

Environmental Audit Committee

Oral evidence: [25 Year Plan for the Environment](#),
HC 803

Tuesday 20 March 2018

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Members present: Mary Creagh (Chair); Geraint Davies; Glyn Davies; Mr Philip Dunne; Zac Goldsmith; Mr Robert Goodwill; Anna McMorrin; John McNally; Dr Matthew Offord; Alex Sobel.

Questions 1 - 56

Witnesses

I: Dr Simon Pryor, Natural Environment Director, The National Trust, Dr Richard Benwell, Wildlife and Countryside Link, Georgia Stokes, Chair, The Birmingham and the Black Country Local Nature Partnership, and Ruth Davis MBE, Deputy Director, RSPB

II: Dr Haydn Davies, UK Environmental Law Association, Professor Andrew Jordan, Tyndall Centre for Climate Change Research, School of Environmental Sciences, University of East Anglia, Dr Stephanie Wray, the Chartered Institute of Ecology and Environmental Management, and Susan Shaw, Living Law

Written evidence from witnesses:

- [The National Trust](#)
- [Wildlife and Countryside Link](#)
- [RSPB](#)
- [UK Environmental Law Association](#)
- [Chartered Institute of Ecology and Environmental Management](#)
- [Living Law](#)



Examination of witnesses

Dr Simon Pryor, Dr Richard Benwell, Georgia Stokes and Ruth Davis MBE

Q1 Chair: Good morning, everyone. We are very excited about this session. We have some of the finest minds in the country—that is you; no pressure—to share with us your brilliance, your thoughtfulness and your institutional knowledge on the environment plan. I am delighted to see some of our second panel sitting in as well, thank you for coming early.

Could you introduce yourselves for the purposes of the record, starting with Dr Pryor?

Dr Pryor: Thank you very much. Good morning, everyone. Dr Simon Pryor from the National Trust, where I am the Natural Environment Director.

Dr Benwell: I am Richard Benwell, Head of Government Affairs at the Wildfowl and Wetlands Trust, and I am here today on behalf of Wildlife and Countryside Link, a coalition of environmental organisations.

Ruth Davis: I am Ruth Davis, the Deputy Director of Policy and Partnerships at the RSPB.

Georgia Stokes: I am Georgia Stokes. I am Chief Executive of the Wildlife Trust for Birmingham and the Black Country. I also chair the Local Nature Partnership for Birmingham and the Black Country.

Chair: Brilliant, thank you very much indeed. We are particularly keen to hear from you because of your urban focus, because we tend to have a very nature and countryside focus. You are very welcome. There is no test, there is no exam to pass here. We just want to hear from you.

We are going to open the session with a question from Zac Goldsmith.

Q2 Zac Goldsmith: I am really sorry that I cannot stay very long. This is a fascinating session, so I do regret that and I apologise.

I am going to start with a question to all of you. I might start with Dr Benwell. The Government have a stated ambition of being the first Government to leave the environment in a better place than when it began. In your view, does the 25 Year Environment Plan meet that ambition? Will it deliver that ambition?

Dr Benwell: It gives us all the instruments we need to get towards a place where we can meet that ambition. We love the overall ambition. It is exactly what we need. It is about time that we did not just concentrate on conserving and holding the line, but turning round the state of nature and start to fix things. What we need to do that is not just a list of individual policies. We all have our own pet policies. It is the architecture of governance that is the real mark of ambition of a 25-year plan, one of the things that is going to make the systemic change to turn a list of different policies into something that can turn things round. For us, the elements are clear and binding targets, proper funding and a system of



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monitoring and accountability that can hold Government to account. In each of those three areas, the plan sets out the first steps.

On targets, we have had targets before. There is a 2020 target for 50% of SSSIs in good condition. We are probably going to miss it. There was a 2015 target for halting the global loss of biodiversity. We are going to miss it. There was a 2015 target for water quality. We are going to miss it. What is going to turn things round this time? It is having legally binding targets. That is why this plan needs to be the first step on the road to an Environment Act that sets legally binding targets.

On funding, there are good indications in the plan that the right money will come to make this happen. There is about £50 million of new funding in the plan and crucially there is this promise of moving the money that we currently spend on agriculture from area-based payments to public money for public goods. That is extremely welcome.

On monitoring, there is a promise of a new watchdog to hold Government to account. That is an absolutely enormous task, to replace the access to justice, the complaints mechanism and the judicial functions of the European Union, but we have an indication in this plan that the Government's intention is not to just replace those functions, but to do better and improve on them with a world-class accountability body.

Yes, the hallmarks are in place, but now we need an Environment Act to make it work.

Zac Goldsmith: Can I put the same question to each of you?

Ruth Davis: I will crack on, if that is okay, because what I have to say follows very closely on from Richard. It is clearly important to take stock about where we are in the UK and globally in our efforts to protect and restore the natural environment. We have made considerable progress in a range of areas since the Second World War, particularly in terms of dealing with gross pollution. In terms of the natural environment, however, and particularly biodiversity, we are on a reckless downward slide. We are in a position where the background rates of extinction are being accelerated to somewhere between 1,000 to 10,000 times what one would expect if we were simply operating in a world where there was no human impact. That is a phenomenal change in the way in which the world interrelates with us and we interrelate with the world.

We are in a context in which 95% of countries failed to meet their international obligations to biodiversity and in which 56% of species in the UK that were assessed are on a downward path. We do therefore have to think about this in a context of presiding over a situation in which the fabric of the natural world is unravelling in front of us. The question we have to ask of this plan is whether it is capable of stopping the rot and is it then capable of doing the fantastic thing that it says it wants to do, which is move us on towards a path of recovery.



The level of ambition is absolutely appropriate to the nature of the crisis we are facing. You then have to ask the question, "How do we get from the ambition to where we need to be?" and I would say similar things to Richard Benwell, but with a slightly different emphasis. I would probably say that the starting point has to be absolutely not going backwards. We have to have a complete line of sight between the things that were put in place during our membership of the European Union, which have made a considerable contribution towards at least stopping the rot around the natural world and biodiversity, and indeed our natural resources, and that is not present in the plan as it currently stands. There is no absolute line of sight between the transfer of European law into our system and how that will operate in future. That line of sight is vital, including replacing the existing governance systems with things that work.

The second thing is having some kind of lodestar of where it is that we want to go. In the global context, there is a growing movement to try to work out how we would set long-term targets for the recovery and restoration of nature that is something akin to the targets and ambitions in the Paris Agreement for climate change. What would we need to do to set that long-term lodestar 20, 30, 40, 50 years ahead, which then shapes pretty much everything we do subsequently? We are nearly there because we are willing to express the ambition of recovery, but there is no metric in the plan as it stands at the moment. There is no description of what that would need to look like, and therefore we cannot work backwards from that with other metrics that would enable us to put plans in place to be able to deliver the outcome. We should think about that long-term vision and making it concrete and real, expressing it here, but also expressing it on the global stage.

The third absolutely critical thing is that we need to transform the way we make decisions about the natural environment in this country and some elements of the plan will enable us to do that, things like the net gain principle, things around the natural capital work, stuff around the way in which we transform farming. If we do not get to the point where decisions take into account the needs of the natural world, we will be back to a stage where we have targets that are narrow, siloed and unachievable. All of that has to have a foundation in law.

Georgia Stokes: The Wildlife Trust obviously supports everything around the Environment Act. I am not going to repeat everything there. Obviously we welcome the view of a nature recovery network and taking a landscape scale approach to looking at nature's recovery, looking at the core sites, the protected sites, those corridors and how we connect them.

My view from an urban perspective is that the plan undervalues the current value of nature in our urban areas. The green infrastructure element sits within, connecting people to nature, which is hugely important in our cities. Our urban areas do that and can do more of that.

Q3 **Zac Goldsmith:** Are you saying the plan omits sufficient reference to



urban environments?

Georgia Stokes: Yes. It fails to take notice of what is already there, of how biodiverse our urban areas are and the fact that our urban areas are ecological networks in their own right. We have an ecological network map for Birmingham and the Black Country. We have core sites. They are not nationally protected and designated sites, but they are local wildlife sites, designated locally, based on evidence and they are often of equal biodiversity value, but the ecosystem services that you get from those sites have arguably greater benefit because there is such a concentration of people next to them. The benefits of investing in improving those sites and that ecological network to have a much more robust and coherent ecological network in our urban areas would be enormous for the people who live near them.

Dr Pryor: I echo most of what has been said. We are in remarkable agreement on this. We are fantastically positive about the plan. It is brilliant to have a Government making such long term and ambitious commitments. Forgive us our scepticism, but we have seen targets fail before. What is different now is that for the first time, certainly in my career, we can unpack and dismantle the biggest single obstacle, which was the CAP. We are much more positive about being able to deliver the ambitions this time around, so it does feel really different.

Q4 **Zac Goldsmith:** On that point, the first review of the 25-year plan happens in five years' time. If things have gone to plan, if your optimism is justified, what would you expect to see in five years' time?

Dr Pryor: First for us would be a completely different look and feel to the environmental land management schemes, the way in which payments are passed to land managers, really tightly tied into public benefit, with environmental improvement and the turning around of the decline of nature is the foremost thing. Then, as Richard said, adequate funding being committed, a strong legislative base for it, strong oversight and a good feedback loop so we could see whether it is working and a very quick response if things are not working. Overall, my ask would be please dispel our scepticism, please put in place very early on, in the next year or two, the solid commitments that will make us think, "Right, you really do mean business".

Zac Goldsmith: Can I put the same point to the remaining three on the panel? What would you want to see in five years' time?

Dr Benwell: I think back to 2013, five years after the Climate Change Act, when we were celebrating boardrooms taking the price of carbon into account in their investment decisions for the first time, the first round of reporting on how we are doing nationally in reducing our impact on climate change and the celebratory feel that came from all parties as to the phenomenal amount of international leadership that this country had set by legislating, for the first time in the world, to turn around our environment impacts in the key industrial area.



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In 2022, 2023, I would like us to be celebrating the world's first natural Environment Act setting legally binding targets to turn round the state of nature and that that is starting to have an impact, so that in everyday decisions across the board polluters are paying more and those who put more into our environment are getting more. Quite simply, as Simon said, on the ground it is those farmers and land managers who are doing the most for nature who are being rewarded commensurately for the amazing work they do and those who are polluting our rivers and our air and taking more out of our land and soils are paying the price.

Ruth Davis: That was great. I have only a couple of things to add. The proof of the pudding will be when you start to see concrete plans over a five-year period, that they are going to transform action in sectors. We have talked a lot about farming. We should talk more about planning and about fisheries. You can see the real gain that you can get from those kinds of plans in the climate change arena, where smart regulation, sensible incentives, a long-term plan underpinned by legislation started to drive environmental innovation. The great benefit of that situation is that you do not endlessly rely necessarily on regulation or necessarily on subsidies, because you begin to build the possibility of a sustainable economy that will stand on its own feet. If we start to send those signals through to business and begin to see the transformation of our economy on the ground, we will become a model for the way in which other countries can do that on the global scene.

