



HM Government

Review of the Balance of Competences between the United Kingdom and the European Union Environment and Climate Change

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Environment and Climate
Change

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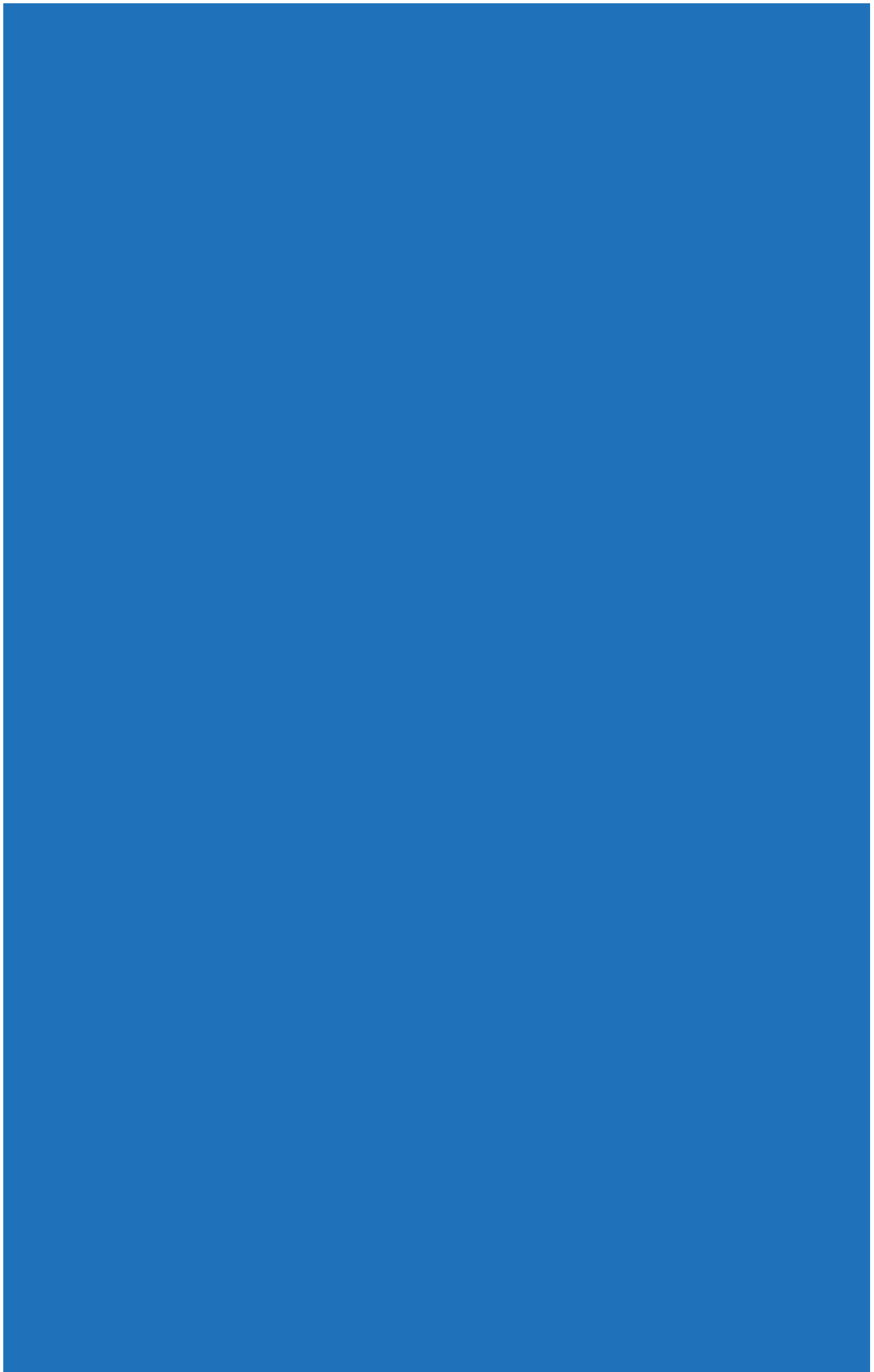
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Contents

Executive Summary	5
Introduction	13
Chapter 1 Development and Current State of Competence	17
Chapter 2 Impact on the National Interest	27
Chapter 3 Future Opportunities and Challenges	75
Appendix Statistics on Trends in Environmental Performance	83
Annex A List of Evidence	89
Annex B List of Organisations that Attended Workshops for the Environment and Climate Change Report	94
Annex C List of Acronyms	102



Executive Summary

This report examines the balance of competences between the European Union and the United Kingdom in the area of environment and climate change, and is led by the Department for Environment, Food and Rural Affairs and the Department of Energy and Climate Change. It is a reflection and analysis of the evidence submitted by experts, non-governmental organisations, businesspeople, Members of Parliament and other interested parties, either in writing or orally, as well as a literature review of relevant material. Where appropriate, the report sets out the current position agreed within the Coalition Government for handling this policy area in the EU. It does not predetermine or prejudge proposals that either Coalition party may make in the future for changes to the EU or about the appropriate balance of competences.

For the purposes of this review, the report uses a broad definition of competence. Competence in the environment and climate change context is about everything deriving from EU law that affects how in the UK we manage the environment and define our response to climate change.

The twin themes of protection of the environment and facilitation of trade inform EU action in this area. The founding treaties of what is now the EU did not explicitly identify a power for the EU to act to protect the environment. Even at the time of the UK's accession to what was then the European Economic Community in 1973, the need to protect the environment was not a widely recognised issue, and indeed climate change was not considered until much later. The initial drive for development of EU competence in this area was to improve the functioning of the Single Market. However, as concern about environmental degradation steadily increased, EU competence became more focused on protecting the environment for reasons of sustainability. More recently, the EU has gained express competence to act on climate change, reflecting the growing concern about the potential impacts of climate change on the environment, the economy and our society. EU law now covers the majority of areas of environment and climate change policy.

Environmental issues are also the subject of international action through a large number of multilateral environmental agreements, and the work of international organisations such as the United Nations (UN). The EU now plays an active role in the negotiation and implementation of international agreements relating to the environment and in the main represents the UK and the other Member States on matters of EU competence within the UN. Whether environmental issues are best tackled through international agreements or through EU regulation, and whether the UK national interest is best served by the current negotiating role of the EU, are questions raised by respondents and considered in detail in this report.

Defining the national interest that should shape policies on environment and climate change is not straightforward. This is a contested area of policy both in the UK, and across the EU,

where the interests of industry and of individuals are inevitably sometimes different and where attitudes to environmental conservation and action to address climate change also differ widely among organisations, the British public and the business community. This diversity of interests and attitudes is reflected in the evidence submitted which demonstrates the complexity of the debate.

The evidence showed that a large number of organisations representing all sectors considered that it is in the UK's national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection.

However, there continues to be considerable debate on how far this competence should extend and whether the EU always acts in accordance with the principles of subsidiarity and proportionality laid down in the EU Treaties, in a way which benefits our national interest and is compatible with the principle of localism. Reflecting this, some respondents questioned the appropriateness of EU measures addressing environmental issues with no transboundary consequences for other Member States. Others argued that even where there were no transboundary impacts, regulation could be needed for the proper functioning of the Single Market. Some identified pieces of EU legislation which in their view imposed unnecessary restrictions on development and economic growth. In contrast, a small minority of respondents made a case for expanding EU competence into specific policy areas and for a stronger role for the EU in international negotiations. This is a complex picture and opinions vary significantly between particular policy areas and even within sectors.

Many responses highlighted the inherent tension between laws that protect the environment and the impact that those laws can have on businesses and others by imposing costs which may affect competitiveness. This is relevant both inside the EU, for reasons of differential interpretation in different Member States, and beyond the EU, where competitors in third countries may be subject to lower environmental standards. The European Commission has itself acknowledged that these regulatory burdens can be perceived as heavy in certain sectors and for Small and Medium-sized enterprises (SMEs). Initiatives such as the recent Red Tape Challenge and the Prime Minister's Business Taskforce reflect the importance the Government attaches to minimising these burdens both when EU legislation is being negotiated in Brussels and through light-touch but effective implementation in the UK. Many of the proposals for ways of addressing some of these challenges chime with the evidence received in this review.

The Government has recognised the need for an open-minded debate around EU competence on the environment and climate change within the context of finding an appropriate balance and exploiting synergies between the need for economic growth and a sustainable approach to the future. Whilst there can be tensions between environmental standards and competitiveness, the evidence paints a more nuanced picture in which some sectors of business welcome some degree of cross-EU environmental regulation. For example, EU targets on waste and on climate change were seen by many as providing greater certainty for investors and an important spur for growth in the rapidly expanding environmental and low carbon services and products sector. In addition, EU regulation on chemicals and other environmental standards was also seen by many businesses as important in providing a level playing field across the Single Market.

Chapter 1 sets out the development of EU competence in environment and climate change, as well as its current state. It shows how the main drivers for EU competence on environment and climate change have developed and changed. It describes the shift from the primary purpose of supporting the Single Market to one focused on environmental protection. Other drivers suggested by respondents for the development of the EU's competence in these areas were the need to protect public health and the development of new industries equipped to meet the challenges of climate change, resource efficiency and environmental health.

Under the EU Treaties, competence in the areas of environment and climate change is shared between the Member States and the EU. The chapter sets out how law on environmental protection and climate change now derives largely from requirements set at the EU level. Member States nevertheless retain the right to introduce more stringent environmental measures than those adopted at EU level, and this has been a controversial point.

This chapter also gives a flavour of how the UK has influenced the development of EU legislation in this area. It explores the international context within which the EU operates and considers international alternatives to working through the EU.

Chapter 2 considers the evidence received from stakeholders on how the competence exercised by the EU has impacted on the development of environment and climate change policy and the UK's national interest, both in terms of the environment and the economy. It describes how the debate about the costs and benefits of taking action on the environment and climate change varies area by area.

The chapter is divided into three main sections which cover the views of those who responded on:

- The impacts of EU competence for the environment and climate change on the environment and the economy, including the regulatory burdens it imposes;
- The level at which action should be most appropriately focused to protect the environment and dealing with climate change; and
- How the EU currently operates and what it could do better.

2.1 What is the Impact of EU Competence for the Environment and Climate Change on the Environment, Climate Change and the Economy in the UK?

The majority of respondents believed that EU competence has increased environmental standards in the UK and across the EU and that this has led to improved performance in addressing several environmental issues.

However, most respondents believed that environmental legislation increases costs for businesses, particularly in the short term, with implications for their competitiveness. Some respondents believed that a healthy environment has an economic value and can bolster long term economic growth by protecting resources. Many acknowledged that environmental legislation can also drive growth in the environmental products and services sector and that the EU has an important role to play because of the stability of the policy framework (once agreed) it offers and the large scale of the market it provides. Some respondents also believed that businesses can benefit by improving resource efficiency and reducing waste.

Some respondents considered that EU legislation could lead to disproportionate costs for businesses when balanced against the environmental benefits achieved. The impact of EU legislation on planning applications and the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation were frequently cited as posing the most challenging regulatory burdens for businesses. This also reflected the findings from recent initiatives by the Government and the European Commission which looked at regulatory burdens. Responses highlighted particular issues around regulatory burdens resulting from EU legislation for energy intensive industry and SMEs.

2.2 Should Action be Taken at International, EU or National Level?

This section looks at the evidence on how decisions to act at international, EU or national level depend on market and geographic considerations and whether respondents felt that the current

level of action was most appropriate. It takes into consideration issues such as the need for a level playing field for businesses within the EU, at what scale the particular environmental issue has an impact and whether there are cases where Member States should be left to decide either some or all elements of their own environment policies in line with the principles of subsidiarity.

At an international level, global environment and trade issues can be addressed through multilateral international agreements and through the work of organisations such as the UN and the World Trade Organisation (WTO). Many respondents suggested that international action was needed for environment and climate change issues which give rise to carbon leakage and transboundary effects.¹ Respondents expressed some concern that while international action arguably may be preferable to EU action in some areas, including climate change, marine and shipping, and migratory and endangered species, there are no effective mechanisms to ensure compliance with international agreements. The majority of respondents who commented on the EU's role in relation to international agreements and organisations suggested that, by acting through the EU, the UK can amplify its influence in relation to particular global environment and trade issues. However, concerns were raised about the UK's voice not being represented if it was in a minority within the EU and about the risk of the European Commission acting beyond the scope of the powers conferred on it by the EU Treaties.

The majority of respondents who commented felt that the main justifications for EU action were to address environmental issues which are transboundary in nature and to ensure a level playing field for businesses operating in the Single Market. The degree to which current EU legislation does this effectively was a matter for debate. However, there was a broad consensus among respondents from all sectors that some EU action is needed on environment and climate change. Mixed views were received on the appropriate level at which to implement some EU environmental policies, in particular those that interact closely with national planning systems. In these cases some respondents made a case for an EU-level framework while others believed action should be focused at Member State level.

The powers conferred on the EU under the treaties allow the EU to legislate on environmental issues in Member States which have no adverse environmental consequences for other States or impacts on the Single Market. Respondents described a number of issues where they thought that UK competence was more appropriate than EU competence, for example, on land use planning, noise, protection of soil, flooding, environmental crime and environmental justice. In some cases respondents recognised that EU action on some transboundary issues was less important for the UK than for other Member States because it has fewer land boundaries with neighbouring countries.

2.3 Does the Existing Way of Making EU Policy Work?

This section looks at the evidence in relation to the way that EU policy is made and implemented. It highlights particular concerns about the EU processes; it looks at the principles underpinning EU legislation and whether they are the right ones, and describes the impact of differential implementation on the level playing field, whilst also noting how some pieces of EU legislation are not thought flexible enough for Member States.

Respondents highlighted a wide variety of issues in relation to the processes which the EU employs to make decisions. Particular issues were raised around the development of impact assessments, the inflexibility of EU processes to adapt to changing circumstances and the slow pace of change. Respondents made a number of suggestions for addressing these issues, in particular the need to review and update legislation to ensure that it is fit for purpose and

¹ Carbon leakage is an increase in pollution in one country as a result of environmental regulation in another.

reflects the current science. Another frequently raised point was the need for a more joined-up approach among the EU institutions to reduce inconsistency and decrease regulatory burdens.

Respondents raised a variety of issues around the way that the EU should approach legislation and its underpinning principles. Opinion was divided on whether EU legislation was sufficiently risk-based. Several respondents criticised the hazard-based approach adopted in EU regulation of chemicals and plant protection products. Similarly, some criticised the application of the precautionary principle by EU institutions arguing that the costs entailed are not always proportionate to the benefits achieved and noting the potential for excessive reliance on this principle to stifle innovation.

Many respondents commented on the EU's use of standards and targets, particularly in relation to climate change. Most welcomed the use of EU-wide standards for products traded on the Single Market and many also recognised that longer term targets provided policy stability and increased certainty for investors.

Many respondents highlighted the tension between the desire by Member States to have the flexibility to interpret EU legislation to meet national circumstances and the need for a level playing field. There was recognition amongst respondents that national circumstances differ significantly across the 28 Member States. However, some felt that flexibility in implementation of EU rules leads to different levels and rates of implementation across Europe. Others felt that greater flexibility is needed for national interpretation of EU legislation in a manner that reflects the regional structure and circumstances in Member States.

Chapter 3 looks at the future opportunities and challenges stakeholders have identified. The evidence submitted identified several major future challenges that would face the UK and the EU and it considered how EU competence could best be deployed to address these challenges in the UK's national interest. The challenges most commonly identified were:

- Climate change;
- Pressure on resources;
- Biodiversity; and
- Future approach to legislating in the EU.

At the heart of these challenges is the question of how to tackle truly global environmental issues whilst maintaining the competitiveness of EU and UK businesses in a global economy. This reflects many of the current challenges facing the EU. This question is particularly vital in a world where increasing population and economic growth is driving ever-increasing competition for resources.

Many respondents believed that achieving a global deal on greenhouse gas emissions reduction will be fundamental to successfully tackling climate change. However, respondents from different sectors agreed that in the immediate future the priority must be to agree a suitable post-2020 EU framework for action on this issue. Respondents had mixed views on ambition levels and on the nature of the targets needed. Some respondents believed that any new framework must attempt to deal with the issue of carbon leakage in the absence of a global deal.

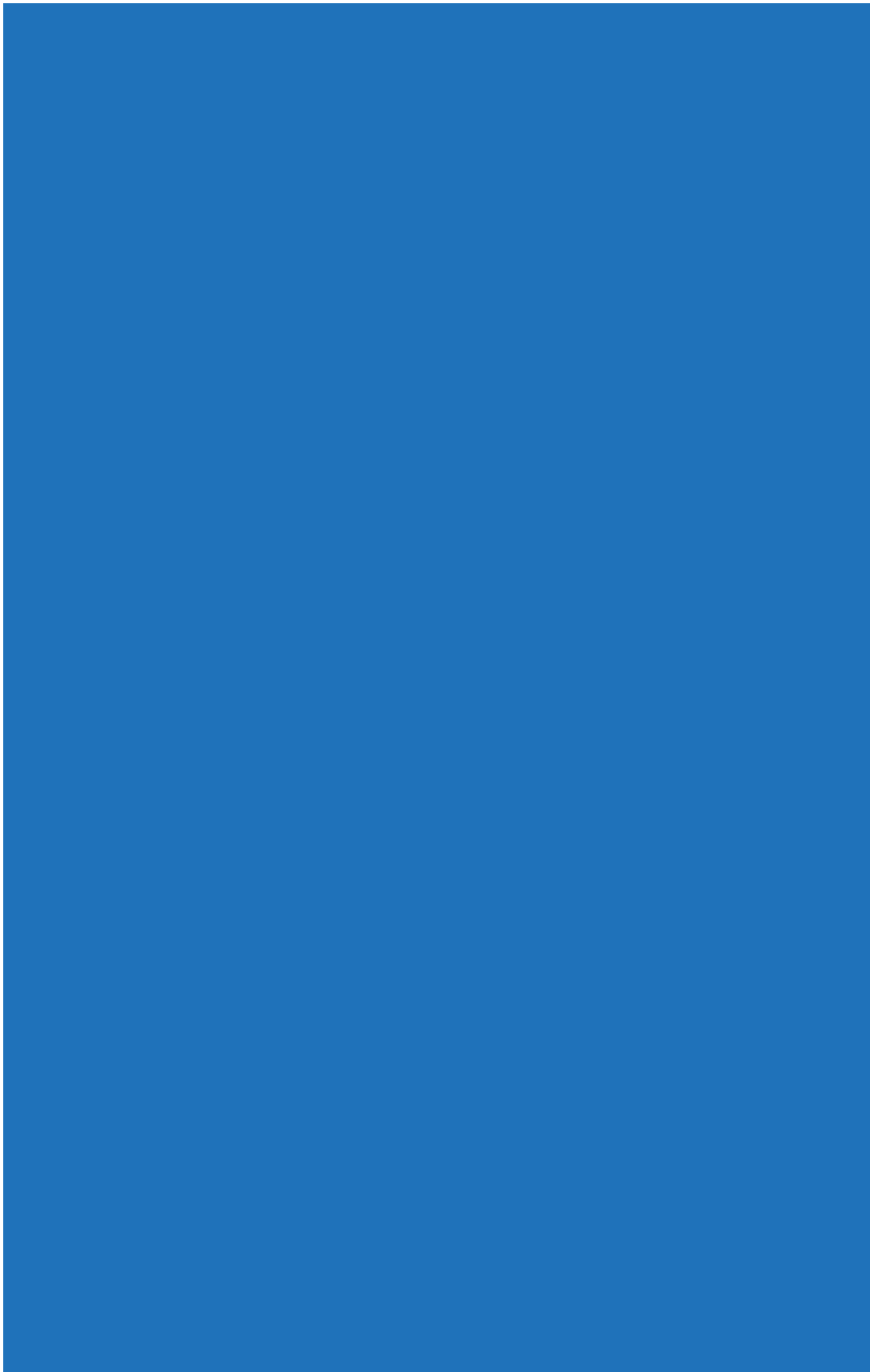
Another key challenge identified by respondents is tackling the cost for businesses of operating within the EU and the impacts of this cost on the global competitiveness of UK and EU businesses. Various respondents argued that the UK should adopt a more active negotiating position in order to encourage a less prescriptive and more business-friendly regulatory framework in the EU. They also believed that the EU should look to use and participate more

in the development of international standards, and should set an environmental and climate change framework that stimulates manufacturers to invest.

Respondents highlighted the increasing pressure on global natural resources from growing demand and climate change. Some felt that EU competence would be needed to plan for resource scarcity and support efforts to promote resource security, for example through the use of eco-design standards.

Some respondents criticised the restrictions which can be placed on development by the requirements of EU legislation such as the Wild Birds and Habitats directives. Others argued that greater action was needed to address the decline in habitats and species within the EU. Respondents also highlighted the importance of tackling Invasive Non-Native Species within the EU.

More widely, respondents generally thought that the main framework of EU legislation on environment and climate change was now established and considered that future EU action should focus on improving implementation of the existing laws rather than seeking to expand environmental protection into further areas of Member State activity.



Introduction

This report is one of 32 reports being produced as part of the Balance of Competences Review. The Foreign Secretary launched the Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the European Union. It will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and to provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It has not been tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between 2012 and 2014.

You may be interested in issues linked to environment and climate change which will be covered in other Balance of Competences reports: The Energy Report (semester 3), which will include a number of issues which are closely linked with the EU's competence for climate change, given the clear and fundamental links between energy use and emissions of greenhouse gases. This will also cover renewable energy and energy efficiency. The Transport Report (semester 2) will consider the development of the Common Transport Policy. There is also potential for significant overlap between this report and the Single Market: Synoptic Report (semester 1); Free Movement of Goods Report (semester 2), and the Free Movement of Services Report (semester 3). Much of the early EU environmental legislation related to common standards which, in the absence of a specific environmental protection provision in the EU Treaty, were adopted under a 'Single Market' legal base. The Agriculture Report (semester 3) will cover the Common Agricultural Policy (CAP) including its Single Market aspects. The environmental impacts of agriculture will be covered in this report. Impacts include diffuse pollution of water and emissions of greenhouse gases and air pollutants. The Fisheries Report (semester 3) will cover the Common Fisheries Policy (CFP) and other fisheries matters but wider impacts on the marine environment will be covered here.

More information can be found on the review, including a complete list and timetable of semesters and reports to be published in the period up to the end of 2014, at www.gov.uk/review-of-the-balance-of-competences.

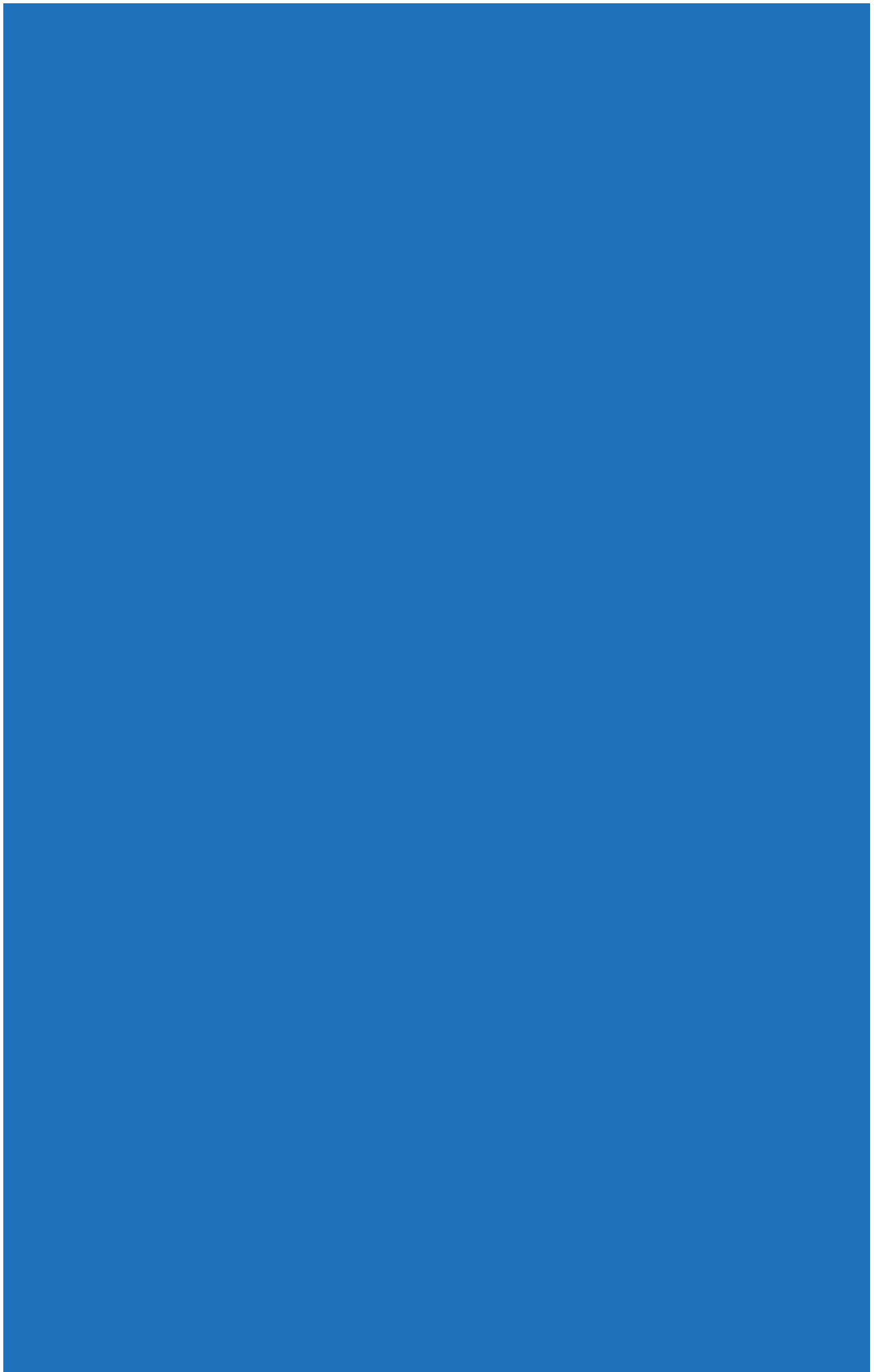
Engagement with Interested Parties

The analysis in this report is based on over 150 submissions of evidence received in response to a Call for Evidence by Defra and DECC from May 2013 to August 2013. It also draws on notes of workshops and further bilateral discussions and existing material, such as Select Committee reports, material provided for the Red Tape Challenge and the Prime Minister's Business Taskforce. It also takes account of evidence submitted to other reports where environment and climate change related issues were raised.

The Call for Evidence was distributed widely in the UK and to other EU Member States and non-EU third countries. Organisations and individuals with an interest in the environment and climate change were encouraged to respond. They consisted of trade bodies or groups representing other interested parties, such as civil society organisations and Non-Governmental Organisations (NGOs). A significant number of individual businesses were included. Governments in Scotland, Wales and Northern Ireland, MEPs, Parliamentary Committees, and Government agencies were also invited to contribute.

A programme of direct engagement was undertaken to collect evidence. 12 workshops were held, seven in London, one in each of the Devolved Administrations, one in York and one in Brussels. Social media were used to raise awareness of the Call for Evidence with messages put out via Twitter.

A list of those respondents who submitted evidence can be found in Annex A, with details of those who participated in the various workshops in Annex B.



Chapter 1:

Development and Current State of Competence

This chapter examines the European Union's (EU) current competence to make rules in the areas of environment and climate change and considers briefly how that competence has developed, looking at how the drivers have developed from a concern with the functioning of the Single Market to a wider focus on environmental protection. These twin aims have become the defining factors of the debate around EU competence in this area. Climate change legislation is made under the EU's general powers in relation to the environment.

- 1.1 The EU's powers to legislate in relation to the environment have grown as understanding of the need for environmental protection has increased in the decades following the establishment of the European Economic Community (EEC) in 1958. The original Treaty of Rome did not contain any references to environmental protection. Nearly 60 years later there is a substantial body of EU legislation which covers almost every aspect of the environment.
- 1.2 The UK's membership of the EU has coincided with the main period during which the environment has become established as a global issue and environmental legislation has been developed in a large number of countries. During this time the UK's position on EU environmental action has varied according to the issues under discussion and the views of successive governments.
- 1.3 The EU Treaties have conferred express powers for the EU to take environmental action since the 1987 Single European Act, and since the 1999 Treaty of Amsterdam they have enshrined the principle that environmental protection requirements must be integrated into the EU's other policies. The Treaty of Lisbon also amended the objectives of the EU's policy on the environment to include an express reference to combating climate change.

