Ritchie of Downpatrick and Baroness Bakewell asked why there was no duty on DAERA to set legally binding targets. The environment is a devolved matter, except for a small number of reserved areas. It will be for the individual Devolved Administrations to decide whether to adopt a targets framework.

DAERA is currently preparing Northern Ireland's first Environment Strategy, which will be Northern Ireland's first 'Environmental Improvement Plan'. Therefore, it was the view of DAERA that it was not appropriate to include provisions in respect of statutory targets for Northern Ireland as the policy objectives to which the statutory targets might apply have not yet been determined.

The Government values its discussions with the Devolved Administrations on environmental matters and will continue to share ambitions and goals with them, including in the context of setting environmental targets under the Environment Bill's framework.

Environmental Principles

Baroness Jones of Moulsecoomb raised concerns about the duty on ministers to have 'due regard' to the Environmental Principles Policy Statement (Clause 18). 'Due regard' means that a conscious and deliberate consideration of the approach has to be undertaken.

Case law demonstrates that the 'due regard' duty will mean that the policy statement must be used in substance, with rigor and an open mind. As established by the Courts in a series of judgments, 'due regard' is explicitly not a tick box exercise and requires analysis of the whole picture.

Placing the legal duty on the Environmental Principles Policy Statement enables the policy statement to set out details on the application and interpretation of the principles. This would not be clear if the duty was directly on the principles themselves because primary legislation cannot go into the necessary detail. The lack of detail could create confusion and significant disparity in approach.

The EU lacks a policy statement. As such, the principles are used inconsistently with little transparency on how they are factored in when EU policy is made.

Resources and Waste

A number of noble Lords, including Lord Bilimoria and Baroness Bennett of Manor Castle talked about the importance of moving to a circular economy and embedding the waste hierarchy in our actions to tackle waste. I would like to assure them that measures in the Bill seek to transform the way we manage our resources across a product's lifecycle – design, use and end-of-life.

Design

At the design stage, powers to extend producer responsibility will enable the Government to make businesses responsible for 100% of the costs of dealing with the waste generated when their products are disposed of (Clause 50). This will encourage them to make better, more sustainable design decisions at the start of a product life cycle. Resource efficiency measures (Clauses 51-2) will also require products to meet specified standards so they are designed from the start to be durable or can be reused.

Baroness Jenkin spoke about the impacts of fast fashion. The Bill includes a broad power to deliver extended producer responsibility schemes for a range of materials. The Government's new draft [Waste Prevention Programme for England - Towards a Resource Efficient Economy](#), published for consultation on 18 March, sets out the Government's approach to improve resource efficiency and reduce waste in textiles. This also announced its intentions to develop a proposal for Extended Producer Responsibility for textiles and the Government will consult stakeholders on options by the end of 2022.

Use

We want to empower consumers with the information to enable them to make informed choices on the sustainable nature of a product. In accordance with the Government's Resources & Waste Strategy, we are seeking powers through the Environment Bill to enable government to require products, such as washing machines and furniture, to carry information for example relating to durability, reparability and recyclability (Clauses 51-2).

Charges on single use plastics (Clause 54) will encourage consumers to reduce consumption. Earl Lytton highlighted that as a material, plastics are useful and the Government agrees their strength and versatility make them valuable materials in many areas of life. Problems occur when they are leaked out of the system and into the environment, where their durability ensures they survive for hundreds of years. The plastic problem is one of management not eradication, to reduce, reuse, and recycle the material we have and not let it escape into, and damage, our environment and its inhabitants. The key is to encourage smarter design in the first instance, and to have a robust, sensible, and responsible system to capture and dispose of plastic waste where it arises.

End of Life – Deposit Return Schemes

The Environment Bill will enable us to introduce deposit return schemes for drinks containers. A deposit return scheme (Clause 53) will help reduce the amount of littering in England, Wales and Northern Ireland, boost recycling levels, and allow high quality materials to be collected in greater quantities.

Lord Randall of Uxbridge and Viscount Trenchard stressed the need for the DRS scheme to work across the UK. Waste and recycling is a devolved matter and each part of the UK has the right to develop policy in the way it considers appropriate. In all deposit return scheme consultations launched by Defra, we consulted with the Welsh Government and DAERA, and we are continuing to work closely with them as we develop proposals to introduce such a scheme in England.

