

Environmental Audit Committee

Oral evidence: [Government's environmental principles and governance consultation](#), HC 1062

Tuesday 19 June 2018

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Members present: Mary Creagh (Chair); Colin Clark; Mr Philip Dunne; Mr Robert Goodwill; James Gray; Dr Matthew Offord; Joan Ryan.

Questions 49 - 95

Witnesses

I: Rt Hon Lord Deben, Chair, Committee on Climate Change, Baroness Brown of Cambridge DBE, Chair, Committee on Climate Change Adaptation Sub-Committee, and Sir Amyas Morse, Comptroller and Auditor General of the National Audit Office.

Written evidence from witnesses:

- [Committee on Climate Change](#)

Examination of witnesses

Sir Amyas Morse, Baroness Brown of Cambridge and Rt Hon Lord Deben.

Q49 **Chair:** Good morning. We have a bit of constant vibration in this room, just something to be aware of from our end, although it seems to have stopped at the moment. Can I welcome our witnesses to this inquiry into environmental governance post-Brexit? A very lively topic of debate, not least in their Lordships' House last night and in this House last week. For the purposes of Hansard, could you please introduce yourselves from my left to right?

Lord Deben: I am John Deben. I am the Chairman of the Climate Change Committee.

Baroness Brown: I am Julia Brown. I chair the Adaptation Sub-Committee of the Committee on Climate Change.

Sir Amyas Morse: I am Amyas Morse. I am the Comptroller and Auditor General.

Q50 **Chair:** You are all very welcome indeed. Perhaps I can begin by asking you, do you think we need a new environmental body if we leave the EU and what should its role be?

Lord Deben: I do think we need an environmental body. The history is a rather sad one about our environmental body. I set up the first major one, which was the Environment Agency, which was the amalgamation of three agencies. We specifically wanted it to be arm's length and we specifically wanted it to be able to criticise Government. I charged the first chairman to recognise that; that was his job. I found that extremely helpful as a Minister, that there was an independent body that could look at things independently and I would then have to answer it. I could have an argument with them, that is one thing, but it meant when I talked in the Cabinet I could say, "The independent advice is this, so if we do not want it, we better accept that there is independent advice".

Historically we have a long history of these bodies, like Natural England and the Environment Agency, starting off as independent and being brought more and more under the control so that they now sit in the Department, which is entirely wrong, and are overseen in the Department. This is not a party political thing. Every Government has done this because it is convenient and they do not like the embarrassment of independent people looking at what they have to do. I think that is part of life. In our businesses, we always have to do that; our customers do that. I do not see at all why Government should not accept that this is a proper way to deal with these very science-based issues. In any case, there is a lot of need to bring the facts as against what is the headline in a national newspaper.



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We have been protected in the European Union by the arrangements in the European Union. The most important of those is that if the Government fails to meet their obligations, then they can be taken in front of the courts. We do not have such a system in Britain. That is why the Committee, in various forms and individuals, has said that they do think that there ought to be an independent watchdog—if that is the word—which does have the powers that at the moment are held in the European Union. That is what the Government promised and it is what I think taking back control must mean. I do not think this is a sensible thing to do, I think the whole European strategy is entirely wrong, but if we are going to do it, let's at least do what it was that we said we would do, which is take back control. That does mean reducing the protections that we have at the moment, it means taking those protections and embedding them in British law.

Baroness Brown: We should think separately about the advice and scrutiny roles for the body and the enforcement role. The big gap, as Lord Deben has highlighted, when we leave the EU is this gap around enforcement and holding the Government to account and the ability to take the Government to court, to fine the Government for missing targets. The advice and scrutiny role is hugely important, but separating those two roles could be a rather important thing to do. I think it also allows for better impartiality if the body giving advice is not also the body doing the enforcement.

Q51 **Chair:** That is very helpful, thank you. Sir Amyas, we have a long and happy relationship with your organisation in terms of how we scrutinise DEFRA and the whole greening Government piece. Where do you see this new body fitting in with what the NAO does?

Sir Amyas Morse: There are a number of other regulatory bodies that work perfectly well and do not clash with the NAO. I see absolutely no reason why this one would, frankly. In fact, I even find it surprising that it is included as one of the requirements. I just do not regard it as a major problem, that there might be a regulatory clash. Most of the regulators with direct enforcement powers have specific areas that they look at. That is a point, if I may: this body that we are talking about has to range across all activity in the UK, not just the Government, but certainly all Government activities in the UK. It is important that it be free to do that. If it is going to be effective, it has to be sufficiently agile that if there is an issue occurring in some part of the public sector that it can go there and pinpoint that issue.

My worry is that if you get something that is very rules-bound, particularly if it has great powers, there may well be a lot of ways of limiting how those powers can be exercised. The great benefit I have had in my job is that I have discretion, which means if there is an issue somewhere that needs to be addressed that is occurring, I can decide to look at that issue. I do not have a long procedure in doing that. I would just say bear in mind what would you regard as successful? Is it going to



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be coming along five years after the event trying to impose penalties or is it going to be being agile enough to be able to move fast and be part of the debate when it is taking place and having an authoritative voice in that way? That is worth thinking about.

Q52 Chair: One of the issues we are going to come on to is scope. Lord Deben, what were the three bodies that the Environment Agency was created out of?

Lord Deben: It was the National Rivers Authority, the Royal Commission on Environmental Pollution and it was the body that was responsible for water quality. Of course one of the things we discovered was that the British always had this view that we had the best water in Europe and we turned out to have one of the worst. That was the reason for the whole Water Acts thereafter.

On something that Sir Amyas said, it is a huge advantage for the Climate Change Committee that if we feel that something has to be investigated we have every right to do so, we do not have to wait for the Government to ask us to do it. We have three possibilities. One is to do it ourselves, the other is to ask the Government to ask us and the third is to be asked by the Government to do it. This is a kind of freedom that is important because, for example, we have seen that agriculture is one of the biggest issues for climate change and we were able to concentrate on the issue of land use before the Government came around to it. But the fact that we were doing it meant that the Government began certainly to take very seriously the issue of land use. It is a very important part of the role.

Q53 Mr Robert Goodwill: The Government have proposed that climate change should be excluded from the remit of this new watchdog, even though the new body will have more teeth and more powers. They said, to use their words, "instead relying on the 'robust mechanisms' of the Climate Change Act". Could I ask Lord Deben and Baroness Brown, in your view, should the new watchdog have climate change within its scope?

Lord Deben: You start off, because you have been dealing with it.

Baroness Brown: It has to, because I think it is impossible, particularly in the environment and the adaptation side, to separate our progress in terms of adapting to climate change from things like having thriving plants and wildlife, which is one of the objectives of the 25 Year Environment Plan. In the Adaptation Sub-Committee's last two reports to Parliament, 39 of our 64 recommendations have been in the areas that are covered by the 25 Year Environment Plan, so these things are closely knitted together. Also most of our environmental legislation has come from the EU and crucially we need to make sure that that is being moved across and properly dealt with post-Brexit.