Key Terms

Treaty on the Functioning of the European Union (TFEU)

EU competence is set out in the EU Treaties, which have been revised several times since the 1957 Treaty of Rome established the EEC in 1958. Following the 2009 Treaty of Lisbon, the current Treaty on European Union (TEU) and the TFEU prescribe the structures of the EU institutions and when the EU can take action.

Competence

There are three different types of competence; exclusive, shared and supporting. Competence for environment and climate change legislation is ‘shared’ (Article 4(2) (e) TFEU). This means that either the EU or the Member States may act, but Member States may be prevented from acting once the EU has done so (Article 2(2) TFEU).

European Court of Justice (ECJ)

The ECJ interprets EU law to make sure it is applied in the same way in all EU Member States.

Current State of Competence

- 1.4 The current powers of the EU to legislate in respect of the environment and climate change are set out in Articles 191 to 193 TFEU.
- 1.5 These provide that EU environment policy should contribute to the pursuit of the objectives of preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; and promoting measures at international level to deal with regional or worldwide environmental problems, in particular combating climate change (Article 191(1) TFEU).
- 1.6 Environmental legislation adopted by the EU can only set minimum standards and so should not prevent any Member State from maintaining or introducing more stringent protective measures, provided these are compatible with the Treaties. Such measures must be notified to the European Commission (Article 193).
- 1.7 EU policy on the environment must aim at a high level of protection and be based on the precautionary principle as well as the principle that preventive action should be taken where necessary, that environmental damage should be rectified at source and that the polluter should pay (Article 191(2) TFEU). The use of EU competences in this area is governed by the general EU principles of subsidiarity and proportionality.¹

The EU Legislative Process

Treaties (which are primary EU legislation) allow for secondary EU legislation (for example directives and regulations) to be made. These are proposed by the European Commission and usually agreed jointly by the Council (made up of ministers from each Member State) and the European Parliament. This is called the ‘ordinary legislative procedure’. The Council acts by ‘qualified majority voting’ (QMV), where a certain number of votes are needed for the law to be agreed. This means that a single Member State does not have the power of veto.

The Council and European Parliament may, through secondary legislation, delegate power to the European Commission itself to make further legislation under defined conditions, as delegated or implementing acts (tertiary EU legislation). Tertiary legislation can be passed more quickly than secondary legislation and is particularly suitable for more technical, less political regulation, but gives Member States and the European Parliament less control.

¹ Further details of EU Treaties on subsidiarity and proportionality can be found in the textbox in section 2.2.

- 1.8 The Treaty of Amsterdam in 1999 extended the role of the European Parliament in relation to EU environmental legislation by applying the use of the co-decision procedure (now the ordinary legislative procedure) to the making of most types of EU environmental legislation. However, the Council must still decide environmental measures unanimously where these are primarily of a fiscal nature; where they affect town and country planning, management or availability of water resources, land use (with the exception of waste management); and where they significantly affect a Member State's choice between different energy sources and the general structure of its energy supply (Article 192(2) TFEU).

Development of Competence

- 1.9 The original EEC Treaty to which the UK acceded in 1973 did not refer to environmental issues. In the early years of the Community any environmental provisions in EEC legislation were incidental to the primary aim of ensuring the free movement of goods by equalising the conditions of competition across the common market. For example, Directive 70/157/EEC on the permissible sound level and exhaust system of motor vehicles laid down detailed harmonised technical specifications applicable in all Member States. It was only in the 1970s that it was recognised by many developed countries around the world, including the Member States of the EEC, that the environmental problems caused by their industrialised economies, including issues such as cross-border pollution, could only be addressed by more wide-ranging environmental legislation.
- 1.10 Until the Single European Act came into force in 1987 EEC environmental policy developed in the absence of any specific environmental Treaty bases, primarily through the use of Articles 100 and 235 EEC. These are now Articles 114 (Single Market) and 352 (default powers) TFEU). Article 100 EEC could only be used to address differences in national environmental rules which affected the functioning of the common market, while Article 235 EEC was a catch-all provision which allowed legislation to be made which was 'necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers'. Both Articles required unanimous voting in Council.
- 1.11 In 1987 the Single European Act amended the EEC Treaty so as to introduce, amongst other things, specific Treaty powers for EU environmental action (Articles 130r, 130s and 130t EEC). There was no requirement in the new powers that the EU should only act in relation to environmental issues with cross-border implications. These powers could be exercised by the Council acting unanimously or, where the Council so decided, by QMV (Article 130s EEC). The European Parliament had a right to be consulted on proposals. Member States retained the right to maintain or introduce more stringent protective measures, provided that such measures were compatible with the Treaty.
- 1.12 These environmental powers have since been amended several times but have not been significantly altered in scope. In 1993, further changes to EU competence in relation to the environment were introduced by the Maastricht Treaty. Article 2 EC provided that the aims of the EU should include the promotion of 'sustainable and non-inflationary growth respecting the environment', while Article 3(k) EC stated that the EU's activities should include 'a policy in the sphere of the environment'. A new objective of 'promoting measures at international level to deal with regional or worldwide environmental problems' was added to the environmental policy objectives set out in Article 130r (1) EC. The principles on which environmental action should be based were expanded so as to 'aim at a high level of protection taking into account the diversity of situations in the various regions of the Community' and to 'be based on the precautionary principle' (Article 130r(2) EC).

The Precautionary Principle

The precautionary principle may be invoked when a potentially dangerous effect is identified by a scientific and objective evaluation, but there is insufficient evidence for the risk to be quantified with certainty. It allows risk management to take place when risk assessment is not conclusive.

- 1.13 Following the Maastricht Treaty, the co-operation procedure applied to environmental legislation – meaning that it could be adopted by the Council by QMV if the European Parliament agreed, or by the Council acting by unanimity if the European Parliament did not (Article 189c EC). Under Article 130s(2) EC, the Council was required to act by unanimity in relation to measures affecting those subjects such as measures concerning town and country planning which are now broadly covered by Article 192(2)(b) TFEU.
- 1.14 The Maastricht Treaty introduced the concept of general action programmes setting out priority objectives to be attained (Article 130s (3) EC, now Article 192(3) TFEU). The 7th EU Environment Action Programme, covering the period until 2020, was negotiated in 2013. Article 130t EC was also modified - although Member States retained the right to maintain or introduce more stringent protective measures in areas where harmonisation measures had been adopted at EU level, these now needed to be notified to the European Commission.
- 1.15 In 1999 the Amsterdam Treaty amended the EU's environmental competence by amending the wording of the EU's objectives in Article 2 EC to introduce a direct reference to promoting sustainable development. It established a new principle that environmental protection requirements should be integrated into the definition and implementation of the EU's policies (Article 3c EC, renumbered Article 6 by the Treaty of Nice). Most importantly, it increased the role of the European Parliament by making the co-decision procedure the standard decision-making procedure for environmental legislation (Article 35 of the Treaty of Amsterdam). Decisions on nearly all environmental legislation now require the Council and the European Parliament to vote in favour of the same text.
- 1.16 The only reference to the environment in the Treaty of Nice, which came into force in 2003, was a Declaration attached to the treaty which encouraged the use of 'incentives and instruments which are market-oriented and intended to promote sustainable development', in prompting environmental protection at the EU, and global, level (Declaration No.9).
- 1.17 The 2009 Treaty of Lisbon did not make any further significant changes to the EU's competence in relation to the environment. The provisions governing the environment in Articles 191 to 193 TFEU are essentially the same as those previously contained in the Treaty establishing the European Community as last amended, with the exception that the objectives of EU policy on the environment in Article 191(1) now refer to 'combating climate change' in the context of promoting measures at international level to deal with regional or worldwide environmental problems.

EU Environmental Legislation

- 1.18 In the mid-1970s the first EU legislation was adopted which focussed primarily on environmental protection, rather than trade, with measures such as the Bathing Waters Directive 76/106/EEC aimed at improving air and water quality by controlling the effects of pollution. The Wild Birds Directive 79/409/EEC, adopted at the end of the decade, was the first piece of EU legislation addressing the protection of nature and biodiversity. These initiatives were followed in the 1980s by other measures aimed at dealing with industrial

emissions such as Directive 84/360/EEC on combating air pollution from industrial plants. The first Environment Impact Assessment Directive 85/337/EEC was also adopted at this time.

- 1.19 Environmental concerns were gradually integrated more into wider EU policies with the intention of reducing pollution at source and minimising waste, and in the 1990s the concept of 'sustainable development' became increasingly central to the EU's approach to environmental protection. There was a new emphasis on addressing the underlying causes of environmental harm rather than merely rectifying 'end-of-pipe' pollution. From 1992 environmental considerations were also brought into the CAP through the introduction of the concept of cross-compliance.
- 1.20 The number and scope of EU laws on the environment continued to expand throughout the 1990s with the adoption of measures such as the Nitrates Directive 91/676/EEC, the Integrated Pollution Prevention and Control Directive 96/61/EC and the Landfill Directive 1999/31/EC. The principle of freedom of access to environmental information was established by Directive 90/313/EEC.
- 1.21 Subsequent EU approaches to environmental protection included producer take-back and responsibility requirements, as in the Packaging and Packaging Waste Directive 94/62/EC, the End-of-Life Vehicles Directive 2000/53/EC, the Waste Electrical and Electronic Equipment (WEEE) Directive 2002/96/EC and the Environmental Liability Directive 2004/35/EC. EU controls on the use of chemicals were also significantly revised by the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation 1907/2006. The 2000s also saw new directives on subjects as diverse as Genetically Modified Organisms (GMOs) (2001/18/EC), noise (2002/49/EC), floods (2007/60/EC), ambient air quality (2008/50/EC), marine ecosystems (2008/56/EC), and environmental quality standards (2008/105/EC).
- 1.22 In 2001, the European Commission proposed a Directive to ensure that certain environmental activities would be deemed criminal offences. The Council took the view that this went beyond the scope of the EU's environmental powers, but the ECJ ruled in the European Commission's favour that, 'as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence. However, [this] does not prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure. One measure for combating serious environmental offences, from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective' (Case C-176/03, para 47-48). This judgment was seen by some as a potentially significant extension of the EU's competence in the area of criminal law. However, a subsequent ECJ case made clear that EU environmental legislation cannot specify the type or level of criminal penalties that should be imposed, and that this remains a matter for each Member State (Case 440/05, paragraphs 70-71). The outcome of this protracted process was the adoption in 2008 of Directive 2008/99/EC on the protection of the environment through criminal law, which required Member States to criminalise serious breaches of specified EU environmental laws and to set effective, proportionate and dissuasive penalties for such offences.
- 1.23 Increasing appreciation of the importance of combating climate change led to the adoption of several EU measures in this area, particularly the EU's Greenhouse Gas Emissions Trading Scheme created by Directive 2003/87/EC, and the development of policy and legislation on carbon dioxide emissions from cars. The current framework for action on climate change was set by EU leaders in March 2007, when they committed Europe to

become a highly energy-efficient, low carbon economy and agreed three key objectives for 2020:

- A 20% reduction in EU greenhouse gas emissions from 1990 levels, to be delivered through the EU Emissions Trading System (EU ETS) and an Effort Sharing Decision providing for national targets for reducing greenhouse gas emissions from the sectors not covered by the EU ETS;
- Raising the share of EU energy consumption produced from renewable resources to 20%; and
- 20% improvement in the EU's energy efficiency.

The impact of the EU targets for renewable energy and energy efficiency will be considered in the Energy Report.

EU Legislation in the Crown Dependencies

Some aspects of EU law apply to the Crown Dependencies: the Isle of Man and the Bailiwicks of Guernsey and Jersey, as set out in Protocol 3 to the UK's Treaty of Accession to the European Communities. Most environmental legislation is not covered by Protocol 3.

However, some EU legislation, such as the Batteries Directive, has a mixed legal base covering trade, which applies to the Crown Dependencies because of Protocol 3, and the environment, which does not apply to the Crown Dependencies because of Protocol 3. This can cause difficulties when it is unclear whether, or to what extent, the measures apply.

In some cases EU environmental standards, in areas like air and water quality, are used as guidelines for domestic legislation in the Crown Dependencies, even though there is no legal obligation to do so.

Differences between international and EU standards can sometimes cause confusion. For example, the Crown Dependencies are covered by the UK's ratification of the Basel Convention on the control of transboundary movements of hazardous waste and their disposal. Yet for the purposes of the EU's implementing legislation in this area they are third countries.

- 1.24 There are now few aspects of the environment within the Member States which are not the subject of EU controls. The recently negotiated 7th EU Environment Action Programme, which is intended to set the direction for EU environmental policy until 2020, has better implementation of existing EU environment law as a key priority, as well as the objective of boosting sustainable resource-efficient low-carbon growth.²
- 1.25 In 2012 the European Commission launched a Regulatory Fitness and Performance Programme (REFIT) to review the entire stock of EU legislation and to identify burdens, inconsistencies, gaps or ineffective measures. In a Communication issued in October 2013 the European Commission acknowledged that 'EU regulation is often accused of applying too many requirements stifling businesses, especially the smallest ones'.³ Starting in 2013 or 2014, in the area of the environment, the European Commission proposes undertaking a 'fitness check' of the Habitats and Wild Birds directives 'to better identify regulatory burden relief so as to meet EU policy goals at least cost and best achieve the benefits of EU regulation.' The Communication also states that 'efforts to reduce regulatory

² DG ENVI, *Proposal for New EU Environment Action Programme to 2020* (2012).

³ Commission Communication to the Council and the European Parliament, *Regulatory Fitness and Performance (REFIT): Results and Next Steps*, COM (2013) 685 final, October 2013.

burden and to ensure that legislation is proportionate and respecting subsidiarity are closely related. Their results are mutually reinforcing. That is why the aims of the REFIT programme intersect with those of the Member States in their reviews of EU legislation.’

UK Influence on EU Action

- 1.26 The UK’s position on environment has developed to reflect the views of successive governments and the changing priorities of the times. As a Member State the UK has had an important influence on several EU environment and climate change policies. For example, a number of pieces of EU legislation have been based, partly or in full on preceding UK policy and legislation:
- The EU’s integrated pollution prevention and control regime (now incorporated into the Industrial Emissions Directive 2010/75/EU) was heavily influenced by the UK’s system of integrated pollution control under the Environmental Protection Act 1990;
 - The UK emissions trading scheme was a forerunner of the EU’s Emissions Trading Scheme (Directive 2003/87/EC), and developed valuable experience in the mechanics of running an emissions trading system; and
 - The concept of Exposure Reduction Commitment for PM_{2.5} was first set out in the UK Air Quality Strategy before its incorporation into the EU’s revised Air Quality Directive 2008/50/EC.⁴
- 1.27 On climate change, from the establishment of the UN Framework Convention on Climate Change and the subsequent agreement of the Kyoto Protocol, the UK Government has consistently supported ambitious and effective EU action to reduce greenhouse gas emissions and argued for a strong leadership role for the EU in securing a global agreement. The UK played a significant and influential role in securing the adoption of the EU’s own emissions reductions targets for 2020, and has also played a key role in ensuring the adoption of EU negotiating positions that have enabled the EU to play a leadership role within the United Nations Framework Convention on Climate Change (UNFCCC) process.
- 1.28 The UK has not always been able to exert as much influence as it would wish on EU legislation. For example the UK unsuccessfully opposed, on the grounds of subsidiarity and proportionality, the extension of the scope of the EU Floods Directive 2007/60/EC from transnational sources to flooding from all sources.⁵ Similarly, the UK has on occasion played a role in preventing the adoption of legislation it considers badly designed, or inconsistent with the principle of subsidiarity, for example on soils or access to environmental justice.
- 1.29 The European Commission, as part of its REFIT programme, has recently announced its intention to consider withdrawing its proposed Soil Framework Directive (COM (2006) 232), but only on the basis that the European Commission ‘will therefore examine carefully whether the objective of the proposal, to which the European Commission remains committed, is best served by maintaining the proposal or by withdrawing it, thus opening the way for an alternative initiative’.⁶ It has also indicated that it may withdraw a contested proposal on access to justice in the field of the environment.

⁴ National Audit Office, *The UK Emissions Trading Scheme: A New Way to Combat Climate Change* (2004).

⁵ Minister for Climate Change and Environment (Rt Hon Ian Pearson), Written Ministerial Statement, HC 5 July 2006, Column 41 WS.

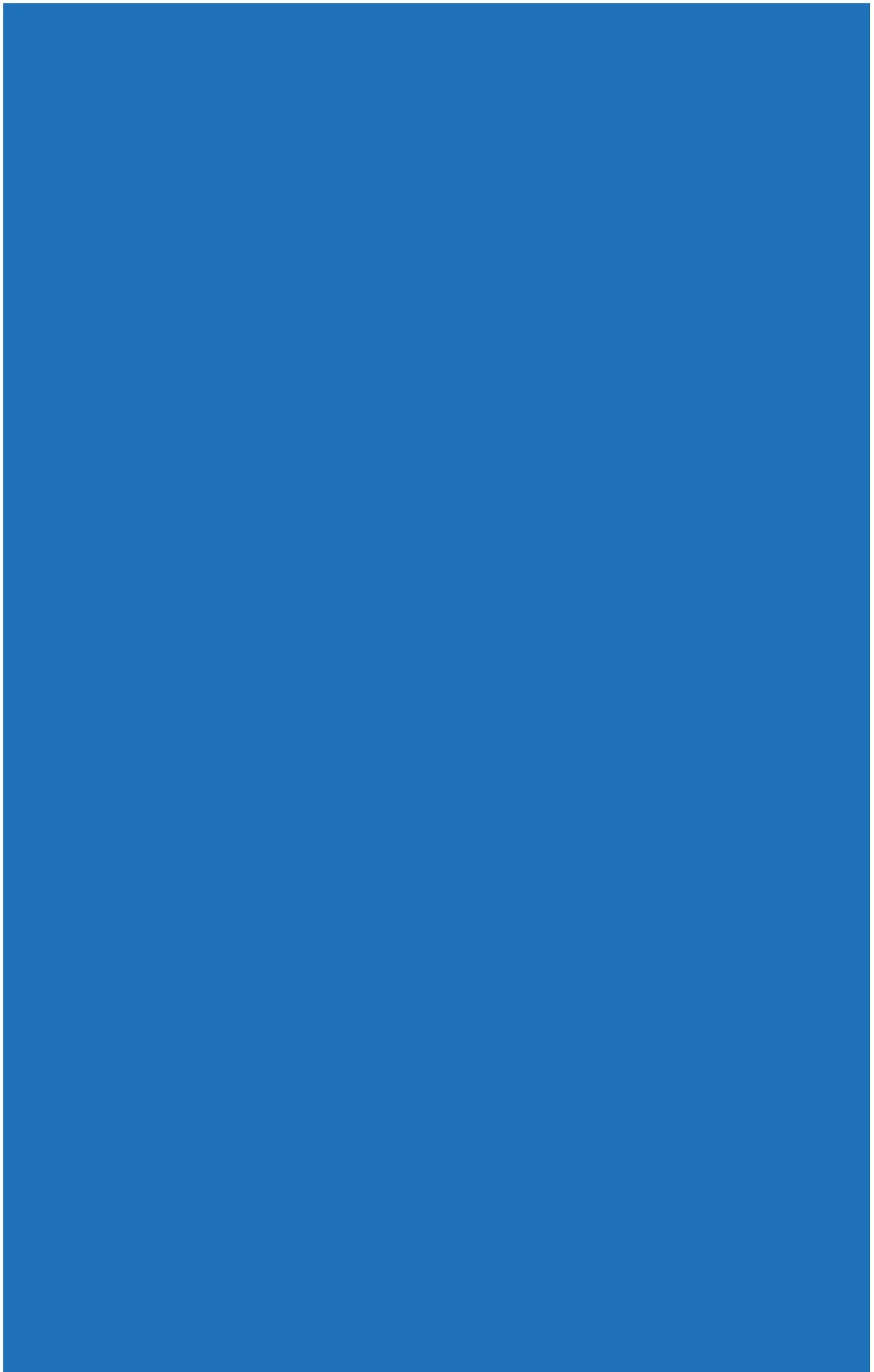
⁶ Commission Communication, *Regulatory Fitness and Performance (REFIT)*.

International Agreements

- 1.30 In addition to being able to adopt environmental measures which apply within the territories of its Member States, the EU is able, within its competence, to enter into environmental agreements with third countries or international organisations which then become binding on the EU and its Member States. These agreements must be necessary in order to achieve one of the objectives referred to in the Treaties, or be provided for in a legally binding Union act, or be likely to affect common rules or alter their scope (Article 216 TFEU).
- 1.31 Both Member States and the EU may adopt international agreements in the area of environmental protection, but Member States may only exercise their competence to the extent that common EU rules are not affected or likely to be affected by such action (Article 3(2) TFEU). This means that where the EU has laid down internal harmonising rules relating to environmental protection the Member States will no longer have the competence to enter into international agreements affecting those rules. However, since the EU can only lay down minimum standards relating to environmental protection, Member States retain the power to enter into international agreements establishing higher standards provided that these are not incompatible with the EU rules.
- 1.32 Since the 1970s the EU and the Member States have entered into numerous multilateral international agreements aimed at the protection of the environment and combating climate change. Commitments entered into by the EU and the Member States as parties to those agreements have frequently been implemented in secondary EU environmental legislation. For example, Regulation 649/2012 concerning the export and import of hazardous chemicals implements the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.
- 1.33 The EU and the Member States are parties to the UNFCCC and the Kyoto Protocol which is made under it. The key piece of EU legislation which implements commitments made under the UNFCCC and the Kyoto Protocol is Directive 2003/87/EC, which establishes the EU Emissions Trading Scheme, but there are many other examples of EU legislation which concern meeting the commitments made under these agreements, including Regulation 525/2013 which governs monitoring and reporting of greenhouse gas emissions at national and EU level.
- 1.34 Over the years the position of the EU and its Member States in the negotiations for international environmental agreements has become increasingly co-ordinated, with agreement between the Member States and the EU institutions being reached on detailed positions on the vast majority of issues being negotiated. Before the Treaty of Lisbon came into force, these positions were represented in negotiations by the Member State holding the six-monthly rotating Presidency of the EU, assisted by the European Commission and other Member States with relevant technical expertise, and often involving the UK. Since 2009 there has been a significant increase in the role played by the European Commission and the new European External Action Service, which negotiate on the agreed positions on behalf of the EU and its Member States without the Member States having a direct representational role. Member States may however make complementary statements to those made by the EU.
- 1.35 The position with regard to negotiating under the UNFCCC and the Kyoto Protocol is slightly different; the Member States negotiate together, as part of 'Team EU.' This team draws on expertise from both the European Commission and Member States and negotiating positions are agreed by consensus in Council Conclusions prior to the main negotiating sessions.

European Alternatives to EU Action

- 1.36 It is possible that environmental issues affecting more than one European state could be addressed by bilateral or multilateral agreements between individual states rather than by action by the EU itself. For example in 1977, before joining the EU, Hungary and what is now Slovakia entered into a bilateral Treaty concerning the construction of the Gabčíkovo-Nagymaros system of locks, a project aimed at, amongst other things, enhanced flood protection in both countries. Equally, the Member States of the EU are not the only European states which are parties to multilateral environmental agreements such as the 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats. This was an agreement negotiated within the Council of Europe, whose 47 Member States include not only the EU Member States but also neighbouring countries such as Albania, Russia, Turkey and the Ukraine.
- 1.37 The mechanism for enforcing breaches of EU environmental legislation is straightforward: the European Commission may bring infraction proceedings before the ECJ, which can impose fines on a Member State which is in breach of its obligations under EU law. Member States can also take direct legal proceedings against each other at the ECJ. In contrast, there is a range of ways to obtain remedies for breaches of international agreements. The WTO has its own dispute resolution mechanism which is binding on its members. In other cases, where both parties consent, the International Court of Justice can be used to secure a binding settlement. However, the emphasis is usually on dispute avoidance, and conventions normally set up their own mechanisms for resolving disputes between their signatories.
- 1.38 The 1998 Aarhus Convention on Access to Justice in Environmental Matters is unusual in that it allows members of the public and NGOs to bring complaints before its compliance committee – the members of which are independent of the 45 states and the EU, which are currently parties to the Convention. However, the recommendations of that committee are not binding on the parties unless endorsed by a formal Meeting of the Parties.



Chapter 2: Impact on the National Interest: Summary of Responses

Introduction

This chapter of the report draws on the evidence provided, as well as some already published (and documented) material. We do not seek to comment on the evidence as stated but use it to demonstrate how EU action on the environment and climate change has an impact on the UK.

This chapter summarises views on:

- The impact EU competence for the environment and climate change has on the environment and economy in the UK (section 2.1);
- The most appropriate level (international, EU or national) to take action on different aspects of environment and climate change and the role of the EU in international negotiations (section 2.2);¹ and
- The way that EU policy is made, how EU institutions function, the principles behind EU policy, the merits of different legislative approaches and how EU policy is implemented (section 2.3).

¹ In this report the term international is defined as beyond the EU level.

2.1 What is the Impact of EU Competence for Environment and Climate Change on the Environment, Climate Change and the Economy in the UK?

This section looks at the impact of EU competence on environment and climate change on the environment and the economy. It outlines some elements of the debate around environmental protection and its impact on competitiveness through imposing burdens on business. These burdens are set against the benefits of protecting the environment which were clearly recognised by respondents in the evidence submitted:

- The first sub-section summarises the large number of responses that were submitted on the impact of EU competence on the level of ambition of legislation and on environmental performance in the UK;
- The second sub-section explores respondents' views on the cost and benefits of environmental legislation for the economy; and
- The final sub-section summarises the evidence provided on the regulatory burdens of EU legislation on the environment and climate change. This focuses on the burden of planning requirements; impacts on energy intensive industry; the disproportionate burden on SMEs; and the burden of complying with the REACH legislation.

Evaluating the Impact of EU Competence on the Environment and Climate Change on Environmental Standards and Performance in the UK

- 2.1 In the main, respondents believed that EU competence has increased the level of ambition of environmental legislation in the UK and many believed this has also resulted in an improvement in environmental performance. This reflects one side of the debate around the benefits and costs of legislating to protect the environment.
- 2.2 It was widely recognised among respondents from a range of sectors and participants in the London and Northern Ireland workshops that it is impossible to be certain about what would have happened in the UK if the EU did not have competence for environment and climate change.² However, there is a commonly held view among respondents, particularly from think-tanks, NGOs, political groups and academia and participants at the York workshop that EU competence has led to higher environmental standards both in the UK and across other Member States than would have been set if this competence had remained at Member State level.³
- 2.3 The Tyndall Centre said that UK environmental standards would not have been set as high without EU competence, particularly in the areas where there have been infringement proceedings against the UK for non-compliance with EU rules. Their analysis showed that changes to laws and the type of policies on the environment found in the UK are also found in other comparable Member States. They suggest that this indicates that environmental standards have increased across the EU due to EU competence.

² Examples include: North London Waste Authority (NLWA); the Institute for European Environmental Policy (IEEP); the Tyndall Centre for Climate Change Research (Tyndall Centre); and Nigel Haigh. See Annex 2 for the list of organisations that submitted evidence through this workshop.

³ See Annex 2 for the list of organisations that submitted evidence through this workshop.

- 2.4 Some respondents thought that, in the absence of EU action, the UK may have taken unilateral action on specific aspects of the environment and climate change. For example, several respondents, including the United Kingdom Environmental Law Association (UKELA), British Ceramics Confederation (BCC) and the Northern Ireland Local Government Association (NILGA) said that the UK's Climate Change Act 2008 has more ambitious targets than the EU. This is an example of the UK driving its own environmental improvements.
- 2.5 Taking a slightly different view, participants at a London workshop said that some improvements in environmental standards will happen regardless of government action. This is because it is in the commercial interest of manufacturers to focus on resource efficiency and resource security to increase their profits.⁴
- 2.6 There was a broad view amongst respondents (see examples below) that higher environmental standards resulting from EU competence on the environment and climate change have improved the level of environmental performance in the UK. The Wildlife Trusts (WT) cites the National Ecosystem Assessment summary which explains that 'changes in national policy and legislation, latterly often driven by EU policy, along with technological developments and changing attitudes and behaviour, have led to improvements in some ecosystem services, particularly in the last 10-20 years.'⁵
- 2.7 The statistics showing trends in environmental performance on a several environmental issues are shown in Appendix 1 of this report. Whether or not these changes are attributable to EU competence can be debated. However, it is clear that many respondents do make the link between higher environmental standards leading to improved environmental performance (or in other words more protection for the environment).
- 2.8 Evidence cited by respondents about improvements in environmental protection due to EU legislation includes:
- **Bathing Water Directive & other Water Legislation:** several respondents considered that the improvements seen in bathing water quality can be attributed to the body of EU law related to water.⁶ The Bathing Water Directive 76/160/EEC and the Urban Waste Water Treatment Directive 91/271/EEC are most frequently credited with the improvements seen by these respondents. Joint Links said that the Water Framework Directive has helped to transform once heavily polluted UK Rivers into functioning habitats and that the Thames, which was declared biologically dead 50 years ago, now supports more than 100 fish species. The Royal Society for the Protection of Birds (RSPB) also believed that the EU's water directives have been instrumental in delivering improvements in river water quality;
 - **EU Landfill Directive & Waste Framework Directive:** respondents from a range of sectors, particularly including those from the waste management profession, as well as environmental NGOs thought that the EU waste legislation has significantly changed the UK's approach to waste management, reducing landfill and increasing recycling.⁷ Whereas 10-15 years ago almost all the UK's waste was disposed of in landfill sites, today the UK recycles over 40% of its household waste and about

⁴ Idem.

