



Environmental Audit Committee

Oral evidence: [Assessment of EU/UK environmental policy](#),
HC 537

Wednesday 6 January 2016

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Written evidence from witnesses:

- [Lloyd Austin](#)
- [Trevor Hutchings](#)
- [Professor Colin Reid](#)
- [Nick Molho](#)
- [Dr Stephanie Merry](#)

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Members present: Huw Irranca-Davies (Chair); Peter Aldous; Mary Creagh; Geraint Davies; Carolyn Harris; Peter Heaton-Jones; Mr Peter Lilley; Caroline Lucas.

Questions 112 - 173

Witnesses: **Lloyd Austin**, Convenor of Scottish Environment Link's Governance Task Force, Wildlife and Countryside Link, **Trevor Hutchings**, Director of UK and EU Advocacy, World Wildlife Fund UK, and **Professor Colin Reid**, Professor of Environmental Law, University of Dundee Law School, gave evidence.

Q112 Chair: Welcome to this afternoon's session of the Environmental Audit Committee and to our guests and witnesses here. This is an ongoing inquiry into the assessment of EU/UK environmental policy. You are all very welcome. I will briefly introduce who we have in front of us this afternoon on our first of two panels: Mr Lloyd Austin, Convenor of Scottish Environment Link's Governance Task Force and also from the Wildlife and Countryside Link; Mr Trevor Hutchings, Director of UK and EU Advocacy, the World Wildlife Fund UK; and Professor Colin Reid, Professor of Environmental Law, University of Dundee Law School. You are all very welcome and a happy new year to you. Thank you for joining us.

Are you happy if we go straight into our questioning? We are going to cover quite a wide range of issues as we go through and we may bounce back to you as well, but may I put

a question to the panel broadly? I do not know who wants to answer this one, but we will start off broadly and then go into real detail. To what extent do you think the European Union has been able to resolve environmental issues that impact a small group of member states, or countries and regions within member states? Setting the high-level objectives is great, but resolving those environmental issues at a lower level, and particularly even within the UK where we have devolved nations as well, is a different kettle of fish. How successful do you think it has been? Who wants to start us off?

Trevor Hutchings: Chairman, thank you very much. I will start. I am delighted to be here and very much welcome this inquiry about informing the debate on the environment ahead of the EU referendum.

On your question, the UK has a fairly good track record in negotiating EU environmental policy. It is a main player within that forum. It has shaped and led much of the environmental EU legislation that we have before us today, and it is an early mover. But, to your point on addressing regional variations, the UK is the member state and the UK leads negotiations on behalf of the UK. Where matters are reserved, which the environment largely is, clearly it needs to have a position and a negotiating position that can be agreed within the nations of the UK, and there is a mechanism to allow that to take place. It works fairly well. There are politics involved in that with national Governments in many devolved Administrations, and there is a mechanism in place.

In recent times, European legislation has mainly been in the form of directives, which do provide greater flexibility so that member states may implement them in the way that suits them best. We see that in the Marine Strategy Framework Directive, the habitats directive and so on. There is an issue about whether member states feel, especially in the UK, that they are able to make their own decisions and to implement regulations such that that suits them, while remaining compliant. Of course, that degree of flexibility has to be balanced with, on the one hand, trying to achieve a level playing field and consistency across Europe, while also applying flexibility for member states to apply them as they see fit.

It is a case-by-case basis depending on the legislation. We see examples where that flexibility has led to under-implementation, and the water framework directive in the UK is something that WWF UK says is being under-implemented. Flexibility perhaps has not been welcome in that regard, but there will be other areas where a more stringent and more regulatory approach is more appropriate. For example, setting minimum energy efficiency standards would be an area where one would not want flexibility because we are trying to achieve a level playing field to drive a market, and to improve or reduce emissions in that particular case.

That is the view from me, but I know colleagues here might just want to add to that.

Lloyd Austin: I agree with much of what was said. I would add that the environment is very much a cross-border issue. Obviously there is a range of global issues related to pollution and migratory species, and things need to be looked at on that large scale. River catchments are another example of things that are often cross-border, whether that is cross-border within the UK's jurisdictions, like the Tweed or the Solway, or cross-border between member state jurisdictions. That is one of the reasons why it benefits looking at the environment on an EU scale and setting common objectives, but it does need to be implemented and delivered locally. That is where the balance Trevor has spoken of needs

to be struck—the balance between consistent standards and objectives, and the delivery that is suited to local jurisdictions. Devolved Administrations in particular are keen to see an engagement. They have a key role to play in delivery and, therefore, they also have a key role to play in the development of policy to suit that delivery.

Q113 Chair: Just a brief illustration of that. Currently, many areas of the UK are being hit by traumatic flood incidents again. We expect that there will be more and more of these. If you look at the Severn Trent River catchment, it starts in the hills of mid-Wales, flows down through Tewkesbury, all the way down to the Severn Estuary, in and out of England. The implications of such things as land use and drainage approaches on the uplands are equally applicable to the town of Tewkesbury, the same as we see in Cumbria. Do you think the mechanisms that we have in those overall high-level objectives and directives of what we need to do—for example, in climate change adaptation and how we respond to flooding—are adequate to give not only the flexibility to devolved nations, but the rigour that we meet the challenges of what we need to do in climate change adaptation? That is one example. We could look at others like air.

Lloyd Austin: In the example you have used, a piece of European legislation, the flood risk management directive, exists that has the right generic objectives. The different authorities across the UK—SEPA in Scotland, the Environment Agency in England and Natural Resource Wales—are responsible for implementing that, but we have not managed to get as far down the implementation road as we ought to because of challenges in integrating flood management with other land use management challenges, with the need for more woodlands in the uplands, with peatland restoration to slow down water flow and so forth. The objectives of sustainable flood management are in that directive but they are yet to be implemented, partly because when the directive was set, the timetable for implementation was so long that we are not behind that timetable. It was just that our aspirations were greater than our delivery ability.

Chair: Before we bring in Professor Reid, Peter, you have a question that flows directly from this.

Q114 Mr Lilley: There are two aspects to look at in any piece of legislation or policy. One is: is it a good policy? The second is: who should be deciding on that policy—should it be decided collectively at a European level or nationally, or even subnationally? I am interested predominantly in the European versus UK. Can you think of any examples of legislation that is done presently at a European level, but does not need to be done at that level, such as flood management for example? Why should we be worried about the flooding policy of Germany, or should Germany be worried about the flooding policy of the UK?

Trevor Hutchings: Many of the environmental issues are so interconnected that to look at any one of a nation—

Mr Lilley: No, I am asking about the ones that are not.

Trevor Hutchings: For example, whether it is soil quality or national rivers, obviously on the Continent rivers stretch across multiple member states. Within the UK, agricultural run-off into rivers that run out into the seas then becomes a European issue and should be dealt with in a Europe-wide way.

Q115 Mr Lilley: Is the prime worry about run-off of soil about what it does to the sea or what it does to the soil?

Trevor Hutchings: What I am trying to illustrate is the interconnectedness of environmental issues.

Q116 Mr Lilley: I entirely accept that some things are interconnected if they are cross-border. Air travel is across borders. There may be different views about how important CO₂ is, but clearly it is not limited to the country that emits it. However, flooding seems to be a national issue as far as the UK is concerned. Rivers, as far as the UK is concerned—I am talking about the UK—are a UK issue. If we were on the borders of the Rhine, we would worry about what other people were doing on the Rhine. We are not. Why should other people be worried about what happens to the UK?

Trevor Hutchings: May I just deal with the rivers point and then perhaps I will turn to my colleague on flooding? If rivers are a source of pollution in the marine environment through, for example, agricultural run-off, pollution in the marine environment is an issue not just for the UK, but for marine member states. That is why there is interconnectedness in that example. I will turn to my colleague on flooding, in particular.