Questions were also raised on the scope of the DRS by Lord Randall of Uxbridge and Baroness Bennett of Manor Castle. The DRS provisions in the Environment Bill are enabling powers that allow the relevant national authority to establish deposit return schemes through secondary legislation. These powers allow for a variable deposit if that is what is required. The recent consultation considered the scope of materials and proposed that the Deposit Management Organisation will have the ability to set either a fixed rate or a variable rate deposit level. The Government wants to make sure any deposit return scheme is right for England and draws on the evidence of what works elsewhere in the world, including the schemes in Scandinavia.

End of Life - Waste Management

Baroness Jenkin raised the important issue of food waste. To combat food waste in the home, the consultation on [Consistency in Household and Business Recycling in England](#) (which closes on 4 July) proposed that the requirement for weekly separate food waste collection would be introduced during the 2023/24 financial year. A consultation will launch in 2021 on introducing regulations that will make the public reporting of food waste volumes mandatory for certain food businesses of an appropriate size. It is already possible to feed certain food waste originating from food producers, manufacturers and retailers to animals, provided operators can demonstrate there are no prohibited animal by-products which may present a risk of spreading diseases.

The Earl of Shrewsbury spoke on the blight of fly-tipping: we are committed to tackling this unacceptable behaviour. In recent years the Government has bolstered local authorities' powers to tackle fly-tipping, such as by introducing the power to issue fixed penalty notices and to stop, search and seize vehicles of suspected fly-tippers (Clauses 65-70). The measures in the Bill will grant greater enforcement powers to tackle waste crime which may help to reduce the incidence of fly-tipping, and ensure government has the ability to increase fly-tipping penalties in the future.

Overseas Shipments of Waste

Baroness Redfern, Baroness Bakewell, Baroness Jones and Lord Vaux discussed the shipment of waste. The Bill provides enabling powers so that the Government can continue to regulate shipments of waste going forward, this includes powers to restrict imports and exports of waste (Clause 61). It is already illegal to export waste for disposal unless for very specific reasons. The Government wants to deal with more of our waste at home and these powers will enable us to deliver on our commitment to ban the export of plastic waste to countries that are not members of the Organisation for Economic Cooperation and Development (OECD) There will be a public consultation on the date by which this should be achieved.

Implementation

For each of the reforms we want to have ambitious but realistic timetables, as raised by Lord Bilimoria. We have reviewed the delivery timelines for each reform and have been engaging with stakeholders through the recent consultations to gather views on the timelines and deliverability.

Air Quality

Air quality targets

Baroness Parminter and Lord Randall of Uxbridge asked for assurance that the air quality targets set under the Bill will be ambitious (Clauses 1-2). I would like to assure them that improving air quality is a priority for the Government and we are committed to tackling a diversity of pollutants which harm human health and the environment. The Government's immediate focus for target setting is PM_{2.5} - it is the air pollutant of greatest harm to human health.

Government is committed to setting targets through a robust, evidence-led process that seeks independent expert advice, provides a role for stakeholders and the public, as well as scrutiny from Parliament. This will help ensure that targets are ambitious, credible, and supported by society. On 19 August 2020, the Government published [a policy paper on environmental targets](#), in which the Government set out its intention that the long-term air quality target (set under clause 1 of the Bill) would be an exposure reduction target for PM_{2.5}, which will drive continuous reductions in population exposure to this dangerous pollutant. This will be complemented by the separate PM_{2.5} concentration target (set under clause 2 of the Bill) which will drive action in the most polluted areas. Together, these two targets represent a significant advance on the Government's current regulatory framework, and will improve the health of all our citizens.

Compliance with existing air quality obligations

Baroness Sheehan raised the issue of compliance with existing air quality obligations, and asked for reassurance that local authorities will be integrated into a strategy to meet new targets. Air pollution at a national level has reduced significantly since 2010 – emissions of PM_{2.5} have fallen by 11%, while emissions of nitrogen oxides have fallen by 32% and are at their lowest level since records began. In addition all zones, including London, meet the current concentration limits for PM_{2.5}.