⁵ Robert Watson, Steve Albon et al, *UK National Ecosystem Assessment: Understanding Nature's Value to Society* (2011).

⁶ Examples include: Dŵr Cymru Welsh Water; the Chartered Institution of Water and Environmental Management (CIWEM); Jean Lambert MEP and Keith Taylor MEP (Green MEPs); AB Sugar; the British Ecological Society; WWF; the Department of the Environment Northern Ireland (DOENI); UKELA; and the Tyndall Centre.

⁷ Examples include: CIWEM; EnergyUK; the Resource Association; and Environmental Services Association.

50% of its commercial and industrial waste. The Environmental Services Association considered that the Landfill Directive has led to a huge reduction in UK methane emissions from landfill (emissions are down 65% since 1990) and a much better rate of recovery of materials and energy for the UK economy;

- **Wild Birds Directive & Habitats Directive:** the British Ecological Society pointed to evidence showing that bird species that are on Annex 1 of the Wild Birds Directive 79/409/EEC fare better than those that are not on the list. Outside the EU where the Directive does not apply these species fare no better than birds that are not on Annex 1. WWF and Open Europe also credited EU directives, including the Habitats and Wild Birds directives for driving improvements in protection of wildlife and habitats across the EU. Respondents including Northern Ireland Environment Link, Joint Links and WWF also commented on the beneficial impact of the LIFE Programme in funding UK conservation projects;⁸
- **Air Quality Directive:** the British Ecological Society indicated that there have been significant improvements in air quality due to a number of EU directives.⁹ This has led to a statistically significant decrease in acidic deposition which benefits both the wider environment and specific conservation efforts, for example, chalk grasslands.¹⁰ The Tyndall Centre, RSPB and Institute for European Environmental Policy (IEEP) also attributed improvements in air quality to EU action; and
- **Climate Change:** Green MEPs said that the EU as a whole is on course to achieve its headline emission reduction target of 8% by 2008-12 over a 1990 baseline.

Evaluating the Costs and Benefits of Environmental Regulation for the Economy

2.9 Economists generally agree that EU action on environment and climate change has both costs and benefits for the UK economy. Economic theory shows that environmental regulation typically forces or encourages people and businesses to change their behaviours and that this can have economic consequences. However, the costs incurred should also result in benefits for society, whether from improved habitats, health or the development of new markets. Some of the evidence, particularly from the private and utilities sectors felt that these costs were not always justified in terms of environmental benefits.

2.10 It is not always straightforward to value accurately the benefits of protecting the environment and respondents recognised this challenge, including English Heritage who felt that mainstream economic thinking did not do this adequately. However, several responses from environmental NGOs made the point that a healthy environment provides essential services which underpin all economic activities and referenced the valuation of ecosystem services provided in the National Ecosystem Assessment.¹¹ Similarly ClientEarth highlighted a recent report published by the European Commission estimating

⁸ LIFE is the EU's financial instrument for funding environmental projects. The current LIFE+ Regulation 614/2007 is due to expire at the end of 2013 and a new LIFE Regulation covering the period 2014 to 2020 is currently in the final stages of negotiation.

⁹ The Framework Directive 96/62/EC, three daughter Directives 1999/30/EC, 2000/69/EC, 2002/3/EC, and Decision on Exchange of Information 97/101/EC were merged in 2008 to form the overarching Air Quality Directive 2008/50/EC.

¹⁰ G.J.D. Kirk, P.H. Bellamy and R.M. Lark, 'Changes in Soil pH Across England and Wales in Response to Decreased Acid Deposition', *Global Change Biology*, 16 (2010), p 3111-3119.

¹¹ Watson, *UK National Ecosystem Assessment*.

that the economic value of the flow of ecosystem services from the terrestrial Natura 2000 network alone is between €200 and €300 billion per year.¹²

- 2.11 The costs and benefits of environmental action do not always arise at the same time. The costs may be immediate, and the benefits generated may take much longer to manifest. The Tyndall Centre, Green MEPs and Greenpeace highlighted the Stern Review which concluded that promoting ambitious action globally to mitigate climate change now will save greater costs later through adaptation to its impacts.¹³
- 2.12 The evidence showed that in some cases respondents believed that EU regulation had not found the right balance between costs and benefits and that some legislation was disproportionate, with high costs experienced by companies or individuals leading to minimal environmental benefits. Five examples of evidence where respondents considered that the costs do not justify the benefits are below:
- Cardiff workshop participants highlighted the Habitats Directive 92/43/EEC which they said requires households to go through the same procedures as a major developer.¹⁴ Similarly the Royal Yachting Association stated that neither the Wild Birds nor the Habitats directives allow for the consideration of socio-economic impacts of site designation or the costs associated with obtaining development consent in these locations;
 - Thames Water Utilities Ltd argued that the changing definitions used in revisions to the Water Framework Directive 2000/60/EC were responsible for large increases in investment in water treatment and energy use with minimal environmental benefit;
 - UK Coal and Coal Pro stated that legislation on the management of waste from the extractive industries has imposed additional costs of administration when the safety and security of mining wastes was already adequately controlled by the Mines and Quarries (Tips) Act 1969;
 - The Association of Drainage Authorities said that the Water Framework Directive, the Habitats Directive 92/43/EEC, the Nitrates Directive 91/676/EEC and the Waste Framework Directive 2008/98/EC give rise to large costs associated with minimal benefits in terms of reducing flood risk; and
 - The Convention of Scottish Local Authorities considered that EU proposals typically have weak economic, territorial and subsidiarity impact and that the new EU Territorial Impact Assessment methodology should be used across EU policies and notably for environmental legislation.

EU Environment and Climate Change Policy and the Single Market

- 2.13 Respondents from all sectors pointed out that environment and climate change policies could act as a driver of growth by encouraging green investment and innovation in certain sectors. This in turn could stimulate growth and increase employment in the Single Market.

¹² Institute for European Environmental Policy, *Estimating the Overall Economic Value of the Benefits Provided by the Natura 2000 Network* (2011) and Institute for European Environmental Policy, *Assessing Socio-Economic Benefits of Natura 2000 – A Toolkit for Practitioners* (2009).

¹³ Nicholas Stern, *The Economics of Climate Change: The Stern Review* (2007).

¹⁴ See Annex 2 for the list of organisations that submitted evidence through this workshop.

- 2.14 The EU constitutes the largest economy in the world. In 2010 the 27 Member States of the EU accounted for a 25.8% share of the world's GDP.¹⁵ The size of the Single Market and the environmental legislation that supports it can have advantages for economic development in certain sectors. The evidence showed that several respondents, including SEEG, Green MEPs, Sandbag, and the Anaerobic Digestion and Biogas Association (ADBA) felt that EU policies on climate change have driven economic growth and jobs in the development and deployment of low carbon technology, by creating a sufficiently large market for mitigation technologies. In its response, the Tyndall Centre also felt that the scale of the EU market has spurred financial investment in the water and waste sectors and technological innovation.
- 2.15 The size and stability of the EU Single Market and its associated common standards (including environmental standards) also provides certainty and a long term perspective for investors according to some respondents.
- 2.16 Renewables UK, Greenpeace, Tyndall Centre, Open Europe and Green Alliance argued that EU climate policy and binding targets for 2020 provided this stability and minimised risk for investors. The WT, The Wildfowl and Wetlands Trust, Prospect and participants at the climate change and London workshops all agreed that the EU provides a longer-term perspective in facing environment and climate change issues than an individual Member State, by providing a more stable framework and fewer political changes.¹⁶ Participants at the York workshop believed that Member States were more likely to prioritise short term economic objectives particularly during times of economic recession or political instability.¹⁷
- 2.17 Common environmental standards were widely recognised as helping to signal that there would be an on-going market for environmental goods and services thereby encouraging innovation. COGEN Europe said that environmental standards can help to improve efficiency in production processes, and stimulate innovation and new markets by lowering product costs and innovation risk for manufacturing industries. The Manufacturers' Organisation (EEF) broadly agreed. However, it felt that a new approach is needed in the EU that understands the trade-offs involved, is grounded in how businesses actually operate and reflects global economic realities.
- 2.18 Participants at the climate change workshop commented that EU legislation has driven innovation in areas such as vehicle and eco-design standards.¹⁸ Equally, the setting of EU standards for fluorinated gases in air conditioners and other appliances have incentivised chemical companies to innovate and find alternatives.
- 2.19 It was noted that other countries were also looking to exploit the opportunities in the EU created by environment and climate change policy. For example, Catherine Bearder MEP argued that because China was investing so heavily in greening technologies it was driving down the costs of these emerging technologies and building economies of scale.
- 2.20 EU environment and climate change legislation is having an impact on the make-up of the private sector in the UK. Several responses, particularly from environmental NGOs and think-tanks, but also from the private sector, indicated that environmental technologies and services represent an expanding proportion of UK and EU business.¹⁹

¹⁵ Eurostat, *The EU in the World – Economy and Finance* (2013).

¹⁶ See Annex 2 for the list of organisations that submitted evidence through this workshop.

¹⁷ *Idem*.

¹⁸ *Idem*.

¹⁹ Examples include: Sandbag Climate Campaign (Sandbag); WWF; ADBA; and IEEP.

ADBA said that in the UK the green economy now accounts for 8% of GDP and that the Confederation of British Industry (CBI) has noted that in 2012 over a third of the UK's economic growth came from the green sector. Government research by the Department of Business, Innovation and Skills (BIS) on the low carbon and environmental goods and services market in the UK, which is heavily dependent on EU driven standards, showed that the sector employed around 938,000 people in 2011-2012.²⁰ The CBI has proposed a similar figure.

- 2.21 The experience of operating within the bounds of EU legislation in the Single Market could have advantages for businesses in the UK according to a wide range of respondents. Environmental NGOs including Greenpeace, Sandbag and RSPB thought that the EU's ambitious climate change targets could provide a competitive advantage over countries which are slower to act. Greenpeace felt that opportunities would be created for UK and EU businesses to capitalise in non-EU markets when a global deal on climate change is reached. The SEEG also thought that UK could take the lead in developing solutions using low carbon technologies, bio-technology and utilisation of waste materials.
- 2.22 Some respondents believed that action in other fields of EU policy could also see advantages for the UK economy. For example, the Chartered Institution of Wastes Management (CIWM) and the Resource Association noted that studies by Friends of the Earth Europe/UK (with the RGR consultancy) had found that if the UK increased its recycling rate to 70% this could provide up to 50,000 additional jobs. The same study suggested that waste legislation could reduce Member State spending by €70 billion and create 400,000 jobs. It was unclear from the response whether this was a gross job creation figure, or net after taking into account jobs lost as a result of the impact of higher costs on businesses in other sectors.

Regulatory Burden

- 2.23 Respondents from a range of sectors recognised that EU legislation on environment and climate change imposes costs on UK businesses which can affect their competitiveness.
- 2.24 In the evidence submitted on the regulatory burdens of EU environment and climate change legislation, there were areas of general concern about the cumulative impact of regulations, as well as four key areas that were identified as posing particular problems and which impose potentially disproportionate costs. These were:
- The burden of planning requirements;
 - Impacts on energy intensive industry;
 - The disproportionate burden on SMEs; and
 - The burden of complying with the REACH legislation.
- 2.25 The academic literature looking at whether environmental regulation adversely affects competitiveness is mixed. Early work has tended to find little evidence, although that may be changing. Cave and Blomquist (2008) for example found evidence that the EU has seen increasing imports from energy intensive and toxic intensive industries from poorer countries when EU environmental standards were raised.²¹ Carbon leakage is discussed further in section 2.2.

²⁰ Department for Business, Innovation and Skills, *Low Carbon and Environmental Goods and Services* (2013).

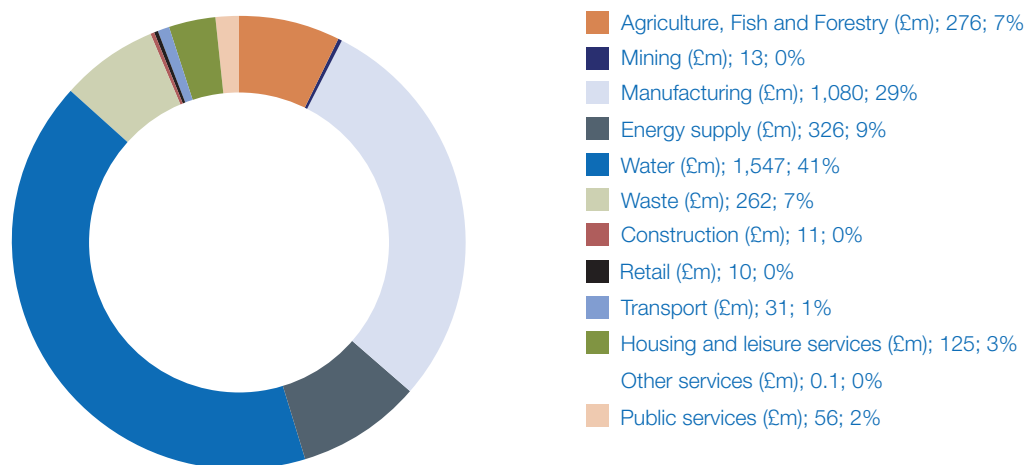
²¹ Lisa A Cave and Glenn C Blomquist, 'Environmental Policy in the European Union: Fostering the Development of Pollution Havens', *Ecological Economics*, 65 (2008) p253-261.

Cumulative Impact

- 2.26 The cumulative impact of EU legislation on particular sectors was identified by some respondents, particularly those from energy intensive sectors, as a problem. In the view of these respondents, while individual requirements may not be overly burdensome, the collective impact of several directives becomes onerous. BAE Systems also argued that the volume and rate of change of EU environmental legislation was particularly high and felt it presented a constant challenge for industry to implement the required compliance activity and manage any consequential business risks.
- 2.27 Defra analysts have assessed the burdens on business from EU environmental legislation, excluding climate change. The analysis made estimates of the direct costs of each piece of legislation on business sectors, providing estimates of the total equivalent annual direct cost by sector (see figure 1).²² It is not looking at the benefits generated, or costs to others in society and the assessment is not complete. It has been drawn from an initial estimate of the costs to business, from all regulations affecting business and the sources for estimates vary according to the most reliable estimates available.

Figure 1: The Equivalent Annual Direct Costs to Business of EU Environmental Legislation (excluding Climate Change) by Industry Sector – 2011 Prices

This figure uses a zero baseline, that is, it assumes that no legislation would have been adopted in the absence of EU legislation. The available evidence is better in some cases than others and there is significant uncertainty for some of the estimates. On average impacts are reasonably understood, but estimates rely largely on expert judgement informed by some real-world data. There remain some regulations for which costs have not been estimated, or where estimates are very provisional, or where important components of cost remain unquantified. Conversely, there is some evidence that the actual costs to businesses of regulations tend to be lower than estimated before regulations are introduced, suggesting that actual costs may be lower than presented here. The costs of many regulations, for example, those setting environmental standards will decline over time as those standards become ‘business as usual’.



Source: Defra ‘The Costs and Benefits of Defra’s Regulatory Stock’ Emerging Findings from Defra’s Regulatory Stock Assessment, (2011).

- 2.28 The Government is keen to minimise the burden of legislation so as to increase productivity and promote growth and innovation, and is working with European partners to encourage smarter regulation. The EU itself has an Action Programme aimed at lightening the administrative burden on businesses by removing unnecessary

²² Department for Environment, Food and Rural Affairs, *The Costs and Benefits of Defra’s Regulatory Stock Emerging Findings from Defra’s Regulatory Stock Assessment* (2011).

reporting and information requirements. The European Commission has also launched a Regulatory Fitness and Performance Program (REFIT) initiative to ease the burden of EU requirements on small businesses.

Planning

- 2.29 The Home Builders Federation (HBF) noted that several EU requirements impact heavily on the home building industry, including those relating to Environmental Impact Assessments, Strategic Environmental Assessments, Habitats and Water. It argued that the cumulative cost on development of fulfilling requirements in the planning system stemming from the EU was disproportionate to the environmental benefits provided. The HBF considered that the economic benefits of development were missing from the debate on planning impacts as environmental aims would always trump the economic arguments, even though, for example, in its view providing sufficient housing is as important as protecting natural habitats. The HBF gave the example of a development where offsite translocation was refused and the methods to protect newts onsite cost £200,000-£300,000 (not including interest or loss of return on the proposed construction) in the context of a peak count of 23 newts. It also noted that in some areas 85% of Community Infrastructure Levy is required for mitigation of the Habitats Directive 92/43/EEC, leaving little funding for schools and roads, commenting that this is disproportionate and unsustainable.
- 2.30 The British Property Federation (BPF) also raised concerns about understanding and treatment of the built environment at EU level. They considered that the European Commission could better engage with property owners and investors.
- 2.31 HBF argued that in some cases, for example Ashdown Forest and the Thames Basin Heaths Special Protection Areas, no new planning permissions to build homes were granted for a number of years due to the cumulative requirements of EU regulations. They claimed that EU legislative requirements play a significant part in adding about 18 months on to the normal cycle of an application and this is costly to industry.
- 2.32 EDF Energy (EDF) agreed that while the Habitats Directive 92/43/EEC rightly sets out species and features that should be protected across Europe, EDF understood it to specify what EDF argued was a novel burden of proof of no harm, implying in EDF's opinion an absolute requirement to protect and preserve irrespective of cost. In EDF's view this does not fit well with the rest of EU environmental law and it continues to generate a growing legal case load, without necessarily delivering any greater level of environmental protection in the final outcomes.
- 2.33 From the perspective of small firms the Federation of Small Businesses (FSB) stressed that the focus should be on ensuring that SMEs could interact with a streamlined and responsive planning and development system. They considered that the current proposal for the revision of the Environmental Impact Assessment Directive 2011/92/EU would have serious consequences for the UK's small firms and limit their ability to contribute to economic growth.
- 2.34 The Explanatory Memorandum on the European Commission's proposal to review the Environmental Impact Assessment Directive referred to research undertaken for the European Commission which identified that across Europe assessments usually take 6-12 months to complete and account for an average of 1% of a total project's cost.²³

²³ European Commission, Commission Staff Working Paper, *Impact Assessment Accompanying the document, Proposal for A Directive of the European Parliament and Council Amending Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on The Environment* (2011).

There has not been any research on the costs of undertaking Strategic Environmental Assessments of plans or programmes in the United Kingdom. Research by the European Commission suggests the assessment of regional and local land use plans may increase the cost by 5-10% and there is no reason to believe the costs are any less in the United Kingdom.²⁴

Energy Intensive Industry

- 2.35 The energy intensive industry sector including the Mineral Products Association (MPA), the Confederation of Paper Industries (CPI), and BCC was particularly concerned by the cumulative cost of EU environment and climate change legislation.
- 2.36 Some participants at the London Two workshop argued that the cumulative impact and cost of EU environment and climate change policy had all but destroyed energy intensive industry in the UK.²⁵ Participants said that many factories were built before requirements were enacted, and suggested that because it was too costly to retrofit factories to meet the development of new legislation and targets they have had to close. The CPI said that different requirements have generated cumulative costs, for example it estimated that the Sulphur Directive 2012/33/EU will cost the paper industry £500million in 2015, while compliance with the Best Available Techniques Reference document will cost an additional €2billion.
- 2.37 The EU Emissions Trading System (EU ETS) was also criticised for being a burden to industry. AB Sugar claimed that monitoring and reporting guidelines were excessive, adding cost which undermines competitiveness, while British Glass felt that the EU ETS combined with national taxes and charges led to an unacceptable regulatory burden. It also argued that in developing proposals the European Commission has increasingly used consultants with little practical knowledge, for example in developing a definition of sub-installation for the EU ETS, which have led to proposals that have placed significant burdens on industry.
- 2.38 The MPA provided evidence of the additional regulatory and cost burden on product groups such as cement and lime manufacture. It argued that burdening these industries with too many costs today will not secure their presence to supply the UK market with products to assist in the future transition to a low carbon economy.
- 2.39 Wedge argued that for the galvanising industry, which is largely comprised of small businesses catering almost exclusively to the UK market, EU requirements are costly and burdensome without the benefits of the level playing field. Examples given were the Integrated Pollution Prevention and Control Directive 96/61/EC (later codified as Directive 2008/1/EC and its successor the Industrial Emissions Directive 2010/75/EU).
- 2.40 Representatives from the energy intensive industries were concerned that the cumulative burden of environmental legislation was leading to carbon leakage to third countries (carbon leakage is discussed further in section 2.2).
- 2.41 On the other hand, the Centre for European Reform (CER) and the Green Alliance strongly disputed whether the EU regulatory burden was solely to blame for the reduction in industry. Green MEPs argued that much of the regulatory burden was home-grown and that in general businesses benefitted from the regulatory certainty provided by the EU. The Green Alliance also argued that pan-EU environmental standards reduced the regulatory burden for international companies.

²⁴ DG ENVI, *Environmental Study: A Study on Costs and Benefits* (2012).

²⁵ See Annex 2 for the list of organisations that submitted evidence through this workshop.

SMEs

- 2.42 The administrative implications of EU legislation can be particularly onerous for small businesses (see textbox on the Red Tape Challenge and the Prime Minister's Business Taskforce). Participants at the London One workshop pointed out that SMEs find it more difficult to meet EU environmental standards for a number of reasons including:
- SMEs have fewer resources to cope with the requirements of EU legislation;
 - SMEs have less capacity to shift investments into cleaner technologies; and
 - SMEs may be more in need of technical assistance which in the view of participants should come from the EU.²⁶
- 2.43 Participants at the London One workshop said that there is a need to reduce the burden on SMEs, but that it was extremely difficult to get them to work together, as they are diverse.²⁷ Participants believed that SMEs need frameworks or structure, for example supply chain agreements. It was added that the Commission could be better at providing technical assistance to SMEs trying to procure through the single market, alongside EU Regional Development Fund (ERDF) and cohesion funding.

Red Tape Challenge Reports – Regulatory Burdens for SMEs

Over recent decades, successive governments have built a framework of environmental regulation that has transformed the way we value our environment in the UK. However, this framework has evolved in a piecemeal way and it now consists of hundreds of laws, guidance documents and procedures. For some businesses this may represent a barrier to compliance with their environmental obligations and growth. With the Red Tape Challenge (RTC), this Government has set the aim to reduce the overall burden of regulation whilst increasing effective delivery of environmental benefits.

The RTC on the environment theme highlighted that the environmental framework is overly complex and inconsistent. The report concluded that of 255 regulations, 132 will be improved, mainly through simplification or consolidation; 70 will be kept as they are, and 53 obsolete regulations will be removed.

A full list of the 132 pieces of legislation covered by the Environment theme the Government proposes to change can be found in the Defra Red Tape Challenge – Environment Theme proposals (March 2012). The list includes Government's regulations to implement EU directives such as the Waste Electronic and Electrical Equipment (WEEE) Directive.

The report pointed out that SMEs find it particularly hard to meet EU requirements in some areas for a number of reasons, including that they have fewer resources to devote to complying and keeping up to date with environmental regulations. This issue was relevant to regulations in the areas of waste and chemicals. The Smarter Environmental Regulation Review pointed out that several research reports have found that awareness and understanding of environmental regulations can be low, particularly amongst SMEs, and that this can result in lower levels of compliance.

²⁶ Idem.

²⁷ Idem.

- 2.44 Participants at the nature and biodiversity workshop suggested that EU legislation is not flexible enough to fit SMEs.²⁸ At the workshop London One, participants said that the EU legislates as if the field to which they apply legislation is uniform across the EU.²⁹ For example, when target setting is aspirational rather than evidence based it can be difficult for micro businesses to comply with and this can give a bad reputation to the entire sector. Due to this, some participants argued that micro business should be given more time to adapt to new requirements or greater leniency, although it was also suggested this would be problematic in some areas, for example waste. In addition, participants argued that the EU can add bureaucracy for SMEs who have to provide data, for example for carbon reporting. EU procurement rules were also felt to disadvantage SMEs in the environment sector as they were considered by participants to make bidding for work more complicated and bureaucratic.
- 2.45 There were varied views on whether alternatives to legislation can work for SMEs. In the London One workshop, some said that voluntary action does not work for SMEs, for example participants felt the Eco-Management and Audit Scheme (EMAS) and Eco labelling had not driven change. Despite the fact that EMAS was designed for SMEs it was still considered to be burdensome and only the top 10% signed up to Eco labelling.³⁰ In the same workshop others gave the example of the negotiations for the EU Forest Law Enforcement, Governance and Trade Action Plan (EU FLEGT) which had been effective and made life easier for EU SMEs, although it was felt that it had taken too long to agree.
- 2.46 In 2012, the European Commission held a consultation to find out what the most burdensome EU legislation was for SMEs.³¹ The REACH Regulation 1907/2006 came top of the list, in relation to the cost burden on smaller firms (see discussion of REACH below).
- 2.47 Another area highlighted by the European Commission's consultation was legislation on waste management. The FSB argued that the European Waste Catalogue established by European Commission Decision 2000/532/EC places a significant burden on small firms. It also said that requirements to register as a waste carrier and to complete a Waste Transfer Note place a high level of compliance burden on small firms which is disproportionate to the environmental risk they pose. The Department of the Environment in Northern Ireland (DOENI) agreed that the extent and complexity of the regulatory framework for waste was a burden for the SME sector which dominates in Northern Ireland. The Prime Minister's Business Taskforce on EU Regulation called on the EU to remove unnecessary rules on SMEs transporting small amounts of waste, which in its view constitute a barrier to businesses expanding.³²
- 2.48 Conversely, attendees at the waste workshop emphasised the need for minimum standards to protect the environment and argued that if SMEs were finding it difficult to meet standards, they should do things differently by changing their production systems.³³ Similarly, participants at the Cardiff workshop argued not to exclude SMEs from requirements because claims of disproportionate cost may not always be appropriate.³⁴ At the same workshop it was also claimed that SMEs are sometimes the worst culprits in

²⁸ Idem.

²⁹ Idem.

³⁰ Idem.

³¹ DG Enterprise and Industry, *Which are the TOP 10 Most Burdensome EU Legislative Acts for SMEs?* (2012).

³² 'Cut EU Red Tape': A Report From the Business Taskforce (2013).

³³ See Annex B for the list of organisations that submitted evidence through this workshop.

³⁴ Idem.

the management of waste and that they need to be regulated in line with the polluter pays principle. It was asserted at the workshop that SMEs are also often able to react more quickly than bigger business.

- 2.49 BAE argued that appropriate consideration would need to be given to how any SME exclusions were managed as goods progress through the supply chain to larger organisations.

REACH

- 2.50 The UK chemicals industry directly employs 125,000 people. Since the break-up of Imperial Chemical Industries (ICI) the structure of the industry is much more focussed on SMEs. This make-up is similar to all EU chemicals industries with the exception of Germany's.
- 2.51 Several responses, particularly from the private sector highlighted the REACH Regulation 1907/2006 as being particularly burdensome to small businesses.³⁵ The FSB, while recognising the impact of the REACH in limiting the impact of harmful chemicals, argued that the current implementation takes little account of the costs and impacts on SMEs. The FSB looked to the European Commission's 2013 review of REACH (see paragraph 2.53 below) to deliver a more SME-friendly REACH Regulation through development of an effective system to monitor the impact of REACH on competitiveness, better guidance for SMEs, a system to monitor the authorisation process, and clear criteria for how authorisation applications will be decided.³⁶
- 2.52 However the Chemicals, Health and Environment Monitoring (CHEM) Trust did note that REACH, whatever its faults, has gone through an intensive process of gestation in which many compromises have been made to reconcile different interests. It considered that the result is a more robust regime than exists anywhere else in the world and that it would be hard to imagine any Member State on its own developing such a regime. The Chemical Industry Association (CIA) noted the complexities of the REACH regulation. However, it sees REACH as a positive development and supports its principles, on the basis that it has made many businesses outside the chemicals sector realise that they do in fact use chemicals every day and that they also have to comply with controls. CIA therefore view REACH as an important step towards achieving safe chemical management.
- 2.53 The European Commission's REACH review, published in February 2013, reflected many of these concerns relating to SMEs with a series of recommendations to reduce the burden on SMEs. These include more guidance aimed at meeting the needs of SMEs and measures to ensure fair division of costs between companies that need to work together on registration dossiers for the same chemical substances. The Prime Minister's Business Taskforce on EU Regulation (see text box below) also recommended that REACH guidance should be improved for SMEs. Defra is working closely with the European Commission, the European Chemicals Agency (ECHA), and UK industry bodies to drive forward implementation of these recommendations. The European Commission's Report on the REACH Review Report also recommended further reductions in the fees payable by SMEs to ECHA. These have already been introduced so the smallest companies are eligible for discounts of up to 95%.