But that again brings me back to that is why we want to think about whether we should separate the enforcement and ombudsman role from



the scrutiny and advice role, because the scrutiny and advice role hugely overlaps with what we do on the Adaptation Sub-Committee. We have recommendations either in the Climate Change Risk Assessment, which we support the Government on, or in our biennial reports on the National Adaptation Programme. We make recommendations in all of the areas of the 25 Year Environment Plan, so separating those out, that sort of scrutiny and advice role from the 25 Year Environment Plan scrutiny and advice role I think would be an extremely difficult challenge. But the enforcement capacity that came from the EU in the environmental area would be missing, so it is absolutely crucial that we have a body to do that.

As I say, we have been developing our thinking on the Adaptation Sub-Committee. We have had a number of meetings with the Committee to discuss this and our thinking has been developing since the consultation came out. We have now come to the conclusion that it would be very hard to separate the scrutiny and advice elements, but the enforcement element is an important and separate utility.

Q54 Mr Robert Goodwill: Would it make sense just to amalgamate the watchdog and the Committee so that they have everything in their remit or—

Baroness Brown: No. We think we should amalgamate a scrutiny and advice element, but there should be a new and separate enforcement element and ombudsman role. That is our view that we have come to now.

Lord Deben: The Government put this in, in my view, because they did not want to have a conflict. I quite understand that. I think initially and from that point of view, it was a sensible thing to emphasise, but when you look at it, there is only a conflict if you confuse the concept of enforcement and doing the advice and working on that. It seems to me that we could do the area that is of advice, which is what we do anyway. That really would be to invite two people doing the same thing and that is not a good idea, but it is very important, on the other hand, not to lose the concept that there is a proper watchdog that can investigate, which can hold the Government to account in the way that to some extent the Climate Change Committee can on its budgets, but it is specifically about its budgets.

Q55 Mr Robert Goodwill: Is that because in terms of EU environmental legislation, there is much more cause and effect, somebody does something and it causes damage to the environment, whereas it is more difficult in terms of climate change because the effects are not felt immediately, people making individual decisions within their businesses do not necessarily see something happening because of that, because it is happening down the line?

Lord Deben: I think the Climate Change Act was cleverly written, because what it sought to do was to create mechanisms of measurement



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that would be accepted by everybody and the budgets do that. It is against those budgets that we are able to assess what the Government has done, so this month we will, by law, have to produce our statement of how well the Government have met the next stage towards the budget and it will be objective, because you know what you are trying to measure. I do not think that is, in general terms, what we are talking about when it comes to the watchdog. The watchdog is doing something quite different. It is looking at the Government and saying, "You said this and you have not done this", right across the board, not about the issues of our budgets.

I am very much against mission creep on those things, because we are based on the science of those budgets and that means that we can stand up. In 10 years—it is 10 years now that we have been doing it—we have had no serious attack on the basis of our ability to stand by the science and that has given great credibility, I think. I do not want to go enforcing anything beyond that.

Q56 Mr Robert Goodwill: Do you think this new body, with its sharper teeth, could pile in behind your Committee in cases where the Government possibly have not taken sufficient action? How is that going to work?

Lord Deben: There will be some things that derive from the advice that we have given, there will be some things that cross between us as far as watchdog terms are concerned, but I rather agree with Sir Amyas. I do not see any particular reason why we should fall out on that, again because we do have this very narrow and specific regulatory situation, which is that we propose the budgets. Once they are passed by Parliament, they cannot be changed without our agreement. We know where we are on them and we measure the Government against them and we measure it on that objective system. We do not get into whether the Government have met, for example, something that they said about, let's say, green replacements for the new London airport. What we say is, "You have a budget. You have to keep within that budget. If you go over that budget, then that is something we can go for".

Sir Amyas Morse: Just one thought, if I might. It is important to remember critical mass. If you are going to have a viable body, I would not get the subdividing it too much. If you do not have a large enough body of people with expertise across a range, that people can develop professionally, that they can build their knowledge, that they can keep going, so just saying, "I am going to make this into purely an enforcement body", having the expertise in that body to do intelligent enforcement is quite a big ask on its own. Just bear in mind, the NAO is 800 people. We do an awful lot of things besides writing reports that are published in Parliament and we have an awful lot of contact with the bodies we are commenting on, so we know a lot about them. We are well-placed to make comments.

Your risk is otherwise you might find yourself with what I would call a slightly naive enforcement approach. You want to have an enforcement



approach that is knowledgeable about how Government and Government Departments work and knows where to apply the pressure. I think you have to ask yourself, what are we going to be left with? Is it something that is big enough to develop as an organisation and be viable?

Q57 Mr Robert Goodwill: Could I ask Baroness Brown how the proposals could be improved to enhance the status of climate change adaptation within Government? Are they going far enough?

Baroness Brown: I think the proposals in the 25 Year Environment Plan are to move to much more measurable and clearer goals. Our struggle that we have had, we have the process at the moment on the adaptation side of every five years there is a Climate Change Risk Assessment and the Government follows that by publishing—hopefully shortly afterwards—a National Adaptation Plan that says how they will be addressing the risk of climate change to the UK. Sorry, the Climate Change Risk Assessment covers the whole of the UK; the National Adaptation Plan is the Government’s response for England. There are other things in the devolved Administrations.

Our challenge with the National Adaptation Plan—we have only reviewed one; we are expecting the second one this summer/autumn—has been that it is not very specific. It is about processes they are going to put in place, it is about intentions, but it does not have very specific targets in it. We can look at how they have done against the plan and say, “Yes, they have put this process in place” but our assessment, if we look at the state, for example, of the natural environment, things are getting worse, not better. Therefore our conclusion is that these processes are not working and we make recommendations on that basis. The intention of the 25 Year Environment Plan is to have much more specific and measurable goals, which is something we have been recommending. In 2015 and again in 2017, we have been saying exactly that for the National Adaptation Plan: it must have more specific and measurable targets.

In the areas where we have comparatively done better, the areas like flooding, the Environment Agency is able to have targets for the number of homes that could be impacted by flooding and we can track progress and see things being done and making a difference. In many of the natural environment areas, it is very hard to see whether the actions taken and the processes in place are affecting the outcomes. Indeed, since the outcomes in many areas are getting worse, we assume that the actions are either not enough or are not addressing the core issues. We have been stressing very much that we want to see these clear goals and that is the intention in the 25 Year Environment Plan, which we see as a very positive step forward.

Lord Deben: Mr Goodwill, I am afraid that there is a whole new vocabulary that delivers no real answer. I do not know whether you have noticed the word “mission” is now very popular, so we will have a mission to do something. Of course that is entirely unmeasurable, “I have a



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mission to achieve something". I am very keen on that being science-based, fact-based, in a world in which science and facts are very often ignored. Therefore sometimes we say things that are very unpopular with the Green Movement, because they have some fashionable thing they want to go after and we have to say, "That is not what the problem is".