Georgia Stokes: A couple of additional thoughts. Yes, an Environment Act embedding targets across all areas of Government and demonstrating how those need to be reported across transport, education, health and so on, but also from a local perspective, consultation with how that is going to translate at a local level. What are the targets? What is the impact? How do local authorities respond and monitor? What do they contribute to this? Local enterprise partnerships, for example, what are they going to be doing? Combined authorities, how are they going to be contributing and what targets do they have to hit? Does the reform of CAP funding and the idea of public benefit for public money extend to the public money that goes to local enterprise partnerships and combined authorities? I would argue that it should.

Q5 **Zac Goldsmith:** One final question. I am going to come back to Richard Benwell. If you put yourself in the position of this Committee, and we are going to be producing a report, we are looking at the 25-year plan, would it be your advice—I think this is an appropriate question, Chair, stop me if it is not—that the final recommendation effectively is guidance on what an Environment Act should look like to make this 25-year plan real? I know noise is coming from a lot of environmental groups, but is that something that you would hope would come from this particular session?

Dr Benwell: Absolutely. The Prime Minister launching the 25 Year Environment Plan was a brilliant indication that the Government means



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business on this and the proof of the pudding will be in getting the institutions and legislation in place.

If I may, sneakily, Chair, add one more thing that we can dream of in 2023, it is the crucial element of international context. The world will be renegotiating its global targets on biodiversity and nature in 2020. Ruth's RSBP and WWF have done some brilliant thinking on what the next round will look like and if we are able to take to the table in 2020 proof that our 25-year plan is meaningful and have a piece of legislation on the statute book to show for it at that point, that will be our way of leading the world in 2020 towards a new biodiversity deal in the same way as we did for the climate 10 years ago.

Q6 Chair: Ms Stokes, I want to come back to something that you said that struck me about the public payments for public goods. That is why you are here, because you are saying different things. What do think about the role of mayors? You talked about the huge benefits that biodiversity in cities has, because so many people access it. You said in your submission that the plan needs to engage local communities and businesses, beyond the usual suspects. How do you think the Government should do that?

Georgia Stokes: There are local businesses on our local nature partnership board and they contributed to the submission. One thing would be more engagement with businesses, including small businesses, recognising the role that they have to improve the environment and also their reliance on the environment for the health of their business, really making sure that we understand how we can support them and what they need to be taking better action on the environment.

Local enterprise partnerships, certainly in the West Midlands, are doing a lot to promote economic growth. Give them an impetus, a consultation about what role they have to play in ensuring that the green infrastructure and natural capital of our cities is improved, beyond the notion of the street trees and nominal green infrastructure, meaningful green infrastructure that is managed and resourced, because it costs to manage. One of the big issues we have in our area is that it is assumed that local authorities will take on that management, but it is not prioritised at a local authority level because it is a nice to have rather than a statutory element, although there are some statutory elements. How do local authorities fund that? They are cutting services to parks and green spaces. There is lack of join-up now. How is that going to be achieved at a local level? How are we going to protect the fantastic green infrastructure that exists? How are we going to invest in it? How are we going to manage it for the future?

There is one other group that is mentioned a lot in the 25-year plan, but I am not sure if they have been consulted, and that is young people. They are the ones who, in 25 years' time, will inherit what we have done. Are they being consulted? What do they think we should be doing now? I am sure they have some thoughts on that.



Chair: I bet they do. Dr Pryor.

Dr Pryor: One more perspective on this, one thing one feels is missing from the 25-year plan, there is talk of the system operator and it is unclear quite how that will operate. One thing that concerns us is the connection between that and Local Places. One of the hugely wonderful things about Britain is the varied landscape, every landscape is distinctive, and one of things we have suffered from is a universal Europe-wide land management structure that is dealt out everywhere in the same way across landscapes. We have an opportunity here to tailor things, to deliver the right things for the right landscapes and celebrate that diversity of both natural capital and heritage that makes up our landscapes. The connection between the Local Places and that system operator seems unclear to me and a concern.

Ruth Davis: I would like to add something to that. There is a risk that we do not see the opportunity to create and retain value in local economies by investing in a different kind of economy. There are all kinds of possibilities available for high-quality agriculture, high-quality fisheries, for the delivery of local services around tourism, for the integration of services through local authorities, all of which will contribute to the creation of a local economy that is better for people and has jobs associated with that transformation. In order to be able to do that, however, you have to see this in the round as something that is about investing in communities and economies as well as investing in the environment.

That speaks to the question about place, but it also speaks to the question about what kinds of partnerships you are going to create at a local level. I would probably speak for all our organisations in saying that we would like actively to participate in the creation of those positive local economies and to be a player around the table with businesses, with local authorities. A straight systems catchment operator catchment system does not necessarily inherently mean that you would do that, so I think it is very much worth exploring what kinds of partnerships would be involved in decision-making and how that can really work at a societal level as well as working for delivering on specific environmental targets at the national level.

Q7 **Chair:** Richard, you and the CPRE were critical that the plan had never been subject to a formal consultation process. As parliamentarians, we are probably critical that it had not been subject to any sort of consultation with Parliament either. We waited two and half years for it. It is a bit like waiting for an elephant. When it is born, you are just glad that it is there. What do you think the weaknesses have been around the process of developing this plan?

Dr Benwell: We almost need to put to bed the weaknesses in the process to get to this point and concentrate on what the Government can do now to engage people and make sure that there is visibility for the plan. Frankly, outside this small Whitehall bubble, nobody has heard of



the 25 Year Environment Plan. The Government made more than its usual effort to promote the environment on the days when it launched the plan. Usually Defra announcements come with more with of a puff than a bang, but they did put some effort in, but now what is needed is sustained visibility for the metrics and the results of the plan. We get regular reporting on a consistent set of indicators for things like economic development, for education. We need that same public and parliamentary visibility year in, year out for how the Government is doing on its plan and it needs to set those indicators in a way that people understand.

When we get to the next stage of plan development, we cannot have a list of 50, 60, 90 targets that folk are expected to follow. They need to be, for example, "Is there clean water in your area? Is your air getting healthier for your children to breathe? Is there more wildlife this year than there was last year or not?" It is that kind of consistent and public parliamentary reporting that will start to give this policy agenda the same kind of visibility and prominence that we get for other areas of government policy.

Q8 Chair: Ms Stokes, you wanted to come back in. You talked about the businesses that you engage with. Could you say something about who is on your business council? There is also talk in some of the evidence we had about a green business council. Could you develop that idea for us?

Georgia Stokes: For example, we have on our board a representative of the Midlands Environment Business Councils. They work with small and medium-sized businesses on a range of environmental issues and look at climate change as well. The representative on the board has very strong views on what local businesses can do and what they need to be able to do it. They do have ambition, but they do need encouragement and support in the same way that perhaps we might with the CAP reforms, looking at supporting farmers to take action. There are possible ways that businesses could be supported to take action as well. Her suggestion is to look at a relationship with business rates, for example. That would be one aspect of change that could maybe produce those results.

What I did want to come back on, you mentioned mayors and I did not talk about the mayor at all, so if I may take a couple of minutes on that. I also chair the HS2 Environment and Landscape board, which reports to the growth board for the West Midlands Combined Authority for HS2. The remit of that board is to look at working in partnership beyond the hybrid build to try to find added value for the West Midlands around the environment. It is obviously a contentious issue. We have developed a set of natural capital metrics that we have used to assess potential projects that could be delivered in addition to mitigation and compensation work by HS2. Those metrics are now being considered at combined authority level to be incorporated across their assurance frameworks and business cases so that when any project comes forward—obviously transport is the main remit within the West Midlands Combined Authority—they would have to report not just on journey times



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or cost benefit ratios, but also on natural capital gains and how they can improve the ecological network of the West Midlands through their transport projects and other projects. That is one way that we would like to suggest it could be looked at in a slightly different way than what is happening now.

Q9 Chair: Dr Pryor, before I come back to you, the plan has a commitment to publish a new strategy for nature, building on our current strategy for biodiversity. Do you think that is a bit about having a plan to have a plan?

Dr Pryor: No, it is very good to have a big and all-embracing, ambitious, long-term plan. I am really keen to see more specific plans dealing with the mechanisms that will deliver specific aspects of it. No, I do welcome that. My main question would be, "Is that realistic and backed up with funding and mechanisms and a new way of working?"

You mentioned the development of the plan. The point I was going to pick up on, one of the little worrying early signs for us is that it is perhaps not very strong on the amount of collaboration that is required—it needs Government, it needs the business sector, it needs the charitable sector and ourselves—but if we are all going to work together and deliver, we do need a more collaborative, open and transparent approach. I am slightly uncomfortable about the kind of scrabble of organisations to pilot and test the new environmental land management scheme. It would be nice to have a more formal and open structure, instead of conversations going on in the background. It would be nice to see some open commitment to working together.

The example I would cite is the major landowners group, which was formed 10 years or so ago to deliver the SSI target. Everyone involved would recognise that it was led by Natural England and Defra, but it was really powerful in terms of all parties coming together to deliver this joined-up target and it is that sort of approach we need again.

Q10 Chair: What do you mean, conversations going on in the background about piloting the new environmental approach? What is happening?

Dr Pryor: We have made an offer on behalf of the National Trust. We have a lot of land and we are very happy to pilot and test things. It just feels like national parks and other places are making suggestions and offers and it would be nice to have a more structured process, rather than informal discussions. There is a lot to develop in a short space of time and I think that if they used our collective experience and expertise, we could work together efficiently.

Ruth Davis: I am sure that is right. If we hark back to previous efforts of this kind around the non-statutory biodiversity action plan, there was a real effort to bring civil society groups together so they worked very much in collaboration. It is even more essential now, because there is so much about planning local projects on the ground, real places, where



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there are lots of overlapping issues. We would do this whole thing much more efficiently, let alone in a much more open way, if we were able to see where we had collective shared interests and started to develop that as a collaborative approach with governance. It is a practical proposal.

Chair, you were also asking about transparency, the involvement of civil society and people, and Georgia mentioned the involvement of young people. This partly falls on us, the civil society, but also parliamentarians. There will be a consultation on the new institution that is being promised in the 25-year plan, which is also an opportunity for people to express what they would like to see in any new legislation. We will make every possible effort to involve our members and supporters in responding to that consultation and trying to reach out to communities that perhaps have not had an opportunity to do that before. We could see this as the moment at which people get an opportunity to describe what they would like their environment to be like, but that probably involves also a whole range of other people who have quite a passionate interest in this area and in making that consultation into a big deal.

Chair: Thank you, that is fascinating. Over to John.

Q11 John McNally: To follow on from the engagement and partnership working, all this is absolutely wonderful, it is ambitious and absolutely the right thing to do. When the sun shines its light on the things you are talking about, you need to be transparent, you need to be open and communities need to be absolutely and totally involved. We have heard from past inquiries they have to go where you were trying to get to because the sustainable development goals, as you mentioned earlier, Richard, they never seemed to get to the people they were meant to go to. That is admirable, to try to get to that position. However, the Government have said they will consult on this new, world-leading, independent statutory body to give the environment a voice, championing and upholding environmental standards as we leave the European Union. Of course that is admirable, but what would you like to see as the role of the powers of such a body and where should it be based?