³⁵ Including: the British Coatings Federation, British Plastics Federation, Chemical Business Association and FSB.

³⁶ European Commission, *Commission Report to the European Parliament in Accordance with Article 117 (4) of REACH and Article 46 (2) of CLP, and a Review of Certain Elements of REACH in Line with Articles 75 (2), 138 (2), 138 (3) and 138 (6) of REACH* (2013).

Prime Minister's Business Taskforce looks at REACH

Prior to the Prime Minister's Business Taskforce on EU Regulation, the REACH Regulation 1907/2006 had been through other reviews, challenges and/or processes over the last few years including Red Tape Challenge (2011); the European Commission's SME Top 10 Survey (2012) and the European Commission's review of REACH (2013).

Evidence submitted to the Prime Minister's Business Taskforce indicated that current REACH guidance is unwieldy and complex. This has hit SMEs across the UK disproportionately hard. They may be forced by buy in expertise, which can cost €180 per hour. This is an issue in the UK and most other Member States where the chemicals industry is mainly made up of SMEs. REACH is forcing some SMEs to consider manufacturing outside of the EU or to stop manufacturing altogether.

The Taskforce found that from 2018 many SMEs will have little option but to pay often prohibitively high amounts to join registration consortia to gain access to information on chemicals and register for REACH. This is due to the planned reduction in the threshold from 100 tonnes to one tonne per annum, meaning most SMEs will now be covered by REACH.

The key recommendations from the Prime Minister's Business Taskforce are that the European Commission and ECHA should make REACH more business-friendly by issuing clearer, simpler guidance, especially on fairer cost sharing; providing a listing on the ECHA website of known consortia working towards authorisation; and ensuring consistent implementation and enforcement across the EU.

2.2 Should Action be taken at International, EU or National Level?

This section discusses evidence for taking action at international, EU or national level in relation to a number of environmental issues. Broadly speaking, it is arguable that decisions should be based on an assessment of two main criteria: the degree to which an issue is transboundary and how the issue interacts with market considerations.

The evidence submitted indicated that most respondents across the range of sectors represented, but with some exceptions, believe that the current balance of EU competence on the environment and climate change is broadly right. In the following section we lay out respondents' views on the level at which different environmental issues should be tackled. Issues have been categorised according to the majority of views expressed but the whole range of views in each case are represented in the text.

- The first sub-section considers the theoretical case for action at different levels;
- The second sub-section deals with international level;
- The third sub-section deals with EU level;
- The fourth sub-section deals with mixed views between EU and national level; and
- The final sub-section deals with the national level.

Deciding on the Right Level to Take Action

2.54 Many environmental issues are transboundary in nature, where activity in one country has a consequential effect in another. In these instances there may be a case for international or EU action because action taken within the territory of a single state will not be sufficient to address the issue. In 1972 the Organisation for Economic Co-

operation and Development (OECD) recommended harmonisation of environmental standards between States where valid reasons for differences do not exist and where there are significant obstacles to trade.³⁷ The OECD also argued in 2008 that the extent to which harmonisation is useful and feasible differs with the type of environmental standard. It said that there is a strong case for harmonising environment-related product standards which may pose barriers to trade, and that harmonising of ambient and process standards to address transboundary and global environmental concerns may be desirable.³⁸ In the case of local environmental problems, however, the OECD considered that the case is less compelling as the environmental conditions and preferences are likely to differ widely among countries.

- 2.55 However, if the appropriate level for action is not found, ‘leakage’ may occur. Leakage results from an increase in pollution in one country as a result of environmental regulation in another country. This may happen if environmental regulation imposes a financial burden that represents a large part of industry costs and if the industry could be moved to a region that is not subject to comparable environmental regulation. Even in cases where there is no leakage and there are no transboundary issues, there may be a case for acting at a large enough scale to create a sufficient market to stimulate effective technological solutions.
- 2.56 Within the EU, the EU Treaties lay out the powers of the EU in relation to the environment and climate change and set out the conditions under which the EU should take action (see the following text box). The principles of subsidiarity and proportionality should inform all EU action in this area and offer a framework for deciding whether action should best be taken by the EU or by Member States. If there is no clear case to be made for EU action on a particular issue due to transboundary or market considerations, then it is arguable that these principles mean that action at a national level may be the most appropriate.

The Legal Context: Subsidiarity and Proportionality in the EU Treaties

The objectives of the EU set out in the EU treaties include ‘preserving, protecting and improving the quality of the environment’, and ‘promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change’ (Article 191 TFEU).

The EU’s exercise of its powers is governed by the principles of subsidiarity and proportionality. Under the principle of subsidiarity, in areas of shared competence like the environment the EU shall act ‘only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level’ (Article 5(3)). Under the principle of proportionality, ‘the content and form of Union action shall not exceed what is necessary to achieve the objectives of the EU Treaties’ (Article 5(4)). Protocol (No 2) to the TEU lays down conditions for the application of the principles of subsidiarity and proportionality which include a scrutiny role for the national Parliaments of Member States in respect of legislative proposals from the European Commission.

³⁷ OECD, *Guiding Principles Concerning the International Economic Aspects of Environmental Policies* (1972).

³⁸ Michel Potier and Cristina Tébar Less, *Trade and Environment at the OECD: Key Issues Since 1991* (2008).

International Level

- 2.57 International action is arguably the most appropriate way to deal with policies that may have global leakage and transboundary effects, including in relation to activity in the EU which may have an impact beyond the EU. It may also be needed where action at a lower level would impact on international trade. A large number of multilateral international agreements (such as the Ramsar Convention on wetlands of international importance) have been negotiated over recent decades which seek to address at international level many of the environmental issues considered by this report. In some cases the EU is a party in its own right in addition to the UK and other Member States; in other cases the EU has observer status. As described in paragraphs 1.30 to 1.35 above, complex arrangements govern the negotiating roles of the EU and the UK in relation to such agreements and at international organisations such as the UN.
- 2.58 While international action may arguably be most appropriate for certain environmental issues with strong transboundary or leakage associated effects, there may be disadvantages to relying on international action. Participants at the nature protection and biodiversity workshops highlighted the fact that there is no court which automatically has authority to ensure that international environmental treaties are adhered to.³⁹ Similarly the RSPB stated that what it identified as the EU's failures to achieve the International Biodiversity Target in 2010 under the Convention on Biological Diversity and to meet the OSPAR 2010 target for an ecologically coherent network of Marine Protected Areas incurred no penalty. In contrast, within the EU the ECJ ensures the implementation of EU rules, and the power of this 'stick' was considered by nature protection and biodiversity workshop participants to be essential to the proper enforcement of EU environmental policies. It was also felt by some respondents that if the WTO was more directly concerned with the environmental issues associated with trade then there could be an argument for international action through the binding dispute settlement mechanism which it offers. Participants at the Cardiff workshop also pointed out that international agreements will only work to address global environmental issues if all countries sign up to them.⁴⁰
- 2.59 Respondents and workshop participants identified three main environmental issues which would most appropriately be addressed at international level.⁴¹

Climate Change

- 2.60 Climate change was widely recognised as being a transboundary issue because greenhouse gas emissions have a global impact. Almost all those who responded on this point, including respondents from all sectors, agreed that climate change is intrinsically difficult to address solely at the national level.⁴² They felt that the framework for tackling climate change should ideally be agreed at the international level through the UNFCCC process. This would offer a global response to a global challenge.
- 2.61 Most respondents acknowledged, however, that there was nevertheless a case for EU action on climate change, particularly in the absence of a global deal.⁴³ By contrast, the British Paper Federation and Open Europe believed that action on greenhouse gas

³⁹ See Annex B for the list of organisations that submitted evidence through this workshop.

⁴⁰ Idem.

⁴¹ Idem.

⁴² Please see submissions of evidence from: energy supply company RWE Group (RWE); Dŵr Cymru Welsh Water; the Food and Drink Federation; IATA; CER; independent consultant on International Climate Change Policy; NILGA; Ecometrics; Open Europe; Transform Scotland; UKELA; CPI; EEF; RSPB; Greenpeace; Umweltdachverband; Centre for Ecology & Hydrology (CEH); and Northern Ireland Environment Link (NI Environment Link).

⁴³ This is discussed further on p55.

emissions is only appropriate at international level due to impacts of climate change policy on leakage and global trade.

- 2.62 The International Air Transport Association (IATA) and the UK Chamber of Shipping suggested that international air transport and shipping are specific areas where action to tackle emissions can only be successfully pursued at the international level, rather than at the EU level, to ensure uniformity of regulation and fair competition.

Marine and Shipping

- 2.63 Participants at the marine and nature workshops agreed that the marine and shipping industry is by its nature international and so should arguably have standards set by the International Maritime Organisation (IMO) rather than at EU level.⁴⁴ However, marine workshop participants disagreed over whether IMO standards were sufficient to protect the marine environment. Some participants said that progress in getting agreement at the IMO can also be slow, while environmental NGOs argued that the marine industry has been very good at resisting change. These participants believed that EU competence has therefore been the only possibility for pushing change internationally.
- 2.64 Green MEPs looked forward to new EU legislation on an Integrated European Maritime Policy following a recent European Commission proposal which aims to establish a consistent framework for maritime spatial planning and integrated coastal management. They considered that the legislation would be beneficial in promoting smart, sustainable and inclusive growth, and for creating employment opportunities in the maritime sector.⁴⁵

Migratory Species and Trade in Endangered Species

- 2.65 Participants at the Northern Ireland and nature protection workshop and others agreed that regulation at the international level is important for migratory species.⁴⁶ York workshop participants noted that it may be pointless to regulate part of the habitat if there is no regulation in another part.⁴⁷ Even where protection for a bird species is provided within the EU, it is often the case that the breeding sites and migratory routes of that species are outside the EU. It was therefore felt that protection should be an international competence, as it is under the Bern Convention on the conservation of European wildlife and natural habitats. However, this was considered by workshop participants to be insufficient in practice. Prohibiting trade in endangered species was also considered as needing to be addressed internationally, as it is under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

External Representation: EU Competence in International Negotiations

- 2.66 The EU plays an active role in the negotiation and implementation of international agreements concerning the environment and in the main represents Member States on matters of EU competence within the UN and WTO. However, it should be noted that even where competence is shared the UK negotiates on its own behalf at meetings for these multilateral environmental agreements and other fora. This is because it negotiates to agree the EU and Member States' common position on an on-going basis and because it may negotiate on matters of Member State competence where there is no agreed common position of the Member States, for example on budgetary matters.

⁴⁴ See Annex B for the list of organisations that submitted evidence through this workshop.

⁴⁵ Directive 2013/0074/COD of the European Parliament and of the Council of 12 March 2013 Establishing a Framework for Maritime Spatial Planning and Integrated Coastal Management (2013).

⁴⁶ See Annex B for the list of organisations that submitted evidence through the York workshop, including NILGA and Dŵr Cymru Welsh Water.

⁴⁷ See Annex B for the list of organisations that submitted evidence through this workshop.

EU Competence in International Environment Negotiations

The EU's objectives include a concern for environmental protection at an international level. Article 3(5) TEU provides that the EU 'shall contribute to [...] the sustainable development of the Earth', while Article 21(2) TEU stresses the importance of environmental considerations in the EU's international relations:

The Union [...] shall work for a high degree of cooperation in all fields of international relations, in order to: (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development.

Article 191(4) TFEU sets out the shared competences of the EU and Member States concerning external relations in respect of environment issues:

Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

- 2.67 A wide range of respondents from political groups, NGOs, business groupings, academia, law and others said that by acting alone in international negotiations, the UK would not have the same influence as the EU. They said that acting through the EU magnifies UK efforts and enhances our influence. Some, including SEEG and Green Alliance, said that the UK has a strong reputation, built on considerable scientific expertise, and significant influence within the EU with UK officials and ministers taking key roles in the negotiations. Dan Hamza-Goodacre added that the EU provides opportunities to share experience and skills in international negotiations. Nevertheless, it was noted that the exercise of shared competence between Member States and the EU in the negotiation of international agreements can be cumbersome and there is room for improvement in the mechanisms.
- 2.68 In other areas, CIWM acknowledged the success of the EU team in agreements on international waste shipments and development of 'end-of-waste' criteria.⁴⁸ However, respondents from environmental NGOs said that EU competence can act against UK interests (see section below on 'National Level').
- 2.69 Shared competence in international negotiations means that agreements need to be ratified by Member States. An independent consultant on International Climate Change Policy noted that the time ratification takes can have implications for perception of the EU's goodwill in negotiations, and argued that there may be a case for more EU competence in this area. Similarly the SEEG believed there may also be a case for giving the EU more leeway to exercise leadership internationally on climate change within guidelines established by the Member States, as is done in trade negotiations.

⁴⁸ End-of-waste criteria specify when certain waste ceases to be waste and obtain a status of a product (or a secondary raw material).

Case Study 1: UNFCCC Negotiations

In order to maximise the influence of the EU and its Member States in negotiations under the UNFCCC, a political decision was taken to negotiate as a bloc, with agreement on EU positions reached by consensus among Member States and the European Commission. As this is an area of shared competence, the EU's negotiating mandate is agreed in advance in the form of EU Council Conclusions encapsulating both matters within EU competence and matters of Member State competence. Members of the Commission and representatives from some Member States work together in a 'Team EU' arrangement.

Greenpeace, WWF, Renewables UK, Green MEPs, Sandbag, RSPB, Welsh Government, University of York, the Scottish Government, Nigel Haigh and others all argued that by acting together in this way, the EU had played a key leadership role in determining the shape of the international climate change negotiations, and has more influence than if individual Member States act alone. Greenpeace, RSPB, WWF, CER and the National Farmers Union (NFU) considered that this successful leadership role has been built on credible and effective action to reduce emissions within the EU and by offering bilateral assistance to developing countries. Nearly all respondents who addressed the question considered that it was important for the UK to remain part of 'Team EU' in the negotiations in the UNFCCC. IEEP noted that nearly all countries negotiate as part of blocs including non-EU members such as Norway and Switzerland which act as part of (less influential) blocs.

The Law Society also felt that negotiating as a bloc on climate negotiations has allowed obligations to be taken as a bloc and then shared out equitably with appropriate burden sharing mechanisms. Green Alliance and Dŵr Cymru Welsh Water believed that by addressing some of these potential internal conflicts, including burden sharing, the EU has also provided an example for others to draw on in the context of solving similar issues in the international negotiations.

- 2.70 The WWF and Whale and Dolphin Conservation both highlighted issues with the EU process for deciding a common position in relation to the International Convention for the Regulation of Whaling, where in their views the aim to conserve species has sometimes been restricted by the positions of other Member States. WWF also said that UK has been one of the leaders in setting strong EU policy on CITES but has also been limited by the need to agree an EU position.
- 2.71 In 2012 the UK Parliament's European Scrutiny Committee considered a case where the EU appeared to be taking competence beyond the conditions laid out in the EU treaties. In this case the Committee considered a draft EU Decision to oppose a Swiss proposal to amend the Bern Convention on wildlife and natural habitats, to which the UK and the EU were contracting parties. The Government and the Committee agreed that the EU should not act because it covered an area of international law outside the scope of the EU's competence. The UK voted against it but the EU Decision was nonetheless adopted.⁴⁹

⁴⁹ European Scrutiny Committee: 13th Report, 2012-13, 86-xiii, Chapter 4; 20th Report, 2012-13, 86-xx, Chapter 6; 23rd Report, 2012-13, 86-xxiii, Chapter 2, Bern Convention on wildlife and natural habitats (14025/12).

EU Level

- 2.72 There was a widespread view among respondents from all sectors that some EU action was needed on environment and climate change. The justification for EU action may be to ensure a level playing field for businesses operating in the EU, or to deal with transboundary effects of environmental issues. Action may also be taken in the EU to ensure compliance by Member States with international agreements, or to show leadership on international issues.
- 2.73 This section looks at the reasons why respondents felt that some issues are more appropriately dealt with at EU rather than international or national level. It then sets out a number of examples of issues that most respondents who commented on the issue thought were best dealt with at EU level. In some cases reservations were also expressed about the existing EU legislation. The policies selected in this section are the ones that drew the most responses. Graphical data showing trends in performance on different aspects of the environment and climate change are presented in Appendix 1.
- 2.74 There are also a few areas where respondents' views were fairly evenly split between favouring action at EU level or national level. These policy areas are in subsequent sections called Mixed Views.

Level Playing Field

- 2.75 There was widespread support amongst respondents from all sectors, including businesses and their representative organisations, for common EU standards across the range of EU environment and climate change policies.⁵⁰ These respondents argued that any national restrictions on marketing, product use and standards or labelling requirements in Member States directly affect intra-EU trade.
- 2.76 The Aviation Environment Federation and Open Europe argued that without common standards there would be competition between EU countries to use lower environmental and climate change standards to their competitive advantage. This would adversely affect trade and undermine the level playing field in the Single Market. EDF also argued that EU action helps to address the issue of carbon leakage for energy intensive industry and so was better than a fragmented approach that would negatively impact competition.⁵¹ EDF said that such distortions in the market could adversely affect the UK's national interest. DLA Piper LLP argued that more uniform environmental regulation throughout the EU would be to the competitive advantage of the UK as a relatively wealthy Member State with already generally high standards of environmental regulation.
- 2.77 The Scotch Whisky Association considered that operating within the Single Market, in which one set of common rules applies, is immeasurably simpler than the alternative of a European market in which 28 different regulatory regimes would operate. The British Coatings Federation pointed out that separate national actions, such as the recently launched French nanomaterials' registry, have, in its view, the potential to cause chaos and uncertainty for businesses.⁵²

⁵⁰ Benefits of common standards and the importance of a level playing field across the EU was made in 47 separate responses and was also a theme raised in workshops.

⁵¹ Commission Decision of 24 December 2009 Determining, Pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a List of Sectors and Subsectors which are Deemed to be Exposed to a Significant Risk of Carbon Leakage (2009).

⁵² Please see: *SAFENANO News, France to Introduce Mandatory Reporting of Nanomaterials in 2013* (2012). This is available at www.safenano.org/KnowledgeBase/CurrentAwareness/ArticleView/tabid/168/ArticleId/194/France-to-introduce-mandatory-reporting-of-nanomaterials-in-2013.aspx, accessed on 15 January, 2014.

- 2.78 By contrast to the more widely held view that the EU facilitates a level playing field, the Wine and Spirits Trade Association believed that targets should be set at national level rather than at the EU level to reflect the differences between regions. It suggested that the simplest approach to addressing concerns about trade would be to seek equivalence between standards already operating in different jurisdictions rather than adopting an EU standard.
- 2.79 Wedge argued that EU action should not be taken on climate change because it did not agree that anthropogenic greenhouse gas emissions were the cause of the problem. However, Wedge did acknowledge that EU targets would be better than UK-only, targets because in its view the UK's current policy on climate change and its carbon reduction targets are far too stringent, too ambitious and do not create a level playing field.
- 2.80 The HBF argued that the vast majority of the UK's home building industry does not have ventures in other Member States and so are not affected by issues of competition across the Single Market. It claimed that these businesses do not reap benefits from a level playing field across the EU but are still subject to legislation that affects them.

Major Policy Areas Respondents Felt were Most Appropriately Dealt with at EU Level

- 2.81 In the following section issues have been categorised according to the majority of views expressed. However the range of views provided is represented in the text. The list of issues is not exhaustive.

Chemicals – REACH Regulation and Pesticide Controls

- 2.82 There was a broad view among respondents commenting on the REACH Regulation 1907/2006 that action on chemicals and nanomaterials is most appropriately taken at EU level, even despite some of the reservations expressed about the legislation as recorded in section 2.1.
- 2.83 ClientEarth set out its understanding of the rationale for EU competence, stating that the relevant substances, and their derived products, represent an economically significant EU and international market. In ClientEarth's view, in order for the potentially adverse environmental effects of these substances to be controlled, Europe-wide standards are required which will apply wherever the product or substance appears on the market. In this way, ClientEarth argued, the functioning and integrity of the single market is preserved and competition and innovation encouraged. Participants at a London workshop stressed the opportunities presented by a successful REACH regime; delivering the single EU regime would give the EU strength in future negotiations with the US through economies of scale and the attraction of REACH as a surrogate international standard.⁵³
- 2.84 Several responses, including from Nigel Haigh and CHEM Trust, noted the benefits of the EU carrying out risk assessments, at that level, on EU legislation. Nevertheless, respondents have highlighted costs and other issues that have resulted from application of the REACH legislation. These are explored in section 2.1.
- 2.85 In the case of pesticides, producers have to prove that the substances they manufacture are safe. The York workshop participants believed that, even if the UK did not have to work within the EU framework on pesticides, it would still base its regulations in this sector on other countries' regulatory frameworks (most likely the EU or US) as other countries do.⁵⁴

⁵³ See Annex B for the list of organisations that submitted evidence through this workshop.

⁵⁴ Idem.

2.86 By contrast to the general view that competence in relation to the control of the relevant substances is most appropriate at EU level, the British Coatings Federation argued that where there is no exposure to consumers, substances should be dealt with at national level by Control of Substances Hazardous to Health Regulations. Some evidence also suggested that having EU-level regulation had disadvantages. For example, the British Coatings Federation and the Fresh Start Project both said that if some chemicals can no longer be authorised under the REACH Regulation there could be supply chain disruption in the EU. They considered that the regulation also may restrict growth, and cause EU companies to lose business to countries outside the EU, where the equivalent legislation is not as stringent.

Water

2.87 Most respondents who commented on this issue believed that some aspects of water quality should be tackled at EU level. However several respondents believed that flexibility is needed at Member State level in some areas.

2.88 Most respondents who commented on competence in relation to bathing water quality, including Dŵr Cymru Welsh Water and Green MEPs, recognised the benefit of EU action due to transboundary issues. Dŵr Cymru Welsh Water also said that the Urban Waste Water Treatment Directive 91/271/EEC provided a good vehicle to deliver the international agreement under the OSPAR Convention for the protection of the marine environment of the North-East Atlantic to stop the disposal of sewage sludge at sea. In contrast to the general view SEEG suggested that there was a case for Member States to set limits for bathing water.

2.89 The majority of respondents who commented on the Water Framework Directive 2000/60/EC from a range of sectors, including the energy supply company RWE, WWF, Open Europe and Dŵr Cymru Welsh Water, argued that it made sense to tackle water pollution at EU level given the transboundary nature of this issue. DOENI commented that this piece of legislation is valuable for Northern Ireland due to shared river basins with the Irish Republic. WWF commented that in environmental terms the impact of the Water Framework Directive on farming practices (the major source of diffuse sources of pollution in most Member States) is a good example of where EU-level legislation has been able to address an issue on which there had been limited national momentum.

2.90 Attendees at the Edinburgh workshops agreed that the EU should set strategic outcomes for water, with Member States setting the direction at a national level.⁵⁵ However, RWE also argued that ‘while a European-wide approach is appropriate, there should be some flexibility of implementation to accommodate the circumstances of individual Member States’.

2.91 In contrast to the general views expressed, the Freedom Association questioned whether water pollution is truly transboundary in nature and proposed that work should be carried out to calculate the balance of flows across each nation-to-nation boundary.

2.92 Those commenting on drinking water standards, including Dŵr Cymru Welsh Water, SEEG and the DOENI, believed that these should be set at Member State rather than EU level, although it was recognised that there was a case for EU competence on bottled water and water used by food manufacturers whose goods are traded internationally.

⁵⁵ Idem.

Waste

- 2.93 The majority of responses on waste policy believed waste policy should be set at EU level and were positive about EU regulation in this area believing that it had helped deliver significant improvements in waste management in the UK.⁵⁶
- 2.94 Valpack noted that EU legislation provides a level playing field for manufacturers especially in the case of regulations regarding products, for example the Waste Electrical and Electronic Equipment (WEEE) Directive 2012/19/EU, the Waste Packaging Directive 94/62/EC and the Waste Battery Producer Responsibility Directive 2006/66/EC. These require producers to contribute towards the collection, recovery and recycling of packaging and end-of life batteries and electrical and electronic equipment.
- 2.95 In contrast to the general views expressed, Fresh Start thought that waste was not a transnational issue and so should not be an area of EU competence. Nulife Glass Processing thought that national rather than EU level targets for waste recycling would benefit the UK as the profile of waste streams, processing capability and geographical location of recycling plants is different for every EU Member State. Nulife also stated that targets for recycling which are appropriate for one country may be unachievable for other countries.
- 2.96 The CIWM suggested that there was a need for new EU-wide standards for ‘solid recovered fuel’ and ‘refuse derived fuels’, coupled with robust and evenly applied regulation of the market.⁵⁷ The CIWM also wanted to see more emphasis placed on measurement and reporting of resource conservation or waste prevention and a shift in the future to standardise reporting of residual waste production. They also believed that there is a need for consistent interpretations, definitions, data standards and reporting to allow fair comparison in performance between Member States.

Climate Change

- 2.97 A large number of respondents from environmental NGOs, think tanks, business and professional groups and workshops, all agreed that, in the absence of a global agreement on climate change and the given complexities associated with achieving one, action must be focussed at the most manageable level. At present, acting at the EU-level represents the most practicable option currently available. This should be supported by effective action at national and local levels.
- 2.98 Many respondents also felt there to be an important leadership role for the EU in helping achieve a global deal at the UNFCCC that would be essential for tackling climate change. Sandbag Climate Campaign and Catherine Bearder MEP considered that, by acting together, the EU and its Member States had helped determine the shape of the international negotiations, the agreement and subsequent survival of the Kyoto Protocol.⁵⁸ These respondents were also of the view that the EU had helped to achieve the successful outcome at the 2011 climate change conference in Durban.
- 2.99 However the Paper Industries Confederation (PIC) and Open Europe were critical of this approach and believed that action to tackle climate change should be taken at international level only, to avoid carbon leakage and impacts on the competitiveness

⁵⁶ Example include: Valpack; Dŵr Cymru Welsh Water; Green Alliance; the Resource Association; British Glass; Chartered Institute for Waste Management (CIWM); and LARAC.

⁵⁷ *The Chartered Institution of Waste Management (CIWM), Research into SRF and RDF Exports to Other EU Countries, Final Technical Report* (2013), available at: [www.ciwm.co.uk/web/FILES/Technical/FINAL_SRF_RDF_REPORT_FOR_PUBLICATION_JULY_2013_\(2\).pdf](http://www.ciwm.co.uk/web/FILES/Technical/FINAL_SRF_RDF_REPORT_FOR_PUBLICATION_JULY_2013_(2).pdf), accessed on 15 January 2013.

⁵⁸ Example include: WWF; the Welsh Government; the Scottish Government; and Catherine Bearder MEP.

of EU business. Responses from PIC and the British Aggregates Association (BAA) highlighted closures of paper mills, glass factories, aluminium smelters and steel, cement and ceramics facilities in the UK, which they attribute at least in part to the impact of EU climate change policy. More widely respondents, including Civitas and WWF claimed that carbon consumption, not emissions, should be the focus of attention in order fully to reflect the issue of carbon leakage.

- 2.100 Nevertheless, other respondents, including Green Alliance and participants at the thematic workshop on climate change argued that carbon leakage has been limited, due to climate mitigation policy, and that some industrial sectors have actually seen large windfall profits under the EU Emissions Trading Scheme (EU ETS).⁵⁹ The CER considered that other factors such as the costs of manufacturing and labour have caused carbon leakage, rather than climate change policy itself. Though they recognised that the latter could become more of an issue if the EU ETS permit price became significantly higher.
- 2.101 Where the UK has wanted to go further in relation to climate change it has not been constrained by EU policy, UKELA argued, for example in the development of the Climate Change Levy and Climate Change Agreement. However, both Sandbag and IEEP were concerned that national action could be constrained in the future.