Q58 Mr Robert Goodwill: But they have the precautionary principle they can then deploy when they do not have any science.

Lord Deben: Exactly. But I do think we all ought to look out for some of these new words that are being manufactured, I think as we speak, in order to make things sound as if we are on the right side, without ever being able to be measured.

Q59 Mr Robert Goodwill: My final question to Baroness Brown, I was going to ask how we could avoid overlaps between the Sub-Committee and the new body, but it sounds from the evidence you have given already that you see much more collaboration and almost a dovetailing approach. Would that be correct?

Baroness Brown: I think there has to be an inevitable dovetailing. If you look at the 25 Year Environment Plan, one of its goals is "thriving plants and wildlife". The examples of the relevant indicators they give are, "Extent and condition of protected sites on land and at sea; status and trends of wild species and habitats". These are exactly the things that we examine on the Adaptation Sub-Committee and we make a large number of recommendations in this area. In our reports on the National Adaptation Plan, we look at these areas in detail in the work we do to help support the development of the Climate Change Risk Assessment. I think there is going to be a huge overlap of potential activity, which is why our conclusion at our last Committee meeting recently, earlier in June, was that it would be pretty straightforward for us to scrutinise the 25 Year Environment Plan for climate-related matters.

Indeed, there would not need to be amendments to the Climate Change Act, as under the Climate Change Act the Government can ask for advice on any climate-related matters from us under the existing section 38 of the Act. It would not be a large extension of our role to take on, for example, some more of the areas of clean air and chemicals, but that would be an extension to our role and that might require an amendment to the Act. I would also stress it is increasingly important that advice to Government on mitigation and adaptation comes together. I sit on the main Committee and we are working increasingly closely between the two parts of the Secretariat. For example, at the moment we are doing reports on bioenergy and land use, which will take both an adaptation and a mitigation viewpoint.

Something I think you discussed at the last hearing, we are also doing a joint report on buildings and planning issues, because while it is crucial that we make houses fit for the 21st century in terms of zero carbon, it is



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also crucial that we do not accidentally then do something to them that means they get even hotter and they are not fit for the 21st century—

Mr Robert Goodwill: Yes, we are just doing a report on heatwaves.

Baroness Brown: —in terms of people having the right quality of life and are dealing with water in those buildings in the right way. These things, it is going to be absolutely key that our Secretariats and our Committees work together on these overlapping areas.

Q60 **Mr Robert Goodwill:** Grateful, thank you very much. By the way, Chair, when we keep referring to this body, do they have a name for it? Maybe that is what we should do, pick a name.

Chair: We have called it the Environmental Protection Agency in our previous report, like an EPA, modelling it on the EMS, though perhaps that is not a model for us to follow right at the moment, given what is going on over there.

We have certainly found an emphasis on processes rather than on outcomes in our heatwaves inquiry, I think we can say. We are going to move on now to a question from Colin.

Q61 **Colin Clark:** We have heard evidence before referring to the Thomas Becket syndrome, that if bodies such as this are too sharp, the risk to them of having their teeth pulled and being closed down altogether. What are the key things that allow you to be able to maintain your body's independence and freedom to be critical of the Government without falling foul?

Sir Amyas Morse: The main thing is that you are independent. Sorry to give you a sort of facile answer, but if I can take the example of the NAO, there are a number of things. One of them is that we are funded directly by Parliament, not by a Department, so they cannot cut our money based on whatever considerations there may be. We are not directed by them as to what we should do. I have this personal office and I have a very wide degree of discretion as to what I do. The practicality is that I listen to the community out there, and particularly the Public Accounts Committee, which I am enjoined to do, but I still have ultimate discretion. You just have to exercise it intelligently. There are series of things that make you independent, which mean that you practically cannot be put under influence.

What I observe about other bodies that have been created by Government with the intention that they will function independently is that it is only a matter of time before Government starts fiddling with them. That fiddling always makes things worse. We had an initial launch of the Care Quality Commission. It went off very badly, because it kept on being given more and more to do and more and more instructions as to how they should do it. It is now functioning well, but it had a pretty tough start. What I would say is the element of actual independence, if you are saying it is going to hold the Government to account, it has to be not in the reach of Government. That is what being independent means.



You cannot be independent if you are a civil servant; that is just not going to happen and over time that will be eroded. I have seen that in virtually every example I have looked at. To be clear with you, you have to say the powers have to be ones that you are content to be exercised by a genuinely independent person, probably a parliamentary persona such as mine. I think without that, in the end it will not stand the test of time.

Q62 Colin Clark: The Thomas Becket syndrome, is that reasonable? Does that happen? Do bodies have their teeth pulled if they are set up independently, as you were saying?

Sir Amyas Morse: Yes, they do, but what happens is they get it done by a death of not a thousand cuts, but quite a lot of cuts. They get their budgets cut and they get pressure applied to them in other ways. If that pressure is capable of being applied, it is probably fair to assume that over a number of years it will be applied. It is not being cynical, it is just how it works. Yes, a form of Thomas Becket syndrome works every time.

Lord Deben: I have experienced that. I think that is absolutely true. The Climate Change Committee, I would say our independence derives from a number of things, but first of all, being set up in a statutory way with specific timed things that we have to do. The timing bit is terribly important, that the Government cannot say to us, for example, which perhaps they might like to, "You must not do your annual report on what we have done in June. We would like you to do it in October". They cannot do that, any more than they can say, "We do not want to respond to that June report until after October" because that is in the statute. First of all, our independence is dictated by the terms of the statute and you would have to change that.

Secondly, the appointment of the chairman was cleverly balanced, because it is not by the Prime Minister, it is in fact by the Minister of Climate Change, the First Minister of Scotland, the First Minister of Wales, and when we have one, the First Minister of Northern Ireland, which means that you automatically have a non-party political decision, so you cannot foist on to the Committee a chairman who might not have the confidence of people. For that lot to have appointed a Conservative Catholic was a surprise, given the Protestant Unionists were in the choice. One does feel that. The other thing is that you are appointed for five years—and in my case, for a second five years—and you cannot be sacked. That is the other thing. You must not have a chairman who can be sacked if he or she is unpopular.

The third bit of independence is that you need to be able to do, as Amyas said, the things that you think are right to do. We are able to look into something. For example, we did an early report on what Paris meant without being asked, but because we felt that we would not be doing our job unless we did do that. We have the power to do that. We do not have what Amyas has, the protection as far as our budgets are concerned,



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except the Act says that we do have to have sufficient funds to be able to do what the Act tells us we are to do.

If there is anything that should have been done about the Climate Change Act, it is that there should have been a funding arrangement, one that was independently assessed. We have never had a problem with that under three different sorts of Government. I am not saying that because I think things have been wrong, but it should have been like that and I think the watchdog needs to have that. It needs to have some independence, because this is how the Environment Agency and Natural England have been taken over by the authorities, simply by—as Sir Amyas says—cut upon cut upon cut, then the only way they could operate was in fact underneath the umbrella.