Professor Reid: Obviously the UK has some international waters in Ireland, but the commonly quoted figure is that 80% of marine pollution comes from land-based sources and flooding of rivers is one of the occasions on which lots of nasty stuff of all sorts, including soil, gets washed into the sea, which has an impact, so it does have an international implication. I am sure there is a spectrum of issues, some of which immediately have international implications and some where the impact is more indirect, and you could argue about where you were going to control the cut-off, but it is very hard to say that anything the EU deals with is exclusively a national issue that does not have implications beyond a single country's boundary, either because of its impact on the environment elsewhere, or because of its potential in a competitive commercial free trade aspect.

Q117 Mr Lilley: Rather widening the scope, I am very hazy as to what the European legislation is or does, or why it is there. There has been great debate about flooding recently but no one has been mentioning that the primary issue is whether it is polluting the North Sea. I can see that that theoretically might be an issue and that there may be aspects of flooding policy that should be controlled across Europe to prevent pollution in the North Sea. To what extent does the flooding directive focus on the effect on the sea, rather than the effect on flooding?

Lloyd Austin: The impact on the sea is more likely to be caught by the water framework directive, which goes out to three nautical miles, and also to be linked into the marine strategy framework directive, which is about linking the marine and the freshwater environments together.

The one thing I would say about flooding and rivers is that they are best addressed at the catchment level. Catchments are very much cross-border and they are as much cross-border in the UK as they are on the Continent because of the fact that we have a devolved setup. So the Tweed and the Solway are cross-border catchments. The Severn, as the Chairman

indicated earlier, is a cross-border catchment, and with the devolved setup, we need to be able to work across jurisdictions and to have a common framework. It does not matter whether that common framework is set by the UK or by Europe, but there needs to be a common framework.

Mr Lilley: It does matter. It might not matter to you, but it matters to some.

Q118 Chair: Can I pick up on Peter's quite interesting challenge? Are there areas that you can think of currently that would not need to be delivered on a pan-European basis? I am thinking, for example, that back in 2010, there was a movement that has now grown towards organisation of the North Sea fisheries on a North Sea basis. It is a multinational basis and it stemmed from a European flow of directives to pass those powers down, but it is not pan-European—it is those countries that fish within those seas. In response to Peter, are there areas that you think do not need to be done on even that basis, and that we can do purely on a national basis?

Lloyd Austin: The CFP regionalisation is a classic example of where, for the North Sea and the north-west waters and the different parts of the EU's waters, the Regional Advisory Councils are now made up of the member states for those particular regions. It is the nations around the North Sea that are involved in the North Sea fisheries discussions—not the whole of Europe, but the nations around the North Sea. That is an appropriate sub-EU level, but it still includes the international co-operation that you need for a common resource like the North Sea.

Q119 Chair: I am going to have one final try. Is there any area in the broad remit of environmental policy that you can see could, and maybe should, be done only on a state-by-state basis—or even a devolved nation-by-devolved nation basis—that would work?

Trevor Hutchings: Nothing immediately springs to mind, but the point is made that the marine example is one where it is a European piece of legislation, but it is recognising regionalisation like the North Sea and applying measures that only apply in the North Sea. There are other measures that will apply only in the south-west approaches, for example. That is a model that is already there, and if there are other areas of environmental issue that could be dealt with on that basis, that seems appropriate.

Chair: We are going to move on to a different area.

Q120 Geraint Davies: Moving on. Obviously there is devolution of management, but can I simply ask to what extent does the EU Commission take account of the forward costs and benefits of legislating when proposing new laws or amendments to existing laws? I want to ask Professor Colin Reid first. I also want to ask whether he thinks that perspective will change with the advent of TTIP—the Transatlantic Trade and Investment Partnership? There is a concern that new laws will invoke lawsuits from corporations who say, “We want you to give us back the costs of that new environmental law,” and the game will completely change. What is your view on whether they take into account the current costs and benefits, and whether those will massively change?

Professor Reid: I am not sure I can be of all that much assistance on this. It is not an area I have looked at in great detail. The law-making and policy-making process is quite a slow one that should have impact assessments. It does have feed-in from various institutions.

The whole issue of things like TTIP and international investment agreements is one that colleagues in my own university and others do a lot of work on, but I am afraid it is a bit beyond me to give a detailed answer on that.

Q121 Geraint Davies: Can you tell us whether you think the trade up between costs and benefits, on the basis of the evidence available, is in balance at the moment, or are environmental laws too great a cost? There is no proper realisation because it is all about the environment. How is that balanced and should that be addressed?

Professor Reid: That raises perhaps a more general question about how we value the environment and so on. One of the big challenges today, having dealt with some of the most obvious dirty point-source pollution, is trying to get the environment embodied, integrated and embedded in our thinking about various things. The ideas that are developing about natural capital, the whole ideas about sustainability and so on would suggest that our classic way of doing cost-benefit impact assessment has undervalued the benefits that we get from the natural environment, and it is the chance to get those into the equation. The sort of cost-benefit analysis and impact assessment that has been done in the past has been skewed, I know some people would argue, because the benefits from the natural environment have not been properly valued. They were now starting to get the tools, the techniques and the interests in developing that.

Q122 Geraint Davies: Can I turn the question around to ask whether the implementation of EU environmental policy remains a challenge? By that I mean is there a balance between costs and benefits? Are we finding that in parts of Europe manufacturers can just bung a lot of waste in the rivers and not worry about compliance, and therefore have lowered costs, but that elsewhere it is not implemented in the same way? Is there a coherence and balanced approach to costs and benefits to the environment industry across Europe? Maybe I can have some brief comments from the others.

Professor Reid: In terms of the results, implementation enforcement is recognised as a major difficulty across the EU. In almost all the studies, for example the recent evidence on the fitness check of the Natura directive, a lot of the emphasis has been that the problem comes with the implementation and enforcement stage and, yes, it is widely accepted that there are differential levels of enforcement across Europe. Tackling that would go a long way to giving people comfort that there is a level playing field and realising the benefits that were meant to be achieved by the policy, and perhaps on this crucial issue of trying to internalise the environment. The environment costs and benefits become an automatic and natural part of people's thinking in the same way that financial aspects are, rather than an add-on of something that is of interest only to one small group of people.

Geraint Davies: I do not know whether anyone wants to comment on that.

Trevor Hutchings: I would like to add something on the natural capital point. This goes to the central issue as to why we do sea environment and degradation, which is that the impact on the environment is often costed at zero and all the headlines go on the impact of growth of business, when in fact protection of the environment goes hand in hand with economic and social wellbeing and development. You cannot look at them in isolation. We want to see much higher standards of cost-benefit analysis when it comes to all sorts

of regulation: what is the impact on the environment; how is it depleting natural capital; and what are the benefits of natural capital preserving that in terms of cost-benefit analysis? It is about making sure that externalities like climate change and air quality health benefits are properly factored in when policies develop, whether it is environmental policy or other types of policy. The Natural Capital Committee did some great work in the last Parliament and we very much want to see that transposed into practical application and decision making within Whitehall, but also across Europe.

Q123 Geraint Davies: Is there is a beggar thy neighbour problem with this, namely that companies go in where they think they can get away with environmental law? This is an argument, of course, in favour of having an integrated environmental policy as opposed to one that is then broken up into bits.

Lloyd Austin: First, I would agree with my colleague's comments about cost-benefit and the need to deal with the costs and benefits to the environment, as well as the financial costs of environmental policies. In terms of implementation, that is one of the key challenges. As Colin said, the fitness check on the birds and habitats directives has demonstrated the challenge is proper implementation and proper enforcement across Europe, which is what would prevent what you call the beggar thy neighbour approach of enabling different parts of the EU to undermine each other's efforts by being more flexible than the framework should allow. Implementation and enforcement is the challenge for the future.

Trevor Hutchings: Could I come back on implementation? It is clear that implementation is an issue and that we need to improve that across the Union, but even if we were fully implementing the current suite of environmental legislation, it still would not prevent the continuing decline in species and habitat status that we see in Europe at the moment. The European Environment Agency's recent *State of Nature* report in Europe was very clear that we still have major problems. I do not think the current suite of legislation would meet international commitments that the EU has recently signed up to in terms of the sustainable development goals and the Paris climate agreement. Implementation is an issue, but that will not solve everything. We do need to go further to ensure that the climb has stopped and we are meeting international commitments.