Dr Benwell: It is brilliant to have the aspiration for a world-leading environment watchdog. We welcome that goal from the Government. I think what we should emphasise is what an enormous task it is going to be to replicate the functions that the European institutions perform for us at the moment. What does it need to do? First of all, it needs to offer affordable access to justice for citizens, which is something that is guaranteed under the EU complaints process at the moment and that we do not have here in the UK at the moment. Judicial review is expensive. It needs to have the powers to bring its own cases against Government. If you think of the Supreme Court here in the UK, which is what we would be left with when we leave, it cannot decide to take the Government to court and begin its own proceedings if it sees the Government breaking environmental law, it requires someone to do it. At the European level, the European Commission can, on the basis of its own expertise and



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evidence, begin its own proceedings against Governments. We need the new watchdog to have that kind of prosecutorial function of its own.

It needs to have access to a strong range of remedies. It needs to be able to call out when the Government is breaking the law and say, "This is not right" and flag up infringements. It needs to have access to the ability to overturn decisions that are against environmental law. If you think at the moment of a planning case that involves a Natura 2000 site, it might get sent into the Secretary of State. He might say, "Yes, of course you can develop that site, it is fine". At the moment we can refer that to the European Court of Justice and it can say, "That is against the law, stop it". We need a similar access to review of executive decisions.

There is always the question of fines, which has been so important at the European level. The threat of daily fines for not meeting targets has the power to focus minds extremely quickly in Government on changing things. It would be enormous and novel to grant a new watchdog in this country the ability to fine the Government. If we are not going to go down that route, then the Government need to think of something with equal welly to make sure that when they step out of line, the new watchdog can bring them back to heel.

Personally, I would like to see the new watchdog have that kind of fining power of Government, and for any fines that are raised, those should instantly be hypothecated to the new Natural Capital Investment Fund to be spent on restoring nature elsewhere. There is a broad swathe of functions from access to justice, to the ability to bring cases of a merits function, as well as a procedural function and a strong range of remedies that need to be brought by this new body. We believe the Government intend to do it, but we would like to emphasise how difficult that will be.

There are also a couple of areas, if we do it right, where we could do better than the EU. The EU is pretty slow at these infringement cases. We could make sure that cases do not sit around for six years before you get a judgment. The other thing that the EU is not very good at is being transparent and open about the reasons for its decisions.

If we get what we want—a new watchdog that can assess cases on the basis of their environmental merits and not just procedure—we need the new watchdog to explain its reasoning. In Europe this tends to happen behind closed doors. We can do better in this country. It is an enormous, mammoth task, but if we do it right we can go one step further and set a gold standard for environmental justice here in the UK.

Q12 John McNally: Georgia mentioned earlier on you now have the new north emerging, where you have all the mayors and the tributaries of power supposedly flowing off to these new powerhouses. I would imagine that these mayors would be—and so would I, and I will come on to Scotland in a moment—making a pitch for this all-encompassing environmental body. I now have the same faith in it as you have, by the way. Maybe that comes with years. I would like to know where it should



be based and if the new powerhouses would be consulted on where this should be located.

Georgia Stokes: Obviously we would love to have it in the West Midlands, but I think there would need to be some regional coverage. Wherever it is based, it needs to be embedded. "Local" needs to be defined at some point as well, but there needs to be complete local buy-in and ownership of the plan, the targets, embedding it, and the scrutiny needs to happen at a local level as well. It cannot just happen at a national level.

Q13 **John McNally:** What we are hearing here is an overarching, underpinning, robust framework of a policy that needs to deliver across every area of the UK. I think at this moment in time this is quite difficult, given the frameworks that we are involved with.

Can I ask a question that maybe Dr Pryor could answer at this point? Should the constituent nations of the UK be involved in the creation of this agency? For example, at this moment the Scottish Government is setting up an expert panel, including a disability adviser, to advise on actions to reduce the amounts of plastic waste that we have. Would or should the Scottish Government be free to put this into practice in their own areas if it is not part of this bigger framework?

Dr Pryor: My overall point is we need something that is really effective at the UK level for those international obligations and UK-wide initiatives, but we also need something that has teeth and powers that will work at the individual devolved country level. How that is squared and whether that is contained within one body I would leave to others, but in reality that is what we need, something that can flex from UK and international to national and, as Georgia says, to that local accountability. Structuring an organisation that can work in that way is crucial. I would say your location needs to follow from that.

Ruth Davis: Can I add something to that? The very starting proposition here is that the different Governments of the United Kingdom need to be having a conversation with each other in a very collaborative and very steady way about what the best outcomes are for the natural environment in this context. We are in a slightly volatile situation in the sense that we have obviously held in tension powers that were held at a European level and then an increasingly devolved framework around environment delivery in the four countries of the UK.

In the process of leaving the European Union, the question has arisen as to where we will create common frameworks that enable us to operate in the international environment with a coherent voice, that enable us to be confident that in our trade relationships with the European Union or anyone else we have an absolutely sound government system for the environment in the UK, but at the same time we do not take for granted or in some way indulge in a power grab that results in powers that have been devolved being de facto taken back to a UK level.



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It is a very complex and very sensitive issue. I do not think it is right at this stage to decide to say it must be one body or four bodies or what the nature of that co-operation is. Everybody who works in and is involved in the environmental sector level at the moment would call for a much higher level of co-operation around making those kinds of decisions and to make sure that what is uppermost in people's minds when they are making those decisions is the future health of our natural environment. It is a political minefield in many ways, but nature knows no boundaries. We cannot afford to have a situation in which there is political trade-off between any of the constituent parts of the United Kingdom around this issue.

Q14 John McNally: You would have to agree that it is essential that any regulations that are made would have to be approved by the different devolved Administrations.

Ruth Davis: It is important to be really specific about what it is that we are talking about. In a context where we were talking about something, for example, that was part of a common framework, it is obviously absolutely essential that the different parts of the United Kingdom agree on that. However, it would be possible to take forward the 25-year plan by implementing an Act for England, for example, that would put in place goals and metrics for England and a different approach could be taken in Scotland, Northern Ireland or Wales. That is within the constitutional settlement because of the nature of the devolved powers associated with the environment.

In the end I think it is up to those different Governments to come together and decide what level of co-operation is appropriate in order for them to meet our shared goals as a country, but in the international arena. It is not necessarily for us to start with the position of saying it absolutely has to be either at a UK level or a Welsh level. This is at this stage about relationships, dialogue and a recognition of a wider common good to come to the right conclusions about that.

Dr Benwell: May I add one more quick word? One way to think about it is that in each country there needs to be an institution with the right features and functions. That might be a shared body or it might be individual bodies that fulfil that role in each country. Those features and functions, in six bullet points, it needs to be independent, well-resourced and expert. It cannot be something that Government can change quickly. It needs something like a Royal Charter to set it up with the right funding and expertise behind it.

On functions, it needs to offer access to justice that is free and affordable, it needs to offer merits-based judgments on environmental cases and not just procedural judgments and it needs to have the right range of remedies to hold Government to account. As long as there is an institution in each country that fulfils those features and functions, you might see a future where we have one in each country, you might see a future where we agree for one body under a common framework.



Q15 Anna McMorris: I am going to move the discussion on to look at how we deliver the plan in terms of funding. To what extent do you feel that adequate funding arrangements to meet the plan's ambitions are set out in the plan?

Dr Pryor: I will return to the environmental land management scheme. That is fundamentally important. It is striking in the plan the emphasis put on the diverse range of funding, and that is right—payment for ecosystem services, markets for public goods and so on—but I do think the plan slightly underplays the critical importance of the core public sector funding and that redeployment of the CAP funding. Fundamentally it is really crucial we very carefully and expertly redirect that in a very fundamental way so that there is a complete change in people's understanding of what the funding stream affords.

In estimates ourselves, working with RSPB, have done around is that enough money, if we redeployed the whole of pillar 1 and the pillar 2 stuff we could probably afford to deliver existing targets so we will need additional funding to deliver the new and more ambitious ones. But it is in the right order to magnitude, which is really encouraging, if we can fundamentally change that. I would want to see an open and transparent discussion about how that deployment of funding is done rather than that being sorted out over there and we have to play around trying to develop all the new sources of funding alongside that.

Ruth Davis: I absolutely agree with that. I think Government should probably be asked some questions about timing, because we are obviously in a relatively transitional period around changes to the Common Agricultural Policy, or leaving it, as well as a transitional period in our overall relationship with the EU. When that money is likely to start to flow in the direction of environmental goods is an important issue because that will affect the ability of the Government to be able to deliver in its first five-year period. That is an area to dig down into a little and it could affect what the nature of the short-term ambition is.

Moving away from the Common Agricultural Policy, there is a broad recognition that there are a huge number of exceptionally useful things that one could do through the changes to the CAP, but there are also things that can only be delivered by direct funding for nature conservation. At the moment we are in a position where the only relatively stable sources of that money have come through the European Union, because Defra's budget in relation to that has been cut.

There are two things, I think, that we would need to see happen. One is that we make sure that across all four countries of the UK we do not lose any of the existing funds that we have access to through the EU. I would add that those funds were not just important because of the amount of money, they were also important because they involved really active collaboration with our partners and neighbours in the European Union, so that is also worth focusing on. Not losing those funds is vital.



We probably need to ask very specific questions about how would this relate to the recovery, for example, of endangered species that do not necessarily immediately recover as a result of the long-term direction of monies through the Common Agricultural Policy. It is also not all about land. It may also be about fisheries and the marine environment, for example, do we have the right level of investment in our understanding of the marine environment even to be able to know how to follow forward with the kinds of protected areas we would like to put in place? There is a lot of stuff that exists outside of the CAP.

The other point I would like to make about money, which I think is a critical one, is we have recognised in the transition to a low-carbon economy that a vital part of that is investing in innovation and investing in industrial policy, which means that we gain the economic benefits for being a country that is on the front foot in terms of environmental innovation.

There is an enormous potential to do something similar in our country if we were able to see environmental innovation around things like green infrastructure or changes to the agriculture system as being something that is of potential economic benefit to us and to local communities, but we will need to start building bridges into, for example, baize if we want to get to that point. Some of that came out of Michael Gove's recent speech, but I think we should be challenging around what would it mean to have the equivalent of an industrial strategy for innovation and environment and then the real money would start to flow.

Anna McMorris: Thank you, that is interesting. Do you want to comment?

Georgia Stokes: Yes, a couple of thoughts from an urban perspective. I think, as I have already mentioned around local authorities, that is where the huge amount of funding is supposed to come from to manage green infrastructure in our urban areas, and that is reducing, or coming from charitable grants, which is not sustainable because they are over three or four years and then you have to reinvent a new project and everybody is trying to get funding from there.

Taking the natural capital approach is looking at what the benefits are. Everybody gets a benefit from having a healthy green infrastructure in our urban areas. How is that reflected in funding and investing in them? Looking at business, looking at the local enterprise partnerships, looking at health spend, public health, we are working with Birmingham public health at the moment around a health assessment toolkit that includes natural capital metrics to then pitch to developers. What is the developer role in all of this? Obviously housing is a massive issue that we probably need to talk about at some point. Where does that link to section 106 money and Community Infrastructure Levy and how can that be a much clearer relationship to invest in our natural assets in our cities? It needs a big rethink in our urban areas to make sure that everybody is investing in



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our green spaces and it is not seen as the parks department of a local authority's responsibility.