Baroness Brown: I might add that until quite recently, I chaired the Audit Committee for the Committee on Climate Change for a period of about eight years. We have had some very difficult budget negotiations over that time when Government Departments had to model 20% and 40% cuts and we were told that these were going to be passed on to us. As Lord Deben has said, that never materialised, although understandably we were pressurised to see if we could save money. Since 2010-11, we have seen a 17% reduction in our budget.

It is a bit difficult to tell from the numbers, because in some years both CCC and ASC does work for Scotland and Wales, and when we do that, they provide the funding for that additionally. In some years, the Adaptation Sub-Committee has done much more of the work on the Climate Change Risk Assessment for DEFRA and they have given us funding for that, so you have to take these things out of our core funding if you are trying to track where our core budgets have gone. We have done our bit to support cost reductions in Government, but we have not come out of any of the negotiations with some of the very severe cuts that Departments have themselves been looking at.

Q63 **Chair:** I am not sure how much President Trump has cut from the Environmental Protection Agency in his time there. There is an argument about 17% in most other countries would be an absolutely huge cut. Is that real or cash terms?

Baroness Brown: That is in cash terms.

Q64 **Chair:** If someone could do the maths and get us the real-terms cut, that would be helpful.

Baroness Brown: We have our chief executive, who will sort out those and send them to you.

Sir Amyas Morse: We have reduced our costs as well, but we offered it up because we thought it was right, and it was about 27%. The crucial point is what happens when you are publishing a report and it contains tough comments, justified by the evidence, but tough comments? There is a discussion, representations are made to you that the words can be



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toned down, it could be put a little bit more mildly, "could be better" instead of "not good" and all that sort of stuff, which is a very deep civil service skill. In the end, you need to be able to say, "I have considered everything you have said and I am not accepting these comments or some of them I am not accepting" and then in the ultimate, you need to be able to do what I do from time to time, which is to publish a report that has not been agreed by the civil service. I say, "I am afraid we have exhausted the process. I am publishing the report now".

If you are not in a position to do that sort of thing, you are not really independent and you are not able to function as a watchdog. I am trying to bring it down to practical, lived experience. You have to be able to do things like that in order to be effective, I think.

Lord Deben: We published last week a letter that Lady Brown and I wrote together to the Secretary of State for Transport, pointing out that he had made a statement in Parliament about the new airport runway without mentioning climate change. We made it clear, to remind him, that it is not possible to build this, except in circumstances that we set out. You have to be independent to do that and that letter was written as we wanted to write it, as the Committee decided it would be. We are publishing at the end of this month our usual report. It will be exactly what we want to say. I do not think it will be a surprise to anyone that it will not be comfortable reading, because there are a whole range of things that need to be done as a result of the Clean Growth Strategy.

I would just say one other thing, which is simply this: you have to be welcoming and give credit where credit is due. You do not want to get a reputation of always being contrary. We thought that it was very important that the Government had moved the whole issue of climate change into the centre of their strategy for growth. We thought it was right to be extremely complimentary about that, because no previous Government had done that. It does mean that they have to carry it through. I hesitate to say it will not be. It may be that we will be tougher because of that, because that is the mission that they have set themselves to do. But I do think saying thank you is a very important part of keeping one's independence, because people know that there is a benefit in getting it right and there is a benefit in trying to do what the independent group says.

The other thing is as a Minister for 16 years, I have to say I have benefited hugely from independent bodies, because if you do not have those, you do not have a basis on which to approach your more cynical and less well-informed colleagues in the Cabinet. That is why I have always found the NGOs extremely helpful, but they do come from a particular direction. You need something that does not do that.

Q65 **Colin Clark:** Baroness Brown, if I can just ask you a very quick supplementary, we have also asked for evidence from the devolved Assemblies and you mentioned working with the Scottish Government



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and the Welsh Government. Has that been an effective relationship and a comfortable relationship? What we are trying to derive from this is what the total framework will be for whatever this body is going to be.

Baroness Brown: Yes. The Climate Change Risk Assessment is done to cover the whole of the UK. The reports on the National Adaptation Programme are just for England, but we work with the Scottish Government and the Welsh Government at their request. We do not go in and tell them we are going to do it, they have asked us to do it. That is done for Scotland under the Climate Change (Scotland) Act and for Wales at the request of the Welsh Government and those relationships have been very good. Of course we are trying to look for areas of best practice from across the UK that we can share and highlight to other parts of the country. Indeed, I think particularly on the mitigation side, there are some real areas of good practice in both Wales and Scotland that we are keen to highlight.

Lord Deben: It is a very good relationship, both with the Scots and with the Welsh. It has not been possible with those in the north of Ireland, for obvious reasons. The Welsh, for example, are well ahead of the rest of the United Kingdom on waste and the way in which they are dealing with that. It is a very helpful thing, that we do the mitigation advice on them. They have particular problems that are different from the United Kingdom or from England because of the way their industry is concentrated in the Talbot area and the difficulties that they have getting the balance right, the fact that if you closed Aberthaw, you would totally change their figures, just one single closure.

In Scotland, a mixture of differences: very big land area, not such a large population, very much concentrated in particular places. Scotland is doing much better over the whole range of things than the United Kingdom. It is an extremely good area to try to get a bit of competition. Our relationships are very good. I spend time with Lesley Griffiths in Wales and Roseanna Cunningham in Scotland, and because we are cross-party in the sense that the members are not representative, they are scientists or economists, I am independent and am seen to be independent, the fact is we have really good relationships with the Labour Party in Wales and the Scots Nationalists in Scotland and I think with the Conservative Government here. It helps to have the three, because that independence is manifest.

Q66 **Colin Clark:** I have two other questions, but in your extensive answers you have covered much of it. Are there lessons you would draw for setting up this new body from your own experiences, inasmuch as you have touched on this already? Is there something very specific we have not already covered?

Lord Deben: Independent money.

Q67 **Chair:** Set by who though? Set by Parliament?



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Sir Amyas Morse: Getting it going right and picking somebody who has real leadership ability at the beginning to front it up. If you do not get the right person, if it goes off badly, it will be quite difficult to recover. I think you need to make sure that you are not too greatly enmeshed in procedure as to how you recruit someone. That is one of the advantages, whether this is a parliamentary body that we are talking about or a part of Government will make a difference to what your recruitment procedures have to be. In some ways, you might be rather freer if it was a parliamentary body, in my experience. Therefore it is just worth thinking about that. If we think we want to be able to get a really strong candidate to get this running, of course you must go through the right process, I am not suggesting anything else, but you need to be in a position where you are calling the shots as to what the qualities are that you are looking for. I think that is quite important.

Baroness Brown: Also one of the things that we notice on both Committees, perhaps particularly on the ASC, is that influence and engagement with our sponsor Department, DEFRA, is very good. We have a lot of recommendations that relate to buildings and planning from the Ministry of Housing, Communities and Local Government. We have much less connection with them, so we make a lot of recommendations and we attempt to engage with them. It is much harder to engage with and to influence the Departments who are not your sponsor Departments.