One example of where Europe has a key role—clearly it is mainly the position of member states to ensure that they are enforcing European legislation within their national boundaries—is in the marine area, and I have experience of this. There is a European inspection service based in Vigo that is there to inspect the inspectors. It has an audit function to ensure that member states are properly fulfilling their obligations under the common fisheries policy and other marine environmental legislation. That is a model that exists. It is not perfect, but it does mean there is resource and capacity within the European institutions to make sure that there is a level playing field of implementation to help member states and to take them to task when they are not implementing legislation.

Chair: There are so many questions that flow out of what you have been saying already, but I am going to hold back because we all have things we would ask you. Peter, over to you.

Q124 Peter Aldous: My questions are mainly concentrated on Professor Reid but anyone else who would like to come in should, by all means, do so. It really concerns devolution. As we know, the EU has developed a framework to encourage consistency in member states on approaches towards implementing environmental policies. In the absence of that framework, do you think that the different parts of the UK would be taking different approaches to managing environmental issues?

Professor Reid: Are you suggesting that if we came out of the EU—

Peter Aldous: No; in the absence of that framework.

Professor Reid: It is some time since I did detailed work on this, which was mainly during the first two periods of the old Government. The message that came out very clearly then was that a lot was happening at the UK level, between the UK and the devolved Governments, based on information arrangements and conversations, and knowing each other, with the civil service having the same background, so that things were going along more or less the same. Over time, inevitably, the different devolved Administrations are going to drift apart because the accumulation of minor differences, both institutionally and structurally, are going to get wider and wider. The way in which Natural Resources Wales lumps and groups things together means that new initiatives are going to be dealt with in a different way from Scotland, England and Northern Ireland, because it has its own arrangements as well.

There are issues about how things will going forward. The idea of using directives for achieving so much EU policy is that you have the leeway to accommodate that, but you are accommodating within a certain envelope, so you know what everybody is working towards. There are brakes and dampeners on how far things can go differently. I do not have any direct personal experience or evidence of this. I suspect the way in which the UK has worked, and is still working, would mean that that EU level is not absolutely vital but, over time, as differences accumulate, it may become more important because the tension between the different ways of doing things within the UK may get greater.

Q125 Peter Aldous: So you think the framework does have a future?

Professor Reid: I suspect it has a future because it helps people to be going along the same broad road, rather than risking dislocating too much.

Q126 Chair: Would you also apply the same thing in terms of devolution within England? We have come to a position where Scotland and Wales have an established amount of devolution in different asymmetric ways but there is a big drive towards cities and city regions. When we deal with air pollution and things like that, or even catchment management, who will deal with catchment management? Would you say that the framework was increasingly useful as you have that devolution within England as well?

Professor Reid: The whole point of dividing power is to allow different people to do things in a different way—the way they think is best. That has huge benefits, but if you end up having total fragmentation with everybody doing things in different ways inconsistently, that has problems as well. It is trying to find the balance between them. In the first years of devolution, inevitably, because people were starting at more or less the same point, the tensions were less than those that will be developing, not through any conscious differentiation but just because of the accumulation of differences.

In England, you would be starting from the same position but, again, if different levels of government are given significant powers, they will do things differently. You will end up with a more differentiated patchwork where you do need to think about the limits on this and by what means you try to make sure that beneficial differences do not become excessive fragmentation.

Q127 Peter Aldous: We heard in a previous session the view expressed that the UK has played a major role in shaping EU environmental policy. Do you think that, with increased devolution in the UK, there may be a danger we could have less of an impact?

Professor Reid: I suspect that that largely depends on how effectively the UK representation at the EU level operates and develops to take account of the wider differences. As long as it is genuinely a UK representation that is reflecting the different ideas and the different experiences of different parts within the UK, I do not see any reason why it should not continue to have a significant role. The scope for innovation within the different bodies gives rise to more ideas and more input that might be useful in other parts of Europe as well.

Q128 Peter Aldous: Perhaps it might be that those different areas have to adapt their approach to more fit in with the framework?

Professor Reid: I think potentially, but again it is a question of exactly where the boundaries are. It could vary over time on different issues.

Q129 Chair: We are going to move on, unless you want to add anything to that.

I am going to play devil's **advocate again here. If you flip this on its head entirely and say, "Let's do away with directives and frameworks and high-level objectives and all that; let's let a million flowers bloom," some of them would fail, but we would let people get on with what they want to do on environmental management, floods management, the way they use their uplands and what they do with carbon locking—all of this—and then we would have some great innovation, amazing breakthroughs and thinking that we do not even have. Would you advocate that?**

Trevor Hutchings: I think you are suggesting, though, that people are not able to do that currently within the framework, while I would argue there are many opportunities for national Governments to take measures beyond and over what is currently at EU level. There are many examples of where the UK Government have done that as an early mover with the marine Act and marine special planning that the EU has caught up on.

There are also many areas where the EU puts in standards, whether they are on energy efficiency, building standards or vehicle emissions standards, dare I say. There is nothing stopping the UK or member states going beyond them in some areas. Some of them need to be set at an EU level, but there are many examples where we could go further. For example, zero-carbon homes, which we all wish was going to come in as a standard for new build of homes, was going beyond any EU requirement at the time. Of course, the Government have not gone there, but in fact they will be required to go nearly there, if not completely the way there, through an EU regulation on energy from building. There are examples where, to your example, this current framework is not a constraint on achieving something you describe.

Q130 Chair: It is not a constraint on doing more. That is the interesting thing.

Trevor Hutchings: Indeed, yes.

Professor Reid: There are two major constraints of letting 100 flowers bloom. One is the free market—the common market. Environmental standards and rules can be abused as a way of cutting out the free market to the extent that that is seen as being a policy objective that is going to be enforced. That limits the scope for doing things completely differently. The other is that international obligations that the UK separately, or the UK through the EU, is a member of impose requirements on nature conservation, air pollution, international trade and waste that are going to affect things significantly. Again, there are the international trade agreements and the World Trade Organisation. The rules mean that you cannot use environmental standards as a way of protecting your own industry, so even saying we will get rid of the European level still leaves that wider international level and there is the common market issue.

Chair: Brilliant, thank you. This has inspired three colleagues who want to come in now.

Q131 Geraint Davies: Trevor Hutchings mentioned vehicle emissions. We know the problems with VW and we also know now that the Department of Justice in America is going to sue VW, yet we see silence across Europe. Why do you think we are not taking legal action against VW in Britain or in Europe? Is it because nobody knows who should be doing it or what?

Trevor Hutchings: There is a question. The point I was making is that minimum standards are an effective way in many cases for driving innovation and in ensuring that industry has a level playing field and can drive markets and environmental benefit from having standards that are set that people can aim towards. Building standards, vehicle emissions standards and white goods energy use standards are examples of those. Clearly there is an issue with implementation, as identified by the Volkswagen example, and if there is illegal activity there, that needs to be dealt with. I do not think anyone would argue against that, but for me that is not necessarily a problem with the design of the regulation; that is about enforcement and implementation.

Q132 Geraint Davies: But the question is whether Europe or parts of Europe have the teeth or the guts to take on corporate abuse and so far we have seen that it has not in this case, haven't we, but the Americans have?

Trevor Hutchings: I think we would all want to see that case dealt with in the most appropriate way. I do not think anyone is going to argue against that. The point has been made by this Committee that implementation of environmental legislation is an area where we need to see further improvement and I certainly will not disagree with that.

Q133 Peter Heaton-Jones: I wanted to pick up on something you said, Mr Hutchings, two or three answers ago now. You listed a number of initiatives the UK has taken where we have gone further than the EU directive would have wanted us to. We have furthered that. You mentioned marine, for instance. I am just interested whether you think we

needed to have the EU directives in place in order to make us do that, or that we would we have gone further and have done what we did anyway.

Trevor Hutchings: I am absolutely clear in my mind that there are areas of environmental legislation that would not have happened if the UK had been acting alone and needed to act off its own bat to bring that in. There is absolutely no doubt that having an EU process that is driving a number of areas of environmental legislation is the reason we have it, but it is not one size fits all. Where there is political interest in an issue, the UK, as in the case of marine, has gone further and ahead of Europe because the politics were there at the time.