Q16 Anna McMorris: Thank you. Can I go back to what you were saying about leveraging and the economics of the natural environment? I know that the Welsh Government has done quite a lot of work in looking into that and green growth and tying that together. The plan does place emphasis on leveraging the private sector in terms of looking at natural capital benefits. Can you talk a little bit about that and how practical you think that might be?

Ruth Davis: Yes. I will try to get down to the granular level of that, because it is very easy to talk about that and it exists in a cloud of unknowing without putting any practical measures in that really drive change. What are the things that drive private sector capital into these sorts of outcomes? Regulation does, and good regulation is an incredibly efficient way of driving innovation and ultimately driving down costs, interestingly. If you look at the space around the energy system, you will see that we have succeeded in incredible cost reductions in renewable energy to the point where they are now cost competitive with a lot of high-carbon energy sources. That is a result of active government. Regulation I think is one way of doing that.

The creation of markets is another way of doing that. In the end, a situation where we have very large transfers of Common Agricultural Policy money to pay for environmental goods and services will attract private sector involvement because there is a revenue source associated with it. Those two things I think are quite important. There are interesting ideas around things like covenants in the plan, which would potentially use the tax and inheritance system to create incentives for virtue around conservation.

The really interesting and big point around that is the capacity to use those tools in such a way that they do genuinely link up with an industrial policy. They link up with the supply chains, for example, they link up with the capacity to take small businesses and help them grow their markets. Ultimately, while you may start by interventions that are about public payment for public goods, interventions through regulations, where you are aiming to get to is to drive innovation in such a way that those businesses are increasingly capable of standing on their own feet. That is what low-carbon industrial policy is about. It is quite sophisticated and I do not think we are anywhere near that level of understanding in the way in which we approach environmental goods and services. We can get there; we could be an innovator in this case.

Q17 Anna McMorris: You are talking ecosystem services?

Ruth Davis: A whole range of different things. Let me give you an example. Let's imagine a situation in which we had public payment for public goods that was helping to protect and restore peatlands. That is paying for a range of potential ecosystem services. In the longer term it



is entirely possible that you would get to a place where you had the benefits, the recipient benefits, of those particular services—let's say people downstream who were being protected from flooding or people in a water company whose water was better as a result of that—being involved in a market that is of a much more straightforward kind than using a large amount of public intervention to pay for that outcome. We are not there yet, so you have to see these things in terms of a transition from a system in which nobody is paying for those benefits and goods to one in the long term in which there are probably more sophisticated markets.

Another example might be a situation in which at the moment the business model of a farm is focused around, let's say, a very high input use of pesticides and fertilisers but there is a transition to an alternative business model that means they are producing very high-value, very high environmental-value goods. What those people probably need is access to markets and a growth in markets. Over time, those forms of ecologically sensitive production may very well become cheaper and more efficient than they are now if they are supported by market access. There are quite a lot of different interventions you could make.

Q18 Anna McMorris: It is interesting because in Wales there are already those projects for the peatlands and partnerships with the water company, with Dwr Cymru, and the Welsh Government on ensuring just that, but it is about rolling that out.

Ruth Davis: Yes, a lot of scaling-up needed.

Anna McMorris: A lot of scaling-up needed.

Dr Benwell: I would like to suggest four ways in which the Government could play a role to unlock some of this long-promised humongous pots of money from the private sector that could go towards the environment. There are four levels to Government function. The first is their overall treatment of green growth, the second is the regulation and target setting, the third is market-making and the fourth is certification.

At the top level, the environment plan talks of the gain of the integration of economy and environment. Mr Gove again emphasised this at Prosperity UK last week, how interdependent they are, but it seems like only yesterday that we had the growth duty in the Infrastructure Act, which set a duty on economic regulators to maximise economic growth. We tried putting green growth in there and the Government rejected that suggestion. It seems like only yesterday that we had the red-tape challenge, where the Government looked at their statute book and decided whether to let regulations go forward on the basis purely of costs to business, again blind to environmental costs or benefits. At that top level it is time for Government to reset things, maybe have a green-growth challenge where every policy in each Department is tested for its net nature benefits. That is the sort of thing that can make interdepartmental co-operation happen.



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At the next level, target setting and obligations are the way to give certainty of revenues in the long term, saying to polluters, "You are going to have a long-term obligation to pay to make up on some of the damage you do". The promise of net environmental gain is one way of doing that. You could think of other obligations for water companies, for chemicals companies and the like.

The next step down is market-making, who is going to award these contracts and how. They need to know where there is an asset to invest in and that it is going to be a certain investment over a long period. The Wildlife Trust has done brilliant work on local ecological opportunity mapping to identify the natural assets that could be investable at the local level. Again, that is a way of involving local people.

The final job that Government really need to do is certification of those products. They need to give confidence to investors that if they are going to put money into stuff it is going to deliver a benefit and it is going to be recognised as an investable proposition in the long term. All four of those levels, from recognising green growth across Government, setting targets and obligations to create revenue streams, market-making with mapping and contracts and certification at the local level are all hinted at in the plan and they could all be realised in an Environment Act.

Dr Pryor: Can I follow up with a couple of practical examples from the National Trust experience that are very relevant to this overall concept of the funding for the provision of public benefit? One is some work we have done with Green Alliance on developing natural infrastructure schemes, bringing land managers together to say, "If we work collaboratively at the landscape scale, we can deliver an improvement to water, reduction in flood risk, carbon storage or other benefits". There is a need—as you were saying, Richard, under that phrase of "market-making"—of encouraging and facilitating the collaboration between owners. One of the problems is as an individual land manager you probably do not have much to sell and it needs a structure that brings people to work together, a facilitation fund successor, if you like.

My other example was at the other end, around public access and public enjoyment, probably the most obvious and tangible and public benefit there is to be able to go for a walk in the countryside and enjoy the beauty of the landscape, its rich wildlife, its amazing heritage. It is fantastic to see the Secretary of State putting such emphasis on that. It has gone down and down in its profile in recent years in the agri-environment. If we do not capture that and give due public funding—and it is not an easy one to get one of these other business funding sources for.

I put a flag up that the Natural Trust welcomes around 200 million visitors a year to its outdoor places, about 10 times as many as it welcomes to its houses and gardens. So many of its places are overrun on a sunny weekend. The demand for countryside access far outweighs



the ability to provide for it, to the extent that places are being damaged or people's experience is not great. There is huge opportunity for more of our countryside to provide a great experience for people but it does need that funding stream, which I think must have a strong core of public funding to deliver that.

Chair: We are going to move on.

Q19 Dr Matthew Offord: I want to ask about the natural capital approach that the Government have certainly taken and ask where you see the benefits or negatives as part of that approach.

Ruth Davis: I will have a go. I guess every single member of the Committee is going to be familiar with the broad conceptual benefits and disbenefits of this situation. We are in a context in which the overall common good, public good, of the environment has not been valued and measured in a way that enables it to be taken into account in decision-making that is broadly dominated by economic analysis, cost benefit or whatever. Attempting to try to understand what the value of that is is motivated fundamentally by a desire to be able to integrate that value in the long term into how we make decisions in the world, an entirely reasonable proposition at one level.

The difficulty is that entangled in any potential monetary value of the kinds of assets we are talking about is a deep-seated cultural value, spiritual value, relationship with individual places. Our relationship with the other things with which we share the planet is simply not one that can be encompassed on its own in a monetary value. That is where the philosophical tension lies.

I think people are beginning to be more sophisticated about the fact that you can hold those two things in your mind at the same time. The question then becomes what happens when you start to try to put that into action at the local level, because the real risk is that we take a set of values that we know we cannot put a monetary figure on, put them over there in a box, continue to count the things that we can count—because it is a lot easier to count the value of air pollution or clean water or whatever it happens to be—incorporate the value of those things into decision-making and somehow or another ride roughshod over both the value of wildlife and biodiversity and the value of people's very intimate and delicate relationships with the places they live, which I think is some of what Simon was talking about.

The solution of that seems to me to be that first we have to acknowledge that this is a hybrid system and that some of things we are trying to do is to set goals and targets and aspirations as a country to protect things that we protect on the basis of values and not necessarily on the basis of economics. The landscape we love, the wildlife we live, we love as a collective common good. If we set that as a framework around natural capital it will work much more effectively than it otherwise would.



The other thing I think we have to do is be much more open about involving people locally in making decisions about the places where they live. I cannot see a future for the natural environment in this country that does not increasingly involve more and more people, empower more and more people, engage more people in shaping the places where they live. If you do that, then I think you have a counterbalance to the risk that what you are doing is setting up an accounting system that is potentially deeply alienating for people's sense of their local community or relationship with place. Those are the two things I would do.

Q20 Dr Matthew Offord: You touched upon the issues of metrics and the Government said they would introduce metrics as a baseline and they said they would do that within six months of publication of the plan. I cannot remember the date that the plan was launched, but do you think that is a realistic timetable or is it too quick and what would you expect them to achieve by now?

Chair: 11 January it was launched.

Dr Pryor: For me that is an illustration of the concern I mentioned earlier. It is a fantastic ambition. It would be superb to have a set of national metrics and also a suite of local metrics, but here we are halfway through that period and we have had no structured conversations with either Natural England or Defra about that, yet it something that we have been closely caught up with our KPIs and so on and other things we want to measure. We have experience in plenty. The NGOs probably have the biggest experience and the biggest datasets that would be relevant to that, so it does not feel right not to be part of that.

The other example I would cite, again taking the natural capital concept and applying it locally, for us what has been really powerful is an initiative around the payment for outcomes banner that have been trialled in the Yorkshire dales, of taking a concept of the natural capital, which is difficult for some people, and translating it to what are the things you expect to see on the ground and working with our farm tenants. It is not telling them we are going to go around with a checklist and see whether they have achieved it or not, it is empowering them to go around and see how the sward is responding, seeing if they are getting a greater diversity of plants, seeing if the wetter areas are getting wetter and seeing how well the young trees are coming on and so on. What has been the transition there has been about working alongside them and building their expertise in a different way of looking at their land. That for me is a translation of the theoretical concept of natural capital into the way people approach the thing on the ground and take ownership of it in a transforming landscape.

Dr Benwell: I think it is important to concentrate on which metrics are missing, which we have now, and what we need to turn from a metric to a target. We already have oodles of natural environmental metrics. The JNCC publishes brilliant metrics in the "Biodiversity Indicators in your Pocket" every year and that kind of thing. We do not need to reinvent



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those, so let's keep those working and make sure that the proper monitoring happens when we leave the EU.

The missing metrics, there are a couple of important ones that are feasible to hone down on quickly: soil quality, for example. I think we are getting to a situation where organic content of the soil is looking like a realistic metric and Government can start to tell us what that starts to look like in the next couple of months. The magic missing metric for the long term is the overarching natural capital asset index, where we decide how much our natural capital assets are worth nationally and what the maintenance investment cost will be to make sure that those assets are improving in condition year on year. That will be a longer-term exercise, but at least having that as an aspiration set out in the next few months would be useful. Already the ONS and the Natural Capital Committee are on the case.