I would suggest that we see a little bit of that on the Mitigation Committee. We have very good and strong links and relationships with BEIS, but of course we have a very important need to influence the Department for Transport, which I think Lord Deben has hinted at, that that connection is not as effective. Environment touches pretty much every aspect of life. As Amyas mentioned, it does need to be a body that can engage across Government and is not mainly focused on the sponsor Department.

Lord Deben: This is going to get worse. Take health, for example. We have very little connection with the Department of Health. It is a thing we are now trying to do. Climate change has a serious effect upon the future planning of the health service and the arrangements that we do there. Environmental health and the question of air pollution is a crucially important part of our planning for health—if you look at the effects of it—and yet the relationships there are, by their nature, distant. That is one thing that we have to put right. But it is partly because Government does not think of these things, except in a siloed way.

They think of the environment, which is DEFRA, they think of climate change, which is BEIS, except the adaptation, which is DEFRA, whereas in fact it is not. At the moment, it is probably more important for the Department of Local Government than any other Department. Getting the standards of house building—so we do not have to redo them in 10 years' time—is perhaps the most urgent thing for Government to do.



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Sir Amyas Morse: Why earlier I commented on the importance of scale in this organisation is you cannot possibly have a portfolio view across Government and maintain awareness if you do not have a reasonable-sized organisation with a reasonable number of senior people who understand what is happening. Just gathering intel, never mind formulating the initiatives, you need a reasonable critical mass.

Q68 **Colin Clark:** My final question, I am conscious of taking up a lot of time. Lord Deben, you said the last time you gave evidence you felt the Environment Agency had lost its independence. How do you think we would avoid that with this new body, considering everything that has already been said?

Lord Deben: We use a statutory base, which clearly gives it a role that it has to fit, whether Ministers like it or not. I do think this business about timing has been an extremely valuable thing. If it has to do certain things by law and Ministers have to respond by law, you begin to get a framework, which Ministers have to deal with. That is extremely helpful.

Q69 **Chair:** Do you think we could end up with environmental budgets set into law: rather than a climate change budget, you take out those state of nature indicators and break them down into five-year budgets?

Lord Deben: If you are asking me, Madam Chairman, I believe that you have to be a bit careful about that, because whereas the climate change budgets are almost universally accepted as objective measures of something, which you can objectively measure, the problem when you get into environmental budgets is there is a degree of subjectivity in any case. There is certainly not the same commonality of view as to how you measure things.

I do constantly remind the Committee that the reason that we have been able to be successful is that we have resisted mission creep. We have not talked about things that we cannot measure. We have tried all the time to base on the science. You can only do that if your budgets are circumscribed like that. I have a problem with the other because I do think that is a different kind of measurement, and I am not sure we are yet there to a position in which people would accept it in the same way.

Q70 **Joan Ryan:** There are concerns that there are no contingency plans in place in the event of no deal with the European Union and that the Government will not be able to meet their own stated objective of ensuring that the governance gap is closed. We are aware obviously that the Climate Change Committee was initially set up as a shadow body, so some more insight into how that worked would be useful to this Committee. Also whether you think this is an appropriate approach to take with the new body. Can I direct that at Lord Deben and Baroness Brown first and then Amyas?

Lord Deben: It is very helpful that our constitution is almost entirely a British laid-down one in these particular circumstances, because it does enable us not to get very much into the argument about what would



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happen if we left the European Union. I can see that. It argues certainly that in a position in which we were not in the European Union, then a similar structure is very valuable because it is seen as being locked into and based upon British law.

There are some things that are a bit difficult that we have to face, like we are in the EU ETS: what happens if we are not, what do you do, do you have a shadow system and suchlike. That does affect our budgets because we include that in the way in which we look forward. There are some things like that, which we have to put right. The great advantage of having a Climate Change Committee and a Climate Change Act is that there are many lessons from that that can be learnt and that are not affected by our leaving the European Union. The Government could be doing that.

Of course the terms upon which we left would have an effect upon what the Government would be able to do in those circumstances and how far they would have to go and would be able to go. But in general they can copy what we do.

Baroness Brown: I was on the Shadow Committee on Climate Change from autumn 2008. I think other members had joined earlier in the year. Of course the Climate Change Act was passed on 26 November 2008 and our first report, called "Building a Low Carbon Economy", was published on 1 December. We did not do all that work between 26 November and 1 December. The shadow body wrote a letter in October 2008 recommending the 80% reduction target rather than the 60% target, which is what had been discussed.

All through 2008 the analysis was being done to recommend the levels of the first three carbon budgets. The way of working—certainly by the time I joined towards autumn of that year—that the Committee and the Secretariat have continued to do was well-established and has continued under different chairs, but in a similar way. That is a scrutiny and advice body and that does take a while to set up because we need to bring a Secretariat together. We have a scrutiny and advice body, which already does quite a lot of this, which is the Adaptation Sub-Committee, and is already there. If somebody chose to ask us to give advice on the remit of the 25 Year Environment Plan, we would be able to do that with the appropriate strengthening of our resources. You could get a body in place for that very quickly.

We do not have a body that shadows the enforcement role of the European Union, so that would be the piece of the jigsaw that is missing. That was the point of the environmental amendment to the EU (Withdrawal) Bill that Lord Krebs and I and others were working on in the Lords. The Government have accepted most of in the amendment that is now in the Bill, although we would rather it had stronger teeth than the amendment that has been made to the Bill.



Sir Amyas Morse: I do not think I need to add anything to that, thank you very much.

Q71 **Joan Ryan:** How long do you think it would take then to set up a new body? How long might be needed?

Baroness Brown: Clearly the Committee on Climate Change started sometime in 2007, in terms of a group of civil servants starting on the analysis. It was preparing a lot of modelling and collecting information to propose the first three carbon budgets. It had a very large and specific task to achieve because they were legislated with the Bill. Those numbers and all that calculation and analysis had to have been done in time. I do not have any sense how long it would take to put in place an enforcement body. Clearly, as Amyas has pointed out, there is a lot of knowledge and skills that need to be brought together to be able to do that. Certainly a number of months, but you do not quite have the analysis challenge that you had with the setting up of the Committee on Climate Change.

Lord Deben: We found when the Committee was set up, the very fact that there was a committee and it would have these powers meant that it was of importance even before it was fully operational. That is true about the enforcement part of this. It seems to me the fact that there would be an enforcement that it would be set up with adequate funds. As Sir Amyas says, we would expect it to have a leader who would be seen as independent and with sufficient energy to make this work. Its first two years are crucial—I deeply believe that—but I do think it is a matter of months because so much of the detailed stuff we talked about would be able to be done by some extension of the Climate Change Committee adaptation work. It could not be done without some budgetary help. That would be certainly true, but it could be done with a certain amount of budgetary help. I do not think that would take any time at all because we are having to do this anyway. It would have to be consolidated and deepened and we would have to have a look at our programme to see whether we had the right order of things. A number of things of that sort. But we are talking in that sense relatively short periods of time.