At a lower level, if I can say that, even in the Welsh Assembly Government there is a recent example there on their Well-being of Future Generations Act that is very progressive in going beyond anything that is being forced upon them or the UK at EU level. It is a model for implementing, as we see it, the sustainable development goals and it has been shown up by the UN as perhaps even a global model. There is another example of where that has gone forward not necessarily because of any EU obligation, but because of the politics and the sense of wanting to do something.

Q134 Peter Heaton-Jones: I take an interest in marine in particular, representing North Devon. You have the Biosphere, a huge, very important project. I just want to be clear that I understand you. Do you think the UK would have done what it has done, like the Biosphere for instance, had it not been that we were members of the EU with the EU directive in place, or would we have done that sort of thing anyway?

Trevor Hutchings: To be clear, my answer is that in some areas where there was political appetite, they would do that regardless of being within the EU with an EU obligation to do it. I think that is clear. Where there is a political appetite, a country will go beyond Europe, but I would say there are more areas that the UK Government has been forced into, if you like, because of a European obligation to do so.

Q135 Chair: Mr Austin, do you want to add to that?

Lloyd Austin: I would agree with that, but I would add the caveat that sometimes the political appetite to go ahead of the EU is created knowing that the EU thing is coming along and they want to set an example and take the rest of Europe with them.

The other thing is that the EU directive and the legislative underpinning it is important in ensuring implementation. If the UK implemented something on its own without that back-up, it could choose not to implement it, whereas with the EU situation there is the ability for stakeholders, for instance, to complain to Europe and get the UK or the other devolved Administrations held to account for the actual delivery of the legislative intent.

Q136 Caroline Lucas: Two quick things. Mr Austin, you gave an example about the fact that we can sometimes go ahead of the EU knowing the EU is coming up behind us and we want to get ahead of the game. It would be really helpful, maybe not now but if you had it somewhere else, if we had some concrete examples of where that has been the case.

Lloyd Austin: Trevor's marine example is a classic one where the UK and Scotland—the marine Act in the UK and the Scottish marine Act—were both implementing marine special planning in advance of the marine strategy framework directive. They came along,

but discussions were going on in the early stages of the value of marine special planning at a European level and then the UK and Scotland implemented their legislation ahead of those directives.

Trevor Hutchings: The Climate Change Act would be another one, would it not?

Q137 Caroline Lucas: Thank you. The reason why I originally wanted to say something was coming back to Professor Reid, who was acknowledging that it is often the single market within the EU that can pose constraints in allowing member states to go ahead of the EU norm. Do you think, from an environmental perspective, that the balance is drawn in the right place between the interests of the single market and the interests of the environment? I am thinking about some of the cases I remember as a Member of the European Parliament. There was the famous case—I do not even remember which country it is now—of one of the Nordic countries that had a policy around returning glass and so forth.

Professor Reid: Denmark; the Danish bottles case.

Caroline Lucas: Exactly, and there was the idea that they were no longer able to keep that policy because it was a barrier to the single market. Bearing that kind of example in mind, are they so rare as to not be an issue, or do you think there is something that ideally one would like to revisit in terms of where that balance is struck?

Professor Reid: There is a lot of discussion about that because exactly the same issue arises at the World Trade Organisation level: where does the point come when a legitimate national environmental or health measure is one that should be preserved?

Q138 Caroline Lucas: As you said earlier, it is more if it can be shown to be an artificial barrier to trade. I do not think anyone would suggest that Denmark having this policy was deliberately trying to exclude—

Professor Reid: Not deliberately, but it is still the same question. The two will conflict and where you draw the boundary line is an endlessly debateable question.

Q139 Caroline Lucas: What is your view? Is it in the right place?

Professor Reid: Personally I would say that I think it is slightly too much in favour of the single market division, but when you look in detail at the cases, the reason why cases get to court is because there is a perfectly reasonable argument on both sides and it is a difficult decision in between. We do not see the examples where what would have been good policies never really get developed because it has been argued, “Hold on, the single market will stop.” That is, in a sense, where the interesting research would be to see what ideas have never flourished because they have been squashed as being difficult.

Q140 Caroline Lucas: Has anything been done on that that you are aware of?

Professor Reid: Not that I am aware of, but it is not something I have studied carefully.

Q141 Mr Lilley: Mr Hutchings made a point that he seemed to relish that in his judgment Britain did not have the political appetite to do many of the things we were forced

to do by Europe. You are effectively saying that our democratic will, in your judgment, has been overridden by the EU in a number of areas. Is that what you are saying?

Trevor Hutchings: No.

Mr Lilley: What are you saying?

Trevor Hutchings: I am saying—this is the point I have made—that I think the UK has been a big and leading architect in many of the European regulations, but there will be occasions where it was not something that was a priority for the UK. In those situations, the EU has perhaps made the UK do something it had not prioritised doing itself, not that it did not really want to do, because presumably there are ways of vetoing new EU regulations and so on. There will be areas where we have higher standards of environmental protection because it was not a priority for the Government of the day and it was the EU that brought them in. That is the example I am giving.

Q142 Mr Lilley: Someone said the language of priorities is the language of socialism. It is also the language of democracy. If you are saying our priorities have been overridden by some supranational organisation's priorities, you are saying our democratic procedures are—you said more frequently than the other way round—overridden by EU directives. I find that quite worrying. You obviously do not because you like the results, but as a democrat I find that worrying whatever the results.

Trevor Hutchings: I think this goes to the fundamental basis on which we have signed up to become a member of the European Union and it goes to the heart of the treaties that the UK has signed up to. If the competencies of the environmental issues are the EU competencies as they are, we have examples where the EU has brought in regulation that may not have been a priority for the UK at the time, and that is a fact.

Q143 Mary Creagh: Do you think a good example of that would have been the waste framework directive where, for example, a tiny amount of waste was recycled when that was brought in. I think it was in the early 1990s or the early 2000s; I cannot remember the exact timetable. Then as the landfill tax was brought in there seemed to be quite an appetite for people to recycle their rubbish, rather than chucking it into big holes. For me, that is the one area where we as a country were very far behind and then made very rapid progress in a very short period of time. Can you think of another example where something like that has happened where it was not a national priority, but then it became quite fashionable?

Trevor Hutchings: I think waste recycling is an example of where the UK and Europe have made great strides—of that there is no doubt. Obviously, trying to prove a negative here is very difficult, but EU legislation has clearly helped there, as it has done on chemicals and air quality, and as it does on water quality. The question is: would all of that had happened had we been acting on our own? My answer to your question is I do not believe we would have the kind of standards we have today if the UK had been left to act unilaterally.

Q144 Mr Lilley: You are saying that left to our own democratic will we would not have implemented the standards you would like us to have achieved and that they have been forced on us because of our membership of the European Union and that is a good thing.

Lloyd Austin: The hypothesis you are suggesting depends on what the UK's position was at the Council of Ministers that agreed the European standards that Trevor is talking about. Usually the UK has been leading and arguing for the environmental legislation and has been a good member state in arguing for the EU laws that exist.

Q145 Mr Peter Lilley: I am merely explicating Mr Hutchings's arguments, that no one demurred from, when he said there were more frequent occasions where we were not enthusiastic about something and we were forced to do it than when we were more enthusiastic than the EU required. I am trying to explicate what the implications are. They are uncomfortable. None of us wants to admit it, but they amount to saying our democratic procedures have been overridden by the European Union.

Trevor Hutchings: But I think the point that is being made—

Chair: I am going to pause there, Mr Hutchings. I will simply make an observation, as we move on to Carolyn in a moment, that several of us around the table have had experience of various types within Europe. It was quite interesting when I was dealing with fisheries, and sometimes agriculture as well as environment, that on some of the issues like the marine aspects, my recollection is strongly that we went there representing the will of the UK people because there was a massive coalition of people who were pushing for real advanced, progressive approaches to marine issues, coastal planning and so on. So it was the UK that directly wanted us to, but it was me and the Council of Ministers and others who argued we need to be leading and also to put the case to have some dispensation to be allowed to lead in certain areas, because we were talking about territorial waters and so on, so there are some interesting illustrations in this. Anyway, let us park that for a moment because Carolyn is going to take us on to other member states and their governance.