Case Study 2: EU ETS

Launched in 2005, the EU ETS is the first and largest greenhouse gas emissions cap and trade system in the world and is the cornerstone of EU climate policy. The system covers energy intensive industries, including electricity generators, who must surrender one allowance for every tonne of carbon dioxide equivalent they emit. A limited number of allowances are issued, capping total emissions at a fixed level, which reduces over time so emissions fall. The limit gives allowances a value, incentivising businesses to reduce their emissions.

The EU ETS was cited by many respondents, particularly environmental NGOs, but also energy companies, as being a good way to achieve climate change goals. It has the merit of facilitating a level playing field across Europe and delivering greenhouse gas emissions reductions targets at least cost. The SEEG argued that the EU ETS had maximised economic efficiency of action across the EU. The Scottish Government considered that continued participation in the ETS was essential if Scotland was to meet its ambitious climate targets.

The UKELA, Sandbag, Green Alliance and Energy UK argued that the EU ETS helps drive technology neutral investment and the development of low carbon industry and new financial markets, and noted that the UK has become the financial centre for carbon trading. Carbon trading is much more efficient over larger areas and EU ETS has been more efficient than the UK ETS as individual Member States are not big enough to create liquid markets. The Policy Exchange noted that it is a more flexible mechanism than target based technological specific targets.

The EU ETS has delivered emissions reductions but many respondents, including Green Alliance, Energy UK, IEEP, the Scottish Government and Renewables UK, argued that there is a need for substantial reform to create a genuine scarcity of allowances to deliver a higher carbon price to drive fuel switching and structural change.

⁵⁹ See Annex B for the list of organisations that submitted evidence through this workshop.

- 2.102 The British Ceramic Confederation (BCC) and the Confederation of the UK Coal Industry noted that in this area it has often been UK policies that have undermined the UK's competitiveness, rather than EU policies, and called for the EU to play a greater role in preventing additional Member State measures detrimental to EU competitiveness. Open Europe also noted that in some cases (particularly those linked with standards) the EU can stop Member States going further. Other respondents, including representatives of energy intensive industry and the Taxpayers Alliance, commented that the EU ETS had imposed additional costs on industry and consumers, and reduced the competitiveness of EU industry.
- 2.103 However, it was a unilateral UK measure, the carbon price floor, that was identified by many respondents as having had a significant impact on the competitiveness of UK industry within, and beyond, the EU; these recipients argued that the introduction of the carbon price floor had removed the level playing field by imposing additional costs on UK businesses, costs which would not be borne by their competitors elsewhere in the EU.⁶⁰ They also highlighted that the introduction of the carbon price floor would impose these costs on business whilst having no impact on the overall level of ambition of the EU ETS given that the overall cap on emissions within the system remained unchanged.

Mixed Views

- 2.104 Respondents' views were mixed on whether habitats and nature protection, GMOs, air quality, and environmental impact assessments and strategic environmental assessments should be carried out at EU or national level.

Habitats and Nature Protection

- 2.105 Civil society and NGO groups did not have a single view of the appropriate level for action on nature protection, although environmental NGOs argued strongly for the need for EU level protection and cited benefits resulting from the Habitats Directive 92/43/EEC. However, at least one organisation also commented that the nature of the legislation itself left very little flexibility for Member States to implement in a sensible, proportionate manner.⁶¹ Participants at the nature workshop and the workshop in Brussels, and the Royal Yachting Association, argued that nature protection has a very local dimension and should involve a strong element of local decision-making.
- 2.106 WWF and the RSPB considered that their evidence showed that EU competence had delivered long term improvements to habitat protection, and argued that it would be impossible for any individual Member State to deliver the environmental, social and economic benefits which had been conferred by EU competence. Bodies such as the WT and WWF argued strongly that designation and protection at EU level was the only feasible way to protect migratory or marine species in particular, giving the Brent Goose as a case study and citing the fact that the number of protected UK marine sites increased from three to 100 after the Habitats Directive 92/43/EEC came into force. They also commented that in the case of the Dogger Bank Special Protection Area, the Habitats Directive 92/43/EEC provided a common framework for ecological assessment across the territories of three Member State, meaning developers did not have to negotiate three different sets of Member State domestic regulation (see the Case Study 3).

⁶⁰ Please see submissions of evidence from: WWF; Sandbag; Civitas; British Glass; the FDF; and EEF.

⁶¹ Please see submission from the British Ecological Society.

- 2.107 There were a number of respondents who said that more flexibility was needed for Member States to decide their own priorities. The British Ecological Society commented that it could be in the national interest for the UK to have more flexibility in implementation, particularly around building and planning, to free up resources to focus on other rare species. The British Ecological Society and the HBF specifically mentioned that greater flexibility around relatively populous species such as the great crested newt would be welcome, and argued that this would provide greater cost-effectiveness by allowing the UK to focus on other species that are nationally or internationally rare. However, the British Ecological Society commented that some EU scrutiny would need to remain to ensure internationally protected species were not undervalued.
- 2.108 The British Ports Association concluded that the current arrangements for regulation in this area were about right, but was strongly in favour of carrying out regular reviews akin to the Government's 2012 Habitats Directive 92/43/EEC implementing review, focussed on ensuring that commercial interests were adequately balanced against environmental interests, and ensuring that the recommendations of such reviews were followed through.⁶²

Case Study 3: Proposed Wind Farm Developments at the Dogger Bank

The Dogger Bank is a large sand bank complex in the North Sea located in UK, Dutch, German, and Danish waters. It is an important marine habitat supporting large numbers of species. Due to the importance of the sandbank habitat, the UK, Dutch and German governments have designated their parts of the Dogger Bank a Special Area of Conservation (SAC). Dogger Bank has been designated a Special Protection Area (SPA).

The Dogger Bank also has many favourable attributes that make it an attractive site for offshore wind farm development. Approval (such as planning permissions, licenses and consents) for some of these developments will need to be given under the Habitats Regulations and the Offshore Habitats Regulations, if they are likely to have a significant effect on an SAC or SPA. If these designations were carried out under national laws, with differing requirements for assessments in each Member State, the developer would have to carry out several different assessments. This would mean dealing with different governments and conservation bodies, resulting in a more drawn out and less joined up process. However, the assessment procedure established for the Habitats and Wild Birds directives has enabled just one assessment to be carried out for the potential offshore wind development. This assessment will be able to examine the potential transboundary effects of the development on SACs and SPAs. The same applies for the development of an environmental impact assessment. Again the developer must consider the transboundary impacts of their proposed development, and the process under the Environmental Impact Assessment (EIA) Directive allows an assessment to be done in a joined up manner across Member States.

From an environmental perspective this EU approach is beneficial as it is possible to assess the full impacts of the development over the North Sea area, rather than only discreet pockets. For developers there is the benefit of doing fewer assessments in order to complying with laws of different governments.

Source: IEEP on behalf of WWF, the Royal Society for the Protection of Birds (RSPB), Wildlife Trusts (WT) and Friends of the Earth.

⁶² Department for Environment, Food & Rural Affairs, *Report of the Habitats and Wild Birds Directives Implementation Review*, (2012).

Environmental Impact Assessment and Strategic Environmental Assessment

- 2.109 Views on the right level of action for environmental impact assessment and strategic environmental assessment were mixed. IEEP, on behalf of WT, WWF, RSPB and FOE and the Wildfowl and Wetlands Trust, noted the benefits of EU level action for protecting the environment, particularly species that migrate across national boundaries and in facilitating a level playing field for developers across the EU (see Dogger Bank Case study for an example of its operation). English Heritage and the Institute for Archaeology argued that EU competence through the Environmental Impact Assessment Directive 2011/92/EU and the Strategic Environmental Assessment Directive 2001/42/EC is important for the protection of the historic environment which is otherwise almost exclusively protected at domestic level. They believe that this has resulted in the historic environment being perceived to be of lesser importance compared with issues dealt with primarily at EU-level.
- 2.110 By contrast, a review of subsidiarity has recently been carried out by the Dutch Government which concluded that EU legislation in this area is highly detailed, with too much of an emphasis on means rather than ends.⁶³ In the view of the Dutch Government this can have an unwanted effect on national approaches to implementing and costs. The Dutch Government concluded that decisions should be made at Member State level. Similar comments were made by some respondents to this review, including UK Coal and British Aggregates, who felt that the requirements of this EU legislation were burdensome and disproportionate. The HBF argued that following the subsidiarity principle, where issues are local (such as land use planning and its environmental impact) action should be taken at the national level.
- 2.111 The EU's requirements for EIAs are currently under review and a number of respondents expressed support for the UK Government's efforts to secure less prescriptive requirements in future. The British Aggregates Association, Energy UK and the Environmental Services Association (ESA) raised various concerns that that current proposals would swing the balance of competence too far towards EU level control and slow down UK planning processes. The ESA considered that the revised Directive would require Environmental Impact Assessments even for small projects which posed no risk to the environment. The Prime Minister's Business Taskforce on EU Regulation also calls on the EU to drop the new proposals on Environmental Impact Assessments, which it believes may present a barrier to businesses expanding.
- 2.112 The MPA argued that the European Commission's review of this legislation should aim to introduce greater discretion for Member States, to allow them to focus on those aspects of the environment that are most at threat in their territories.
- 2.113 Attendees at the Northern Ireland workshop considered the SEA Directive to be particularly costly. The Northern Ireland Department of the Environment cited a rise in the volume and complexity of legal challenges which caused significant delay in bringing forward new policy initiatives. Participants at the London Workshop One considered the SEA Directive to be too prescriptive for smaller organisations, and noted it took an additional 20 months to go through the Strategic Environmental Assessment process for their waste strategy.

⁶³ Government of the Netherlands, *Testing European Legislation for Subsidiarity and Proportionality – Dutch List of Points for Action*, (2013).

2.114 Fjordr Ltd argue that the rules made under the Environmental Impact Assessment Directive 2011/92/EU and the Strategic Environmental Assessment Directive 2001/42/EC saved costs and delays by ensuring developers are prepared for challenges they may face in development. They argued that this prevents loss and damage to significant historic assets, while environmental NGOs welcome the transparency provided by the regulations.

GMOs

2.115 Views were also mixed on whether the deliberate release of GMOs should be dealt with purely at EU level, and several respondents commented that the EU legislation in this area is not functioning effectively.

2.116 The International Meat Trade Association believed that the scientific assessment of applications at EU level should take precedence for decision making on GMOs. SEEG and the Agricultural Biotechnology Council believed that the effective operation of the current legislation is being undermined by the failure of Member States to respect the scientific evidence (see Case Study 5). RSPB noted that in future, as GM crop cultivation increases outside the EU, it will be necessary to have strict protocols in place to control the movement of unapproved GM material in the UK.

2.117 Green MEPs expressed their view that GMOs should be banned and that EU legislation to restrict their use should be strengthened, while the Scottish Government believed that the legislation should allow for regional flexibility.

Air Quality

2.118 The majority of respondents who commented on the Air Quality Directive 2008/50/EC, including stakeholders in all the devolved administrations and other groups, believed that long range air pollution should be tackled at EU level due to the transboundary nature of the problem.⁶⁴ However the Freedom Association questioned whether air pollution is truly transboundary in nature and proposed that work should be carried out to calculate the balance of flows across each nation-to-nation boundary.

2.119 The Convention of Scottish Local Authorities (COSLA) believed this is an area where there is scope for a better balance of competences. In particular, COSLA questioned why the measurement at a very local level of air quality standards should be defined by EU legislation. They argued that it would be much more advisable from the point of view of subsidiarity and proportionality if EU air quality legislation addressed EU-wide impacts while leaving each Member State or Devolved Administration to define how local authorities could contribute to improve air quality. EEF and IATA also believed that local air pollution should be dealt with at a local or Member State level.

2.120 However, Green MEPs argued that the Air Quality Directive allowed citizens to put pressure on the UK Government to clean up air pollution hotspots. They suggested that without EU competence in this policy area it would be unlikely there would be sufficient external pressure and legal opportunities to ensure the necessary effort from policymakers to secure citizens' health. They said this was evidenced by the current reluctance of national government and local authorities to address air quality on grounds of cost.⁶⁵ Respondents, including the Greater London Authority (GLA) and ClientEarth argued that, despite progress, both a co-ordinated EU response and action

⁶⁴ Please see submissions of evidence from: Dŵr Cymru Welsh Water; the Welsh Government, Department of the Environment Northern Ireland (DOENI); CEH; Open Europe; the Convention of Scottish Local Authorities (COSLA); and Nigel Haigh.

⁶⁵ Great Britain Parliament House of Commons Environmental Audit Committee, *Seventh Special Report Air Quality: A Follow-Up Report: Government Response to the Committee's Ninth Report of Session* (2010-12).

at the national and local level were still needed as a substantial proportion of the EU's population remains exposed to levels of air pollution exceeding World Health Organisation recommended standards.

- 2.121 The University of York also identified indoor air pollution as an emerging challenge that may require regulation.⁶⁶ They argued that, given addressing this challenge will have either or both Single Market and ecosystem implications; there was a case for any regulations on the release of substances into the environment or on minimum housing standards to be negotiated at the EU level.

National Level

- 2.122 Respondents felt that some environmental issues are less appropriate for international or EU-level action than others. This is usually because there are no or very limited transboundary effects, no implications for the Single Market, or legislation at national level already performs the necessary task to an acceptable standard. Action at national and local level may also enable regulators to take greater account of environmental, social and economic circumstances that are specific to a nation or local area.

Climate Change Adaptation

- 2.123 Respondents including EDF and COSLA felt that action to adapt to climate change was best taken at the national or local level as impacts will vary from place to place and a one size fits all approach would not be appropriate. Respondents including Thames Water Utilities Ltd, COSLA and the Welsh Government also stressed the urgent need for regular review of all existing EU legislation to determine if it needs to be revised to accommodate adaptation to climate change.
- 2.124 However, a number of respondents recognised that some adaptation measures, for example water management, can have transboundary impacts which could possibly be addressed through regional arrangements. RWE stated its support for the EU approach to adaptation, which it saw as being a proportionate one in which guiding principles are set at the EU level but Member States have freedom to deliver adaptation plans in their own way.

Land Use Planning

- 2.125 The EU has no competence over land use planning except as it relates to environmental matters. Environmental measures may affect town and country planning, but in this case such measures must be subject to a special legislative procedure and must be agreed unanimously by the Council after consultation with the Parliament. EU requirements stemming from environmental directives affect land-use planning in general terms. This includes effects on development, the development process, and the way land can be used, and in doing so they affect how land use planning is undertaken in the UK. There are an increasing number of directives which have implications for land use planning.⁶⁷
- 2.126 The Law Society, UK Coal, British Aggregates, HBF and CBI minerals believed that decisions on the balance of economic and social needs and environmental protection should be dealt with through the national land-use planning system. British Aggregates argued that planning rules should take primacy over EU rules (including those relating to Environmental Impact Assessment, Strategic Environmental Assessment and the Wild Birds and Habitats directives). The Scottish Government also highlighted the

⁶⁶ N. Carslaw, S. Langer and P Wolkoff, 'Where is the Link Between Reactive Indoor Air Chemistry and Health Effects?', *Atmospheric Environment* (2009).

⁶⁷ Secretary of State for Communities and Local Government (Rt Hon Eric Pickles MP), Written Ministerial Statement, HC 6 December 2012, Column 84 WS.

tension between EU legislation on habitats and birds, and the Strategic Environmental Assessment Directive, on development objectives in Scotland.

Soils

2.127 Attendees at the Brussels workshops and the NFU argued that the proposed Soil Framework Directive is another area where it can be argued the EU should not act and existing national legislation is seen as sufficient.⁶⁸ The BPF raised concerns that the proposal would have significant implications for industry. The review of the application of subsidiarity by the Dutch Government also argued that soil management is a prime example of a policy area that should be handled at national, regional and local level as international aspects are limited.⁶⁹ However RSPB and the University of York argued that there is a case for EU action due to transboundary effects arising from soil condition. The Prime Minister's Business Taskforce on EU regulation called on the EU to withdraw proposals on soil protection which it believed constitute a barrier to business expansion.⁷⁰

Noise

2.128 COSLA said that it is hard to see why the EU needs to be involved with noise maps of very local impacts (other than in transnational urban areas). COSLA felt that from the point of view of subsidiarity and proportionality this should be left to the competent authorities (either national or local as most appropriate depending on which Member State was concerned) to define. The Scottish Government felt that Environmental Noise Directive 2009/49/EC requirements were now embedded in domestic policy and therefore suggested that EU drivers may no longer be necessary. The Dutch subsidiarity review also concluded that noise regulation should be left to Member States. However views among participants at the Brussels workshop were split on whether noise should be dealt with at EU or Member State level.⁷¹ Accon stated that if noise mapping was not required for EU purposes it would nevertheless be useful to aid noise reduction programmes and for planning control purposes.

2.129 Respondents commenting on noise standards for machinery and engines, including COSLA and the Agricultural Engineers Association, felt these make sense from the point of view of the single market as well as for environmental protection.

2.130 IATA commented that aircraft noise is dealt with globally through international standards. IATA felt that where these standards are not sufficient to address demonstrated local environmental problems, including noise, any further measures would be best taken at the local level, rather than at the EU or even national level, in order fully to take into account local circumstances.

Environmental Crime and Environmental Justice

2.131 DLA Piper argued that the EU should avoid becoming involved with areas of enforcement, such as in the Environmental Crime Directive 2008/99/EC, where in its view the considerable differences between the legal systems of the different Member States give scope for misunderstanding and litigation.

2.132 DLA Piper also argued that access to environmental information is another example of an area in which EU law is inappropriately involving itself with the administrative systems of the Member States. Since Member States are parties to the Aarhus Convention, which

⁶⁸ See Annex B for the list of organisations that submitted evidence through this workshop.

⁶⁹ Government of the Netherlands, *Testing European legislation for Subsidiarity and Proportionality* (2013).

⁷⁰ See para 1.29.

⁷¹ See Annex B for the list of organisations that submitted evidence through this workshop.

has its own mechanisms for dispute resolution, DLA Piper did not see why there was a need for EU legislation in this area.⁷² It believed that a clearer demarcation between the respective roles of the EU and the Member States would lead to a reduction in costly litigation and more cost-effective regulation.

2.133 In contrast to these views ClientEarth and IEEP, on behalf of WT, WWF, RSPB and FOE, believed that the EU has played an important role in embedding the Aarhus Convention rights into EU law, including on access to environmental justice. IEEP's report indicated that as a direct result of EU legislation, the UK has adopted a new costs regime for facilitating access to justice so that citizens and civil society groups can bring legal action relating to environmentally significant decisions when no alternative avenues are available. ClientEarth argued that the result of this has been to improve substantially democratic environmental decision making. The Prime Minister's Business Taskforce has recently called on the EU to withdraw proposals on access to justice in environmental matters which it believed would constitute a barrier to business expansion.⁷³

Flooding

2.134 Participants at the marine workshops concluded that the Floods Directive 2007/60/EC is an example of legislation which is not entirely appropriate to the relevant conditions in Great Britain; they observed that the UK has its own national legislation which goes further and is more aligned to our own national circumstances.⁷⁴

2.3 Does the Existing Way of Making EU Policy Work?

The section looks at the effectiveness of the process of EU policymaking. It looks at issues linked to the implementation of EU legislation and how it affects organisations in the UK. The evidence submitted reveals a relatively widespread concern about the way EU legislation is made and continues the debate about the tension between a desire for flexibility in implementation and the benefits of consistency across the EU for a properly functioning single market. Many respondents felt that the EU should focus its efforts on better implementation of its existing environmental legislation.

The section is divided into the following sub-sections:

- The first looks at the current EU decision making processes, including the need for joined-up working in Brussels, the process of developing legislation and the need for the body of EU legislation to stay current;
- The second sub-section looks at the principles which underpin EU legislation on environment and climate change, how standards are used and what the alternatives are; and
- The final sub-section looks at issues to do with implementation, including the need for flexibility, the effects of differential interpretation and the varying perceptions of over implementation ('gold plating') and under implementation.

EU Decision Making Processes

2.135 The process by which EU environment and climate change legislation is produced is set out in the EU Treaties and requires agreement between the European Commission, the European Parliament and the Council. Getting these institutions to act together

⁷² See para 1.38.

⁷³ See para 1.29.

⁷⁴ See Annex B for the list of organisations that submitted evidence through this workshop.

to produce workable legislation can be difficult and often involves tensions and compromises which in turn can lead to considerable diversity in adopted legislation.

- 2.136 The European Commission has responsibility for proposing new legislative initiatives and enforcing legislation by bringing actions against Member States in the ECJ. Member States can also bring challenges before the ECJ. The role of the European Parliament in the legislative process through the co-decision procedure (now the ordinary legislative procedure) was increased by the Treaty of Amsterdam in 1999. Although directly elected, MEPs are not responsible for the implementation of the measures the Parliament and the Council adopt. This task falls to the European Commission and the national governments of Member States.
- 2.137 National Parliaments have a limited role in the EU legislative process. However, the Treaty of Lisbon confers a new role on national Parliaments in the enforcement of the principles of subsidiarity and proportionality. Under the EU Treaties these principles should govern all EU actions in relation to the environment and climate change.
- 2.138 A wide variety of issues were identified in relation to the processes the EU employs to make decisions. This is an area where many respondents were critical of the EU and its institutions, citing issues such as the development of proposals behind closed doors, silo thinking, lack of transparency and inability to react to changing circumstances.

Developing Legislation

- 2.139 Several respondents, particularly from the private sector, said that the European Commission does not always consult openly or enough when developing legislative proposals. EDF said that at present the typical sequence for a new Directive is for the European Commission to develop proposals largely in isolation, and on its own initiative, and then to present a fairly well-developed proposition to Member States and other stakeholders. In EDF's view, it is often difficult to redirect the European Commission at this point if certain fundamental issues have not been taken into account, while there are many options for a more productive collaborative approach to be taken earlier in the process in order to engage stakeholders effectively. Participants at the Edinburgh workshops noted that Commission proposals are difficult to alter once published, referencing, in particular the draft proposal to revise the Environmental Impact Assessment Directive which is currently being negotiated.⁷⁵
- 2.140 British Glass said that the process of comitology can have a serious impact on legislation and that policy is often made behind closed doors precluding wider consultation. RWE added that more transparency would also be helpful on the modelling used to support impact assessments undertaken as part of the process of developing legislation. In particular, the results of modelling should be available sufficiently early and in enough detail to allow thorough review by stakeholders.
- 2.141 Participants at the York workshop believed that Regulatory Impact Assessments are often done from a purely environmental perspective and do not take affordability into account.⁷⁶ In contrast, in the view of ClientEarth the assessments place emphasis on costs and do not adequately take into account the environmental benefits of proposals.
- 2.142 Respondents thought that legislation can, however, be influenced by the UK if we engage early and effectively enough in the process. Participants at the marine workshop commented that there is an opportunity for the UK to continue to play an important role

⁷⁵ Idem.

⁷⁶ Idem.

and to have a strong influence over the making of EU legislation.⁷⁷ CIWM suggested that the UK could do more to provide effective input in the negotiating period. This would improve the development of proposals and/or impact assessments as well as increasing the recognition of national circumstances. CIWM felt that early input from Member States would entail better liaison and consultation with industry via its representative bodies and trade associations. Whilst some trade associations have a direct voice in Brussels via their own EU trade body, CIWM noted that others would be relying on the UK Government to include them in wider, and more encompassing, consultations.

- 2.143 National Air Traffic Services and One Planet Solutions also felt that UK experts should in future be more closely involved in the EU target setting and legislative process, perhaps through sponsoring experts to support this process.

The Role of the European Parliament

- 2.144 Since the Amsterdam Treaty, MEPs in the European Parliament have had a stronger influence on the legislative process, including in relation to the environment. The Tyndall Centre said that as decision-making power has inexorably shifted to EU level, UK MPs have struggled to exercise effective oversight. They considered that the European Parliament's environment committee is vastly more influential than its opposite number at the national level.
- 2.145 Green MEPs thought that EU decision-making now goes beyond inter-governmentalism, and the direct involvement of the European Parliament allows for greater democratic oversight and input into decisions. They felt that the European Parliament is able to debate transboundary issues and legislation without having to represent national interests and that as a democratically constituted body it is well-placed to scrutinise and co-legislate on climate change and the environment. Catherine Bearder MEP added that MEPs have a wider circle of expertise and experience than the limited number of Council members and have a direct focus on the EU as a whole. In contrast participants at a workshop in Brussels felt that the European Parliament was poor at holding officials and ministers to account and suggested that it should have the powers of a select committee in the UK.⁷⁸

Changing with the Times

- 2.146 Respondents highlighted a clutch of issues related to the lack of flexibility within EU decision making processes to adapt to changing circumstances. Many commented that in some cases legislation had become outdated for a variety of reasons, including advances in scientific understanding, changing economic and environmental circumstances and changes in the make-up of the EU through accession. A common point made was that the EU needed to be able to review and update legislation. In this context EDF said that the EU had so far been unable effectively to adapt its policy approaches to changing circumstances. Participants at the Northern Ireland workshop mentioned that some environmental targets were set before the economic downturn and there is no flexibility to recognise this.⁷⁹
- 2.147 One area where it was claimed understanding had moved on since EU legislation had been agreed was around the impacts of climate change in various areas. Thames Water Utilities Ltd provided the example of the Water Framework Directive 2000/60/EC, which it said did not take climate change into account; in its view this creates problems with

⁷⁷ Idem.

⁷⁸ Idem.

⁷⁹ Idem.

respect to designated protection of aquatic habitats that will be impacted by climate change and that are regulated under the Wild Birds Directive and the Habitats Directive 92/43/EEC. In the House of Lords Report on EU Freshwater Policy, the House of Lords Committee also expressed concerns that the Water Framework Directive may be too rigid to be able to take sufficient account of climate change.⁸⁰ In relation to the Habitats Directive 92/43/EEC, a participant at the marine workshop thought it difficult to change protected areas once they are designated even if the protected species had moved.⁸¹

- 2.148 Another area where understanding had moved on was around GMOs. Participants at the Northern Ireland workshop said that GMO legislation was out of date as technology had developed enormously in the last decade.⁸² Participants at the York workshop agreed that GMO technology has evolved over time due to technological progress and innovation, and that very specific definitions in the EU legislation mean it can be difficult to decide whether the product of a new technology is or is not a GMO.⁸³ In the view of participants at the York workshop, current safety assessments are now actually dealing with technologies which differ significantly from the ones that were in place in the early 1990s. As a result there is uncertainty about where EU legislation applies and how to implement it properly.
- 2.149 Keeping EU legislation updated was a general issue raised by respondents as applying particularly to GMOs, climate change and nature protection, but also in many other areas as well, including the exploitation of shale gas and oil. The Prime Minister's Business Taskforce on EU Regulation has recently recommended that to avoid barriers to overall competitiveness the EU should refrain from bringing forward legislative proposals on shale gas.
- 2.150 Many respondents thought that reviewing and updating legislation is desirable to check that it is still fit for purpose. The Law Society felt that there were several directives which were in need of review and revision to clarify and bring them up to date, for example the Environmental Impact Assessment and the Wild Birds and Habitats directives. The NILGA suggested that review clauses and feedback opportunities should be built into legislation in case the legislation does not adequately tackle the problem it was employed for or the situation changes, citing as examples the Waste Electrical and Electronic Equipment (WEEE) Directive 2002/96/EC and the EU ETS. Participants at the workshop in Northern Ireland also called for regular reviews of existing legislation with proper opportunities for stakeholder feedback.⁸⁴
- 2.151 However, reviewing and updating legislation can be slow. Valpack noted that the updating process of the WEEE Directive started in 2008, but the recast Directive 2012/19/EU was not published until 2012, and is not due to be implemented until February 2014. This is a lengthy process.
- 2.152 Energy UK noted that as the legislative process required agreement between the Council and the European Parliament, the Council could also exercise its right to make a more critical assessment of proposals made by the Commission. They pointed to the opportunity every five years (2014 being the next) to re-evaluate the situation when a new European Commission is appointed. The Institute of Environmental Management and Assessment (IEMA) argued that mechanisms for the review of the effectiveness

⁸⁰ House of Lords European Union Committee, *An indispensable Resource: EU Freshwater Policy* (2012).

⁸¹ See Annex B for the list of organisations that submitted evidence through this workshop.

⁸² *Idem.*

⁸³ *Idem.*

⁸⁴ *Idem.*

of European environmental policy measures at the EU level are poorly developed. It suggested that consideration should in future be given to developing review mechanisms which are independent of those who have developed proposals, for example in a similar way to the role played by the UK's Regulatory Policy Committee.