Q72 **Joan Ryan:** Just taking that one a little bit further, what contingency plans do you think should be put in place in the event of a no-deal scenario?

Lord Deben: It seems to me that we have to establish that there would be a clear replacement for the necessary—I use the word generally—watchdog circumstances that we now have in the European Union. It is clearly true if you look at, for example, air quality—as has been done by the Government—has only been done because of the pressure of the fact that it has by law had to do it.

If you look back, I was the Minister for some time during the things when we got our water right. We were in a terrible situation as far as the water was concerned. We were pouring sewage into the sea, people could not swim in the sea. Surfers Against Sewage was a powerful group. When



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you tested our water, it was of a lower standard than much of Europe. I remember being in the middle of the cryptosporidium—which I can still pronounce—problems. All that only happened because the Government knew that they could be taken to court for not carrying out what they had said.

That is a crucial part of it. As a Minister, it was very valuable to me, because how do you argue with your colleagues unless you are able to say, "Look, this is what we have agreed to do. This is what the law says. If I do not do it I will be in court"? If you say, "This is what we have agreed to do. This is what the law says and if I do not obey it, nothing can happen", which is what the situation at the moment is, "you do not get any of this". Manifestly, the one thing we have to do is to put that into operation at once, to show that we had determined to keep the protections, which we had promised we would, that the day after we left—even if it were a crash-out—people would be as protected as the day before.

Q73 Joan Ryan: There is some doubt or scepticism that that would be the case on exit.

Lord Deben: It is not for me to be sceptical about it. My job is to tell the facts. The fact is the Government promised the day after would be the same as the day before as far as environmental protection. That is why we had the amendment, which we supported as non-political people. We supported in the House of Lords because it did not say in the Withdrawal Bill, it did not have the same protection. It now has a bit of the same protection, not that we are asking for extra, but it just is a reflection in a British sense of what happens at the moment in the European Union.

Sir Amyas Morse: Just thinking about what else is being done, clearly across Government there is modelling, there is activity based on the contingency of an ideal scenario. That is part of what Government are doing, quite rightly too. If that happens to be the case, that is one of the contingencies the Departments are working to be ready for. If you add to that, so in this case we would expect that if you are seriously concerned to get something in place, you should have some work going on, probably on what I would describe as a no-regrets basis. In other words, to think about the things that even if we are through a transition period you would still like to have some of these bodies, some of this work done and some of these activities in place, start launching in a certain direction. I do not think there is an argument for doing nothing. You could very well say, "Come on, irrespective of which of these services that turns out, what is wrong with getting on with doing this, this and this?" You could put a reasonable list together.

Chair: We are going to move on to the next question from Philip, but Baroness Brown, did you need to leave us?

Baroness Brown: I need to leave at half past.



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Chair: We have 10 minutes with you; that is good to know. I think Philip has a deadline to meet as well.

- Q74 **Mr Philip Dunne:** Very quick question for Baroness Brown, as I know you have to leave. I want to probe a little bit more about the money and how that establishes independence. You talked about how you reduced your budgets in discussion after having been set a higher target. Can you just talk us through that process in a little bit more detail? How does the budget process work?

Baroness Brown: Typically we would put a bid into the sponsoring Departments for how much we need.

- Q75 **Mr Philip Dunne:** Your indication of what you want for the next year?

Baroness Brown: It has varied from year to year as to whether they have told us in advance, because we had the period between 2008 and where we are today, and Departments were having published targets for reducing their spend. We have had a number of rounds of that. Sometimes we would put the bid in, sometimes they would tell us what scenarios they were having to model as a Department and ask us to model those scenarios.

Quite often we would push back and say, "No, we are not prepared to model the 40% cut scenario, but we will look at the implications of some of these things" on the basis that it would be unfair not to be part of the pressure to reduce the costs of bureaucracy. As Sir Amyas has pointed out, they do as well. It has resulted in things like we have moved into significantly smaller premises, which has reduced our rent quite significantly over that period. Some of those things have probably been a sensible pressure to—

- Q76 **Mr Philip Dunne:** But this has been a negotiation with the sponsoring Department?

Baroness Brown: It has been a negotiation. On our Committee we have a NAO attendee, who has always been very helpful to us, and has at times reminded us that we have to be given enough money to do the work that we are statutorily required to do. If we got to that point, we are all digging our heels in. We have at times taken the budget to main Committee to say, "We think we need you to be aware of this risk to us and we want the whole Committee to agree that we go back into negotiations saying, 'No, this is unacceptable. We cannot operate on this'". They have been quite tense negotiations at times, but we have always come out with something that we felt we could deliver.

- Q77 **Mr Philip Dunne:** The remedy or recourse, if you do not have as much as you think you need, is to say, "We cannot perform our statutory function without this"?

Baroness Brown: Yes. Our statutory functions are defined in legislation and if you do not have enough money to do that, so yes.



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Lord Deben: That is the saving grace. I run businesses. I am not in favour of spending money if we do not need to spend. I personally think a discussion each year is a sensible thing. Like Amyas, we reduced our expenditure without reducing what we have had to do. We are very tough when people ask us to do extra stuff. Sometimes they add bits to Bills to say, "The Climate Change Committee must do—" like the Fracking Bill, for example. We cannot do that.

If we are going to run ourselves as a lean machine, which is what I believe we should do, then we do also have to say, "If you want us to do this on land use or you want us to do this in addition to what we are doing, the fracking thing, then you just have to accept that it is going to cost more. We will do it as reasonably cost effectively as we can, but this will be extra". On that basis, I have to say there have been tough negotiations, but I cannot say that any of the three Governments we worked with, certainly the two that I have worked with—and I know my predecessor would say this—I cannot say that any of them tried to use the financial screw to make us think differently, do differently or do less. That is true.

It is right to have that discussion. The NAO position there is very important and it ought to be stronger. There ought to be a position in which somebody independently could say, "Just a moment, they cannot do with less than that" because that is the one thing we do not have.

Q78 **Mr Philip Dunne:** You are not subject to NAO scrutiny in terms of your spending?

Lord Deben: Yes, but at the moment they are there to make sure that they—

Sir Amyas Morse: I am scrutinised myself by the Committee for Public Accounts. I am scrutinised every six months, so I am not missing out on scrutiny.

Q79 **Mr Philip Dunne:** You are, but the Climate Change Committee, do you have any oversight of what they do as the NAO?

Baroness Brown: I believe you do, yes.

Sir Amyas Morse: We audit their accounts.

Lord Deben: We are audited by them.

Sir Amyas Morse: But we do not decide how much they should spend. We simply certify their accounts are right.