Q146 Carolyn Harris: First of all, thank you for mentioning Wales and the wonderful innovation of the National Assembly. On that issue, how well do other member states with devolved or federal structures manage environmental issues, Mr Hutchings?

Trevor Hutchings: I do not want to hog the limelight here. There are examples such as Belgium, Spain and Germany where there are regions. There are a number of different examples around Europe where this kind of situation arises. The UK is not unique in that regard. I do not have vast experience in those areas, but there are arrangements for flexibility in implementing and agreeing EU regulations to account for national differences, if you can call it that. As I say, within the UK, we have a mechanism where that largely works, and it is probably more of an issue in some other parts of Europe, but I do not have any clear examples of where it is particularly effective or not.

Q147 Carolyn Harris: Mr Austin, do you have anything?

Lloyd Austin: I was going to say the way the UK Government and the devolved Administrations work together on European issues—whether it is about creating the UK position for negotiating and developing legislation, or about how that European legislation is then subsequently implemented—is not, as Colin indicated earlier, transparent in as much as it is the four Governments operating between themselves with primarily informal links, although there are increasingly more formal discussions as well. As for other member states, in Germany and Austria in particular, the Länder have formal legal rights

of consultation, and in Germany the Bundesrat, the upper house, is made up of Länder representatives and they have a veto on European things that affect matters of competency at the Länder level that would include the environment. So there are more formal mechanisms in Germany and Austria. In Spain, the more autonomous regions of Catalonia and the Basque country have similarly formal arrangements for consultation and engagement.

I think that as devolution is bedding in in the UK and as we see increasing changes and differences in how implementation is happening in the different parts of the UK, there will be a need for us to be more formal in the way our Administrations work together on European issues. But equally, from a stakeholder's point of view, it will need to be more transparent and with more opportunities for engagement by stakeholders in intra-UK discussions in terms of how they decide on a common UK position and how they then implement the forthcoming European legislation. I think there was a recommendation to that effect, for instance, in relation to Scotland in the Smith commission report. As far as I know, there has been no progress on the implementation of that particular recommendation of the report and it will be interesting to see whether the environment might be an area that could be taken forward a bit faster than in other areas.

Q148 Peter Heaton-Jones: I wanted to look ahead if I may. The EU is currently going through the REFIT process, testing all legislation against a range of things, but the environmental policies seem to be uppermost in that. I want to seek your thoughts on what that process needs to achieve. To put my question another way, what are the gaps at the moment in EU environmental policy and directives that you think the REFIT process needs to address? Let us start with Professor Reid.

Professor Reid: I think a problem that has arisen in relation to the REFIT process, particularly in relation to the birds and habitats directives, is that it has been caught up in two different arguments. One is the detail of the directives and exactly how well they work, as well as the technical ways they could be improved or not, and the other is the much bigger argument about deregulation as opposed to environmental protection.

The birds and habitats REFIT got off very much on the wrong foot because it was perceived as being the vehicle for a vast deregulation that was going to happen. That has perhaps created an over-reaction the other way of trying to protect the directives as they stand as if they were perfect, which they are not, the net result is probably that we get nothing happening when clearly both sides would like to see some refinements. You can argue about other issues, but there are some refinements that should come that are going to get missed out. I think it is a real difficulty in this process that you almost need to separate out the technical aspect of the law as it is and as is it being properly implemented, from what the law should be, and the REFIT shoved those together in a way that, in this example, has not been all that helpful.

Q149 Peter Heaton-Jones: I do not want to put words into your mouth. Is another way of saying that the problem with the REFIT process as you see it is that it has become rather too defensive? It is defending and justifying what currently exists, rather than looking at what it needs to be doing.

Professor Reid: Yes, in the current climate, but equally in other climates it could have been the other way round. If the pressure was thought to be not for deregulation but anti-globalisation, anti-modification and anti-industry, you could have seen a very different sort of argument.

Lloyd Austin: I think one of the things the REFIT process has done is to highlight the challenge of implementation and enforcement, and the fact that flexibility exists within implementation if things are implemented well, but equally the framework provides bottom lines below which you cannot pass. That provides standards that need to apply everywhere and the Commission needs to be empowered to ensure those standards are applied everywhere.

Trevor Hutchings: I will pick up on this forward-looking point that everybody needs to look at where the gaps are because we are not going to halt the degradation of the environment across Europe with the current suite of regulations. We are not going to meet our international obligations on the SDGs and climate with the current suite of EU environmental legislation. We need to look forward to see what further is required for that.

The one point I would add on that specifically is that I think there needs to be a greater focus on Europe's environmental impact outside Europe as well as inside Europe. Our supply chain, as the European Union, stretches round the world and we have a huge impact on forestry, fisheries, soil and so on around the world, and I think that needs to be much more front and centre of the debate than it currently is.

Q150 Peter Heaton-Jones: Can I go down the line and ask: in one sentence—literally one sentence—if there is one thing you think the EU needs to be doing better or doing at all that it is not currently doing, what would it be?

Professor Reid: Integrating and internalising environmental issues across all areas of policy. Making sure that the environmental dimension is properly reflected across the board. That it is not an add-on. That it is not something only one DG looks at. That agriculture policy, fisheries policy, chemicals policy, all industrial policy and energy have built into them a consideration for the environmental impact of what is going on that is taken seriously.

Chair: Geraint promises me he has a short one-liner.

Q151 Geraint Davies: Following that, would you agree that the environmental imperatives from Paris and generally should be integrated into this new EU-US free trade agreement, TTIP, and that it is genetically edited so that it provides a blueprint for an environmentally sustainable future rather than a future where Governments are sued by companies for introducing environmental legislation?

Trevor Hutchings: TTIP must not lower environmental standards. It is at risk of doing that and the interstate dispute settlement you are referring to clearly has been an issue. We made sure that TTIP does not result in lower environmental standards. In fact, it does look to the SDGs and the major international agreements we are referring to. To answer the gentleman's point to plug the gaps in the EU timber regulations, which are just—

Lloyd Austin: I would agree with Colin about cross-policy integration, but I would add implementation and enforcement, and also within the UK a better, more transparent and inclusive system of discussion between the devolved Administrations and the UK, and all stakeholders in each of those countries.

Chair: You have been very generous with your time. Thank you very much, but we are going to bring it to a close with Caroline, who is going to come to the nub of some important questions.

Q152 Caroline Lucas: I was forced to put some of the questions we have been having so far the other way around, so the way I wanted to pose the question is: what impact would a decision to leave the EU in the forthcoming referendum have on the UK's capacity to pursue ambitious environmental policies?

Professor Reid: I think it has to be realised that there would still be very substantial constraints on what the UK could do on internally developing its own policy, stronger or weaker, because of our international obligations, both environmental and others, in terms of what our arrangement with the EU in future would be. Would we have a free trade agreement; would we have a European economic area and so on? They all have environmental considerations for product and other standards for the purposes of the single market, and the provisions about not lowering your environmental standards as a way of distorting free trade. There would be opportunities for the UK to become a world leader in all sorts of areas to do with exciting strong environmental matters. Also there would be the potential to retreat, but regarding the freedom of movement, when examining what you could do, you would have to look at this much wider dimension. At present everything is focused on the EU, because a lot of our international obligations are dealt by the EU. From an internal UK point of view, it is often seen as being EU law, whereas that EU law is actually reflecting international law, which will still be binding on us directly, even if we—

Q153 Caroline Lucas: Could you give us a general example?

Professor Reid: A lot of the birds and habitats directives are based on the biodiversity convention and the earlier treaties on that. With a lot of chemicals and emissions stuff, the long-range trans-boundary air pollution convention affects a whole host of noxious gasses and so on, which again binds us.

Q154 Caroline Lucas: The position put forward by people who want to leave the EU is that if we did that we would get rid of all of this stuff that ties us up in knots and is very bureaucratic and so forth. Imagine that the birds and habitats directives and whatever else did not exist. What would we still be bound to?