Thirdly, and the most important thing, I think, is turning metrics into publicly accessible targets. That is the real exercise that we should be doing with the public over the next few months: which of these metrics can we use to be a proxy for air quality, for water quality, for wildlife and for access to natural green space? It might be that the Government say in the next couple of months, "We are going to take habitat extents and quality, basket of species index and a commitment to no extinctions as our nature metric" and set a target to make sure that the extent, the quality and the overall basket of species is going up in five-year milestones over the next few years. It could do that for nature, it could do it for water, using ecological status and abstraction amounts, it could do it for air quality, as this Committee knows better than anybody.

The big task for the next three months is drawing on the metrics we already have and translating them into realistic and publicly accessible targets to be the headline not just for the plan but also for an Environment Act.

Q21 Chair: Thank you. I think we would also want to see soil biota included in that. Can I bring in Ms Stokes before we move to our final question? One of the things that is not measured in natural capital is the built environment—back to housing and planning—farmed landscapes, back to the National Trust and historic assets. What are your thoughts on that, but also on the CAP where the Secretary of State has said to farmers there will be no substantive change until 2024? That is a quarter of the way through a 25 Year Environment Plan. Can you talk about built environment? If anyone wants to pitch in on CAP not changing for the next six years, I would be interested to hear.

Georgia Stokes: To use local examples, one of the things that is not mentioned at all in the plan is the importance of brownfield sites. Development is, in our area at least, twin-tracked, where if it is looking to be built on areas of high green space value, then the expectation of the local authorities and the planners is that the green infrastructure is significant in that area. If it is looking to be built on brownfield, then it is



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as many houses as you can get in on a space of land. The density is expected to be huge.

There needs to be a value on green infrastructure regardless of the value of that green infrastructure and biodiversity if there is nothing else there, but brownfield sites can be enormously valuable for biodiversity. That twin-track approach is not working and there needs to be something around that that needs to be changed. There needs to be clarification around how development is going to happen and how that works with the 25-Year Environment Plan and what is going to trump the top of the priority list. Local authorities need to be given some powers to review and to follow up. As a quick example, I know one wildlife trust followed up on the environment conditions for 40 different planning applications and not one single one was put into practice.

Chair: Thank you. Does anyone want to comment on CAP?

Ruth Davis: It is a really good question. There is nothing that says that we have to carry on exactly as we are now and then fall over a cliff edge in 2022 into an entirely new system. I do not think environmentalists or farmers would find that a particularly useful thing to do, so it is a question of the steps that we plan between now and then.

There are some quite basic, very important things about that. If we are to set goals based on a set of common metrics in the 25-year plan, they have to have an absolute read-across and commonsense relationship with the public goods that we are paying for, potentially, in a public payment for public good system under the agriculture reform process. We can start to reflect that in the Agriculture Bill that is coming to Parliament. That would not be very difficult to do, make that read across.

Then I think it partly relates back to the question that Simon was raising about the plethora of potential places in which we can start testing different approaches and seeing what works. There is a lot of goodwill and a lot of energy in that. There is not a massive amount of coherence right now. I think if we have that relationship and read-across to the metrics and goals and we have a rather more coherent plan as to how we are going to test things, then over the period of six years—let's hope it is rather less—we can begin to roll out the changes in a way that is probably essential for farming communities so that they do not end up with no understanding of where they are going to be at the end of this process.

Dr Pryor: There are two things: one was around tradition and one was your point on heritage. First Ruth's point about transition. One of the things we are really concerned about in the short term is farmers facing uncertainty about future funding and switching to a high-input, market-led agriculture. We have already seen areas of habitat that were publicly funded, created over the last 10 or 20 years, being ploughed up and destroyed by farmers who have said, "I do not have any faith in this, I am going to pursue a market-intensive agriculture".



It would be a very simple move for the Government to make to say, "You will not be eligible for any future funding under this new regime if you have in the last few years destroyed stuff you have been paid public money to create". It would be a quick act to do and it would stop all this worrying concern, or we could end up with a lot of natural capital being lost over the next two or three years while we are inventing the new scheme and transitioning to it.

On the heritage side of things, I am pleased to see that getting prominence in the plan. We were worried that was going to be left out and obviously it is a difficult one in terms of requiring cross-departmental collaboration. The landscapes of our countries are brilliant in terms of being that culmination of nurture and nature over centuries and it is crucial that we have a wide interpretation of that.

There is a reference in the plan that worried us. It seemed like it had gone from heritage down to just talking about protecting archaeological sites. It is important we take the wider view of historic environment, the cultural landscapes that this country is so wonderful for and playing that in with the natural capital. There is a risk there that natural capital can be very focused on the natural environment, and we must put the heritage element of that capital alongside it.

Q22 Mr Philip Dunne: Very briefly, following Matthew's question about natural capital and your explanation about how you think that could be valued was very impressive. How do you see a definition of net environment gain sitting alongside that and how would you seek to define that and encourage the Government to define that? You talked a lot, Richard, about metrics. Do you see the same process? Does it cover a net environment gain or is it different?

Dr Benwell: I would say that net environmental gain is one of the Jekyll and Hyde policies hiding in this plan. It could be absolutely fantastic if it results in additional cash from developments that would have happened anyway being channelled towards locally identified ecological priorities. If it increases design quality and planning standards along the way for a development, that is also a brilliant win.

The other side of the coin is if we go too far down the reductionist natural capital approach that Ruth was describing, where you imagine that every kind of natural capital asset is fungible and swappable. This nightmare scenario is where you shortcut planning protection in order to get a development through, with the promise of swapping one type of natural capital asset for another. Say, for example, you are crushing something irreplaceable like ancient woodland or swapping 10 woodpeckers for a reduction in noise pollution. That is the nightmare scenario. I do not think that is where we are headed, but it is really important that Government create those firewalls between different natural capital assets so we are not exchanging one element of nature for another, and that it guarantees that net environmental gain means increased build quality and additional



funding and compensation for damage rather than a way to short-circuit the planning system. Does that answer what you were getting at?

Q23 Mr Philip Dunne: To a degree it does. Another question I have is whether we have any responsibility beyond these shores. If our activity encourages biodiversity in a particular area and the consequence of that is fewer agricultural outputs and yield and therefore greater purchase of food stocks from other countries that are producing more cheaply and damaging the global environment, how do we strike that balance and is that part of the responsibility of this Plan?

Ruth Davis: I think it is a really important and interesting point you have raised. I do not think at the moment it is necessarily conceived of in the idea of net gain, which I think is mostly shaped around the planning system, but I do want to think about the question you have raised.

For me, the UK's contribution to the restoration of the natural environment can only be seen within the bigger global context. The plan expresses the desire to be a global leader, so it is absolutely critical that we understand not just what we are doing here but also understand the footprint of our activity overseas. One very important part of that is recognising that the trading relationships that we have affect the environment in the countries with which we are trading. Reflecting and being transparent about that and setting some principle about overall gain within that would be really useful.

There is an underlying premise of what you are saying, that there is an inevitability that if we reduce agricultural production within the UK the consequence will be to drive unsustainable agricultural production elsewhere. It is a very important question to start to unpick. If you take the perspective, as I do, that the future of land use—not just here, but globally—has to be able to feed people, look after and restore the natural environment and deal with our problems around climate change, then you cannot see the UK's agricultural production in isolation. Nor can you intensify agricultural production in the UK in a way that means we break all of those boundaries here and expect that to be offset somewhere else.

We are an agriculturally rich country. We have to start to think about how we produce food in this country in a way that is reconcilable with our own goals, but also reconcilable with a broadly transformed agricultural system at a global level that does not rely heavily on pesticides, fertilisers and the conversion of land in a way that puts at jeopardy all of those different things that I am talking about. That is why I think having a conversation about agricultural innovation and thinking about sustainable agriculture in the long term is a critical part of this discussion. It is a longer conversation, but I think if you were to put that challenge to those who think about the global aspects of this plan, you would be raising a very important point.

Chair: Brilliant. Thank you all very much indeed. We have slightly run over time, but it has been a fascinating session. Thank you very much.

Examination of witnesses

Dr Haydn Davies, Professor Andrew Jordan, Dr Stephanie Wray and Susan Shaw

Q24 Chair: We welcome our second panel. Thank you very much indeed for all coming. Could you introduce yourselves from left to right, starting with Ms Shaw?

Susan Shaw: My name is Susan Shaw. I am a lawyer and I am a managing partner of Living Law. We are a public interest law firm based currently in Scotland, but working primarily on international law matters.

Dr Wray: I am Stephanie Wray. I am President of the Chartered Institute of Ecology and Environmental Management and possibly the exception on this panel in that I am not a lawyer.

Professor Jordan: My name is Professor Andrew Jordan. I work at the University of East Anglia in Norwich and I am also the co-chair of an ESRC-funded academic network called Brexit & Environment.

Dr Davies: I am Haydn Davies. I am a Professor of Environmental Law and Head of the Law School of Birmingham City University, but today I am here in my capacity as vice-chair of the UK Environmental Law Association.

Chair: Thank you all very much, you are very welcome. You sat through the first panel, so I think we got a pretty good grounding. We are going to kick off with a question from Anna.

Q25 Anna McMorris: I want to look at targets in the 25-year plan and look at what the UK has already committed to internationally and look at where we are and where we need to be. How far do you think the targets in the 25-year plan meet or go beyond those that the UK has already committed to through existing legal and international frameworks and what more might it do?

Susan Shaw: That is a very pertinent question and I think it is one that is quite difficult to answer at the moment. I find personally that when you look at this plan it is quite generic in terms of a lot of framing. I think overall there is a risk of insularity in how we approach some of these issues. We are leaving the EU but we are not leaving an international legal framework that we are all part of. Ironing out some of those issues would help go towards answering the questions that you have raised. I think we would like to see greater clarity from the Government in terms of where they stand in relation to existing international treaties, but also recognising that some of these issues go beyond that, they are part of customary international law.

One of the areas where we would like to see it go further is in recognising the urgency of what we need to tackle. We have a 25-year plan here, but



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the actions that we take in the next five years are going to be instrumental at a planetary scale. There are nine planetary boundaries and we are already transgressing four of those in relation to climate change, obviously a central topic. Chemicals, for example, is a planetary boundary where we cannot even quantify the impacts that we are having at a global level at the moment. There are discussions happening from the Swedish Government at the moment pushing for a new international treaty on those and I am worried about where we are in those discussions at the moment.

Dr Wray: My first response to that was, "Targets? What targets?" The plan seems to me to be long on ambition and very short on legally binding targets and actions.

Q26 **Anna McMorris:** Those international targets that already exist out there, not those within the plan.

Dr Wray: Exactly. If we look at halting biodiversity loss as an example, we are told in the plan that we will learn lessons from the missed target on biodiversity loss and will develop a new strategy, but we are not getting any closer to very urgent and large-scale action that is necessary. While I absolutely agree with the vision and the scope of the plan, it does not feel like it is an action plan. I do not think the targets are there to deliver the huge turnaround that we need to protect the natural environment.