Lord Deben: But the representative, who is present when these negotiations very often taken place, is the person who is most likely to remind the Government that we do have to have the money to carry out our statutory function. My suggestion is it would be helpful if somebody who was in that position also had a stronger power to say not just, "This



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is the fact" but could say, "You cannot go any further than that, otherwise they cannot do the job". There is a role for somebody to do that. I am undecided as to who should do it, but somebody should do that, because although we have never had the experience, I do not expect to have the experience, I do not want to be put into a position that I would be in, which is I would get up and say, "We cannot do the job statutorily and I am not prepared to do that. You have two choices: you either give us the money or I will raise the money outside". Of course the last thing the Government would want is if we had independent money. You would have to be very tough about it. You could not let that go.

- Q80 **Mr Philip Dunne:** We had evidence that the OBR have in part of their terms of reference an independent line in the Treasury accounts, so that there was transparency about how much they receive. Does that apply in your case? Presumably you publish your own accounts.

Baroness Brown: Our annual report is laid in Parliament, which has our accounts in it, so it is completely transparent.

- Q81 **Mr Philip Dunne:** Is it seen as a line within the sponsoring Department as well or not? Does it fall within their accounts?

Baroness Brown: It must fall within there, yes, because money comes from DEFRA and BEIS, so that must fall within their accounts as well.

Lord Deben: It does not all come in the same account of course, because we have some money from DEFRA and we have some from the Scots and some from the Welsh.

- Q82 **Mr Philip Dunne:** Amyas, can I just ask you on the NAO funding directly from Parliament, are you the only body that receives funding?

Sir Amyas Morse: No, there are other bodies, parliamentary bodies, and I think I am right in saying the Parliamentary Ombudsman and various others. There are a series of bodies that do and some that have adopted the PAC Commission as a model. What we do, very quickly, is just put forward our strategy for the year and what we think that will cost.

- Q83 **Mr Philip Dunne:** Do you have a negotiation with somebody?

Sir Amyas Morse: The Commission benefits from advice from the Treasury and we give our views.

- Q84 **Mr Philip Dunne:** And you reach a settlement?

Sir Amyas Morse: We do.

- Q85 **Mr Philip Dunne:** You have already indicated you have previously reduced your costs.

Sir Amyas Morse: Yes, but not as a result of advice from the Treasury, but because I believe we could reduce some costs.



Q86 **Mr Philip Dunne:** You have consulted yourself on that one?

Sir Amyas Morse: We prefer making our own decisions, if we can, yes.

Q87 **Mr Philip Dunne:** You have been clear that would be the best model for this organisation?

Sir Amyas Morse: Yes.

Q88 **Dr Matthew Offord:** Sir Amyas, I wanted to ask you a few questions about governance, particularly your own experience of the NAO, and I understand your own governance arrangements re-evaluate in 2011. What advice would you seek or what would you expect the Government to seek in setting up a new body?

Sir Amyas Morse: There are two things: one is that anything where there is public money being spent in an organisation there needs to be reasonable governance to show that the organisation is being run properly. Sometimes you see otherwise good organisations where something about the way the corporate governance is going on is not okay, people employing friends or not having proper competition on the contracts they put out, things like that. Every organisation that is being paid for by public money should be properly run. One of the jobs in governance—you might not think is terribly exciting—is that one.

Then there is a value in having an independent conversation about what the strategic issues are. In the case of the NAO, we are slightly unusual because the Comptroller and Auditor General is a personal appointment, and the NAO exists—I am sorry to say about this—to support me in that appointment. That is a bit of an unusual set of circumstances. The judgments and the discretion are mine. The board is interested in that and we do have strategic discussions, but in the end I am the decision-maker in that. That happens to be the way that is set up and it is right because I am exercising professional judgment all the time.

Q89 **Dr Matthew Offord:** Would you say a good example of good practice would be to have one person making a decision or, for example, like the Climate Change Committee that have a committee of people?

Sir Amyas Morse: You will get a different result, if I can say it like that. If you are asking a committee to exercise discretion, it is asking quite a lot. Whether in truth that is what happens or whether you just have the chair exercising discretion, that is a question you need to ask. I do not think you can have corporate discretion. That turns into a debating shop.

What I find is I am very constrained in exercising my discretion. I have to think about the community surrounding me: Government, Parliament and so forth. I think about all that very carefully. It is a strange feature of the system that if you started going off track you will somehow be shuffled quietly towards the door pretty quickly, even though it is not heavily rules-based and you get a lot by having discretion. You get a chance to



say, "Look, this is obviously what we need to look at now. We are going to look at it".

I will give you a very quick example. We are doing a series of reports on Brexit. We started out writing reports in a particular style because people did not know what Government was doing on Brexit and therefore they were just descriptive reports, not assessing anything or giving a judgment at all. Now we are starting to write reports that have a more judgmental style to it. Being free to make those sorts of choices and not to spend six months debating it, but quickly make the choice, respond to the situation in a way that seems to be appropriate, of course you take advice. But if you want a fast-moving adaptable body like that, you need to create the ability to make your mind up quickly.

Lord Deben: Could I just say something, a comparison? We have never had a vote on the Climate Change Committee in 10 years because it is a different sort of committee. First, it is not representative. It is of scientists and economists who are at the top of the tree. The applications are always very fine people. You are having discussions about fact. What is the best information that you can get? The chairman's role in those circumstances is to bring that together and to give it, first of all, a characteristic, a character, so that people get used to the way in which we do things; to give it language, which is not scientific, but can be understood by everyone. If I can understand it I feel at least happy with that.

I do not have the same position—and nor would I want to have the same position—but I am put into the same position, because the Committee is not a representative committee in which you have great debates about what would be the best thing to do, because of course it is the Government that decides what to do. We tell them a range of things that they could do and we tell them a physical target that they have to reach. We tell them when they have not reached it and we give them more advice about what they should do.

None of this is a committee of representatives second-guessing the Government. It depends on what you are asking the group to do as to whether a committee system is for better. In our case, it is very sensible. What people abroad find amazing is that it is a committee of independent scientists and economists, because they always think that it would be we would have a representative from this part of the country, somebody who is a trade unionist and somebody who is a member of the CBI. I do think that would be hopeless and it would be quite impossible to run it.

Q90 **Dr Matthew Offord:** That is helpful, the change in perspective of the two of you. The next thing I certainly want to ask from that, the NAO has been critical of some organisations of public bodies because there has been a lack of their objectives in their initial setting up. Do you feel the Government's objectives for the new body are a sound foundation?

Sir Amyas Morse: You want me to give my opinion now?



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Dr Matthew Offord: Both of your opinions.

Sir Amyas Morse: How easy. There are bits in the objectives I was more enthusiastic about than others. The ones at the front look good. When you get down to “very balanced and even” or whatever—I am probably unfairly summarising the words—I started thinking, “Hello, is this some way of importing a lot of limiting capacity into it?” If I sound sceptical, it is because I have been in this job for nearly 10 years now and I find scepticism is rarely misplaced. What I have been trying to do in my testimony today is to keep saying, “Put yourself in a practical situation. You know what the issues are you are going to be addressing, roughly speaking. Can it be done with this or are you going to be limited in some way?”