Professor Reid: I have not seen detail published on it. I have given papers that try to provide a brief overview of this, but I do not have any sort of detailed, thorough analysis.

Q155 Caroline Lucas: I am sorry to interrupt you. Is that in the evidence you have already submitted to the Committee, or can we get access to that?

Professor Reid: A conference I gave is on YouTube, but other than that it is not written up anywhere in detail. I know that the UK Environmental Law Association was thinking

about doing this. The Nature Conservation Working Group was thinking about trying to identify how EU law implementation has an effect on the position in the UK, but I am not sure how far it is looking at, if you got rid of the EU level, how much of the law would need to stay as it is in order to meet the international obligations.

Q156 Mr Lilley: Caroline has a good point. The point I have always said—
Caroline Lucas: You are not going to repeat it, are you?

Mr Lilley: I know it always causes you great distress, but you have a good point, up to a point. The point normally made by those who want to leave the EU is that at present we have no role directly, only indirectly through the EU, in the formation of all these international rulings on chemicals and so on that you mentioned. You used to be involved in this within the civil service, didn't you? You would not directly have participated in that rule-making process because we are part of the EU. If we were not, you would directly have participated in it.

Trevor Hutchings: Member states are involved in the negotiations on an international stage. The recent Paris international agreement is an example of where member states are heavily involved in forming the EU's negotiating position. I do not think it is quite right to say that member states are not involved in these.

Professor Reid: There are a number of examples. It is not an exclusive EU competence. The member states are parties to the treaties individually as well as through the EU. It is a question of whether it is an exclusive EU competence or not.

Mr Lilley: That is where we need to know what competencies are exclusive.

Lloyd Austin: The other question related to it, before one can answer Caroline's question, is what the nature of non-EU membership would be. If you take the Norwegian example, for instance, Norway is obliged to sign up to most of the environmental regulations from Europe without any ability to influence them. There is an advantage of membership over the Norwegian example.

Chair: There we are. Thank you very much. We have run slightly over time, but it has been well worth it. Thank you very much. You have had a good cross-section of interrogations on your views on these various issues, which is right looking at this, as well. Thank you very much for your time. We may be in touch if there is anything else we want to follow up with you and if you would be happy to keep in touch with us, but thank you very much.

Examination of Witnesses

Witnesses: **Nick Molho**, Executive Director, Aldersgate Group, and **Dr Stephanie Merry**, Head of the Ocean Energy Group, Renewable Energy Association, gave evidence.

Chair: We are going to proceed to the second session this afternoon with our second couple of panellists here. Happy new year to you; you are very welcome. Thank you for

bearing with us. We have had some very interesting inquiry sessions already, and I am sure this is going to be equally interesting as well. We have Mr Nick Molho, Executive Director of the Aldersgate Group, and also Dr Stephanie Merry, Head of the Ocean Energy Group, and of course with links with the Renewable Energy Association as well. If you are happy, because time is running on, we are going to go straight into it and we are going to begin with Carolyn.

Q157 Carolyn Harris: Thank you. You both represent a range of UK businesses. Do you believe that the EU environmental policy has a positive or a negative effect on the businesses you represent?

Dr Merry: I represent a fairly small sector in the renewable energy sector, which is wave power and tidal stream power. It is a new technology that does attract a lot of attention from the regulators, and we find that some of the EU environmental directives present regulatory burdens that hinder the sectors growth. We would like to see certain changes made in order to help to take the sector forward.

Q158 Carolyn Harris: I represent Swansea East, where the tidal lagoon is. Do you believe that that has had an effect on the project?

Dr Merry: I am sure that they, like every other marine energy project, will have had to do a very large environmental impact assessment. I can give you an example of the sorts of things that have to happen off the Isle of Wight, which is my own area. They had to submit an environmental impact assessment for a 30 MW project, which is relatively small. It cost over £1 million, and it came to just 21 volumes. That is an example of the type of thing if you have a small company, and I believe Tidal Lagoon Ltd is quite small. The human resource, the cost, and the time implications of that are all detrimental to marine energy projects, and in fact the UK is the world leader in this sector at the moment. As I say, the sector is, by definition, environmentally aware. We are trying to reduce carbon emissions and to mitigate climate change, which I see as the biggest environmental issue that we have to deal with at the moment, but we do need to support them and reduce these legislative areas.

Nick Molho: Aldersgate Group works with corporate members who come from across the economy: food, retail, manufacturing, finance, energy and so on. When we look at it from across the economy perspective, we would say that, on the whole, EU environmental policy has had positive impacts on businesses, although there are clearly some areas of improvement, which I would be very happy to touch on during the session. In terms of the overall impact on businesses, the key feedback we have received from corporate members on the impact of the EU environmental legislation, which signals an overall positive effect from that legislation, is very much threefold.

The first one is that EU environmental legislation has, on the whole, provided more of a level playing field for businesses between the markets of different member states through, in particular, the introduction of common environmental standards. It also means the businesses see a reduction in administrative compliance costs because they do not have to comply with different rules in every single member state. The second area of feedback has been that by addressing environmental issues at an EU level you are able to address these issues by pulling resources from across Europe, which can provide a more cost-effective delivery of those environmental improvements. The third and final key aspect was around

the creation of market opportunities that the introduction of common standards, such as product standards, that deploy across the single market will give businesses by providing clear market signals as to where innovation is required and the kind of standards that have to be met with in order to access the single market. Those are the overall key positive aspects that we have gathered across the membership but, as I say, there are important areas for improvement going forward as well.

Q159 Geraint Davies: Following on from that, I was going to ask whether you thought that business compliance costs are adequately considered during the design and implementation of EU environmental policies. But alongside that, maybe you could comment on this issue about TTIP as well. You have made the case that standardisation lowers compliance costs and can provoke environmental innovation, but there is a concern that with ICS in TTIP we might find a situation where there is a chilling effect on environmental legislation from big corporations threatening to sue EU Governments, particularly fracking companies.

Nick Molho: We have not been involved in the ins and outs of the TTIP negotiations, but a theme that has come across from several of our corporate members has been the fact that a lot of work has gone in across European businesses to be able to comply with a wide range of environmental standards that apply across the single market and to meet all the different product standards and energy standards that apply across the EU. There is, therefore, a concern that if those were to be diluted through TTIP, they would lose some of the competitive advantage that they have built over the years, thanks to the introduction of those standards. That is very much a theme that we have come across from our corporate membership.

Q160 Geraint Davies: Do you feel that those environmental standards and the imperatives from Paris should be wholly integrated into TTIP so that there is not slippage and those costs are not lost, and we move forward rather than backwards?

Nick Molho: I think it would be important that the progress that we have achieved through the developing of those standards is preserved. It makes sense from a UK and European business point of view because our businesses are used to meeting those standards and, therefore, they should be maintained. On the cost perspective that you mentioned—that also slightly touches on the issue that you mentioned in a previous session around the REFIT “think small” strategy—the high-level group on administrative burdens, which is the initiative that was set up by the European Commission to review the impact of environmental regulations on businesses, estimated in its report in 2014 on cutting red tape in Europe that EU environmental regulations amounted to just under 1% of the administrative burdens that impact on businesses in Europe. That is the latest statistic that I am familiar with.

In terms of what corporates tell us on a day-to-day basis on how EU environmental policy is developed, we have not heard any particular concern around the EU failing to take into account the cost and economic benefit of different sets of environmental legislation. A concern that has come out is the importance, going forward, for the EU to think a bit more holistically when it develops EU environmental policies, by which I mean that when EU legislators are trying to address a particular environmental problem they need to also think

about the impacts that developing a particular policy will have on other environmental priorities.

A good example is in the waste sector. In the past, waste legislation has developed on an economic sector-by-sector basis, or it has been developed on a hazard basis to ensure the minimisation of harm from goods that were previously used. The issue that this has created is that now we are often in a situation whereby materials are declared as waste too early and that prevents the reuse of those materials which, if it was allowed to go ahead, would make the European economy more resource-efficient. That is one of the specific issues that the circular economy package that was introduced last month is supposed to look at and that is one that we are particularly engaged in.