While responsibility for meeting the PM_{2.5} target will sit with the national government, local authorities will have an important role to play in delivering reductions in PM_{2.5}. Regular reviews of the national Air Quality Strategy, which sets local standards and objectives, will be required under the Bill. We are considering what the role of local authorities should be as part of the first review of the Air Quality Strategy as required under Schedule 11. As air quality standards and objectives are revised, any impacts on local authorities and delivery partners would be assessed at that stage.

The Bill also introduces a new reporting duty on the Government itself, which requires annual reports to Parliament about progress made towards government's air quality targets (Clause 5). Furthermore, the OEP will have the power to bring legal proceedings if the Government breaches its existing environmental law duties, including its new duty to achieve long-term targets, the duty to achieve other air quality targets, and air quality reporting duties.

Water

Storm overflows and water quality

Lord Cameron of Dillington, Baroness Boycott, Baroness Altmann, Lord Harries of Pentregarth, the Duke of Wellington and the Earl of Shrewsbury raised the issue of storm overflows.

Addressing storm overflows is a priority for the Government, and we are taking action beyond the amendments being tabled for Committee. Defra set up a Storm Overflows Taskforce in August 2020 to bring together key stakeholders from the water industry, environmental NGOs, regulators, and government to drive progress in reducing sewage discharges.

The Taskforce has agreed a long-term goal to eliminate harm from storm overflows and has already taken steps to improve monitoring and transparency. A call to action from the Storm Overflows Taskforce has led to £143 million of new, additional investment on storm overflows within the current 5-year business planning period (2020-2025). The Taskforce is now working on plans to make progress towards that goal and has commissioned research to gather evidence on the costs, benefits and feasibility of different options. This research project is due to be completed in early summer.

Effective enforcement of water quality regulations

Baroness Altmann and Lord Chidgey raised the effectiveness of enforcement of water quality regulations, in particular the Environment Agency's enforcement of wastewater discharge. Sewerage companies must have a permit, issued by the Environment Agency, to discharge any wastewater.

The Environment Agency assesses whether companies are complying with their permits. Any non-compliance, such as spills resulting from blockages, is reported and may be subject to appropriate enforcement action. The Environment Agency has brought 48 prosecutions against sewerage companies in the last six years, securing fines of £35 million. £10.4 million has also been donated to environmental and wildlife trusts organisations in the same period through enforcement undertakings, a voluntary agreement which includes a donation to environmental charities to restore any harm done.

The Environment Agency will continue to take enforcement action against sewerage companies which fail to uphold the law or cause serious environmental harm. They are also looking at how new technologies, such as the use of drones and geospatial tools, can increase the effectiveness of its resources.

Water demand

Lord Redesdale and Lord Smith of Finsbury asked about managing demand for water. Protecting the UK's water resources is a priority for this government, which is why we are exploring using powers in the Environment Bill to set a statutory water demand target, which would cover water demand in the household and non-household sectors, as well as leakage. We will continue to develop this target, and other related targets, as well as working with water companies to further reduce leaks so we can balance growing demand for water with the commitment to protecting and restoring our natural environment.

The Government has committed to publishing the response to the 2019 consultation on personal water consumption this summer. The response will set out the Government's ambition and a package of policies to reduce household water consumption.

Water abstraction

Viscount Trenchard and the Earl of Devon raised concerns about the impact of abstraction licence reform on farmers (Clause 82). Government is very conscious of the need to balance the needs of agricultural and other abstraction licence holders accordingly with public water supply demands and the need to protect the environment.

While farmers will not be exempt from these measures, powers in the Environment Bill may only be used to vary licences where a licence causes or risks environmental damage or where at least 25% of a licence's licensed volume has been unused for the previous 12 years or more. We expect the Environment Agency to work closely with the affected licence holders before using these measures.

Nature and Biodiversity

Trees

Baroness Young of Old Scone, Lord Carrington, Lord Framlingham, Baroness Eaton and Lord Devon all raised various issues relating to trees.

To address concerns on tree planting targets I would like to highlight the Government's [England Tree Action Plan](#). Published in May of this year, the plan sets out that increasing tree planting is just the start of a journey towards creating a more wooded country. As noted in the policy paper on environmental targets published in August 2020, the Government is exploring whether a statutory target for trees in England would be appropriate. We plan to consult on a long-term tree target within a public consultation on Environment Bill targets, expected in early 2022, to help meet government's commitments on climate change and biodiversity.