The danger almost is you are transitioning from the massive power of the EU legal system and so forth into something that is very different. To say we are just going to produce exactly the same thing, only in some ways is that true. Concentrating that power in the hands of a watchdog rather than the EU means that the EU have checks and balances, they have a lot of factors there that probably mean governments, notwithstanding the present political situation, can be reasonably comfortable they can influence and have their voice heard. The danger about having almost too much power in the hands of a watchdog is the Government’s reaction to that will be to try to build in stoppers. In some ways, if you are going to have a watchdog, you need to think about what power they can handle and still be free to use discretion, which is important. I hope that point makes sense, but on thinking about this I decided I would say this because it is a bit of a hazard.

Lord Deben: Can I lead you back to the setting up of the Climate Change Committee because it illustrates the problem? You will remember the story because you have to know the story. The story was that it was originally written, the Act, by the Conservative Party, with the help of Friends of the Earth and then spread to all the opposition parties. You had a situation in which all the opposition parties had agreed to it. There were 100 or more Labour Members of Parliament who said they would agree to it too.

But the opposition came from the Treasury, not because it was opposed to green things, but because it was opposed to anything that restricted the Treasury’s powers. It always is. Of course we had as Prime Minister somebody who was a very keen Treasury man in Gordon Brown. That was his structure. It is no secret, because he admitted it, this is not a Bill he wanted, but clearly the parliamentary arithmetic meant that he had to be and his own party wanted it. It was genuinely an all-party Bill. But there was a moment in which a representative of the Treasury came into the Department of then Climate Change and threw the Bill across the table and said, “There you are. You have your Bill” because they did not want it.



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Exactly the same thing has happened over the watchdog. It is quite clear that what happened was the watchdog was prepared to do a particular job and the same people with the same argument said no. The lesson is if you write it properly, there is no need for the Treasury to be worried, but it is instinctively worried. What it does is—to do exactly what Sir Amyas has said—to put in all these little extra phrases, which mean that you cannot in the end do the job properly. I would much prefer to see someone who is limited in what job it does, but has the discretion to do that job properly than to be wide in what it is supposed to do, but cannot in any way do it because there are these weasel words.

I said earlier this weasel word of “mission”. The Treasury has more weasel words than most. You have to look out for that if you want it to work. Make sure it is concentrated, make sure what it does is in the legislation and give it the power to say, “I am sorry, that is what is true and that is why I am going to take you to court because you have not done this”.

Q91 Dr Matthew Offord: Are there any examples or experiences we can learn from your establishment of the Environment Agency?

Lord Deben: I have to say I found it so valuable to have what was in every way an independent agency that I never thought anybody would want it differently, but immediately I went under each Government, that was reduced. There was this curious concept that somehow or other a publicly-funded body should not criticise the Government. I think the opposite. This is most peculiar, the statement, and I can remember not just Tories but Labour people too saying, “It is outrageous that they should criticise us”. We need criticism. In our own lives we do it. We set up arrangements for people to say; we have children and they tell you, “That is a bloody silly thing to do”, don’t they? In a sense, we need that in public life. I totally believe in that. I have learnt the hard way, which is that you cannot trust Ministers not to want to close down criticism and therefore you must make it an endemic part of the system, make it systemic.

Q92 Mr Robert Goodwill: We have been assured that following our exit from the European Union there will be no reduction in environmental standards. Often when new regulations are being pushed through, the UK will get a derogation or if it is a directive we would transpose that in a way that might not always been seen as fully in the spirit of what has been proposed. Would it be the job of the Government to grant themselves derogations and for this body to then report back? Or would they have to reply to the body to get derogations on the legislation that is coming forward in Europe that we would probably want to echo?

Lord Deben: There are so many suppositions there. I am trying to be as objective as possible because none of us are entirely objective on this particular subject, but I am trying to be objective. The truth is that we are going to have a future in which there are many things that we are going to have to have, roughly speaking, the same arrangements



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because that is what life is like. It is not only like that, but the fact is the costs of doing anything different and the ability to do anything different. The idea that we could have different rules for motorcars, for example, is obviously not in a general sense right.

My experience of our treatment of European Union law is partly there are derogations, but partly too that we have used it in order to—I mean the gold-plated bit is not untrue. There are many areas where we have made decisions and very often when we have started it off. It is our health and safety laws that have been largely taken on by the rest of Europe and then come back and we have made them more onerous than has been there. The crucial thing is that Government must be in a position that they have to put its policies before Parliament in a proper way and when Parliament has decided, it must be in a position to have to do what Parliament has decided.

I give you an example of where we must not be. Lord Marlesford introduced a Private Bill about litter. Not the most important thing in the world, but something that the public are very concerned about. There was in those days a gap in the law that if you threw something out of your car you could not be prosecuted. There was some reason why this was. All he did was to propose this and the Government opposed it and opposed it and opposed it. Finally the House of Lords passed it, the House of Commons passed it and it became law. Then the Government did not implement it. It took, I think, five years—I may be wrong—but certainly three years before we finally managed to go back and pass it again, but this time with a timing date on it that it should be implemented. That is bad government, and as it spread over two Governments I think it is fair to use that.

There is the same thing about taking caste as to one of the reasons that you could claim unfair discrimination. That is passed by Parliament, but it has not been implemented because the Government have all sorts of reasons why it would prefer not to be implemented. I do not think that is right. Parliament does not think sometimes, but it is sovereign and if it is not allowed to make those decisions against the Executive, then the Executive succeeds. You do need to think about how when a Bill has been passed, when Parliament has argued it out, however it may have done, that there must be, in the areas that we are talking about, an ability to insist.

Government does their own derogation in the argument of the Bill. That is when they derogate, because they now have total control over what they put through, in the sense that they legally have that. Of course they do not, because they are still having to listen to and think about how that will affect their relationships with their neighbours and people they are trading with, with people they get goods from, and all the rest of it.

Q93 Chair: I am going to draw the conversation on hypotheticals to a close. A couple of quick final questions for Sir Amyas. What lessons are there



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from the review of the NAO's governance that could be learnt for setting up of this new body? Any thoughts on organisational structure?

Sir Amyas Morse: Get the right people, keep it simple.

Q94 **Chair:** What controls should Parliament have over the appointment and dismissal process for the person who heads the new body?

Sir Amyas Morse: Parliament should be in charge of that.

Q95 **Chair:** Finally, to Lord Deben, obviously the remit is under discussion. What are the strengths and weaknesses of a UK-wide remit?

Lord Deben: I do not call it a weakness that we have to organise ourselves so that we work with the devolved governments. That is a good thing. I believe in devolution and it is a helpful thing to have a remit that covers the whole of the United Kingdom, but which needs to be negotiated the way in which you deal with it. You are dealing with devolved governments, which have decision-making powers, have different legislation and it is very good for us because we have to understand that legislation. We can then play back some of the advantages for the Future Generations Act, for example, which has great advantages, which one can play back in our normal discussions with Government.

Chair: We are going to leave it there. Thank you both very much. This is a discussion I am sure is set to continue. Thank you.