Professor Jordan: The first thing to say about the plan is it really is a massive opportunity for the environment sector in the UK. Prime ministers do not normally give big speeches on the environment and they certainly do not announce big 25-year plans, so I think it is a really, really big and important opportunity.

For it to succeed though, it has to somehow build on and advance upon 40 years of EU legislation. It is striking that Defra thinks that it has responsibility for about 1,200 separate pieces of legislation and that 80% of its work is framed by EU legislation, yet you read this plan and it is very difficult to identify where the EU has acted and how precisely the UK will build upon that. You really have to dig into the detail to find that, and what you find is that sometimes EU commitments are literally carried over. Sometimes they are carried over and not attributed to the EU. On other occasions they seem to be somewhat watered down.

The second point is having read lots of EU legislation in my life and also national legislation, I am struck by some of the loose phrases that are found within the plan. Commitments to "look into, to aim for, to do things where the balance of costs and benefits allows". This is exactly the sort of language that was reminiscent of the 1970s and 1980s. I think it is that sort of language that will make it difficult for parliamentary bodies, for NGOs, to hold the Government to account if the targets and if the aims are not clearly specified.



Q27 Anna McMorris: What does it need to do? We need an Environment Act, you are clearly saying, in order to clear that out or something in legislation, would you agree with that, in order to spell out the targets?

Dr Davies: We certainly need that. I think over and above that is the question of precisely where our relationship with international law will be as part of the Withdrawal Bill, putting aside any issues of a separate Environment Act. One of the worries we have at the moment, I would endorse Stephanie's comments about lack of obvious targets. We know what some of our international targets are.

The big problem is deciding whether they are our targets or the European target or a mixture of the two and how those obligations that we have signed up to, either in mixed agreements or alone, are then translated into our own law. To some extent, until we get that hammered out, it is a little bit premature to talk about whether we are going to meet or exceed targets. That is the legislative structure issue that concerns us greatly at UKELA.

Q28 Anna McMorris: Professor Jordan, how does the plan compare to what is set out in the EU's Seventh Environmental Action Programme? How does what is set out in the 25-year plan compare?

Professor Jordan: I think what is interesting about the action in the 25-year plan is it contains or hints at a potential mechanism to review and revise the plan up to every five years. There are two lessons from history that we can look at if we want to learn how that could be done in a world-leading way. The first one was an attempt made in 1990 by the UK Government, announced after Prime Minister Mrs Thatcher had made a big speech. That led through to a White Paper with, like the 25-year plan, lots of commitments made. There was a plan to renew and revise that and one report was issued in 1995. Thereafter, the Labour Government came in in 1997, the political climate changed and the energy level started to drop.

Contrast that with the EU level. The EU has seven environmental action plans. The first one was developed in 1973. I think what is different about those to the 25-year plan is first of all they are enacted in legislation. They are enacted through a decision that is co-adopted by the European Parliament and Ministers. Secondly, it is independently evaluated. It is independently evaluated by the European Commission, by the European Environment Agency and by the Commission itself. Finally, within the action plans—and I am thinking about the seventh one here—there is a ratchet mechanism built into that. If you look at the decision that creates the Seventh Environmental Action Programme, Article 4, it requires the Commission, at the end of the evaluation of the seventh programme, to start adopting and start writing an eighth one. You can see there built into it it has a legal underpinning, it has independent scrutiny and it also has this really important ratchet mechanism.



If the UK wants to be world-leading in the environment sphere, I think that is the world-leading approach to environmental planning. That is the thing that the Government should seek to do better than and improve upon.

Q29 Anna McMorris: Thank you. Susan Shaw, your submission argued that some of the elements of the plan were outdated. How do you think the plan might better reflect international thinking on environmental protection targets?

Susan Shaw: Part of that is an ideological one. It is also about we have advocated to embrace social ecological resilience. By that what we mean is fundamentally understanding the interactions between people and nature and trying to get away from the linear approach in thinking towards the environment. The environment does not function in an A plus B equals C manner. If we degrade biodiversity, for example, as our planetary boundary, that has impacts on the ability for other impacts on say climate change for the system to absorb those and respond. That is one area where we think that is important.

Also in terms of polycentric governance, bringing in lots of different actors at the right stage and proper spatial strategic planning, I think that is one area where the plan could be far more improved in terms of specification of who it is that will be involved and at what stage of the process.

Q30 Anna McMorris: Dr Wray, do you agree with that or would you comment on any of what Susan has said?

Dr Wray: The non-linearity?

Anna McMorris: Yes, or how might the plan better reflect international elements and targets.

Dr Wray: I think at the moment it is slightly insular. It is slightly inward looking and in its England basis, I suppose. From that perspective, because I think it has been written at the time in history it has been written, it does not necessarily know how to reflect wider EU or international targets and that does show in the drafting at the moment. To take this on to the next stage or to underpin it by legislation, it does need to tie back into those international obligations in a much clearer way.

Q31 Anna McMorris: That is quite concerning, as we leave the EU, where we are not going to be tied into that thinking and that legislation.

Dr Wray: Exactly. We have had assurances that we will still be abiding by the same treaties and international conventions, but there is no mechanism to tie us into that at the moment, no.

Chair: In some areas it is weaker. The Water Framework Directive says "good ecological states" by 2027. This just says "good ecological condition". The "when" we need to tidy up.



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- Q32 **Geraint Davies:** Is there a danger the 25-year plan is booting our objectives on things like plastics and air quality into 2042, when in the case of Europe these things will happen in 2030? In fact, a long-term plan means we do not have a short-term plan and in the medium term we are at a dirtier and worse place than the EU?

Dr Wray: That is certainly a risk, it would appear, in the plan as drafted at present, yes.

Professor Jordan: Comparing it with the Seventh Environmental Action Programme does not necessarily mean that that is the only way to do it and that is the best way to do it, but I think what is interesting about the Seventh Environmental Action Programme is that it has a long-term target, 2050, living well within the earth's limits, but it has a whole series of interim targets and a whole list of measures, of actions that should be taken. It is a living document that is regularly updated, it is regularly evaluated, and as I said, it contains this important ratchet mechanism as well.

- Q33 **Geraint Davies:** The idea is that by 2030 in France or whatever they will only have recyclable or reusable plastics and they are going to get rid of all fossil fuel engines by 2030 in Europe, but in Britain it is going to be 2042, is it not?

Susan Shaw: The fact that we have a 25-year plan does not mean that you have to wait 25 years to do everything, obviously. It is good that the plan does refresh itself, but if we take the analogy of the Water Framework Directive, the river basin management planning process under that instrument has been effective at driving collaboration at an early stage. If we look at the re-watering of the River Garry in Scotland, that was a 10-year plan in terms of getting the hydro power sector, the Environment Agency and others around the table together, but the preparations for the next plan start mid-plan. It is back to the point you raised earlier about the consultation process. In terms of this draft plan, at what point would the five-year ratchet, for example, be consulted upon? If the Government could start working on those aspects soon then it would help to allay some of those concerns.

Chair: That is obviously a massive concern for us as an Audit Committee. We are going to move on.

Mr Robert Goodwill: Some people might be quite surprised to hear from Professor Jordan that Mrs Thatcher's ambitious environmental targets were watered down by subsequent governments, but it illustrates the fact that during any 25-year plan there are going to be changes of government and possible changes of policy. What can we learn internationally to enable us to make sure that these ambitions are baked in and that they are not somehow jeopardised or changed by future political developments? I am not looking at anybody in particular. I suppose the short question is: do we need legislation? Do we need an Environmental Protection Act now laying out what will happen in the



same way that we have done with climate change, so that everyone has to sign up to it and therefore it will be a very big departure to make substantial changes?

Dr Davies: In a word, yes, though you would expect me to say that, coming from an organisation full of lawyers. Yes, that is important. An example comes to mind from Wales. The Environment Act there has built in a four-year review period for their natural resources plan and so on and that is enshrined in legislation. It is never going to be completely insulated from political change because clearly you cannot bind future governments and so forth, but the fact that it is in legislation means it is taken more seriously than if it is were in a non-legal policy framework instead. I do think it is important to enshrine the commitment in legislation, yes.

Q34 **Mr Robert Goodwill:** How can we address the big issue that always seems to develop, that we want the highest possible standards of environmental protection in legislation, but at the same time we want to be able to develop projects, whether it be a runway at an airport, a high-speed railway line or a nuclear power station? It makes it so difficult to do those things that it almost gives environmental legislation a bad name or at least makes them much more expensive. I am thinking about the Newbury bypass. Money that could have been spent on environmental enhancement on that was spent on wonderful lawyers being paid to fight the case.

Dr Wray: I can address that, if you like. I think what we have been lacking so far in how we have dealt with the natural environment in terms of development is taking a much more strategic look at it. We have a national biodiversity strategy that says we should have a network of bigger, better, more connected sites that protect our natural environment, but we have never developed that. We have a national infrastructure plan, but we do not have a natural infrastructure plan. We have not set out where those big, better, connected sites are that we need to protect. If we have that as a plan then it is easier to plan how we develop, where we put new housing and where we route new infrastructure that does not come into conflict with high-priority areas to be protected for the natural environment. That is one element that we have not really taken into consideration, treating them in the same way and looking at them in that same strategic way. We have dealt with it on a case by case basis, quite often too late in the development process to do anything meaningful other than compensate for a loss.

Going back to your earlier question about what you need to underpin the 25-year plan—if I had thought about this a little bit longer, I would have it as an acronym, but it is not going to make sense—the first thing is funding. Do we have the funds to deliver it? Do we have the other resources that we need, the people and the skills? If we do not have the knowledge, is there a research plan in place to fill those gaps so that we are not coming up against problems with the precautionary principle at a later date? Then is it aligned to the rest of Government policy? For me



that is the key one, because this will never work in isolation or if it is something that sits purely within Defra. It has to be an ambition that is across Government.

Professor Jordan: Just coming back to your question about what the Act will do, the NGOs are right that an Act is needed to put this new body on a statutory footing. It is also needed to ensure that the principles in the treaties are properly retained and, where possible, improved upon. However, it is not a panacea. It will not do everything that is required to make a success of Brexit. It will not, for example, ensure the long-term status of the international environmental agreements that the EU and the UK have entered into. It will not, for example, provide the common frameworks that will be required to ensure that the different parts of the UK pull together on sustainability. It is part of a jigsaw of pieces, but certainly not the only one.

Dr Davies: If I could just add to my earlier answer, one of the keys to this is thinking across the board and buy-in across the board. That has been achieved in legislation to some extent. The whole of the European legislative project is based on the idea of a high level of protection of the environment. It is built into the Treaty itself and that is a starting point, in theory at least, for everything the Union does.

Similarly, going back to what has happened recently in Wales, the aim of the Wellbeing of Future Generations Act in 2015 is to make sustainable development the central organising principle of Welsh governance, not just in relation to environmental matters, but across the board. It is early days, it has only been in place for three years, but that idea of building a principle into legislation that is supposed to inform all decision-making may be one of the ways of tying it in beyond the normal political cycle.