Q161 Geraint Davies: Are you saying, therefore, that the environmental policies could be redesigned to be less costly to business and more effective to the environment at the same time?

Nick Molho: I would say that, going forward. A specific example is the circular economy package that is going through the European law-making process right now, which I would encourage the Committee to scrutinise. We need to ensure that the way in which new environmental objectives are set look at issues on the whole. When you are setting a recycling target, for example, you should also look at the energy efficiency impacts of what you are proposing. When you are designating a material as waste, you should ensure that you are not designating that material as waste too early, which would then prevent the use of a secondary material in another economic sector that could make good use of it, and that would allow you to retain the economic value of materials within that economy for a longer period of time. That would make both environmental sense and economic sense, which is again a key part of the circular economy package that is going through the Parliament at the moment.

Q162 Geraint Davies: Do you want add anything, Dr Merry?

Dr Merry: Yes, although this is not my area of expertise, but representing the REA, I can say that we believe that EU-driven legislation has speeded up the modernisation of the waste industry in the UK and improved the environmental impacts of waste, and that there were advantages around the directive decreasing diverse negative impacts on surface groundwater, soil, air and human health. I am sorry I cannot go into more detail than that but, as I say, it is not my area of expertise. We do feel that that area has been beneficial.

Q163 Peter Aldous: At the outset I should point out that I am patron of the Aldersgate Group and I do work quite closely with the REA through my parliamentary work. I would like to turn Carolyn's question around slightly. Several member states would like the Commission to set regulatory burden reduction targets, I think. Do you think this would be beneficial to your respective members or not?

Dr Merry: Yes. I am sure you would like me to expand on that a bit. One of the things we would like to happen is for the regulatory burden of these environmental directives to be proportionate to the size of the project. Perhaps I can give an example of the marine current turbines project in Strangford Lough, which I know you will be very familiar with. Initially it was a £10 million project, and then it had to implement £2 million-worth of

environmental monitoring on top of that, so that was 20% of the project costs. This disincentivises investment in the sector and diverts money elsewhere so that technology does not go forward, for one thing.

On some of the things they had to do, for example they had to have a marine mammal monitor. Sorry, I should explain—this is a SAC for marine mammals, particularly harbour seals. So they had to have a marine mammal monitor on the platform all the time, with their finger above the red button, and if one came within 200 metres of the turbine, they had to press the button and stop it operating. It was only allowed to operate in daylight hours because the monitor could not see in the darkness. They had to charter helicopters with infrared cameras to go at night and pick out where the seals were hauling out. I am not quite sure what that had to do with the harbour seals around the turbine, but this was one of the things they were required to do. They also had to strap GPS on top of seals' heads so that they could follow their tracks in and out of the harbour. We all looked with great interest at these tracks going across to the island and then came back again, thinking, "What does that prove?"

What we would like to see is proportionality within this type of environmental legislation. Also we would like to see the positive impacts of marine projects included in the environmental impact assessment, because marine renewable energy is trying to do positive things for the environment. At the moment it is all about negative impacts.

Nick Molho: From our perspective, there are two key issues. The first one is not so much an issue of reducing regulatory burden as it is an issue to make existing regulations more efficient. The circular economy package is again a very good example. What we would like to see happen at the European level is the development of a market for secondary materials that would allow materials that have already been used to be used again across a different economic sector. That requires clear quality criteria that will give consumers confidence as to when they trust the viability of secondary materials. It requires a revision of end of waste rules to ensure that materials are not declared as waste too early. All these are issues that the European Commission has indicated a willingness to address in its recent White Paper, but the detail is not there yet and that is something that will be particularly interesting to follow through.

Just one additional point on what Stephanie mentioned: when it comes to the birds and habitats directives, one of the issues there that comes quite regularly from across our corporate membership is that while EU environmental legislation has helped to create more of a level playing field across different markets, there are cases where the implementation of those directives across different member states is not always uniform and where there are fairly significant differences. We know of offshore wind developers, for instance, that develop projects in Denmark, the Netherlands, Germany and the UK, and that find themselves having to comply with different sets of standards or having to provide different types of environmental evidence. That makes a project more complex and, therefore, more costly. That is where seeing a more common implementation of those directives across different member states would simplify compliance in business.

Dr Merry: I would agree with that.

Q164 Mr Lilley: You talked about the designation of waste. I was not quite sure whether there is some official body that designates a material as waste, or whether it is the companies themselves that say it is waste.

Nick Molho: It is a good question. It is quite a complex area, but I will give you an example that hopefully will help explain the issue. Most of the EU's waste legislation will provide high-level definitions of what should be considered as waste and not as waste, but will leave an element of discretion to the member states and to national regulators as to how they want to implement that. The concerns that I mentioned around the need for more efficiency in waste regulations is both an issue of EU institutions providing clearer rules, and also an issue of national regulators making more pragmatic decisions as to what should or should not be designated as waste.

A concrete example is one of our members, National Grid. As you will know, they transport electricity across the country by using aluminium conductors. Previously, at the end of their lives, those aluminium conductors would be sold for scrap. In 2013 National Grid decided to pilot a new initiative with its manufacturer, Midal Cables, which is based in Bahrain, whereby National Grid would resend the conductors to Midal Cables, and it would reprocess them and give them back to National Grid. The advantage was that National Grid would not have to source new aluminium, it would reduce the cost of replacing those cables, and it would also protect them against the fluctuation in the cost of aluminium. They sent 15 tonnes of aluminium conductors back to Bahrain, but that turned out to be a very complex exercise because the national regulator categorised the conductor as being waste and this required National Grid to take extensive legal advice, as well as very extensive discussions with Customs and Excise, before having the right to transport what was categorised as waste out to Bahrain and then getting it sent back to National Grid.

We have another example from the construction industry where one of our members excavated a significant amount of virgin clay that a brickworks nearby wanted to reuse, but because the clay had been excavated, it could be interpreted as being waste and in order to transport the clay, he needed to have a waste transport licence. That was too complex and, therefore, he did not go ahead.

I should stress that this is particularly an issue of areas where EU legislation could be clearer, but is also an issue of national regulators making pragmatic and intelligent decisions in areas where they are given precisely the flexibility to interpret those directives. If I may just finish on that note, a concern that comes from across our members, whether it is in the water sector, the construction sector or others, is that the impacts of the cuts on Defra and its regulatory agencies risks limiting the varied resources of those regulatory agencies, which in turn can make those pragmatic decisions more difficult. In order for business to innovate and be effective, we need effective regulatory decisions to be made and that requires resources in the first place.

Q165 Caroline Lucas: I want to get back to the circular economy package that you already mentioned briefly and ask you a few related questions. First, what impact is that package likely to have on UK businesses that you are aware of? How well is it aligned with the Commission's commitment to implement better regulation? Is there any indication that

this latest intervention has improved on, built on and learned from past approaches to promote sustainable business practice?

Nick Molho: The first thing I would say is that what is positive about this package at the high level is that it does not just look at the waste issue; it looks at a product throughout the whole lifecycle of a product. That was a really important issue for a lot of our corporate members in that before you get to the stage of disposing of a product, there are plenty of opportunities to try to reuse materials. In the past those opportunities were not really captured by EU legislation. The package is more pragmatic from that point of view. I think the overall ambitions seem right, but what is lacking at the moment is detail as to how markets for secondary materials will be set up and how quality standards will be determined. What are the standards that secondary materials have to comply with in order for consumers to be able to trust the quality of those materials and buy them, which is an important part of having an effective secondary market? There is also an issue around modifying the end of waste rules that I referred to earlier, which again the Commission touches on in its communication, although the detail is not there yet.

They are the plans that were announced pursuant to the Commission communication. It has set up different working groups between 2015 and 2017 to flesh out the details of the secondary market rules and how it proposes to modify end of waste rules, but the devil very much is going to be in the details. I think at a high level the short answer is, yes, it is sending the right signals, but a lot of whether or not the package will be a success and trigger resource efficiency across Europe will be in the detail that is being fleshed out over the next two years.

Q166 Caroline Lucas: To follow up on that, are you saying that at this point we cannot really judge how well it implements better regulation because that will be in the detail? Is that the point?