To meet planting commitments we need a strong supply of healthy, disease free saplings. We are therefore providing funding to support UK public and private sector nurseries and seed suppliers to enhance quantity, quality, diversity and biosecurity of domestic tree production. We will provide a Nursery Notification Scheme that will help better plan for supply and demand in the sector. This will support nurseries and seed suppliers to produce the right stock at the right time. The Forestry Commission continues to be the Government's statutory adviser on trees and forestry and regulates the planting and management of new woods and forests.

The Government's new environmental land management schemes, named the Sustainable Farming Incentive, Local Nature Recovery and Landscape Recovery, will provide the main mechanism for publicly funded woodland creation after 2024 and will be informed by any new target. Government also supports new planting of urban trees to expand our urban forests in areas of greatest need through its Urban Tree Challenge Fund and Local Authority Treescapes Funds.

We recognise the need to safeguard jobs as well as newly planted trees. The successful delivery of the Government's plans to plant and protect many more trees requires a skilled workforce. Trees, woodlands, forestry and arboriculture will be important sources of jobs and revenue across England in future, aided by the Nature for Climate Fund, which will create and secure jobs, helping to level up across the country.

The Plan also sets out policy commitments to build on existing regulatory and planning protections for trees and woodlands, including by introducing a new category of 'Long Established Woodland': woodlands that have been in situ since 1840, alongside ancient woodland. We will consult on the protections these woodlands are afforded in the planning system, recognising their high ecological and societal value. We will also ensure future

planning reforms lead to more trees being planted and ensure strong protections for existing trees.

Biodiversity Net Gain

Earl of Lytton, Lord Randall of Uxbridge, Viscount Ridley, Lord de Mauley, and Baroness Jones of Whitchurch all spoke to biodiversity net gain (Clauses 92-4).

The net gain or loss of a development is measured in 'biodiversity units', which represent the value of that habitat to wildlife of all kinds. Biodiversity units are calculated using a metric that takes account of the type, extent and condition of habitats.

The Bill's biodiversity net gain provisions do encourage transparency, and provide specifically that off-site habitat enhancement for biodiversity gain must be recorded in a register which is accessible to members of the public.

Nationally Significant Infrastructure Projects (NSIPs) remain out of scope of the mandatory requirement in the Bill. However, the Government is exploring how a biodiversity net gain approach for major infrastructure projects could best be delivered, and how other policy or legislative levers could be used to support this. The NSIP regime is an important route to planning consent for a wide range of major infrastructure projects, which provide vital benefits for the public. These projects are planned and delivered over many years. It is therefore important that any strengthening of biodiversity net gain requirements for the nationally significant infrastructure regime is done at the right time and in the right way, particularly if any mandatory net gain requirement is introduced for such projects. This will help to ensure that projects in the pipeline are able to progress and take advantage of the benefits a net gain approach can offer.

Biodiversity Net Gain and Sites of Special Scientific Interest

Lord de Mauley spoke of biodiversity net gain on Sites of Special Scientific Interest (SSSIs). In providing advice to land managers in relation to biodiversity net gain, Natural England reflects good practice as set out in published industry guidance. This guidance states that conservation outcomes for net gain should demonstrably exceed existing obligations - they should not simply deliver something that would occur anyway. SSSI landowners are under a legal obligation to achieve favourable conservation status for designated features of designated sites. Accordingly, Natural England's advice is that achieving favourable condition for these designated features does not meet the principle on additionality set out above. However, the non-designated features of such sites may be able to be used to deliver biodiversity net gain as they are under no such existing legal obligation. Natural England will keep its advice under review in the light of the Environment Bill biodiversity net gain provisions.

With respect to whether the mandatory net gain approach will take account of appropriate enhancements within SSSI boundaries, Defra will continue to engage stakeholders to find the most appropriate answer. We recognise both the potential benefits of enhancing protected sites, or their non-designated features, but also recognise the additionality concerns that this might raise if done improperly. We also understand from stakeholders that a different answer might be needed in the intertidal and estuarine environment where the proportion of land designated as protected is significantly greater than it is in terrestrial areas.

Local Nature Recovery Strategies

Viscount Ridley wishes to see nature-based policies that reward success.