Q35 **Mr Robert Goodwill:** Thank you. My next question is for Ms Shaw. During the last evidence session Dr Davies was very optimistic that if we brought in measures in the UK that might reduce food production and agricultural production generally, that would not have knock-on effects across the world. I am thinking specifically about legislation on biofuels, where there is a real issue with indirect land use changes, or indeed the idea that if we tax high-energy consumers in this country we will just push those industries abroad. How can we ensure that measures we take here do not have knock-on effects around the world? Are there examples that maybe we could draw on to ensure that does not happen?

Susan Shaw: Part of that is, as we have talked about, strategic planning, which is really important. A lot of the legal cases and battles that have been fought over the last few years probably would not have happened if there had been that proper strategic spatial planning. Part is also trying to sort out the conflicts within existing legal frameworks and also adopting a principled approach.

For example, in relation to energy we have consistently advocated for a principle of "efficiency first". If we looked at reducing demand that



obviously opens up scope for huge innovation and businesses in that space as well. Then we perhaps may not have been required to build those biomass plants as a transition pathway towards a clean future. It is also about undertaking proper strategic environmental assessment and proper environmental impact assessment. Again, these are basic points, but it is bringing the right experts around the table at the correct stage, before investors have put that significant capital into particular projects, only for those views to come later down the line.

Part of it is embracing complexity, understanding that these are very difficult questions and that there are inevitably at some stage going to be trade-offs in some sense, for example, the electric vehicle revolution we have talked about, the environmental problems shifting in that space with the mining of cobalt in the Democratic Republic of Congo and how that relates to issues to do with international peace and security when that money can then be diverted into international armed conflict. There are very complex issues there and they are not ones that we can give a generic answer to. Part of the problem is the cultural embracing of that complexity.

Q36 Mr Robert Goodwill: Have the European Union delivered on that, as we have been acting through them for the last 40 years? Have they come to terms with that or is it still a work in progress for them?

Susan Shaw: It is a work in progress globally. It is a very complex issue. Again, partly it is putting science first and embedding things like the precautionary principle, but also trying to refine the precautionary principle. We advocate in favour of this idea of, "If in doubt, nature prevails", "In dubio pro natura", which the IUCN have advocated for. It is constantly being refined, but it has to have that "science first" positioning behind it as well, the principle of "efficiency first" in relation to energy, "reduce, reuse, recycle" and producer responsibility in relation to waste and those kinds of issues.

Q37 Mr Philip Dunne: The Secretary of State in the environment plan talked about establishing a world-leading oversight body with enforcement powers. He is consulting on it. Can you give us—it is probably mostly a question for the lawyers—your sense of the essential attributes such a body should have?

Professor Jordan: It is good there is now a high-level acknowledgement by the Government that a new body is required and an acknowledgement by the NGOs that it should be underpinned by primary legislation. Within the Withdrawal Bill there is a clause, clause 7, which if it is accepted will allow the Government to create such bodies through secondary law. I do not think that is a good way to redesign the institutional hardware of Government.

Since November, when I think Michael Gove appeared before this Committee, things appear to have slowed down. It is perhaps four months now and the consultation process has not started. My sense is



that the NGOs now between them pretty much agree on the main elements of such a body and there is a recognition in Government that such a body is required. There is still a lot to work out, of course, including how it is going to operate between the different devolved bodies. That is really important. There is a debate to be had about what functions it should take on. Perhaps there is an opportunity there to learn lessons from other countries.

It is important to remember that even if that body is created and it is Commission-like, there are still some very important functions that the Commission at the moment discharges that would not be picked up. First and foremost, the Commission is a complex hybrid body. There is no equivalent anywhere in the world. For example, it is very heavily engaged in policy formulation. If this new independent body is not going to engage itself in policy formulation, who or what is? Defra is struggling with huge cuts and is in the midst of a huge amount of internal reorganisation and change, so there are doubts there as to what can be delivered in the short term.

The Commission has been very good at offering long-term strategic thinking through these environmental action plans and programmes. Finally—this is often forgotten—the Commission also gets involved in a lot of policy evaluation. Policy evaluation is important to keep legislation updated, to keep it nimble and to keep it fresh. I have a great deal of concern about all of this legislation, 40 years' worth of legislation, that has been adopted. Who is going to keep that updated? Who is going to evaluate it? I can imagine, in the shift toward a post-Brexit mindset, that this gets forgotten and the legislation, in effect, is allowed to wither or—to use your phrase—zombify.

Q38 Mr Philip Dunne: Ms Shaw, I think you indicated in your evidence that you had some concerns about the longevity and the independence of this body. As you are, I think, the only non-English member of this panel, could you also just touch on the devolved Administration aspects of this body, whether you agree that it should be UK-wide and how you think that would work?

Susan Shaw: There is quite a lot to determine at this stage to answer the question about whether it is UK-wide. Overall, the concern is around the enormity of the task that currently faces us and the extent to which this has been underplayed in some of these debates and discussions to date. Independence is an obvious key principle that should apply to this body, but realising that in practice is not always straightforward. We can see examples in things like the Freedom of Information Commissioner, Scottish Natural Heritage and those kinds of organisations, which on paper do have independence, but when issues become very highly economically charged with particular cases that is very difficult to maintain. It has to be very clear.

Using the rights-based optic could be quite helpful here. We spoke a bit in our submission about recognising the work of the UN Special Rapporteur



on Human Rights and the Environment. The first two principles that are specified in his framework principles are about recognising the fact that states are under an obligation to ensure a safe, clean and healthy environment and to uphold human rights and an obligation to apply human rights in relation to the environment. It is bringing those perspectives into play and recognising that these are also requirements of existing international human rights law, not just environmental law. It also goes back to the point about building this out across Government. It needs to be far more wide-reaching in terms of the scope of ambition.

Dr Davies: I can comment on that as well because I am actually Welsh rather than English.

Mr Philip Dunne: I apologise, I realised that just as I was saying it.

Dr Davies: Perhaps there ought to be an earlier question answered and that is how exactly are EU powers going to be devolved? That is the big issue. Once you have decided that, then it is appropriate to decide what the powers of any such independent body should be and whether they need to be replicated in independent bodies in the devolved regions or whether those regions decide to take advantage of the powers of the new body. To some extent we have to decide which common frameworks are necessary. The Joint Ministerial Committee just last week, I think, drew up a list—a starting point, anyway—of things that could go back to the devolved Governments without change, some that would need a non-legislative framework and some—I think 25 or so—that would need a legislative framework. To some extent what happens there is going to dictate what the body ought to be and whether it ought to be replicated or not. Until we answer those questions it is going to be very difficult to say. Certainly in UKELA we have a lot to say and we have published quite extensively about our thoughts on this new body.

One of the Commission's roles that is very important and that Andrew did not refer to is its ability to negotiate with Governments, particularly where it has been in receipt of complaints from citizens about something to do with the environment. The Commission will often negotiate an outcome or a remedy without recourse to legal procedures at all. If we are talking about replicating that power in this country it is going to be very important because the alternative is judicial review. Nobody can afford judicial review, even in the light of the easier availability of protective cost orders and so on. That ability to—I will not use the word "threaten"—engage with Government over disputes and reach a non-judicial remedy is extremely important and one thing that is perhaps underplayed considerably both in the report and in descriptions of the Commission's role more generally.

Mr Philip Dunne: That is very interesting. Thank you.

Q39

Alex Sobel: We had Michael Gove here in November and Kerry McCarthy asked him about some of the principles such as "polluter pays" and precautionary principles. His response was, "I do not think the right



answer, and I know lots of environmental lawyers take this view, is to place these principles on a statutory basis". Do you agree with his answer? Maybe Haydn and Susan might want to comment on that as lawyers.

Dr Davies: Really? I know lots of environmental lawyers who have the opposite view. This comes back to our earlier point about the sanctity of or respect for environmental principles. Are they more respected if they are in statutory form? Generally I would say yes. Certainly the precautionary principle is a matter of European law as it stands. If we are going to draw back from that, that has profound implications.

Q40 **Mr Robert Goodwill:** It depends how you define that. If you define it to justify doing something that you politically want to do and for which there is no scientific evidence fully agreed, then that might be something less—

Dr Davies: That is when we get into a philosophical discussion about what the precautionary principle means in Europe as opposed to in Anglo-Saxon jurisdictions. That is a question for—

Q41 **Mr Robert Goodwill:** Who is it a question for?

Dr Davies: It is a question for the Government. Ultimately they have to decide, but I think it has to be an informed decision. One of the things that has dogged particularly trade disputes, for instance, across the Atlantic has been a distinct difference in the interpretation of the precautionary principle. The Americans call it the precautionary approach for very good reasons. The question is do we want to continue with the precautionary principle in its European form or do we not? If we do not, why are we doing that? If the reason for that is to attract trade from the US then potentially that is the reason for doing it, but environmentally speaking, in my view, not a very good one. I may be stepping beyond my organisation's brief there. I personally think it is very important that the precautionary principle remains enshrined in law.

Susan Shaw: If I could add to that, we would say that it is very important there is no cherry-picking of principles. It is very important that the principles are recognised. They can provide a framework to help deal with some of the conflict resolution. It is absolutely right, as we said in our submission, that principles on their own will not resolve everything, but that does not mean they cannot be part of the solution. Again, what we are looking to try to see is an overall refinement of UK environmental law as we move forward and the correct, principled hierarchy is as good a place as any to start.

Obviously there is debate that you could have around certain principles in relation to the precautionary principle or approach. When you get into complex issues like geoengineering, for example, you can have debate about where the balance of precaution lies, but there is thinking at an international level that is already looking to grapple with some of those key questions. It could be an opportunity for the UK to set itself ahead of



the international agenda there and really demonstrate a progressive approach.

Q42 Alex Sobel: To follow up, to Dr Wray and Professor Jordan, how important are these principles—polluter pays, the precautionary principle—to you, not obviously as lawyers, but more as policymakers and practitioners in the field? Do you also agree with Dr Davies and Susan Shaw that they should be enshrined in legislation?

Dr Wray: Yes, certainly we agree on the importance of the principles and the most natural way to ensure that they were enshrined and adhered to would be to have them on a legal basis. It also helps in knowing where we stand when trying to deal with some of these issues in the years immediately after Brexit. We have a massive body of European case law that tells us how to interpret particular situations and helps us to develop ways of working that it would be very important not to just shut the door on next year. While I understand problems around the precautionary principle, when we go back and think from a biological point of view about the scale of the issues we are dealing with and the urgency of the issues we are dealing with, it is not a time to assume things will be all right and carry on, it is a time for caution.

Professor Jordan: The principles are important and that is why the British Government signed up to them in 1992 in the Rio Declaration. They are absolutely foundational. They are, to use a phrase I think was used by a witness in the previous session, the lodestar by which you navigate as a policymaker. Mrs May has already answered the question, has she not, about whether these should be enshrined in law? She said there should be no lowering of standards after Brexit. The principles at the moment are enshrined within the Treaty and they are enshrined within international legislation. What is there to be frightened of? What is there to be scared of?