- 2.153 The UK Environmental Law Association noted that many of the current EU environmental rules had come into force when there were only a dozen or so Member States and that, whilst changes have been accommodated by means of accession Treaties, some elements of these rules now require review, for example, the species and habitat types listed in Annexes to the Wild Birds and Habitats directives.
- 2.154 However, the IEEP report on behalf of WWF, RSPB, FOE and the WT highlighted that processes to adapt EU policy already exist and some are being used more often. In 2011/2012, for example, a 'Fitness Check' of EU water policy took place with extensive consultation of Member State governments and stakeholders. Waste policy is the current topic for a 'Fitness Check'. It noted that governments have the opportunity to express their views forcibly in this and other contexts, and can, if they choose to, work with like-minded governments elsewhere in Europe to promote change.

Joined-Up Working in Brussels

- 2.155 Respondents from many sectors commented on the need for a more 'joined-up' approach in EU institutions, in particular in the European Commission. Views of Irish NGOs and business groups collated by the British Embassy in Dublin, said that competing priorities between different Commission Directorate-Generals (DGs), in particular DG Climate and DG Energy, had, in several instances, resulted in conflicting policies, for example on energy security, energy efficiency, and climate change.
- 2.156 Participants at the nature protection and biodiversity workshop and the York workshop also commented on silo-working within the Commission.⁸⁵ For example, they felt that water policy should take into account the carbon impacts of implementing it as improving water quality is very costly in terms of carbon. They also noted that, one DG had encouraged incentives to drain land and another provided incentives not to do so. EDF added that air quality, climate change, energy efficiency, energy policy and industrial emissions control all interact very closely but are developed independently and often conflict, and there is a need for greater co-ordination within EU institutions.
- 2.157 Respondents believed that more could be done to bring terminology in different directives in line with each other to make it easier for those using the legislation. For example, RWE described an overlap between the Environmental Impact Assessment Directive and 'appropriate assessment' under the Habitats Directive 92/43/EEC which results in a duplication of effort. It argued that the terminology of the two should be brought into line and any overlap, ambiguity and inconsistencies removed so that, where both apply, one assessment of the impacts on EU sites and EU protected species will suffice.

⁸⁵ Idem.

Case Study 4: Raw Water Storage Reservoirs

Thames Water Utilities Ltd gave the example of raw water storage reservoirs which are intended to provide large volumes of water that can subsequently be treated to provide potable water for human consumption. These important pieces of infrastructure have, however, have also proved to be attractive habitats for a number of rare bird species and as a consequence have been given protected status under the Wild Birds Directive 79/409/EEC. Under normal operation, depending on demand and the time of the year, reservoir levels fluctuate up and down, and during periodic statutory maintenance inspection the reservoirs have to be almost completely drained down. Any significant or prolonged change in water level for example maintenance drain down could impact on habitat quality. As a consequence there is a clear incompatibility between the needs of reservoir operators to operate and maintain reservoirs and the objectives of the Wild Birds and Habitats directives to ensure habitats are maintained. These issues were not appropriately thought through during the legislative process so as to balance the need to protect biodiversity with the need to allow sustainable provision of potable water and meet other statutory requirements.

The wording for this case study differs from that in the evidence submitted to reflect further comments from Thames Water Utilities Ltd.

- 2.158 Catherine Bearder MEP suggested that in general EU institutions could benefit from more joined-up thinking around sustainability, which should be seen as a process of change rather than a specific end point. In her view, to pursue sustainability effectively greater efforts must be made to integrate an environmental dimension into the development of policies for agriculture, transport and energy sectors that otherwise tend to drive unsustainable development.
- 2.159 Sandbag and the RSPB also identified a need for EU legislation to be more reflective of the need to protect the environment. They said that some EU legislation is detrimental to UK environmental efforts citing the CAP as a cause of considerable environmental damage. RSPB also commented on elements of the EU structural funds and the Common Fisheries Policy which they believed threaten biodiversity. RSPB noted that what it saw as the EU's failure properly to integrate environmental concerns into its sectoral policies, with the resultant loss of ecosystem service benefits, is unhelpful for conservation. One example of this which RSPB gave is the EU's failure to reduce the CAP's negative environmental impacts and to allocate sufficient CAP funding to agri-environment schemes. Equally RSPB believes insufficient funding is provided for supporting High Nature Value farming systems. RSPB also noted that the EU needs to offer greater scrutiny of implementation in some cases, giving the example of the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006 in the UK which in RSPB's view is failing to provide adequate protection for semi-natural grassland.
- 2.160 In the area of water policy, the Association of Drainage Authorities argued that, in future, the Commission needed to better understand the linkages between the Water Framework Directive 2000/60/EC and other directives so as to avoid gaps, duplication or conflicts in future. Examples included the links between the Water Framework Directive and the Common Agriculture Policy, and between the Water Framework Directive and EU waste legislation (in particular, the fact that the UK interprets dredged material from rivers as waste).

Making Legislation – or Not?

2.161 Respondents discussed a variety of issues around the way that the EU should approach making legislation. However, a more general point of concern for several organisations, was the increasing political influence over the use of science to underpin policy, particularly around climate change. Respondents such as the Centre for Ecology and Hydrology and the Aviation and Environment Federation said EU climate change policy generally has a robust scientific foundation and is based on risk, though this has often been subject to political pressures, for example, in the setting of national greenhouse gas targets. In their view, this political overlay can dilute the link between science and policy.

Precautionary Principle and Risk

2.162 Article 191(2) of the TFEU provides that EU policy on the environment shall be based on the precautionary principle. The principle allows risk management to take place when risk assessment is not conclusive. It may be invoked when a potentially dangerous effect is identified by a scientific and objective evaluation, but there is insufficient evidence for the risk to be quantified with certainty. The European Commission has set out detailed guidelines on the approach it will take to the application of the precautionary principle.⁸⁶

2.163 Environmentally-focussed civil society organisations and political groups advocated the use of this principle (for example Green MEPs) but other groups, including those whose businesses are affected by its application, felt that use of the principle can be disproportionate to the likely risk. The NFU gave an example of the precautionary principle being invoked because a farmer has not been able to prove that his water abstractions are not having an impact on a nearby habitat (protected under the Habitats Directive 92/43/EEC). Without a huge body of evidence, it is almost impossible for an individual farmer to prove that his abstraction is not having a negative impact. The burden of proof lay with the farmer. This has resulted in his abstraction licence renewal being delayed or only temporarily renewed, causing uncertainty and cost to his business.

2.164 Participants at the York workshop argued that EU institutions should take costs more into account when applying the precautionary principle.⁸⁷ For example, they said that the Water Framework Directive sets out ‘strategies against pollution of water’, which established a list of priority substances which include some substances that may present a risk to the environment. However, they estimated that it would cost an estimated £10 billion to remove these from water in accordance with the precautionary principle. In the view of the participants the costs are not always proportionate to the benefits.

2.165 As the precautionary principle is about protection through preventative decision-taking in the case of risk, it may impact on innovation. How to regulate innovation at the EU level is a general issue and it applies to GMOs as well as to other areas, for example nanotechnology and synthetic biology. Participants at the York workshop said that in this context the precautionary principle poses problems.⁸⁸ However, the Liberal Democrat Environment Parliamentary Party Committee stated that the approach to GMOs in the EU balances a system of scientific assessment of health and environmental risks with the freedom of Member States to act in accordance with their own national, regional or local circumstances.

⁸⁶ Commission Communication, *On The Precautionary Principle*, COM (2000) 1, February 2000.

⁸⁷ See Annex B for the list of organisations that submitted evidence through this workshop.

⁸⁸ *Idem*.

Case Study 5: Approval Process for Genetically Modified Organisms

The Agricultural Biotechnology Council pointed to the approval system for GM (Genetically Modified) crops as something which needs to be implemented properly rather than changed.

The EU authorisation framework has two phases. The first is the risk assessment phase, which involves a scientific assessment of human and environmental risks by independent scientists operating under the European Food Safety Authority (EFSA), alongside Member State experts. At the end of the assessment EFSA provides a scientific opinion to the European Commission on a specific product. The second phase, risk management, is a political phase where the European Commission and the Member States decide whether or not to authorise the product taking into account the scientific opinion and 'other legitimate factors'.

As of August 2011, there are 39 GM products approved in the EU: of which 37 are crop products approved for import (23 maize, 7 cotton, 3 oilseed rape, 3 soybeans and 1 sugar beet) and 2 are approved for cultivation (1 maize and 1 potato for industrial use). There are however, 72 products pending in the system (51 for import/processing and 21 for cultivation). On average it takes 45 months for GM product approval in the EU. This compares to 30 months in Canada, 27 months in Brazil and only 25 months in the United States. The European Association for Bio-industries forecast that another 20 new GM products will enter the authorisation process by 2015. The current backlog in the EU approvals system for GMOs would take almost 15 years to clear at 2012 approval rates. The long approval times and backlog in the EU process are one of the causes of the problem of asynchronous approval where GM products are approved in one jurisdiction (for example Brazil) but not another (for example EU). Shipments with traces of unauthorised GM product can and will be refused entry to the EU. This trade disruption has costs for European producers and consumers. A study published by the European Commission in 2010 concluded that when trade between the US and EU is disrupted in soybeans/soymeal it can push up prices in those products by 25%. In the long-run supply disruptions can be expected to see the EU source animal feed from non-traditional suppliers, or reduce livestock production. Feed price increases are eventually passed on to consumers, estimated to be of the order of €10.5bn per year.

Evidence submitted by the Agricultural Biotechnology Council.

European Commission, 'Approvals of GMOs in the European Union' EuropaBio (European Association for Bio-industries), 2011; 'Study on the Implications of Asynchronous GMO Approvals for EU Imports of Animal Feed Products', (2010).

- 2.166 The use of evidence is important in identifying risk and underpins the precautionary principle. Some respondents provided examples of good practice in the use of evidence in EU policy-making. The Centre of Ecology and Hydrology described the use of scientific risk assessment in setting outcomes for and monitoring the Large Combustion Plant Directive 2001/80/EC and the National Emission Ceilings Directive 2001/81/EC. Similarly, the Waste Incineration Directive 2000/76/EC (now recast into the Industrial Emissions Directive 2010/75/EU) was also cited by participants at the waste and resource management workshop as a good example of EU legislation based on risk.
- 2.167 However, the need for evidence based legislation is seen by some as only part of the equation when considering the most appropriate type of action. The GLA said the National Emissions Ceilings Directive is heavily evidence led, but there is some disconnect between these ceilings, the emission source control measures put in place

(for example EU standards for vehicles) and the achievement of EU Ambient Air Quality Directive 2008/50/EC limit values.

- 2.168 In contrast to areas of good practice around use of evidence, some respondents said that EU legislation can be based too much on hazard rather than risk. In fact, opinions were divided on whether EU legislation is sufficiently risk-based. The REACH Regulation 1907/2006 was cited by the British Coatings Confederation, the BCC, BAE Systems and EEF as an example of over-reliance on the hazard-based approach. They felt that REACH has put substances at risk of being banned because they are hazardous, even if they can, and are, being used safely with the appropriate controls. In their view, this has serious implications for the wall covering industry and other users.
- 2.169 Similarly the NFU highlighted the Plant Protection Products Regulation 1107/2009 as adopting a hazard-based approach, which in its view, leads to further restrictions on vital crop protection products, which are important for securing crop yield and quality. The Business Taskforce has also recommended that the EU should move towards a purely risk-based evaluation of plant protection products.
- 2.170 In addition the House of Lords Report on EU Freshwater Policy concluded that there is a need for the UK Government and the European Commission to acquire more knowledge of the risk posed by priority substances. The House of Lords Committee also felt that there is scope for increasing knowledge of cost-effective methods of reducing this risk before, for example, effluent containing the substances requires wastewater treatment. The Committee argued that these considerations are important not least because the 'polluter pays principle' means that organisations, such as pharmaceutical companies, may be called on to contribute to mitigating the risk.⁸⁹

EU Standards and Targets

- 2.171 Respondents generally welcomed the use of some EU standards and targets because they can help provide a level-playing field, provide certainty for businesses and help achieve environmental goals. However, some criticised the use of targets which they saw as being either blunt instruments or as being unachievable. Many comments on the use of targets were related to water and climate change policy.
- 2.172 An example of where standards and targets have been used effectively was given by Dŵr Cymru Welsh Water. It argued that EU Regulation 259/2012 to introduce limits of phosphates in household detergents will make a significant contribution toward improving the aquatic environment, thus helping to meet the requirements of the Water Framework Directive. Dŵr Cymru said setting pan-European standards for products to be sold is fully in accordance with the single market ethos that underpins it. In fact Dŵr Cymru would like to see similar action taken to reduce agri-chemicals and pharmaceuticals at source.
- 2.173 The timescale of the target has an effect. Participants at the Edinburgh workshop agreed that longer-term targets were better for business as they provided a longer lead-in time to implement changes.⁹⁰ Targets set in the Water Framework Directive were said to be a good example as they provide clarity for businesses. However, some respondents said that setting targets with short deadlines provides little scope for innovation or sourcing sustainable solutions. Water UK argued that the requirements of the Water Framework Directive are likely to be unachievable in many Member States. The House of Lords Report on EU Freshwater Policy also acknowledged that it is unlikely that the relevant targets will be achieved in accordance with the required timescales because they are

⁸⁹ House of Lords European Union Committee, *An Indispensable Resource*.

⁹⁰ See Annex B for the list of organisations that submitted evidence through this workshop.

too aspirational. The House of Lords Committee viewed the basis for assessing status categories in the Water Framework Directive as a ‘blunt and rigid method which fails to capture effectively the ecological as well as the chemical quality of water’.⁹¹

- 2.174 Clarity of targets is also considered important. Participants at the marine workshop argued for greater clarity in EU targets, for example on the definition of ‘good ecological status’ under the Water Framework Directive.⁹² RSPB considered that implementation of the Marine Strategy Framework Directive would be more effective if, in future, Member States set ambitious ‘Good Environmental Status’ targets with sub-targets and indicators combined with adequate monitoring and enforcement. It believed that relying on existing conservation and monitoring measures to achieve and determine progress would not be effective in reducing the impacts of the EU on its marine waters and protecting biodiversity.⁹³
- 2.175 Targets are a fundamental element of efforts to tackle climate change. Some respondents, including Green Alliance and Greenpeace, felt that binding targets had provided long term policy stability, minimising risk and increasing certainty for investors and thus driving down costs.
- 2.176 Respondents had differing views on the level of the targets and the implications of the mechanisms for achieving them, particularly on businesses exposed to international competition (see section 2.1) and energy costs. Having said that, with the exception of respondents who expressed doubts about anthropogenic climate change, respondents did not argue against the use of targets as an appropriate legislative mechanism. WWF raised the question of whether it was sensible to focus on, or solely on, emissions reductions when assessing the total carbon footprint of a country. WWF felt it was also necessary to account for territorial emissions and consumption emissions. For example, the UK Committee on Climate Change had suggested that ‘the UK’s carbon footprint has increased by around 10% since 1993, as growth in imported emissions more than offset the 19% reduction in production emissions’.⁹⁴
- 2.177 Respondents also noted the potential interaction between emissions reduction targets and energy targets, notably the EU renewable energy target. Respondents considered that this would be a fundamental question for the post 2020 climate and energy framework (this is discussed in Chapter 3 and EU actions on renewable energy, including targets, will be considered in the forthcoming Energy Report). Some respondents, for example the Fresh Start Project, favoured a single emissions reduction target with all low carbon technologies competing against each other on a level playing field. Others such as Renewables UK pointed to the need for both targets, with a renewables target to create a positive incentive for investment in renewables.
- 2.178 Targets can also have a knock-on effect in other areas of policy. The Fresh Start Project commented that the Large Combustion Plant Directive 2001/80/EC provides an example of conflicting objectives since existing plants had the choice either to comply with the new targets by installing new technology to remove emissions or to remain open for a limited period only. The Fresh Start Project went on to say that, in the UK, 11GW of capacity plants opted out of the Directive and will consequently have to close in 2015 which will have a serious impact on the UK’s ability to cope with peak demand.

⁹¹ House of Lords European Union Committee, *An Indispensable Resource*.

⁹² See Annex B for the list of organisations that submitted evidence through this workshop.

⁹³ House of Lords European Union Committee, *An Indispensable Resource*.

⁹⁴ Committee on Climate Change, *Reducing the UK’s Carbon Footprint and Managing Competitiveness Risks* (2013).

Alternatives to Legislation

- 2.179 Legislation may not always be the best way to tackle an environmental problem. In terms of policy instruments, the IEEP said there is increasing academic literature examining the benefits of environmental taxes replacing other forms of taxation and encouraging a better use of resources, and that there would be benefits to considering environmental taxation more widely in the EU much as the UK does domestically. Civitas, in their report, CO2.1, submitted as evidence, also suggested that the EU ETS should focus purely on energy generation and that in other sectors the EU ETS should be replaced with an EU-wide carbon tax with funds recycled to intensive R&D. However, they believed that, at present, the UK's strong opposition to fiscal measures at the EU level inhibits further exploration of this option.
- 2.180 Taking another approach, some respondents commented that in some areas policy instruments can be voluntary because other factors will drive change. With particular reference to UK and EU climate change legislation, the Agricultural Industries Confederation (AIC) said overall voluntary approaches have created the most significant shift in environmental awareness in history and have provided an incentive for greater corporate responsibility and sharing of academic expertise internationally.
- 2.181 Another approach identified was for the private sector to drive change itself through its own continual improvement. Participants at the climate change workshop highlighted the impact of commercial interests which will continue to drive change.⁹⁵ Manufacturing now focuses on resource efficiency and resource security to increase profits and improve environmental impacts. It is becoming a commercial imperative to reduce energy costs and often this is done without the 'stick' of legislation. Participants highlighted that the corporate world and investment banks are also bringing in global importing index and environmental codes of practice.
- 2.182 The BPF also thought that there were opportunities for industry and market led action at an international level to promote sustainability. For example, the Global Real Estate Sustainability Benchmark is putting pressure on international companies to report on their performance and sustainability indicators. The BPF believed this approach could provide an opportunity for future initiatives.

Implementation

- 2.183 A large amount of evidence was submitted concerning the advantages and disadvantages for Member States in having flexibility to implement EU legislation. The advantages are linked to the desire to reflect national circumstances and to leave some flexibility for national policy choices. The disadvantages are centred around the impact that differential interpretation and implementation, including 'gold-plating', can have on organisations in the UK which are affected by national policy choices by the UK and by other Member States with which they trade or compete. The debate was fairly evenly balanced.

The Desire for Flexibility

- 2.184 Flexibility can help Member States reflect their own national circumstances and their regional make-up. The Tyndall Centre said that the EU has generally argued that differential national environmental standards constitute barriers to trade, inhibit innovation or resource efficiency and facilitate a 'race to the bottom' in environmental standards. However, in the Tyndall Centre's view it was also clear that inflexible legislation that does not allow for different national circumstances can also cause difficulties.

⁹⁵ See Annex B for the list of organisations that submitted evidence through this workshop.

2.185 Participants at both the Brussels workshops and the Northern Ireland workshop agreed that the EU has moved towards more flexible legislation.⁹⁶ However, some respondents provided evidence where inflexible ‘one size fits all’ legislation has caused problems for the UK:

- Participants at the York workshop gave the example of bathing water standards that are more costly to manage in Northern European countries than the Mediterranean due to climatic differences.⁹⁷ According to NILGA, this means that EU water legislation will raise water bills in the UK;
- NILGA and marine workshop participants also gave the example of the Nitrates Directive.⁹⁸ NILGA described this as being much more suited to countries that are hotter and drier than the UK; and
- The British Ecological Society also argued that greater flexibility around relatively populous species such as the great crested newt would be welcome, and would allow the UK to focus on other species that are nationally or internationally rare, providing greater cost-effectiveness. In its view there can be differences across the EU which makes a single approach difficult.

2.186 In countries with devolved regions, there is no single set of ‘national’ circumstances and Member States may therefore need the flexibility to interpret the legislation in a manner that fits their regional structures. The Local Authority Recycling Advisory Committee (LARAC) noted that in the UK the Devolved Administrations determine their own environmental legislation in relation to many activities. In the view of the Welsh Government, ministers in Westminster may not always be aware of particular issues in Devolved Administrations in negotiations, so the Devolved Administrations need room to address them in implementation. Participants at the Northern Ireland workshop agreed.⁹⁹ The Scottish Government was keen to explore opportunities for differential implementation based on risk assessment to reflect significant differences across Member States. It also expressed a desire for regional flexibility, particularly on areas of public concern such as use of GMOs and pesticides policy.

Differential Interpretation

2.187 EU Regulations are directly applicable in all Member States, while directives are merely binding as to the outcome to be achieved. In many cases, Member States can choose whether or not to transpose directives directly into national legislation, or to develop their own legislation to achieve the prescribed outcome, often taking advantage of any room for flexibility to reflect particular circumstances. This can result in differential interpretation across the EU. While differential interpretation can have the advantage of allowing Member States to adapt EU legislation to national circumstances, it can lead to distortions in the Single Market.

2.188 Participants at the Brussels workshop and the European Liberal Democrats, for example, suggested that the UK is directly involved in the development of EU directives and having been involved should therefore implement them as they are. They said this has the advantage of being less resource intensive and has the potential to minimise differential interpretation.

⁹⁶ Idem.

⁹⁷ Idem.

⁹⁸ Idem.

⁹⁹ Idem.

- 2.189 Some participants at the Edinburgh workshop suggested that another way of minimising differential interpretation is for the EU to introduce more education, training and guidance for Member States on the transposition of directives, rather than making greater use of more prescriptive regulations.¹⁰⁰ However, other participants at the same workshop expressed the view that EU regulations are often clearer than EU directives and reduce the risk of differential interpretation across Member States. The Tyndall Centre noted too that Regulations, because they are directly applicable, are also more prescriptive and that many Member States (the UK included) have consistently argued against such a move towards Regulations on the grounds that it could violate the principle of subsidiarity.
- 2.190 NILGA said that differential interpretation of directives is also an issue, due to some terminology being unclear. In some cases this is only resolved in the ECJ, a lengthy process often leading to uncertainty in the interim – see Habitats section below. EDF agreed pointing out that the need for clarification in the ECJ in some areas removes certainty for industry about the legislation.
- 2.191 NILGA also said that different definitions across Member States are also a cause for differential interpretation. The North London Waste Authority (NLWA) agreed and said that when the Landfill Directive 1999/31/EC was implemented in the UK, the definition of ‘municipal waste’ adopted did not include commercial and industrial waste and applied only to waste collected by local authorities. This led to some differences in implementation across Member States.
- 2.192 While some respondents, as noted in earlier paragraphs, pointed out problems with flexibility, other respondents, such as EDF, pointed to some areas where the UK could press for more flexibility. EDF said the UK does not always make full use of the flexibilities that are available in EU directives. For example, in the area of waste there is some scope to apply Member State discretion in the definition of ‘by-products’. UK regulators have so far been very reluctant to apply any additional interpretation.

Is the UK Stricter than Other Member States?

- 2.193 The evidence showed that perceptions varied about whether the UK implements or enforces EU law more strictly than other Member States. NILGA pointed out that the UK has a reputation for being less flexible in application than other Member States. However, few specific examples of such ‘gold plating’ were included in evidence submitted.
- 2.194 Organisations such as the British Association for Shooting and Conservation, British Glass, Energy UK, the NFU, the Freedom Association and the Law Society of England and Wales claimed that the UK had been guilty of ‘gold-plating,’ that is, going further in implementation in the UK than was strictly required by EU legislation. However, RWE felt that the UK was now less prone to ‘gold-plating’ than it had been historically, but also considered that there is a need for continued awareness of this issue.
- 2.195 Some respondents including participants at the climate change workshop disputed the extent of ‘gold-plating’ in the UK.¹⁰¹ IEEP pointed out that the *Davidson Review* on the implementation of EU legislation noted that perceptions of ‘gold-plating’ in the UK were generally exaggerated.¹⁰² Dŵr Cymru Welsh Water also noted that recent investigations such as the recent Defra review of the Habitats Directive 92/43/EEC had tended to disprove ‘gold-plating’. Going further, the Association for the Conservation of Energy argued that we should not be frightened of ‘gold-plating’ directives, as building sensibly

¹⁰⁰ Idem.

¹⁰¹ Idem.

¹⁰² Lord Davidson QC, *Davidson Review: Implementation of EU Legislation* (2006).

upon the minimum requirements of directives could bring both environmental and economic benefits, for example through greater energy savings.

- 2.196 The findings of a report by IEMA indicate that the UK appears to have the lowest level of Environment Impact Assessment activity of the EU's Member States that have a population over 20 million. However, Fjordr note that more attention is required to ensure that UK implementation is as effective as possible in targeting real risks in a proportionate way. They commented that EIA is more onerous to developers than it need be as in the UK it tends to result in long documents going through topics mechanistically instead of focussing more clearly on what might be significant. The Government is currently reviewing guidance and screening thresholds for EIA.
- 2.197 It is the Government's policy to minimise regulatory burdens when implementing EU legislation and to ensure that the UK does not go beyond the minimum requirements of EU legislation when transposing it into UK law. The Coalition Agreement included a commitment to 'end the so-called 'gold-plating' of EU rules, so that British businesses are not disadvantaged relative to their European competitors'.¹⁰³ This was implemented through the Government's Guiding Principles for EU Legislation, published in June 2011 and recently revised, which aim to prevent 'gold-plating' of EU legislation by putting in a strong scrutiny and challenge process in assessing how EU legislation is implemented in the UK. This includes the principle that the Government will always copy out the directive for transposition where possible, except where doing so would adversely affect UK interests, for example by putting UK businesses at a competitive disadvantage compared with their European counterparts. The Government is also committed to rooting out historic 'gold-plating' with a view to removing any unnecessary 'gold-plating' from the stock of UK legislation.
- 2.198 UK Government policy on transposing EU legislation is to ensure that, save in exceptional circumstances, the UK does not go beyond the minimum requirements of the measure which is being transposed and to endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts.¹⁰⁴

Differential Interpretation of the Habitats Directive

- 2.199 A considerable body of evidence was received from respondents in relation to the implementation of the Habitats Directive 92/43/EEC in the UK. Many respondents felt that differential interpretation of this legislation across the UK, and the implementation choices in the UK, had affected businesses. This was the subject of the Habitats Directive Implementation Review by the Government in 2012 which made several recommendations about how to improve implementation in the UK.¹⁰⁵
- 2.200 Some respondents, including Renewable Energy Systems Limited (RES) and the participants in the nature and biodiversity workshop said that implementation of the Habitats Directive 92/43/EEC was inconsistent across Member States, and that conferring blanket protection to all species on a Natura 2000 site (including non-important and pest species) imposed unnecessary restrictions on business. Responses from the Royal Yachting Association, the Mineral Products Association, Renewables UK, EDF and the HBF support the assertion that the implementation of the Habitats Directive 92/43/EEC imposes restrictions and disproportionate burdens. RES commented that due to vague wording in the Habitats and Wild Birds directives and the way they have

¹⁰³ HMG, *The Coalition: Our Programme for Government* (2010).

¹⁰⁴ HMG, *How to implement European Directives Effectively* (2013).

¹⁰⁵ Department for Environment, Food & Rural Affairs, *Report of the Habitats and Wild Birds Directives Implementation Review* (2012).

been transposed into UK legislation, developers were often caught in ‘double jeopardy’, in instances where particular projects could be referred to the European Commission or to the ECJ. EDF also pointed to the growing legal case load associated with the Habitats Directive. HBF highlighted the impact of the Directive on the speed of planning applications (see section on regulatory burdens in Section 2.1).

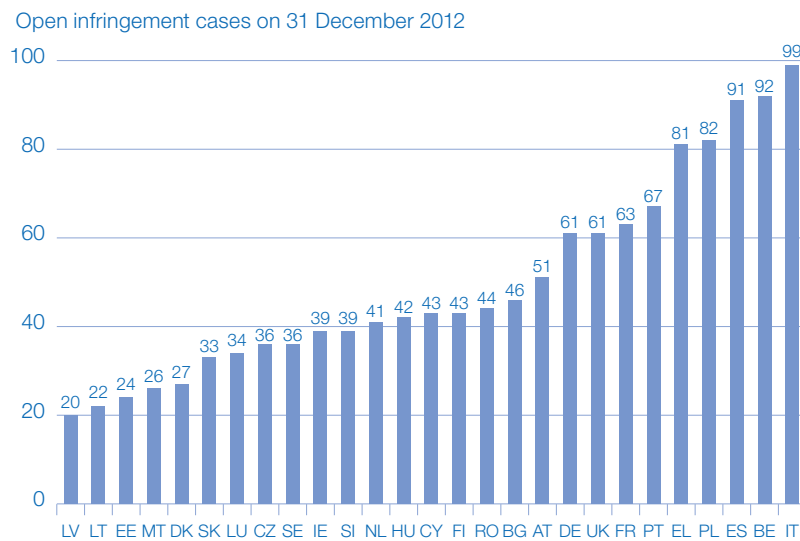
- 2.201 However, WWF said that it considered that the current approach was correct, and cautioned against giving undue influence to the small proportion of planning cases which struggled with Habitats Directive issues. WWF quoted the Habitats Directive Implementation Review stating that ‘of the 26,500 land use consultations Natural England receives annually, fewer than 0.5% encounter objections on Habitats Regulations grounds, and most of these are successfully dealt with at the planning stage.’¹⁰⁶ The Review also recognised that ‘although the Habitats Directive 92/43/EEC may only be one contributory factor, the evidence presented to the Review, and a number of well publicised individual cases, showed that costs and delays for developers can arise in the implementation process’. The BPF also considered that implementation issues primarily relate to the role of statutory consultees.