The Local Nature Recovery scheme (Clause 97) is one of the new schemes we are introducing to reward farmers and other land managers for producing environmental benefits. The Local Nature Recovery scheme will empower farmers, foresters and other land managers to build bespoke agreements that help deliver national environmental priorities in a locally responsive way, factoring in the views of local people. The scheme will integrate with locally developed plans and other local environmental policy mechanisms, such as Local Nature Recovery Strategies, to ensure that the right environmental actions are delivered in the right places. The scheme will also facilitate collaboration between land managers where this can deliver improved outcomes for the environment.

Rewilding Schemes

Viscount Trenchard asked whether Clause 95 puts a duty on Local Authorities to support rewilding schemes. Clause 95 confers a general duty on all public authorities to look across all of their functions and decide what actions they can take to conserve and enhance biodiversity, before taking that action. Whether the authority decides to support a rewilding scheme is a decision for that authority to take, but we will be publishing guidance to support public authorities with what they should do to comply with the duty.

Conservation Covenants

The Earl of Devon questioned how conservation covenants work under English property law and wishes to see conservation covenants executed by deed in the bill. This Bill provides for conservation covenants to be binding on successor landowners (Clause 110-2). It does not prevent the parties from executing these covenants by way of a deed but it does not make this a requirement.

The covenant will have to be in writing and signed by the parties. This provides a level of formality beyond that required of a contract and was well supported by stakeholders when proposed by the Law Commission. It also provides the parties with some flexibility over the approach to take in creating covenants, allowing them to choose the method which best suits them.

Due Diligence for Forest Risk Commodities

Lord Trees, Lord Marlesford and Baroness Sheehan all spoke on a range of issues concerning the due diligence measures (Clause 109 and Schedule 16), most notably on the approach to legal deforestation, financial incentives and the rights of indigenous peoples.

Legality

The Government's approach to due diligence is based on illegal deforestation. This is because globally, a significant proportion of deforestation is illegal, and is close to 90% in some of the world's most important forests. By basing the approach to due diligence on compliance with the local laws of producer countries, of which the UK is one, the Government recognises the primacy of national and sub-national governments' decisions in determining the management of their natural resources. That in turn supports the Government's work to build a global coalition of countries – both producer and consumer – committed to breaking the link between commodities and illegal deforestation. That is important because while the UK is a large market, it is not sufficiently large to shift the sector globally. The more countries that join us, the greater the global impact we will have on tackling deforestation.

Of course, the Government recognises the challenge of legal deforestation and unsustainable conversion to produce agricultural products at the expense of the environment. While the Government's due diligence law will target illegal deforestation and make supply chains more

sustainable, we continue to develop ambitious programmes and interventions designed to protect intact forests and other ecosystems, and the people who depend on them.

Indigenous People

The UK also recognises the vital role indigenous people and local communities play in protecting forests. The legality approach taken means that where local laws protect indigenous communities, regulated businesses in the UK would need to comply with them. This includes, for example, recognition of legal titles held by indigenous people and local communities, and national laws that require obtaining free, prior and informed consent.

Wider Scope

Any agricultural commodities associated with wide-scale conversion of forest can be in scope of the due diligence measures, and may include beef among others.

A commodity can be specified in secondary legislation at any time, allowing for the due diligence regime to account for changing patterns of deforestation. This will be subject to consultation and the affirmative procedure, allowing for both public and Parliamentary scrutiny.

While we agree that in some circumstances there is a relationship between deforestation associated with commodity production and human rights abuses, it doesn't follow that the best solution to tackle these two issues is the same. Tackling human rights abuses requires an approach that is tailored for that purpose – rather than an approach targeted at a specific subset of commodities.

Chemicals and REACH

Lord Trees raised the REACH Regulations. The Government agrees with the importance of animal welfare, which is reflected in REACH through the principle that tests on vertebrate animals should only be carried out as a last resort. That is why we have included this last resort principle in the table of “protected provisions” in Schedule 20 to the Bill. Any amendments made to the REACH Regulation through the power in the Environment Bill must also be consistent with Article 1 of that Regulation. That includes the principle of the promotion of alternative testing methods to reduce the use of animals.

Additional Points

Soil

The Earl of Caithness and the Duke of Montrose spoke about the importance of the soil environment. The Government recognises that healthy soil underpins a range of environmental, economic and societal benefits, including food production, biodiversity, carbon storage, and flood protection. The 25 Year Environment Plan sets out the Government's commitment for sustainably managed soils by 2030.