Nick Molho: Yes, that is correct. We will be holding an event in Parliament on 23 February with a high-level representative of Commissioner Vella's cabinet, which we would warmly invite Committee members to attend, precisely to discuss some of that.

Caroline Lucas: Dr Merry, is there anything you wanted to add to that?

Dr Merry: No, that is fine.

Q167 Caroline Lucas: The current Commission has said that it is committed to applying the "think small first" principle—in other words, regulating only when it is absolutely necessary. How relevant is such a principle in a mature area of policy like the environment?

Dr Merry: They certainly are not thinking small as far as small and medium-sized enterprises are concerned. I think, again, this is a very small sector, and I apologise for that, but there are some particularly relevant examples. For a project that is run by a small company of, say, fewer than 20 employees, the uptake of the human resource and the time to manage the environmental impact assessment, and then the environmental monitoring process, are going to be disproportionate for a small company. There will be delays due to imposed operational and monitoring procedures.

For example, they might say, “You cannot operate during the seal pupping season.” I do not think that has ever been said, but that type of thing might be imposed. That is disproportionate for a small company that has one project. Something that a company in Wales flagged up to me is that they had just put their marine generator in the water and they had to develop monitoring equipment that was nothing to do with their technology. They had to develop monitoring equipment themselves and then they had to prove to the regulators that this was acceptable and agree a procedure for what would happen if the monitor noticed a seal in the area or whatever. If that equipment then malfunctions, although it has nothing to do with their generator, they have to turn the whole lot off. I think this is all very disproportionate for a small company that is trying to do one small demonstration project.

Q168 Chair: Can I ask a short supplementary on that? I understand the impacts, particularly on the small and innovative companies that are bringing new investment to the field of marine technology, but you could equally apply it to land-based initiatives as well. One of the challenges with the marine environment is that some of these are pristine and fragile, and also environments where we do not have a lot of experience of monitoring, surveillance, data collection and so on. In fact, many of these companies are pioneering.

Dr Merry: They are. They are indeed.

Chair: What would be the alternative to saying to them, “We need belt and braces”?

Dr Merry: Yes, I agree. As I said at the beginning, it is a new technology and it attracts a lot of attention from the regulators, which is understandable. I believe that they called the marine current turbine “the seal chopper” before it was even installed, the assumption being that seals were going to go through it and get chopped up. In fact, if I can quote the results of this two-year launching programme: “No major impacts on marine mammals detected. Changes in benthic ecology appear to be gradual and in line with natural variation. No evidence of significant change to ambient velocity or flow direction within the Lough.” I guess that had to be proven, and I agree with that.

But other regulators are not taking all that on board, so the new one that has gone in in Wales has to redo a lot of that. That is one of the issues that I think needs to be dealt with. The other issue that needs to be dealt with is who pays for this monitoring. If it becomes part of a project, cost state aid rules mean that the developer or the company has to fund 50% of those costs. Therefore, I think it would be very helpful if either the UK Government, or even the EU, paid for such strategic monitoring because they have made marine energy part of the strategic energy technologies. It is strategic for the EU.

Q169 Mr Lilley: I will ask these questions if everybody wants them. I do not see why you should have any more view than anybody else, but I simply want to ask whether, in your view, with any of the environmental legislation that is required to be carried out at an EU level, under the principle of subsidiarity—that if something can be done equally well or even not quite as well, but nearly as well, at a member-state level, it should be done—are there any areas where such devolution could occur at a European level? We have already had devolution within the UK to the member countries. Why can’t we have similar devolution within the EU for environmental legislation? Are there any ideas that spring to mind?

Nick Molho: From the extensive feedback we got from our corporate members, that was not a particular issue that came up. On the other hand, what did come up were several areas where EU legislation could be made more efficient, which I touched on earlier, in terms of much better common implementation across different member states, removing some of the inconsistencies in areas such as waste regulations and having a greater focus on holistic thinking when developing particular environmental policies—so, not losing sight of the whole. But what I would say as well is that looking forward there are areas where the EU can have a role that do not necessarily require legislation.

For example, one of our major members in the finance sector, Aviva, is very involved in what is called the sustainable stock exchanges initiative. The particular concern that institutional investors such as Aviva have at the moment is that capital markets often tend to operate on the assumption that the natural resources on which our economic activity depends are unlimited when they are not, and that many capital markets also tend to operate on a very short-term basis. What Aviva and other institutional investors would like to see happen is much greater levels of information disclosure on the sustainability impact of investments that are made across different capital markets.

The EU can have an important role here in influencing the likes of IOSCO—the International Organisation of Securities Commissions—which is very influential in helping to develop the information disclosure standards that are applied across stock exchanges worldwide. The EU could play a very important role in influencing the standards that would then be applied internationally and would provide more standard and more robust disclosure on sustainability information across international stock markets.

Q170 Geraint Davies: Can I ask something slightly different, linked to waste and plastics, and marine wildlife? Do either of you think that the EU should bring in legislation about more biodegradable plastics, given the enormous amount of plastic pollution in our oceans?

Nick Molho: That is not my particular area of expertise, I have to admit, but I would be very happy to try to get more information on that. What I would say is I do think it touches on the live issue of the circular economy package, because that package is looking at all the materials across the piece and at how you can retain the economic value of products throughout their whole lifecycle, and plastics is an important part of that.

Q171 Geraint Davies: I know you have written to the Committee on this, haven't you?

Nick Molho: Yes. We have mentioned it to the Committee—

Geraint Davies: Is it possible—through you, Chair—for you to give us something more comprehensive, because it is something we might want to look at?

Nick Molho: Yes, absolutely. Obviously I can do that. One thing I would encourage the Committee to keep an eye on is the development of the package over the next two years, in particular through the development of product standards under the circular economy package. The Commission will have to be looking on a product-by-product basis at how we can facilitate the disassembly and reuse of the different types of products, and this may mean that for critical components such as plastics, we may be able to find opportunities

for reusing them more often, thereby minimising what ultimately ends up at the waste stage. I would recommend that as an area of focus for the Committee.

Geraint Davies: You can write to us.

Chair: We would be happy if you would write to us on that, because it may be something we need to pay attention to.

Nick Molho: Yes, absolutely. I will gather more evidence on that and submit it.

Q172 Chair: I can see the clock is approaching 4 pm and the Division bell will be going at any moment. Apologies to Committee members, because there are a couple of other questions we wanted to ask. Could you write to us if there is anything else you think we have not covered that you want to bring to our attention? Specifically, I notice that Peter Aldous was going to ask about your thoughts on whether there are areas of improvement that could be made within the EU approach to environmental policies within the UK going forward. You have mentioned some of the details in terms of the impact on small business, so you clearly have ideas of your own as well.

Dr Merry: Yes, I have a few, and I definitely have one. Most of the environmental directives were brought in before the renewable energy directive, which was 2007. There are conflicts between the two, if you think about the fact that the environmental directives are erecting barriers to our being able to achieve the 2020 targets. I think the environmental directives need to recognise the long-term impacts arising from climate change on habitats and species and renewable energy would, therefore, be a positive impact, so that would be taken into consideration.

Chair: Okay. Brilliant. If there are any other thoughts or any comments, I urge you to write to us. Thank you very much. I have Committee members who are desperate to get all their questions in but I think we are going to have to stop—*[Interruption.]* Geraint, go on; quickly.

Q173 Geraint Davies: The Severn Barrage is a massive energy opportunity—about 5% up to 9%, some people say—for UK energy. Part of the stumbling block of that is new habitat directives related to birds and also impacts on fish. Obviously there is a balance between the different environmental imperatives of renewable energy and habitat preservation, but what, in brief, is your view on that, and indeed Mr Molho's?

Dr Merry: The REA was involved in the last investigation into the power in the Severn, and our view about barrages has always been that we should look at something smaller first, not the Severn, because once you build the barrage you are stuck with it. Therefore, if you do it on a smaller estuary to start with and you can see the benefits, costs and impacts, and then monitor them, would be the most sensible way forward.

Chair: Very good. Thank you very much. Thank you very much for your time; the anticipation is that the bell will go at any second.