Under-Implementation and Enforcement

- 2.202 Respondents commented on the speed of EU action to start infraction proceedings against Member States that failed to comply with EU environmental legislation. Catherine Bearder MEP considered that the European Commission is now devoting more of its resources to improving the implementation of EU policies at the Member State level. A European Commission Report showed how Member States are performing in applying EU law.¹⁰⁷ There were fewer infringements open at the end of 2012 than in previous years. At the end of 2012, the number of open infringement procedures decreased by 25% compared to 2011. One of the reasons for this decrease was that more cases were being resolved by EU mechanisms such as EU Pilot and SOLVIT, designed to improve communication between the European Commission and Member States on issues concerning the application of EU law or the conformity of national rules with EU law at an early stage before an infringement procedure is launched.
- 2.203 Catherine Bearder MEP also believed that the quality of implementation varies from country to country and sector to sector, and is generally regarded as the ‘Achilles heel’ of EU environmental policy. The underlying problem, she believed, is that implementation depends on what happens inside each state, as Member States are formally responsible for ensuring compliance. In her view the EU institutions are in a subservient position. She said that the UK’s record is better than most, but is not unblemished. As shown in Figure 2, although the UK has a number of open cases which is about average if compared to other Member States, it is still implementing better than some other Member States.

¹⁰⁶ *Idem*.

¹⁰⁷ Commission, ‘30th Annual Report on Monitoring the Application of EU Law’, COM (2013) 726, October 2013.

Figure 2: Open EU Infringement Cases on EU Member States

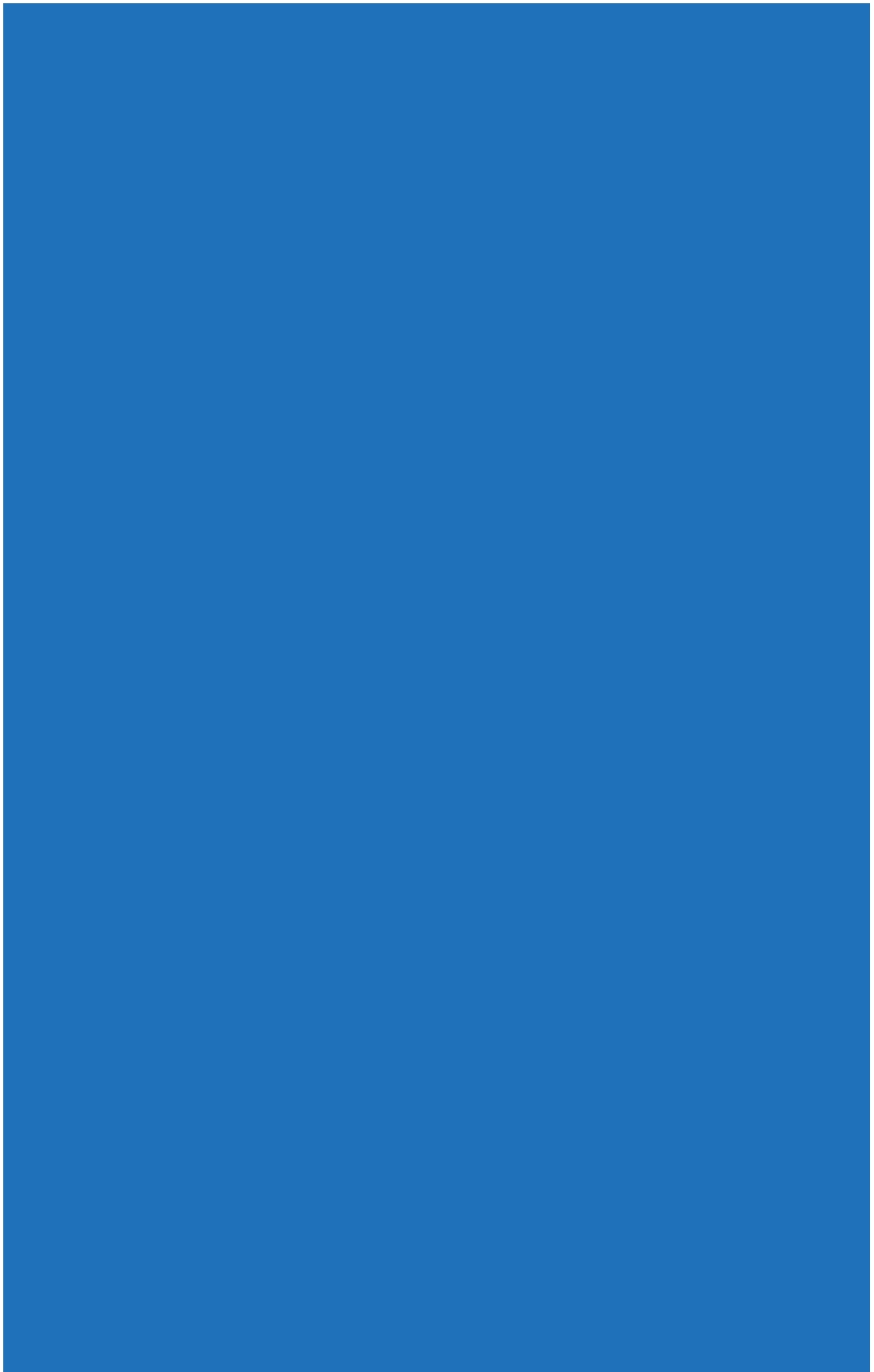
Source: European Commission, '30th Annual Report on monitoring the application of EU law', 2013.

2.204 Participants at the London One workshop also commented that the enforcement of sanctions against individuals is usually a matter for individual Member States. Consequently, there may be different sanctions applied when laws are broken. Participants said that the European Commission has shown itself to be quite willing to take Member States to the ECJ in some areas and for fines to be imposed if Member States fail to implement EU legislation properly. Participants also said that uneven enforcement such as different levels of fines in different Member States can in itself lead to a distortion of the market.¹⁰⁸ However, they said that uneven enforcement by the European Commission is also an issue. In one example, the MPA said that harmonisation of EU ETS rules has fallen short in a number of areas, in particular the cement and lime sector are entitled to free allocations but final allocations have been delayed because other Member States have not submitted details on time as required by the legislation. The MPA said that European Commission have not taken enforcement action in relation to this.

2.205 In Catherine Bearder MEP's view, until the EU has greater oversight and powers of compliance, EU environmental policy is always likely to suffer from a sizeable 'implementation deficit'.

2.206 Catherine Bearder MEP also said that the European Commission is responding to the need to do more to ensure legislation is implemented by devising new approaches. Examples include implementation guidelines, closer direct relations with Member States just after formal agreement on a proposal, and a forum for exchange of implementation best practices, to reduce the communication black-out between the time ministers agree a new measure and the achievement of the objectives the measure sets out to attain. The Scottish Government welcomed in particular the new pilot approach to dealing with potential infringements to EU legislation that was introduced in 2008. The aim of this new approach is to provide quicker and fuller answers to questions and solutions to problems arising in the application of EU laws, particularly those raised by citizens or businesses requiring confirmation of the factual or legal position in a Member State.

¹⁰⁸ See Annex B for the list of organisations that submitted evidence through this workshop



Chapter 3:

Future Opportunities and Challenges

Respondents identified a number of major future challenges and considered how EU competence could best be deployed, or not deployed, to address these in the UK's national interest. At the heart of these challenges was the question of how to tackle truly global issues whilst maintaining competitiveness in a global economy. Alongside this, increasing population and economic growth are placing ever-increasing pressure on resources.

The evidence pointed to challenges in the three major policy areas below, as well as to the future focus for the EU in legislating on the environment and climate change:

- Climate Change – including mitigation, global competition and adaptation;
- Pressure on resources; and
- Biodiversity.

Climate Change

3.1 Climate change was identified by many respondents from all sectors as the greatest threat to the environment and the global economy and tackling it was also identified as a key challenge. Comments fell into three broad categories of mitigation, action in the context of global competition and adaptation.

Mitigation

3.2 A large number of respondents considered that achieving a global deal on emissions reductions would be fundamental to tackling climate change and avoiding its worst consequences.¹ A number of respondents also felt the EU is well placed to play a continuing leadership role in the negotiations to achieve such a deal.² Open Europe however highlighted the scope for the EU's 'marginalisation' in the negotiations, even when united, compared to China and the US.

¹ Examples include: ADBA; British Port Association; ClientEarth; DOENI; EDF; Energy UK; Fjordr; Green Alliance; Greenpeace; Green MEPs; RES; Co-Chairs of the Liberal Democrat Environment Parliamentary Party; NFU; and the Scottish Government.

² Examples include: Greenpeace; WWF; Renewables UK; Green MEPs; Sandbag; RSPB; the Welsh Government; and the University of York.

- 3.3 Within the context of the UNFCCC negotiations and pending a possible global deal, the WWF argued there is a need for the EU to keep on track to achieve its goal of an 80-95% reduction in greenhouse gas emissions by 2050. They considered that this would need a mix of actions at EU – and UK – level in both the traded and non-traded sectors.
- 3.4 A range of respondents from NGOs, businesses, political groupings, academics and the Scottish Government all agreed that, in the immediate future, the priority would be to get the post-2020 EU framework right. The GLA, RWE, ClientEarth, Sandbag, WWF, and Green MEPs all argued that this would need to comprise appropriate emission reduction targets and a substantially reformed and robust EU ETS, with EDF arguing that the latter would be vital in order to provide long-term signals for low carbon investment. Respondents, however, had differing views on the appropriate level for the emissions reduction target and, in particular, on whether there was also a need for additional technology-specific targets, for example for renewable energy.
- 3.5 Taking a different tack, Open Europe stressed that whilst a degree of European regional cooperation on climate change made sense, it felt that the reality was that a solution would not be found by reducing the EU's emissions alone but by reducing global reliance on carbon. It considered that the biggest potential impact the EU could have would be through setting an example, for other countries to follow, of how this can be achieved in a cost effective manner.
- 3.6 WWF argued that there was also a need to consider how to bring aviation and shipping into the EU framework. In contrast, the Fresh Start project felt that for these sectors the UK should negotiate through appropriate international bodies, such as the International Civil Aviation Organisation, to obtain a global agreement rather than pursue unilateral action.
- 3.7 Greenpeace emphasised that delays in reaching agreement within the EU would lead to a hiatus by investors, derailing the rapid transition to a low carbon economy. It was also noted by the Tyndall Centre that further ambitious EU action would underpin the targets established in the UK under the Climate Change Act 2008. Catherine Bearder MEP stressed that the barriers currently faced by key mitigation technologies, for example carbon capture and storage, would also need to be addressed, and that the EU was well placed to co-ordinate the necessary action and research. In addition, EEF noted that industrial sectors were now reaching the limits of what current technology and processes could deliver. Fundamental changes to how products are designed, manufactured and used would be needed to meet future environmental needs.
- 3.8 The British Standards Institute noted the need for wider society to be mobilised in order to address the challenge posed by climate change with a focus on education and co-operation which suggested the need to focus downwards to the institutions of civil society rather than upwards to a central EU authority.

Global Competition and Trade

- 3.9 In general, respondents were clear that action to address climate change must be situated in the context of the global economy and how the EU addressed this issue would have significant effects on the private sector in particular. Attendees at the London Three workshop and the Confederation of UK Coal Producers said that the key future challenges for industry and business would be tackling the cost of operating within the EU, and the impacts of environment and climate change legislation on competition and investment, given the increasingly global nature of markets.³ Whilst applauding the ambition of both the UK and EU on climate change, they felt that unless binding commitments from the other

³ See Annex B for the list of organisations that submitted evidence through this workshop.

major global trading nations were secured then the UK and EU should pause to assess progress and work to provide solutions to enable others to catch up.

- 3.10 Some respondents considered that carbon leakage could continue to be a problem. The Welsh Government, British Glass and others argued that in the absence of a global deal, the post 2020 EU climate framework would need to deal effectively with the issue of carbon leakage, particularly for energy intensive industry in the EU. EEF suggested that, in the absence of a global deal, the EU should pursue global sectoral agreements to address carbon leakage.
- 3.11 How the EU approached future climate change action was identified as important. The Fresh Start Project argued that the UK should adopt a much more active position in negotiations with the European Commission and other EU institutions, particularly in the context of our next EU Presidency term in 2017. It believed the UK should aim to reduce the bureaucratic burden of environmental legislation and help to curb carbon leakage. This in its view would mean taking a more holistic, co-ordinated approach towards developing a less prescriptive, more business-friendly, regulatory framework in the EU.
- 3.12 Energy UK considered that, apart from de-carbonisation, the major environmental impacts of electricity generation have already been addressed in EU legislation. In its view the levels of emissions in some areas are now so low that it will become very costly to reduce them further and it argued that the European Commission should take a more critical and principled approach.
- 3.13 Some respondents identified the opportunities which might arise from the EU taking the lead in future climate change policy. The EEF noted that well-designed environmental and climate change policy could also stimulate manufacturers to invest, create innovative new markets and help firms become more efficient. It felt, however, that a new approach was needed in the EU that understood the trade-offs involved, was grounded in how businesses actually operate and reflected global economic realities. Some respondents, such as Catherine Bearder MEP, noted that other countries were also looking to exploit these opportunities.

Adaptation

- 3.14 A major future challenge identified by a number of respondents was the need for adaptation to the impacts of climate change on the environment.⁴ A number of potential impacts were identified and whilst the respondents considered that competence for adaptation should remain at the national level, they acknowledged that national adaptation measures would impinge on a number of areas where the EU had competence. The British Ecological Society and others highlighted shifts in species ranges which could have implications for designation of conservation status and protection of habitats.⁵ Thames Water Utilities Ltd, and the British Ecological Society also noted the implications for the implementation of the Water Framework Directive with changes in the frequency and severity of extreme weather events such as floods, drought and seasonal variation in rainfall patterns and water flows. Dŵr Cymru Welsh Water noted the interaction, and potential for increased competition, between requirements for public water supply and those for the protection of designated species in many rivers under the Habitats Directive 92/43/EEC.

⁴ Examples include: British Ecological Society; NILGA; Thames Water Utilities Ltd; Redcar and Cleveland Borough Council; CIWEM; the Agricultural Industries Confederation (AIC); the NFU; Dŵr Cymru Welsh Water; and LEAF.

⁵ Examples include: RSPB; Thames Water Utilities Ltd; Dŵr Cymru Welsh Water.

Pressure on Resources

- 3.15 A number of respondents highlighted the wider issue of increasing pressure on global resources from increasing demand and population growth.⁶ The GLA noted that the need for additional energy supply, housing and transport will all lead to pressure on natural resources. They argued that, whilst in its view many of these issues would need to be tackled locally, the EU would need to ensure that the Single Market continued to function properly, trans-boundary issues were addressed, and key sectors were required to improve their performance.
- 3.16 SEEG argued that the international nature of issues such as resource scarcity, population growth and migration meant that governance will need to operate across multiple scales and actors. In that context, they felt that the EU provided a useful model for how governance across borders could be organised in other regions.
- 3.17 CIWM proposed that resource security should be assessed and planned for at an EU level. However, CIWM thought that demand for rare materials varies across Member States and therefore an EU-wide measure requiring consistent recovery of these materials would not be proportionate to the benefits received in all Member States. Both CIWM and the Resource Association also stressed the importance of counting lifecycle cost in future.
- 3.18 The Environmental Services Association felt that there were key areas of resource management where the EU would in future be much better placed to act than individual Member States. It highlighted the area of eco-design as a good example, as only the EU could set Single Market rules to make products more resource efficient, that is, more durable, repairable, re-usable and recyclable.
- 3.19 EEF pointed to its February 2013 *Tech for Growth* report, which set out what it saw as the significant opportunities in the transition to a low-carbon economy, and additional opportunities in unlocking wider resource efficiency.⁷ EEF's evidence suggested, however, that surveys of business executives within manufacturing continued to show that access to raw materials was still perceived to be a threat to business growth in the UK.

Biodiversity

- 3.20 Several respondents, particularly from environmental NGOs, thought that the continuing threat to biodiversity was a major future challenge and was linked to other global challenges such as climate change.⁸
- 3.21 The RSPB and the WT both suggested that there was ample evidence from the UK National Ecosystem Assessment of 2011 and elsewhere that habitats and species were continuing to decline and that growing population and the impacts of climate change would only increase pressures on the ecosystem.⁹ They argued that ecosystem services had been consistently undervalued in conventional economic analyses and decision making, but that techniques now existed which allowed the monetary and non-monetary values of a wide range of ecosystem services to be taken into account. In future RSPB wanted to see these techniques adopted in everyday decision making practice within

⁶ Examples include: CIWM; GLA; the Resource Association; UKELA; the Environmental Services Association; and SEEG.

⁷ EEF, *Tech for Growth: Delivering Green Growth Through Technology* (2013). This is available at www.eef.org.uk/NR/rdonlyres/438EB81D-FEEE-46B6-AA68-5D492DE73E0F/22137/TechforGrowth_Locked_Final_Jan2013.pdf, accessed on 15 January 2013.

⁸ Examples include: RSPB; WT; WWF; and nature workshop participants.

⁹ Robert Watson, Steve Albon et al, *UK National Ecosystem Assessment: Understanding Nature's Value to Society* (2011).

the EU to ensure the benefits of ecosystem services are better realised and more equally distributed.

- 3.22 ClientEarth also felt that traditional metrics for assessing value such as GDP were inappropriate to assess the impacts of human activity on the environment. It argued that the explicit recognition of the true value in ecosystem goods and services necessitated a shift away from mainstream economic thought. It considered that a true valuation of costs and benefits should entail a long-term perspective that seeks to go beyond the dominant current conception of the relationship between the economy and the environment.
- 3.23 The WWF and participants at the nature protection and biodiversity workshop highlighted that Invasive Non-Native Species (INNS) and wildlife disease could have significant impacts on biodiversity and on human society and its economic interests.¹⁰ INNS had been recognised as one of the major causes of global biodiversity loss in the Millennium Ecosystem Assessment.¹¹ In June 2009 the Environment Council re-iterated the need for a comprehensive, proportionate and cost-effective EU response to INNS. WWF agreed and advocated the urgent need for such an EU framework and UK participation in it if challenges such as ash die-back, the water mould *Phytophthora*, or highly-pathogenic avian influenza were to be addressed.

Future Approach to Legislating

The 7th EU Environment Action Programme

The Programme entitled ‘Living Well, Within the Limits of Our Planet’ was agreed in Brussels in June 2013 and is intended to set out the EU agenda for environment policy action up to 2020.

It identifies nine priority objectives for the period up to 2020, including:

- Protecting nature and strengthening ecological resilience;
- Boosting sustainable, resource-efficient, low-carbon growth; and
- Effectively addressing environment-related threats to health.

The Programme sets out a framework to support the achievement of these objectives through better implementation of EU environment law, state of the art science, securing the necessary investments in support of environment and climate change policy, and improving the way that environmental concerns and requirements are reflected in other policies.

- 3.24 The majority of respondents who commented on this issue thought that the major future focus of the EU should be on making the current set of EU rules work as well as possible and on better implementation.¹² Most respondents who referred to it endorsed this aspect of the approach of the 7th EU Environment Action Programme.
- 3.25 The IEEP in their report for WWF, RSPB, Friends of the Earth and the WT argued that it was unlikely that EU environmental policy would continue to give rise to new measures at the pace adopted in the 1990s. In its view most of the major areas had already been

¹⁰ See Annex B for the list of organisations that submitted evidence through this workshop.

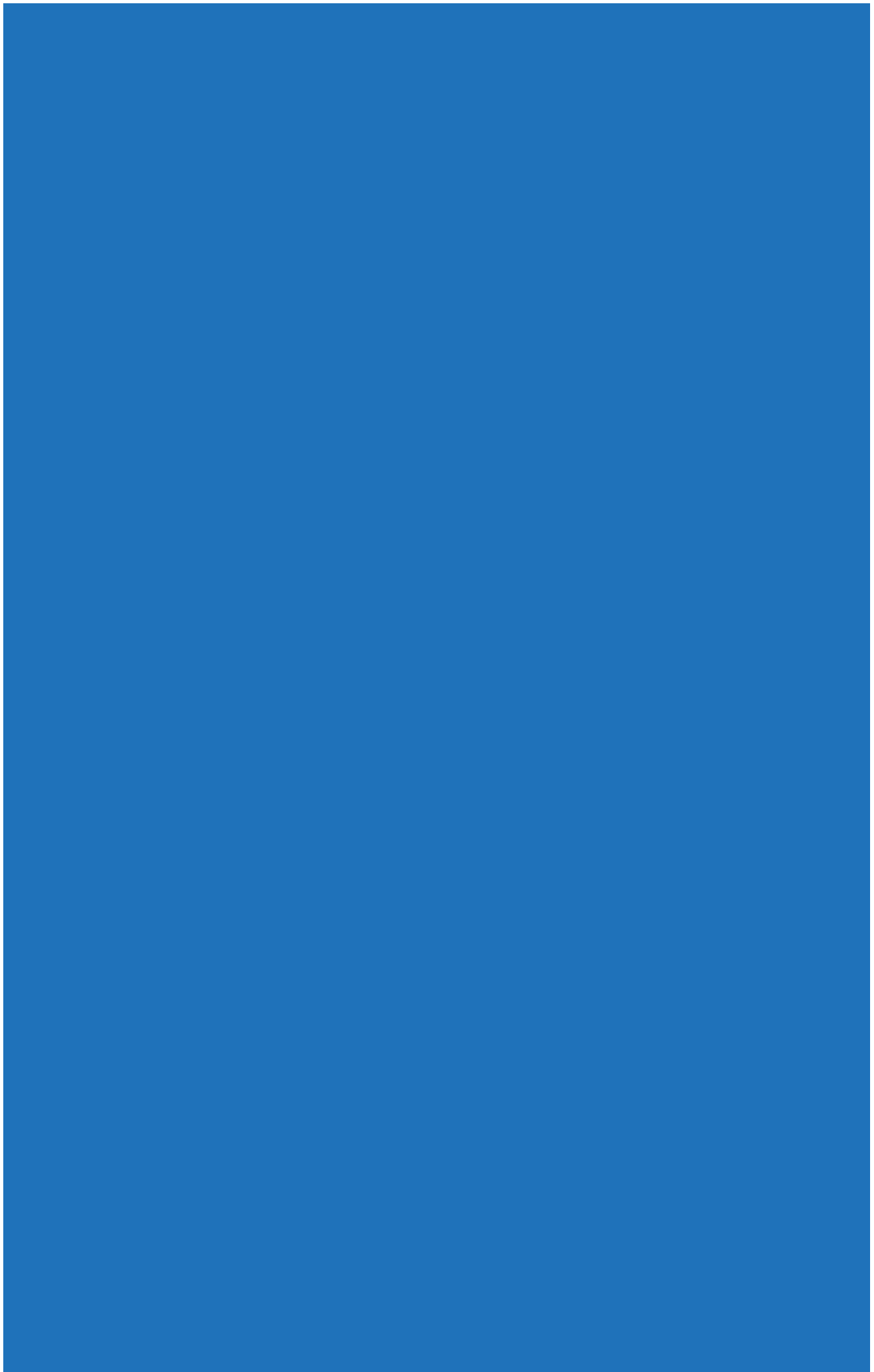
¹¹ Please see The Millennium Assessment Reports, available at www.eef.org.uk/NR/rdonlyres/438EB81D-FEEE-46B6-AA68-5D492DE73E0F/22137/TechforGrowth_Locked_Final_Jan2013.pdf, accessed on 15 January 2014.

¹² Examples include: IEEP on behalf of WWF; RSPB; Friends of the Earth; Green MEPs; North London Waste Authority; Chemical Industries Association; the Law Society; the Scottish Government; and Views of Irish NGOs and business groups collated by the British Embassy in Dublin.

covered. The Law Society also considered that no major new environmental legislation is required at present as in its view the current framework is broadly adequate and there are no immediate gaps which need to be addressed. It noted, however, that further action on climate change could become necessary as the evidence and science continue to evolve.

- 3.26 The Scottish Government welcomed the European Commission's work to develop the 7th EU Environment Action Programme. Its view was that environmental policy must be seen in the wider context of a government's role and not in a silo. In particular, it welcomed what it saw as the positive connections between the environment and economic growth opportunities as part of the 2020 agenda. The GLA and HBF also saw a challenge in balancing environmental objectives with the need to provide housing to accommodate growth.
- 3.27 The Scottish Government noted the agreement reached in the recent 7th EU Environment Action Programme to develop further the inspection support capacity at an EU level. It stressed, however, its view that the application of this agreement should respect subsidiarity principles in enforcement of EU environmental law and not lead to new EU inspection burdens on Scottish businesses. The BPF suggested that there are opportunities for industry and market-led action at an international level to bring about action on sustainability without the need for legislation.
- 3.28 IEEP argued that any proposals for new EU regulations are already subject to an intense level of scrutiny in an atmosphere of much higher sensitivity to any cost burden either on governments or the private sector than prior to the economic downturn. The AIC also called for the European Commission in future to assess the cumulative as well as individual effects of legislation, and to consider opportunities for alternative policy drivers which could deliver multiple benefits beyond those which can be achieved by single-issue legislation.
- 3.29 There was broad agreement amongst the views of Irish NGOs and business groups collated by the British Embassy in Dublin, that there should be more focus by the EU on implementation rather than new legislation. Energy UK also wanted to see the European Commission take a more principled and considered approach to the introduction of environmental legislation in future. It felt that once the machinery of government is in place it tends to gain momentum, and was concerned that the number of directives would increase indiscriminately as a consequence. Attendees at the London Three workshop suggested that in future the UK Government's 'one in, one out' approach to regulation should be deployed in the EU to reduce burdens to business.¹³ This was also a key recommendation of the Prime Minister's Business Taskforce.

¹³ See Annex B for the list of organisations that submitted evidence through this workshop.

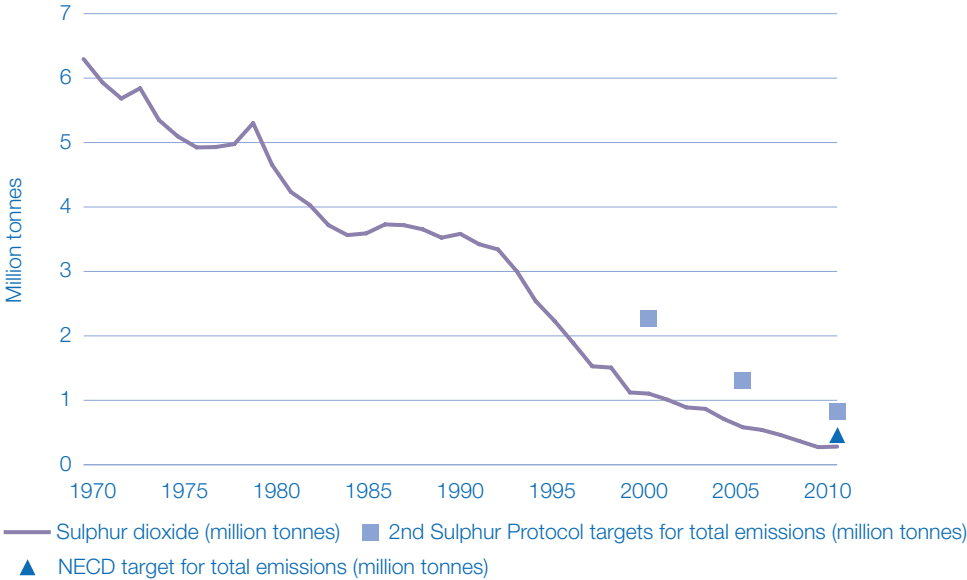


Appendix:

Statistics on Trends in Environmental Performance

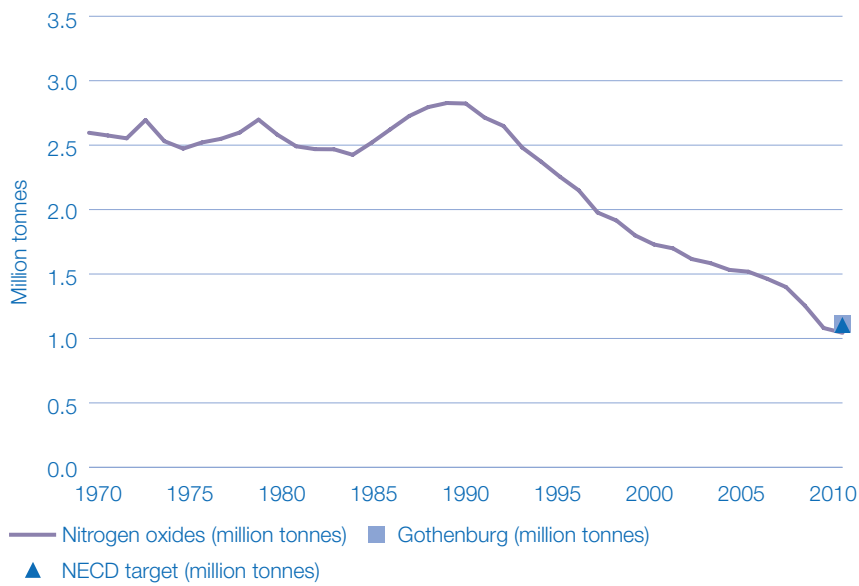
This appendix supports section 2.1 of the report. The graphs below show trends in the condition of specific areas of the environment and climate change over recent years. It is not possible to say whether or not there is a causal link between these trends and EU legislation in these areas.