The Environment Bill framework allows for long-term targets to be set on any aspect of the natural environment, including soils. We are working collaboratively with technical experts to identify soil health metrics that can represent diverse functions and services provided by soils across all land-use types. These metrics will inform the development of a healthy soils indicator as set out in the 25 Year Environment Plan and potentially a future target for soil.

Environmental land management schemes

The Earl of Sandwich voiced concerns about the environmental land management schemes. Our new agricultural policy will reward farmers and land managers for delivering public goods. Three new schemes are being introduced that reward the delivery of environmental benefits: the Sustainable Farming Incentive, the Local Nature Recovery scheme and the Landscape Recovery scheme. These schemes will pay for sustainable farming practices, improving animal health and welfare, reducing carbon emissions, creating and preserving habitat, and making landscape-scale environmental changes. This is an important step towards achieving our 25 Year Environment Plan ambitions and Net Zero.

Heritage

The Earl of Devon, Lord Redesdale and Lord Carrington mentioned that heritage should sit within the definition of the natural environment. The definition of the 'natural environment' was created with two specific aims in mind:

(1) to define the scope of the Office for Environmental Protection's (OEP) enforcement function. In particular when taken in conjunction with the definition of environmental law, this defines the scope of the OEP's complaints and enforcements function. The OEP's scrutiny of EIPs are not constrained by the definition; and

(2) to underpin the purpose and scope of EIPs. EIPs are plans for significantly improving the natural environment and they must (as a minimum) set out the steps the Government intends to take to improve the natural environment.

This definition therefore has specific legal effects, which are confined to the Environment Bill, and it is not intended to have any wider application. There are however important links between the natural and historic environments, and this is reflected in the 25 Year Environment Plan and our work in other areas, such as designing our future environmental land management schemes.

Lord Cormack requested that heritage be referenced on the face of the bill. The Government's manifesto pledged a Bill to "protect and restore the natural environment". The Government's 25 Year Environment Plan committed us to "safeguarding and enhancing the beauty of our natural scenery and improving its environmental value while being sensitive to considerations of its heritage".

We will continue this approach to improving the natural environment, both identifying the mutually positive impacts on the natural and historic environments our policies can have, as well as identifying potential trade-offs between them.

The 25 Year Environment Plan will be adopted as the first statutory Environmental Improvement Plan through the Environment Bill and we anticipate it will set the benchmark for future EIPs. The approach we took in our 25 Year Environment Plan on heritage, which was welcomed by stakeholders, is expected to be mirrored in future EIPs by this or future governments.

Antimicrobial Resistance

Lord Trees voiced concerns about antimicrobial resistance (AMR). There is an increasing focus globally and nationally on the environment as a potential reservoir and conduit for AMR. The Government's ambition is to minimise the potential threat of AMR from the dispersal of the drivers for resistance in the environment.

The Environment Bill includes the power for the Government to update the list of priority substances which must be tested for in the water environment (Clause 83), and their respective environmental quality standards in line with scientific advice and evidence. This can be used to maintain domestic legislation for harmful substances in the aquatic environment which might otherwise contribute to the spread of AMR, including antimicrobials.

Marine environment

I would like to assure the Earl of Sandwich and Lord Teverson that marine environments are included in this Bill. Both water and land are included in the definition of the natural environment (Clause 43) as well as the natural systems, cycles and processes through which they interact. "Water" includes seawater, freshwater and other forms of water.

Seas and estuaries are one of the broad themes that the 25 Year Environment Plan is divided into and therefore will fall within the remit of the OEP when it reports on progress in the Environmental Improvement Plan (of which the current 25 Year Environment Plan is the first) in its annual progress report.

The current targets framework allows the Government to set a marine target and we are collating evidence with a view to including a target on the condition of Marine Protected Areas. Government tabled an amendment at the House of Commons Report stage to clarify that both the terrestrial and marine aspects of England's natural environment will be considered when conducting the significant improvement test in Clause 6.

I hope noble Peers find these responses informative. I am copying this letter to all Peers who took part in Monday's debate and I am arranging for copies to be placed in the Libraries of both Houses.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'The Lord Goldsmith', written in a cursive style.

The Lord Goldsmith of Richmond Park