Q43 Chair: She also said in December that we would be leaving the fisheries policy and we have an urgent question in 15 minutes because we are not leaving the fisheries policy. A lot of what the Government says on Brexit and future—

Professor Jordan: Of course, but if the UK was already clear about where it stood on these principles it would make it easier and quicker to sign free trade agreements because then our trading partners would know what we stand for and what is important to us. It would also, I think, help to reassure some of those in the EU who question our motives and think that we are aiming for some—what did David Davis call it?—“Mad Max-style” deregulatory drive.

Dr Davies: Can I just add a supplement to Andrew’s point there? If, as it may be, the worry about bringing these principles in is that it will affect our ability to attract trade deals or whatever it is, it is worth pointing out that most model trade agreements enshrine—certainly the US model bilateral investment treaty, for instance, in Article 12, if I remember



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correctly—the principle that a reduction in environmental standards as a means of attracting trade or international investment is essentially contrary to international law. This idea that we can reduce standards to attract trade—I am not saying that is the justification, but if it was the justification—is already considered beyond the pale, even in international trade law.

- Q44 **Geraint Davies:** Specifically on that, my understanding on chemicals is that the precautionary principle would mean that if you wanted to manufacture chemicals you would have to prove they are safe. In the United States, the onus is on the Environmental Protection Agency to show that they are hazardous, which is why they sell asbestos in brake pads. Presumably the idea of getting rid of the precautionary principle is to have that trade link and have those lowering standards with the United States, despite what you have just said about international trade law.

Professor Jordan: Quite possibly. Certainly if you sign up to a trade agreement, thereafter you cannot lower your environmental standard to attract trade. Is it within the spirit of that to do so before you have entered into a trade agreement?

- Q45 **Geraint Davies:** Could we would have lower trade standards with the US than with the EU if we abandoned—I am not suggesting we should do so this, but—

Professor Jordan: It is a possibility.

- Q46 **Geraint Davies:** Is that right?

Professor Jordan: Yes, it is a possibility.

- Q47 **Alex Sobel:** That is a concern, is it not? In the International Union for the Conservation of Nature, principle 12 is the principle of non-regression. We have had evidence from UKELA and Client Earth calling for this inclusion in our environmental protections. Do you agree that it is important to introduce this principle?

Susan Shaw: Absolutely. It should be the first thing we should do. I am quite confused as to why we are not able to include that within the Repeal Bill itself. It is something that would be really obvious and would help to dispel a lot of the anguish, if you like, around some of these issues at the moment and put it beyond doubt.

Dr Wray: Yes.

Alex Sobel: We are getting broad agreement. I know you agree; it is your evidence.

Dr Davies: Absolutely.

- Q48 **Chair:** Thank you. The plan has been described as “a plan for England”. Does it take adequate account of the other nations of the UK?



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Professor Jordan: Essentially it is Defra's plan for England. That is pretty transparent, is it not? If it is going to be successful it has to be contingent on the establishment of common frameworks and, as was already alluded to by Haydn, we received more information on that last week from the JMC.

It is interesting and slightly ironic that having started the process of leaving the EU, the UK is now confronting many of the same issues about how to organise a multi-level government system outside the EU with its devolved organisations. There are important lessons that the UK can learn about how you go about setting common frameworks. For example, what type of frameworks should they be? Should they set maximum standards or should they set minimum standards? I think the EU has learnt that it is good to set minimum standards through directives. Then when particular countries want to do more than they can do, how do you do it? One way is to do it in a top-down fashion. I think the EU has learnt that it is much better to be consultative and to produce common frameworks through a process of negotiation and debate.

Finally, who is going to oversee the common frameworks to ensure that one country does not try to achieve a trading advantage against another by engaging in a race to the bottom? I think what the EU has learnt is that in practice one state does not take another state to the court or the adjudicating body. Therefore it is important, going on what the EU's experience has been, to provide adequate mechanisms for non-state actors to challenge the implementation of common frameworks through, for example, this new watchdog.

Chair: Yes. Ms Shaw, do you have a comment on it?

Susan Shaw: From a Scottish perspective the obvious concern is that there has been, on occasion, higher ambition north of the border and in some of the devolved Administrations and we want to make sure that that is not impacted by what we are doing currently. I would agree with the submission that Professor Jordan has made and clarify that we can replicate the subsidiarity style of approach of EU law has taken and ensure that issues are dealt with at the lowest level that they can possibly be dealt with.

Q49 **John McNally:** That has been very interesting, I have to say. Can I follow on from that? For example, in the common frameworks we would have a problem, would we not, Susan, with renewable energy and environmental impact assessments compared with Westminster?

Susan Shaw: In what sense?

Q50 **John McNally:** Our policy areas in Scotland, I believe, are slightly different. Would there be a conflict of interest in developing these common frameworks?

Susan Shaw: I do not think common frameworks by themselves would preclude having different approaches in different areas. It is about



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minimum standards and common frameworks could be advantageous for both sides so that you do not have this race to the bottom and there is a mechanism to deal with that. In certain instances that could be to Scotland's advantage.

Dr Davies: There are some cases. This is hot off the press, but I understand that water quality is not going to be part of a common framework in the future. I know Colin Reid from Dundee University has already expressed worries that that could lead to problems if one of the devolved nations or England decided not to have as high a quality of water standards. That would be a race to the bottom, particularly since some rivers cross borders and so on. How is that going to work? I am not sure that the document issued as a result of the JMC meeting can be considered to be terribly useful or perhaps not final, because there has been a lot of quite negative commentary about it already. In an attempt to convince the devolved regions that it is not about Westminster grabbing power, they appear—in the minds of some commentators at least—to have done the exact opposite.

Q51 **John McNally:** From what I have read about these things, I understand that they do not want to have conflicts of interest and lowering standards. I understand that, but then you already have standards that are set in place. For example—Mary will know—I am chair of the Flood Prevention Group and there are conflicts everywhere you go in England, Scotland and in Wales, I believe. We have a realistic approach to everything, planning in particular, whereas down here we seem to have exceptions to everything all the time. It is a very difficult way to progress and no one seems to have the lead agency, whereas in Scotland we have that established already. I would be very fearful and mindful that we would fight tooth and nail to defend that at all costs. I would be very worried that within these common frameworks the legislative powers that are currently in Scotland would be diluted in any way. I am not making a pun. I would be wary of the fact that they could dilute these standards that we already have. Do you think that is a possibility?

Susan Shaw: There are a lot of things that are a possibility at the moment and that is part of the problem. It goes back to the enormity of this exercise and that some of these issues are being presented as being quite simple and straightforward to deal with, when the reality is that they are just not.

Dr Wray: What is clear here is that what needs to be agreed is a set of principles that each of the devolved Administrations can sign up to about how we will go about this, issues like networks of protected sites, catchment issues across borders, biosecurity and so forth. We need to take expertise, learning and experience from each of the nations because at the moment there is much better practice being demonstrated in Scotland and Wales, for example, than in England. It is not something that needs to come from England and be exposed outwards, it is something that we need to jointly prepare. In answer to your question to



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the earlier panel this morning, Mr McNally, I believe that Halifax is equidistant between Yorkshire, Edinburgh, Belfast and Cardiff.

John McNally: Nice wee plug.

Q52 **Chair:** I will take a note to tell my colleague, Holly Walker-Lynch, that.

On this working group, this Joint Committee, there was no framework required for air, which is a bit of a surprise, or water. They are two clear areas that this Committee has identified are going to need action, a Clean Air Act and the Environmental Protection Act needs to look at water. Yet the Joint Committee has announced that they are not going to be part of the framework. What are the risks around that, particularly with water and air in general? Does someone want to come in on that? Haydn.

Dr Davies: Again, it refers to what I stated earlier. It does bring in the possibility that there could be a race to the bottom. Most of the commentary I have seen so far relates to water, but potentially it could even be worse for air quality standards, particularly as the ability of contaminated air to cross borders is considerably greater than that of water. It does seem a great surprise to me. I have to say, I have only fairly lately come across the detail of what came out of that Committee so I have not had the chance to think it through, but—

Chair: Yes, there has been a lot of news in the last week.

Dr Davies: —I certainly will do. As you say, it is a great surprise that air and water are—

Q53 **Chair:** Does this raise the prospect of environmental dumping? What does it mean, Professor Jordan, going back to your point that if you were clear upfront that there will be no environmental degradation you would get a trade deal quickly? Do you think the EU is going to have something to say on air and water?

Professor Jordan: In the EU's Withdrawal Agreement and its frameworks for a future relationship with the EU, as it has already indicated, it will include its own green lines, including non-regression. There is an opportunity here, is there not, for the UK, if it really wants to be ambitious, to put its own green lines in there and say, "Right, we firmly believe in net environmental gain and this is what we understand by it"? We could put that in.

Similarly, this idea of a high level of environmental protection that is currently enshrined within the Treaty could also become a clear principle of UK policy after Brexit. There are opportunities here not just to take environmental directions from the EU but for the UK itself to indicate what it wants, not having this conversation with itself—which it can easily become if it is all about devolution—but opening that conversation up to its other partners in the EU and globally to say, "This is what we stand for. We stand for these principles and we stand for these aims".

Q54 **Geraint Davies:** My question was going to be around that. Can I simply



ask, in terms of adjudication on these green lines, if we do leave and we have to have trade and the like, if we do approach this idea of net environmental gains, how do you see those tribunals working? At the moment the European Court of Justice will make a judgment but historically these tribunals have been all about investors rather than the environment. All these deals like CETA and TTIP have been about the investor trumping environmental considerations. How do you see that working?

Professor Jordan: Yes, all modern trade agreements now include some mechanisms for dealing with conflicts and disagreements that are either of a political/administrative nature or of a legal nature. I think you were referring to the legal ones. What we know about these though is that they are generally used by states and are accessible to states. They are not so accessible to non-state actors and I think that is where some of the concerns expressed by some NGOs about this new watchdog come in. How will they access these international trade agreements if there is no watchdog, if that is their only access to resolving disputes?

Q55 **Geraint Davies:** Can I ask Dr Wray then, if we extend net biodiversity gain to net environmental gain, in practice, how is that going to pan out in terms of enforcing those higher standards?

Dr Wray: It will be necessary, in my view, to let biodiversity net gain embed first. We have only just started using biodiversity net gain in development and in the planning system. It is not fully embedded yet. People do not understand it. The metrics are still evolving. To then layer that with a broader environmental net gain in a system with metrics again I think is going to be very difficult to do for a little while and it leads to the problem that you start to trade one commodity off against another. The various dimensions of the environment and sustainability are not tradeable. They cannot substitute for each other. It does not matter how much clean water you have if you do not have any air to breathe. Ultimately net gain is an ambition, always looking to have an environmental benefit across each of the environmental dimensions as a principle, but in terms of metrics and a system of analysing whether a project should go ahead, I do not think we are there yet.

Q56 **Geraint Davies:** Finally, do you think there is a risk of environmental dumping that will lead to a reason to block or inhibit trade and our economy?

Dr Wray: That has been expressed as a risk, yes.

Chair: Thank you very much indeed. We are just in time to run off and do an urgent question on fisheries. If anyone has any bright ideas, send them through to me. Thank you all very much indeed. I think that is the first time we have had a full gender balance on both panels. Congratulations to the clerks on that and congratulations to you for being part of that. Thank you.