Graph 1: Sulphur Dioxide Emissions and Targets: UK, 1970 – 2010



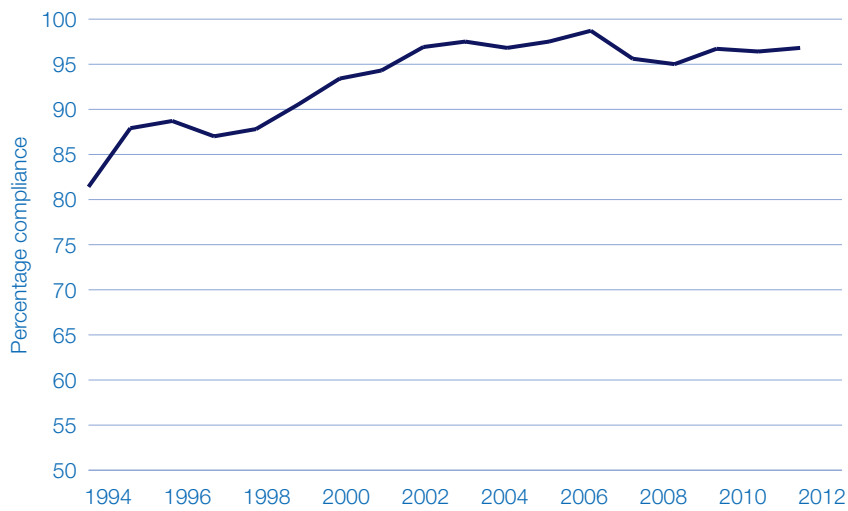
Source: AEA Group.

Graph 2: Emissions of Nitrogen Oxides (NOx) and Targets: UK, 1970 – 2010



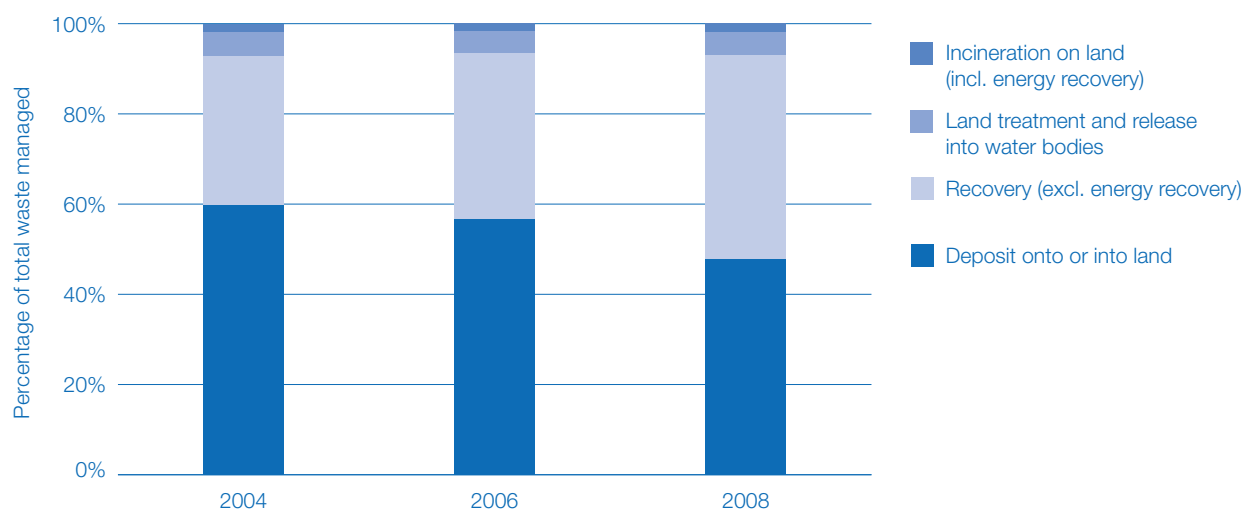
Source: AEA Energy & Environment

Graph 3: Bathing Water Surveys, Percentage Compliance with Mandatory Standards: UK, 1988-2011



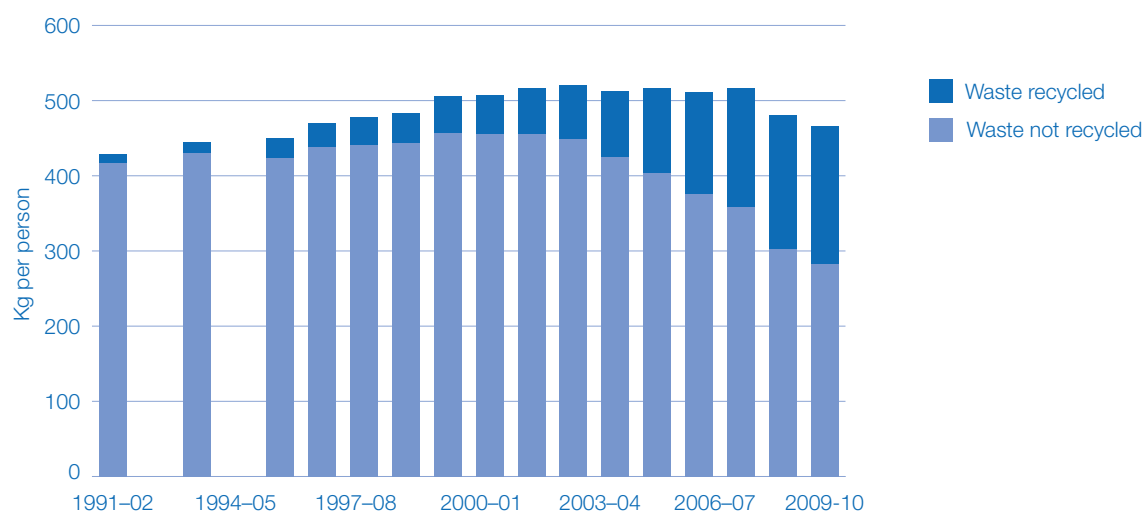
Source: Environment Agency; Scottish Environment Protection Agency; Northern Ireland Environment Agency.

Graph 4: Waste Disposal by Management Method: UK, 2004-2008



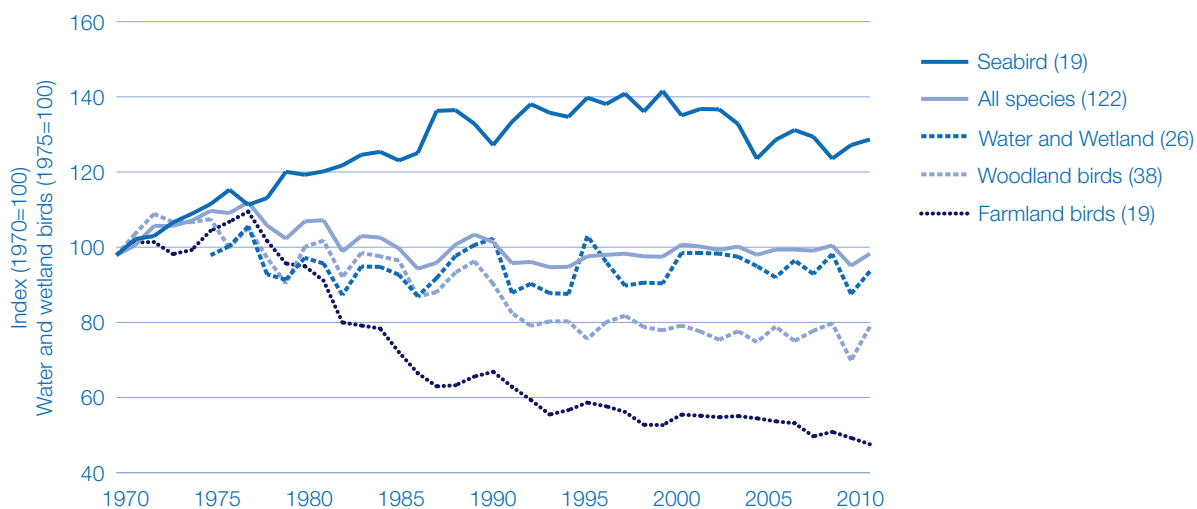
Source: Defra – Waste Statistics Regulation return to Eurostat, 2004 to 2008.

Graph 5: Household Waste Recycled Per Person (kgs): UK, 1991-92 to 2009-10



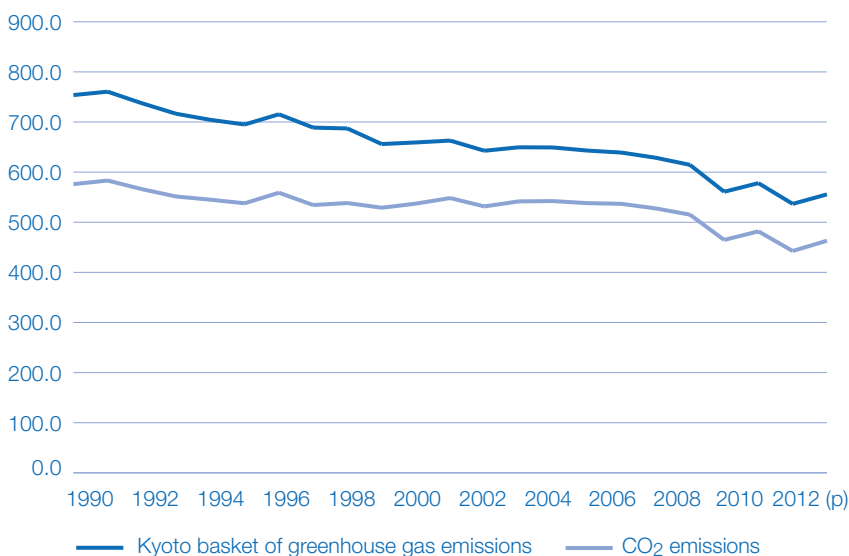
Source: Defra, Environment Agency, Scottish Environment Protection Agency, Welsh Assembly.

Graph 6: Wild Bird Populations in the UK, 1970 – 2010

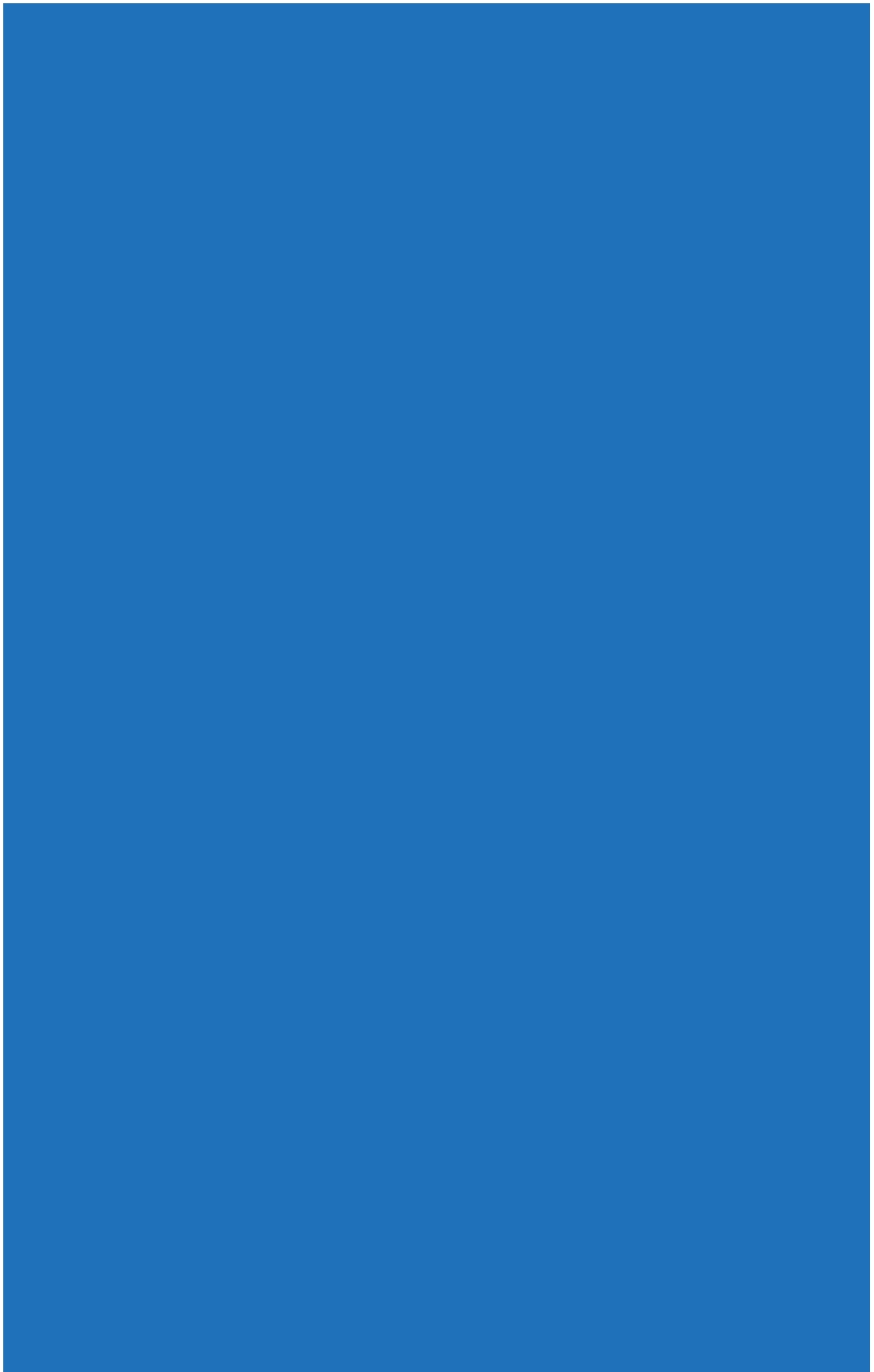


Source: Defra, RSPB and BTO.

Graph 7: Greenhouse Gas Emissions in Million Tonnes Carbon Dioxide Equivalent (MtCO₂e), UK, 1990 to 2012



Source: DECC, Statistical Release: 2012 UK Greenhouse Gas Emissions, Provisional Figures and 2011 UK Greenhouse Gas Emissions, Final Figures by Fuel Type and End-User, 28 March 2013, www.gov.uk/government/uploads/system/uploads/attachment_data/file/193414/280313_ghg_national_statistics_release_2012_provisional.pdf.



Annex A:

Submissions to the Call for Evidence

AB Sugar

ACCON UK Limited

Agricultural Biotechnology Council

Agricultural Engineers Association

Agricultural Industries Confederation

Alberta – UK Office

AMSTaR Consultancy

Anaerobic Digestion and Biogas Association

Association for the Conservation of Energy

Association of Drainage Authorities

Association of Manufacturers of Domestic Appliances

Aviation Environment Federation

BAE Systems PLC

Bearder, Catherine MEP

Benson, Nicola

British Aggregates Association

British Association for Shooting and Conservation

British Ceramic Confederation

British Coatings Federation

British Ecological Society

British Glass Manufacturers Confederation

British Plastics Federation

British Ports Association

British Standards Institution
Brussels and Europe Liberal Democrats
CBI Minerals Group
Centre for Ecology & Hydrology
Centre for European Reform
Chartered Institution of Wastes Management
Chartered Institution of Water and Environmental Management
Chartered Quality Institute
CHEM Trust (Chemicals, Health and Environment Monitoring Trust)
Chemical Business Association
Chemical Industries Association
Chief Planning Inspector at the Planning Inspectorate
Civitas – The Institute for the Study of Civil Society
Clean Air in London
ClientEarth
Co-Chairs of the Liberal Democrat Environment Parliamentary Party
COGEN Europe
Combined Heat & Power Association
Confederation of Paper Industries
Confederation of UK Coal Producers
Convention of Scottish Local Authorities
Cooper, Dr. David
Coulton, Alex
Department of the Environment Northern Ireland
DLA Piper UK LLP
Dŵr Cymru Welsh Water
Ecometrics Research and Consulting
EDF Energy
EEF, the manufacturers' organisation
Energy UK
English Heritage
Environmental Services Association

European Commission
Federation of Small Businesses
Fjordr Limited
Food and Drink Federation
Fresh Start Project
Friends of the Earth
Future States (Global) Limited
Future Training College
Greater London Authority
Green Alliance
Greenpeace
Haigh, Nigel
Hamza-Goodacre, Dan
Independent consultant on International Climate Change Policy
Institute for Archaeologists
Institute for European Environmental Policy
Institute of Environmental Management and Assessment
International Air Transport Association
International Meat Trade Association
Joint Links – Wildlife and Countryside Link, Northern Ireland Environment Link, and Wales Environment Link
Joint Nautical Archaeology Policy Committee
Lambert, Jean MEP and Taylor, Keith MEP
Law Society of England and Wales
LEAF (Linking Environment and Farming)
Local Authority Recycling Advisory Committee (LARAC)
Local Government Association
London Borough of Havering
Lubetech
Lyons, Peter
McCann, Dominic
Mineral Products Association (aggregates and industrial minerals)
Mineral Products Association (cement and lime product groups)

Modularis, Prunella

Mooney, Stephen

National Association of Local Councils

National Farmers Union

NATS (National Air Traffic Services)

Natural Heritage Directorate Of Northern Ireland Environment Agency

Noise Abatement Society

North London Waste Authority

Northern Ireland Environment Link

Northern Ireland Food and Drink Association

Northern Ireland Local Government Association

Nulife Glass Processing Limited

OnePlanet Solutions Limited

Open Europe

Policy Exchange

Prospect

Prowse, Hazel Anne

Quiet Market Approval Limited

Ravnkilde, Kristian

Redcar & Cleveland Borough Council

Renewable Energy Association/Organics Recycling Group

Renewable Energy Systems Limited

RenewableUK

Resource Association

Rowan, Peter

Royal Society for the Protection of Birds

Royal Yachting Association

RWE

Sandbag Climate Campaign

Scotch Whisky Association

Scottish Government

SEEG – Senior European Experts Group

Shaw, Thomas Leslie

Simmons, Peter

Society of Motor Manufacturers and Traders

Sustainable Development Unit, NHS England and Public Health England

TaxPayers' Alliance

Thames Water Utilities Ltd

The Freedom Association

The Wildlife Trusts

Thompson, James

Transform Scotland

Tyndall Centre for Climate Change Research

UK Chamber of Shipping

UK Environmental Law Association

UK Green Building Council

UK Major Ports Group

Umweltdachverband

University of York, Environment Department

Valpack

Views of Irish NGOs and business groups collated by the British Embassy in Dublin

Water UK

Wedge Group Galvanizing Ltd

Weitsch, Martina

Welsh Government

Whale and Dolphin Conservation

Wildfowl & Wetlands Trust

Wilson, Dr David C

Wine and Spirit Trade Association

WRAP (the Waste and Resources Action Programme)

WWF

Annex B: List of Organisations that Attended Workshops for the Environment and Climate Change Report

Brussels

Attendees:

British Agricultural Bureau
Change Partnership
Chris Davies MEP
Confederation of British Industry
Convention of Scottish Local Authorities
Copa-Cogeca
East of England Brussels Office
Eurelectric
European Climate Foundation
European Commission, DG ENV
European Policy Centre
Fiona Hall MEP
Institute for European Environmental Policy
Merseyside Brussels Office
RWE Group
Sandbag Climate Campaign
Scotland Europa
The Sustainable Synergies Group
Transport and Environment
University of Cambridge Programme for Sustainability Leadership
Welsh Government, EU Office

Bilateral meeting with the British Property Federation

Bilateral meeting with the Home Builders Federation

Climate Change

Attendees:

PWC
Greenpeace
Institute of Civil Engineers
British Marine Federation
EcofysGlass and Glazing Federation
Prospect
UNICEF
Anaerobic Digestion and Biogas Association
AIC
Mineral Products Association
University of Cambridge
Thames Water Utilities Ltd Forestry Commission
RSPB
DLA Piper UK LLP

London One

Attendees:

Aerospace Defence Security
Albion Water
Alstom
Animal Health and Welfare Board for England
Associated British Ports
Association of Drainage Authorities
Association of Manufacturers of Domestic Appliances
BioRegional
BP plc
British Marine Federation

Carbon Disclosure Project
Chartered Institute of Ecology and Environmental Management
Chartered Institution of Wastes Management
Client Earth
Confederation of British Industry (CBI)
Confederation of Paper Industries
Copenhagen University
EDF Energy
Electrolink Recycling Limited.
Energy UK
English Heritage
Environment Agency
Environmental Investigation Agency
Environmental Services Association
Environmental Sustainability Knowledge Transfer Network
Essex County Council
Eunomia Research & Consulting Ltd
European Climate Foundation
Flybe
Food and Drink Federation
Food and Environment Research Agency
Forestry Commission England
Greater London Authority
Green Alliance
Health and Safety Executive
Herbert Smith Freehills LLP
Ian Cameron Media & Communications Ltd.
IBM
Institute for European Environmental Policy
Institute of Environmental Management & Assessment
Interserve Defence Ltd
Linklaters LLP

Living with Environmental Change
London School of Economics
Maltsters' Association of Great Britain
Marine Management Organisation
Met Office
Mineral Products Association
Ministry Of Defence
Nabim (British and Irish Millers)
Petrol Retailers Association
Policy Exchange
Royal Yachting Association
RSPB
RWE npower
SaBur Advisory Service/Black Swan
SSE
Stevens & Bolton LLP
Sustainability West Midlands
Thames Water Utilities Ltd
The Law Society
The Society of Motor Manufacturers & Traders Limited
Timber Trade Federation
Town and Country Planning Association
Travers Smith LLP
UK Chamber of Shipping
UK Environmental Law Association
UK Green Building Council
UK Non Ferrous Alliance
UK Petroleum Industry Association
University College London
University of East Anglia
Valpak Ltd
Waste & Resources

Water UK

Westminster City Council

Whale and Dolphin Conservation

Wildlife Trusts

Wine and Spirit Trade Association

WRAP (the Waste and Resources Action Programme)

WWF

London Two

Attendees:

Centre for European Reform

Confederation of Paper Industries

Defra's Strategic Regulatory Scrutiny Panel/Aldersgate Group

Friends of the Earth

Institute for European Environmental Policy

Intellect

Prospect

University of Durham

Wine and Spirit Trade Association

London Three

Emerging Themes

Attendees:

Aviation Environment Federation

Confederation of UK Coal Producers

Institute of Environmental Management & Assessment

RenewableUK

Royal Meteorological Society

RWE npower

Society of Chemical Industry

Wedge Group Galvanizing Ltd

Nature Protection and Biodiversity

Attendees:

Anaerobic Digestion and Biogas Association
British Marine Federation
Essex & Suffolk Water
National Farmers' Union
RSPB
Wildlife Trusts

Northern Ireland (Hillsborough)

Attendees:

AgriAD Ltd
Belfast City Council
Belfast Healthy Cities
Colleges Northern Ireland
Department of Agriculture and Rural Development in Northern Ireland
Department of the Environment in Northern Ireland
Department for Social Development in Northern Ireland
Energia
Linden Foods
Moy Park
Northern Ireland Environment Link
Northern Ireland Food and Drink Association
Northern Ireland Local Government Association
Northern Ireland Science Park
Omagh Council
Queen's University
Ulster Wildlife

Scotland (Edinburgh)

Attendees:

Transform Scotland
Quality Meat Scotland

Scottish Power

Scottish Water

The Environment Exchange

Scotch Whisky Association

Scottish Government

Scotia Gas Network

Waste and Resource Management

Attendees:

Anaerobic Digestion and Biogas Association

Chartered Institution of Wastes Management

Environmental Services Association

Improvement and Efficiency South East

Intellect

Kent County Council

Nabarro

North London Waste Authority

UK Environmental Law Association

Water and Marine

Attendees:

Marine Management Organisation

National Farmers Union

British Marine Federation

Wildlife Trusts

Wales (Cardiff)

Attendees:

Aberystwyth University

Bat Conservation Trust

Constructing Excellence in Wales

Cynnal Cymru-Sustain Wales

Dŵr Cymru Welsh Water
Institute for Archaeologists
National Assembly for Wales
Panasonic
Renewable UK Cymru
RSPB
Soil Association
The Carbon Trust
Welsh Government
WWF

York

Attendees:

BRE Global Limited
Food and Environment Research Agency
Kingston upon Hull City Council
Prospect
United Utilities
University of York

Annex C:

List of Acronyms

ADBA	Anaerobic Digestion and Biogas Association
AIC	Agricultural Industries Confederation
BAE	BAE Systems (British multinational defence, security and aerospace company)
BCC	British Ceramics Confederation
BPF	British Property Federation
CAP	Common Agricultural Policy
CBI	Confederation of British Industry
CEH	Centre for Ecology & Hydrology
CER	Centre for European Reform
CHEM	Chemicals, Health and Environment Monitoring Trust
CIA	Chemical Industry Association
CITES	Convention on International Trade in Endangered Species
CIWM	Chartered Institution of Wastes Management
COSLA	Convention of Scottish Local Authorities
CPI	Confederation of Paper Industries
DECC	Department for Energy and Climate Change
Defra	Department for Environment, Food and Rural Affairs
DGs	Directorate-Generals
DOENI	Department of the Environment in Northern Ireland
ECC	European Economic Community
ECHA	European Chemicals Agency
ECJ	European Court of Justice
EDF	EDF Energy (Energy supply company)
EEF	The Manufacturers' Organisation
EFSA	European Food Safety Authority
EIA	Environmental Impact Assessment
EMAS	Eco-Management and Audit Scheme
ESA	Environmental Services Association
EU	European Union

EU ETS	EU Emissions Trading System
EU FLEGT	EU Forest Law Enforcement, Governance and Trade Action Plan
FOE	Friends of the Earth
FSB	Federation of Small Businesses
GDP	Gross Domestic Product
GLA	Greater London Authority
GM	Genetically Modified
GMOs	Genetically Modified Organisms
Green MEPs	Jean Lambert MEP and Keith Taylor MEP
HBF	Home Builders Federation
IATA	International Air Transport Association
IEEP	Institute for European Environmental Policy
IEMA	Institute of Environmental Management and Assessment
IMO	International Maritime Organisation
INNS	Invasive Non-Native Species
LARAC	Local Authority Recycling Advisory Committee
MEPs	Members of the European Parliament
MPA	Mineral Products Association
MPs	Members of Parliament
NFU	National Farmers Union
NGOs	Non-Governmental Organisations
NILGA	The Northern Ireland Local Government Association
NLWA	North London Waste Authority
OECD	Organisation for Economic Co-operation and Development
OSPAR	The Convention for the Protection of the Marine Environment of the North-East Atlantic
QMV	Qualified Majority Voting
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
REFIT	Regulatory Fitness and Performance Program
RES	Renewable Energy Systems Limited
RSPB	Royal Society for the Protection of Birds
RWE	RWE Group (Energy supply company)
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SEEG	Senior European Experts Group
SMEs	Small and Medium Enterprises
SPA	Special Protection Area
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UKELA	United Kingdom Environmental Law Association
UN	United Nations

UNFCCC	United Nations Framework Convention on Climate Change
US	United States of America
WEEE	Waste Electrical and Electronic Equipment Directive
WT	The Wildlife Trusts
WTO	World Trade Organisation
WWF	World Wildlife Fund